COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF WAINWRIGHT v. THE UNITED KINGDOM

(Application no. 12350/04)

JUDGMENT

STRASBOURG

26 September 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wainwright v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Ms L. MIJOVIĆ,
Mr J. ŠIKUTA, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 13 December 2005 and on 5 September 2006,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 12350/04) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by British nationals, Mary and Alan Wainwright ("the applicants"), on 2 April 2004.

2. The applicants, who had been granted legal aid, were represented by Mr D. Reston, a lawyer practising in York, and Mr Ian Christie, a barrister practising in London. The United Kingdom Government ("the Government") were represented by their Agent, Mr Derek Walton of the Foreign and Commonwealth Office, London.

3. The applicants complained that they were strip-searched when seeking to visit a relative in prison, invoking Articles 3 and 8 of the Convention, and that they had no effective remedy as required by Article 13 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 13 December 2005, the Court declared the application admissible.

6. The applicant, but not the Government, filed further written observations (Rule 59 § 1). The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*). The Government made comments on just satisfaction.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant, Mrs Mary Wainwright, was a United Kingdom national, who was born in 1953 and lived in Leeds. Her son was the second applicant, Mr Alan Wainwright, a United Kingdom national, born in 1975 and living in Leeds. He had cerebral palsy and severe arrested social and intellectual development. He was defined as a "patient" within the meaning of the Mental Health Act 1983 and as such lacked the capacity to bring or defend legal proceedings. His application to the Court was made through the first applicant, who acted as his "litigation friend" throughout the domestic proceedings.

8. In August 1996, Patrick O'Neill (the first applicant's son and the second applicant's half-brother) was arrested on suspicion of murder and detained on remand at HMP Armley, Leeds. Following a report by a senior prison officer raising suspicions that Mr O'Neill was involved in the supply and use of drugs within the prison, on 23 December 1996, the Governor ordered, *inter alia*, that all Mr O'Neill's visitors be strip-searched before visits.

9. Unaware of the Governor's orders, on 2 January 1997, the applicants attended Armley Prison, Leeds, to visit Mr O'Neill. Until then, neither of them had previously been to a prison. On presentation of their visiting orders, the applicants were requested to join the queue of visitors lined up by a security barrier. As requested, they removed their coats and placed them with their bags on a conveyor belt to be x-rayed. They were then frisked and searched by metal detector. Whilst waiting with other visitors in a corridor to go inside, a number of prison officers approached them and told the applicants to follow them. They were taken across the courtyard from the south gatehouse by four or five prison officers. The second applicant asked his mother what was happening. As they approached the north gatehouse, one of the officers stated that they had reason to believe that the applicants were carrying contraband. When the first applicant asked what this meant, she was told that he was referring to drugs.

10. At the north gatehouse, the applicants were taken through another security barrier and up some stairs to the first floor. They were informed that they would be strip-searched and that if they refused they would be denied their visit to Mr O'Neill. The second applicant was beginning to be distressed and the first applicant tried to calm him down. They were then taken to separate rooms for the searches.

A. The search of the first applicant

11. The first applicant was taken by two female officers into a small room which had windows overlooking the road in front of the prison and the administration block beyond it. It was dark outside and the lights in the room were on. There were lights on in the building, making the first applicant believe that people were still working in the administration block. Although there were roller blinds on the windows, they were not pulled down. The first applicant was told to take off her jumper and vest. One of the officers searched them whilst the other officer walked around her, examining her naked upper body. She was then instructed to remove her shoes, socks and trousers, which she did. At this point, a third female officer entered the room. This officer asked where the consent forms were, and was told by one of the officers where to find them. In answer to a question from the first applicant, the third officer confirmed that the form was for the second applicant. The first applicant explained that it would be no use to him because of his learning difficulties, particularly with reading and understanding, and that someone else needed to be there to explain to him what was happening. The third officer then left and the search of the first applicant continued. By this time she was crying. She was standing naked apart from her underwear. On her request, she was returned her vest and allowed to put it back on. She was told to pull down her underwear which she did and then told to widen her legs. She was then told to take one leg out of her underwear so her legs could be spread wider. She was told to bend forward and her sexual organs and anus were visually examined. The officer inspecting her body then asked the first applicant to pull her vest up again, asking for it to be raised higher and higher until it was above her breasts. The first applicant asked why that was necessary since they had already inspected her top half. The officer ignored her and continued walking around her body. She was then told to put her clothes back on.

12. By the end of the search, the first applicant was shaking and visibly distressed. She believed that anyone outside the prison looking at the windows in the room where she was being strip-searched could have seen her in a state of undress. She was worried that if she protested too much she would not be allowed in to visit Mr O'Neill. She was also worried about what was happening to the second applicant. Although none of the officers touched her, she felt threatened by their actions and considered that she had no alternative but to comply with their instructions.

13. After she had been told to put her clothes back on, one of the officers approached the first applicant and asked her to sign the form to consent to a strip-search (F2141). Attached to the consent form is a summary of the procedure to be carried out. The first applicant told the officers that she might as well sign it as there was by that stage nothing else the officers could do to her and she then did so without reading it.

B. The search of the second applicant

14. The second applicant was taken to a separate room by two male officers. At first he refused to go into the room but was told that he would not get to see his brother if he did not agree. Once in the room, one of the officers put on a pair of rubber gloves. This frightened the second applicant who feared that there would be a search of his rectum. As requested, he removed the clothes from the upper half of his body and they were searched. He was subjected to a finger search, which included poking a finger into his armpits. The prison officers then told the second applicant to remove the clothes from the lower half of his body. At first he refused to remove his boxer shorts. He was by this stage crying and shaking. He reluctantly removed his boxer shorts and was told to spread his legs. Because of his physical disability, he had to balance with one hand on the wall to do so. One of the prison officers looked all around his naked body, lifted up his penis and pulled back the foreskin. He was then allowed to get dressed.

15. After this, one prison officer left the room returning with a consent form. When presented with it, the second applicant explained that he could not read and that he wanted his mother to read it to him. The officers ignored this request and said that if he did not sign the form he would not be allowed in to visit his brother. He signed the form.

16. The applicants were led back to the prison to proceed with their visit. During the visit, the first applicant told Mr O'Neill what had happened. The first applicant went into the toilet where she cried and vomited about four times. The second applicant felt shaken and nervous and was upset. The applicants did not stay for the full length of their visit.

C. Effects of the searches

17. Regarding the first applicant, on returning home, she removed her clothes and bathed because she felt upset, angry and dirty. Because of her experience, she did not visit Mr O'Neill for a further four months. In October 1998, in the context of the civil proceedings, she was examined by Dr Sims, Professor of Psychiatry. At that time (approximately 21 months after the incident), the first applicant stated that she still thought about the strip-search about once a week, continued to get upset about it, remained angry about what had happened and had difficulty sleeping. Dr Sims considered that the severe upset that she had experienced in the prison made her existing depression (for which she was receiving medication at the time of the visit) worse, but that apart from recurrent intrusive recollections of her time at the prison and psychological distress at anything that resembled her previous experience, she did not show other symptoms of post-traumatic stress disorder (“PTSD”). He concluded that as a result of her aversive

experience in the prison, the first applicant would be more vulnerable to future traumatic events and more prone to depressive reaction.

18. As for the second applicant, on his return home from the visit, he went to his bedroom crying. For about five weeks after the incident, he would not see his girlfriend, baby son, friends or anyone else and spent large amounts of his time in his bedroom. He was also examined by Dr Sims in October 1998. At this time, he stated that he was still feeling bad about the incident, had difficulty sleeping and had nightmares about going into the room at the prison and of being strip-searched. He thought about being in prison almost continuously and broke out in a sweat and felt frightened when he recalled the incident. During a subsequent visit, he saw some of the same officers who had strip-searched him and became very frightened. In addition, he became afraid to leave the house alone and therefore stayed at home, only going out with his mother, the first applicant. He lost interest in his previous activities, showed irritability and hyper-vigilance.

19. Dr Sims concluded that the second applicant was suffering from PTSD (scoring 15 on a scale devised form DSM IV of the American Psychiatric Association Diagnostic and Statistical Manual where 10 would indicate presence of PTSD) and had a depressive illness. He found that both illnesses had been substantially caused by his strip-search experience. He found that the second applicant had experienced the strip-search as a threat to his physical integrity, believing that he was going to experience anal penetration, to which he had responded with fear and a feeling of hopelessness. His symptoms were severely impairing his ability for social functioning. Dr Sims concluded that even after recovery, the second applicant would remain vulnerable to further symptoms with lesser provocation than previously.

20. In April 2000, the second applicant was further examined by Dr Sims. He concluded that he was still suffering from post-traumatic stress disorder (which in fact was more severe, measuring 18 on the DSM scale) and depressive illness. He predicted some improvement, with appropriate treatment, within one to two years.

D. Civil proceedings

21. On 23 April 2001, the County Court upheld the applicants' civil claims against the Home Office holding that the searches constituted a trespass to the person which could not be justified by Rule 86 § 1 of the Prison Rules (see Relevant domestic law and practice) for two reasons. Firstly, the trial judge held that their strip searching was an invasion of their privacy exceeding what was necessary and proportionate to deal with the drug smuggling problem (at paras. 105-8). Although he accepted that there were serious drugs problems at the prison at the time of their visit and that

there were reasonable grounds for believing that Patrick O'Neill had been obtaining illicit drugs (he referred to the report by a senior prison officer that his speech had been slurred and mannerisms incoherent), he held that the prison officers should not have searched the applicants as it would have been sufficient to have searched Mr O'Neill after they left. Secondly, the prison authorities had not adhered to their own rules. The judge rejected the applicants' submission that Article 3 was relevant, holding that although strip-searches were unpleasant, they did not amount to inhuman or degrading treatment (at para. 100). The trial judge accepted the diagnosis of the second applicant as suffering from PTSD, but did not think that his symptoms had lasted as long as the psychiatrist thought, and that the second applicant had substantially recovered from the effects of the strip-search by March 1998, when he made a para-suicide attempt. He awarded the first applicant a total of 2,600 pounds sterling (GBP) (comprising GBP 1,600 basic damages and GBP 1,000 aggravated damages) and the second applicant a total of GBP 4,500 (comprising GBP 3,500 basic damages and GBP 1,000 aggravated damages), the Home Office having conceded battery, following the trial judge's factual findings.

22. On 20 December 2001, the Court of Appeal allowed the Home Office's appeal. The court disagreed that trespass to the person could be extended to fit these circumstances, and found that no wrongful act (save for the battery against the second applicant) had been committed. Lord Woolf C.J. noted that there were numerous ways in which drugs could be smuggled into prison and that the most vigorous regime of searching prisoners would not in itself suffice. He found therefore that a search of Mr O'Neill would have been inadequate. He rejected the applicants' arguments that the Human Rights Act 1998, which did not have retrospective effect, could affect the outcome of the appeal. While agreeing that the Act had no retrospective effect, Buxton L.J. commented that if the events had occurred after the coming into effect of the Act, the applicants would have had a strong case for relief due to the manner of the search and the public authority's lack of regard for Article 8. The court set aside the first-instance judgment and substituted an award to the second applicant for battery of a total of GBP 3,750.

23. On 16 October 2003, the House of Lords upheld the judgment of the Court of Appeal and dismissed the applicants' appeal. Holding that the Human Rights Act 1998 was not applicable as the events took place before its coming into force on 2 October 2000, the House of Lords nevertheless went on to consider whether, if the Act had been in force, breaches of the Convention could be made out. Lord Hoffman, delivering the leading judgment, found that there was no infringement of Article 3 as the conduct had not been sufficiently humiliating to constitute degrading treatment:

> "50. In the present case, the judge found that the prison officers acted in good faith and that there had been no more than "sloppiness" in the failures to comply with the

rules. The prison officers did not wish to humiliate the claimants; the evidence of Mrs Wainwright was that they carried out the search in a matter-of-fact way and were speaking to each other about unrelated matters. The Wainwrights were upset about having to be searched but made no complaint about the manner of the search; Mrs Wainwright did not ask for the blind to be drawn over the window or to be allowed to take off her clothes in any particular order and both of them afterwards signed the consent form without reading it but also without protest. The only inexplicable act was the search of Alan's penis, which the prison officers were unable to explain because they could not remember having done it. But this has been fully compensated."

24. As for Article 8:

"51. Article 8 is more difficult. Buxton J. thought, at [2002] QB 1334, 1352, para. 62, that the Wainwrights would have had a strong case for relief under section 7 if the 1998 Act had been in force. Speaking for myself, I am not so sure. Although article 8 guarantees a right of privacy, I do not think that it treats that right as having been invaded and requiring a remedy in damages, irrespective of whether the defendant acted intentionally, negligently or accidentally. It is one thing to wander carelessly into the wrong hotel bedroom and another to hide in the wardrobe to take photographs. Article 8 may justify a monetary remedy for an intentional invasion of privacy by a public authority, even if no damage is suffered other than distress for which damages are not ordinarily recoverable. It does not follow that a merely negligent act should, contrary to general principle, give rise to a claim for damages for distress because it affects privacy rather than some other interest like bodily safety: compare *Hicks v. Chief Constable of the South Yorkshire Police* [1992] 2 All ER 65."

25. Dealing with the applicants' submission that in order for the United Kingdom to conform to its international obligations under the Convention, the House of Lords should find that there was (and in theory always had been) a tort of invasion of privacy under which the searches of the applicants were actionable and damages for emotional distress recoverable, Lord Hoffman stated:

"32. Nor is there anything in the jurisprudence of the European Court of Human Rights which suggests that the adoption of some high level principle of privacy is necessary to comply with article 8 of the Convention. The European Court is concerned only with whether English law provides an adequate remedy in a specific case in which it considers that there has been an invasion of privacy contrary to article 8(1) and not justifiable under article 8(2). So in *Earl Spencer v. United Kingdom* 25 E.H.R.R. CD 105 it was satisfied that the action for breach of confidence provided an adequate remedy for the Spencers' complaint and looked no further into the rest of the armoury of remedies available to the victims of other invasions of privacy. Likewise, in *Peck v. United Kingdom* (2003) 36 E.H.R.R. 41 the court expressed some impatience, at paragraph 103, at being given a tour d'horizon of the remedies provided and to be provided by English law to deal with every imaginable kind of invasion of privacy. It was concerned with whether Mr Peck (who had been filmed in embarrassing circumstances by a CCTV camera) had an adequate remedy when the film was widely published by the media. It came to the conclusion that he did not.

33. Counsel for the Wainwrights relied upon Peck's case as demonstrating the need for a general tort of invasion of privacy. But in my opinion, it shows no more than the

need, in English law, for a system of control of the use of film from CCTV cameras which shows greater sensitivity to the feelings of people who happen to have been caught by the lens. For the reasons so cogently explained by Sir Robert Megarry in *Malone v Metropolitan Police Comr* [1979] Ch 344, this is an area which requires a detailed approach which can be achieved only by legislation rather than the broad brush of common law principle.

34. Furthermore, the coming into force of the Human Rights Act 1998 weakens the argument for saying that a general tort of invasion of privacy is needed to fill gaps in the existing remedies. Sections 6 and 7 of the Act are in themselves substantial gap fillers; if it is indeed the case that a person's rights under article 8 have been infringed by a public authority, he will have a statutory remedy. The creation of a general tort will, as Buxton LJ pointed out in the Court of Appeal, at [2002] QB 1334, 1360, para. 92, pre-empt the controversial question of the extent, if any, to which the Convention requires the state to provide remedies for invasions of privacy by persons who are not public authorities.

35. For these reasons I would reject the invitation to declare that since at the latest 1950 there has been a previously unknown tort of invasion of privacy."

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. Section 47(1) of the Prison Act 1952 allows the Secretary of State for the Home Department to lay down rules relating to the management of prisons:

"The Secretary of State may make rules for the regulation and management of prisons, remand centres, young offenders institutions or secure training centres respectively, and for the classification, treatment, employment, discipline and control of persons required to be detained therein."

27. Pursuant to this power, the Secretary of State has issued the Prison Rules. Rule 86 § 1 of the Prison Rules (consolidated January 1998), which was in force at the relevant time, provided:

"Any person or vehicle entering or leaving a prison may be stopped, examined and searched."

28. The details of the grounds for stopping and searching visitors and the procedure to be followed were set out at the relevant time in a document entitled *"Strategy and Procedures of Searching at Leeds Prison"*. This document is not available to the public. The relevant paragraphs (as found by the Court of Appeal at paragraph 18) are as follows:

"1.2.1 – Searches will be conducted in as seemly and sensitive manner as is consistent with discovering anything concealed.

No person will be strip-searched in the sight of anyone not directly involved in the search.

A person who refuses to be searched will be denied access to the prison or detained in accordance with s.1.2.7.

1.2.5 – Strip-searching of visitors is not permitted except in the circumstances specified in 1.2.7 and then only if police attendance is not possible. In cases where strip-searches of visitors are necessary it is preferable that this is done by the police.

1.2.6 – A visitor who refuses to co-operate with the search procedures will be advised that the failure to comply will result in exclusion from the prison.

1.2.7 – If the duty governor sanctions a strip-search, the visitor should be taken to a room which is completely private and informed of the general nature of the suspected article."

29. A summary of the procedure to be followed during strip-searches at the prison was set out on the back of the consent forms. The consent form (F2141) provided as follows:

"Appendix F: Notice for the information of visitors or other persons entering an establishment

Strip Search

Please read carefully

The Governor has directed that, for the reasons explained to you, you should be strip-searched.

The police have been informed but cannot come to deal with the matter. The search will therefore be carried out by prison staff.

The procedure for the search is explained overleaf.

Please sign below if the search is taking place with your consent."

30. Above the line to be signed by the person being searched appeared the following:

"I have read this notice (or it has been read to me) and I understand it.

I agree to be strip-searched by prison staff."

31. The summary of the procedures to be followed appeared overleaf:

"Procedures for a strip-search

Staff and visitors

Two officers will be present. No person of the opposite sex will be present.

You will not be required to be fully undressed at any stage.

You will be asked to remove clothes from half of your body and pass them to an officer so that they may be examined. Your body will then be examined briefly so that the officers can see whether anything is concealed. The clothes will then be returned to you without delay and you will be given time to put them on.

The procedure will then be repeated for the other half of your body.

The soles of your feet will be checked.

When your upper body is undressed, you may be required to hold your arms up.

When your lower body is undressed, you may be required to position yourself in such a way as to enable staff to observe whether anything is hidden in the genital or anal areas. Your body will not be touched during this process.

If you have long hair, it may be necessary for an officer to search it. It may also be necessary for an officer to check your ears, and mouth. You will not be touched otherwise."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

32. The applicants submitted that the strip-searching infringed Article 3 and/or Article 8 of the Convention.

Article 3 of the Convention provides:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention provides as relevant:

"1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

1. The applicants

a. Article 3

33. The applicants submitted that members of the public such as themselves, not suspected of a criminal offence, were entitled to a more relaxed regime than convicted prisoners. There was no suspicion that they

were carrying drugs nor any convincing basis for suspicion that their relative was taking drugs or heavily involved in the supplying of drugs. No drugs had been found on Patrick O'Neill after a search and no information given concerning his mandatory drugs test. They rejected the Government position that a search was justified simply because of the general drugs problem in the prison and the contention that the applicants could realistically have made objection to the procedures adopted during the search. It would have served no point for the first applicant to request the blind to be drawn where such request did not have to be complied with and the prison officers were ignoring her questions. They submitted that the conduct of the prison officers departed from procedure to such an extent that it was beyond mere sloppiness and disclosed humiliation for questionable motives. As well as the improper touching of the second applicant and the failure to provide them with the consent forms before the search, they referred to the fact that at one point the second applicant was entirely naked and the first applicant was effectively naked (underwear round her ankles and vest held above her breasts); and though the applicants were only searched by prison officers of their own gender, the first applicant suspected that she could be seen through the window by people outside. The experience was highly distressing and constituted degrading treatment contrary to Article 3 in the circumstances.

b. Article 8

34. The applicants submitted that Article 8 was engaged as they were seeking to visit a member of their family, the first applicant's son and the second applicant's half-brother and emphasised the importance of the visiting regime in prison for maintaining family links. They denied that there was any element of waiver in the fact that they did not refuse to undergo the searches, pointing out that the domestic courts found no real consent in law. They had to comply with the condition in order to exercise their right to visit and it was unrealistic to assert that they could have objected to the way in which the searches were carried out.

35. The applicants argued that that the searches were not "in accordance with the law" as the Prison Rules were not drafted with sufficient precision to enable persons to know the reasons when they might be subjected to a search or the procedure to be followed. Nor were the searches proportionate. They rejected the claimed wide margin of appreciation, emphasising the particularly invasive nature of the interference. There was no justification for a blanket order of search which regarded these applicants as a risk. Notwithstanding the difficulty of identifying drugs smugglers, they argued that the authorities should make a reasonable attempt to identify the likely suspects and the low-risk categories of visitors. It was inherently unlikely that a middle-aged woman and a handicapped person who required constant supervision would attempt to bring in drugs. The manner in which the

searches were carried out in breach of the prison's own internal guidelines were also elements rendering the interferences disproportionate.

2. The Government

a. Article 3

36. The Government submitted that the searches did not constitute treatment of sufficient severity to violate Article 3, pointing to the domestic courts' negative findings under that provision and the comments of the Lord Chief Justice who had enormous experience of prison matters. They emphasised that there was no intention to humiliate, that the search was carried out in good faith for the legitimate object of searching for drugs in a prison with a serious drugs problem; that it was relatively brief; that the applicants were given the choice to leave without being searched and at no point voiced any complaint or objection. If the first applicant had felt strongly about the blinds not being drawn, she could have asked for them to be closed.

37. The Government argued that while it was true that the applicants had not previously been caught bringing in drugs or even visited before it remained the case that visitors were a major source of drugs and all sorts of unlikely visitors had been known to bring in drugs. There had been reasonable grounds for believing that Patrick O'Neill had been obtaining illicit drugs, namely observations as to his physical comportment, which justified the search of his visitors. The aspects of the search which the applicants argued as aggravating the procedure were not, in their view, grossly humiliating or of any significant degree of severity. It was accepted that the physical touching of the second applicant should not have occurred, but it did not last more than a few seconds and there was no intention to humiliate.

b. Article 8

38. The Government emphasised that the applicants had been given a choice as to whether to be searched in order to see their relative and pointed out that the applicants had voluntarily undressed and had not been subjected to any threats or coercion. If at any time they had taken exception to the procedure adopted during the search they could have declined to continue. They submitted that if they had chosen not to be searched this would not have involved any interference with their Article 8 rights, pointing out that the relative was an adult and the lack of any visit in the prior four months indicated the lack of closeness of the relationship.

39. The Government submitted that even assuming that there had been an interference with Article 8 rights the measure had been in accordance with the law, the Prison Rules setting out an accessible and sufficiently

precise basis in law. They disputed that the lack of access to or compliance with internal prison guidelines (save as regarded the battery inflicted on the second applicant) in any sense deprived the searches of their lawfulness.

40. The Government further argued that the searches were proportionate, serving the purpose of preventing crime and protecting the health of prisoners. There was a serious drugs problem, visitors were suspected of bringing in drugs and there were reasonable grounds for believing that their relative had been obtaining illicit drugs. A balance had to be struck between the potential rights of visitors and the rights of others to be protected from drugs in which a wide margin of appreciation ought to be afforded. Finally the way in which the searches were conducted did not give rise to a violation. They pointed out that the first applicant could have asked for the blinds to the room to be pulled down and the fact that more than one half of the body was exposed at a time was not so much greater an invasion than that inherent in the strip-search in the first place.

B. The Court's assessment

1. General principles

41. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and health of the victim. In considering whether a treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. Though it may be noted that the absence of such a purpose does not conclusively rule out a finding of a violation (*Peers v. Greece*, no. 28524/95, §§ 67-68, 74). Furthermore, the suffering and humiliation must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment, as in, for example, measures depriving a person of their liberty (see, *Kudła v. Poland* [GC], no. 30210/96, §§93-94, ECHR 2000-XI, *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII; *Jalloh v. Germany* [GC], no. 54810/00, § 68, 11 July 2006).

42. The Court has already had occasion to apply these principles in the context of strip and intimate body searches. A search carried out in an appropriate manner with due respect for human dignity and for a legitimate purpose (see *mutatis mutandis*, *Yankov v. Bulgaria*, no. 39084/97, §§166-167, ECHR 2003-XII where there was no valid reason established for the shaving of the applicant prisoner's head) may be compatible with Article 3.

However, where the manner in which a search is carried out has debasing elements which significantly aggravate the inevitable humiliation of the procedure, Article 3 has been engaged: for example, where a prisoner was obliged to strip in the presence of a female officer, his sexual organs and food touched with bare hands (*Valašinas,* cited above, § 117) and where a search was conducted before four guards who derided and verbally abused the prisoner (*Iwańczuk v. Poland*, no. 25196/94, § 59, 15 November 2001). Similarly, where the search has no established connection with the preservation of prison security and prevention of crime or disorder, issues may arise (see, for example, *Iwańczuk*, cited above, §§ 58-59 where the search of the applicant, a model remand prisoner, was conducted on him when he wished to exercise his right to vote; *Van der Ven v. the Netherlands*, no. 50901/99, §§ 61-62, ECHR 2003-II, where the strip-searching was systematic and long term without convincing security needs).

43. Where a measure falls short of Article 3 treatment, it may, however, fall foul of Article 8 of the Convention, which, *inter alia*, provides protection of physical and moral integrity under the respect for private life head (*Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, § 36; *Bensaid v. the United Kingdom*, no. 44599/98, § 46, ECHR 2001-I). There is no doubt that the requirement to submit to a strip-search will generally constitute an interference under the first paragraph of Article 8 and require to be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein. According to settled case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular that it is proportionate to the legitimate aim pursued (see *e.g. Olsson v. Sweden*, judgment of 24 March 1988, Series A no. 130, § 67).

2. Application in the present case

44. The Court notes that the applicants were visitors to the prison, intending to exercise their Article 8 right to see a close relative. There was no direct evidence to connect them with any smuggling of drugs into the prison, in particular as this was the first time that they had visited the prison. However, it has no reason to doubt the Government's contention that there was an endemic drugs problem in the prison and that the prison authorities had a suspicion that the applicants' relative had been taking drugs. In these circumstances the Court considers that the searching of visitors may be considered as a legitimate preventive measure. It would emphasise nonetheless that the application of such a highly invasive and potentially debasing procedure to persons who are not convicted prisoners or under reasonable suspicion of having committed a criminal offence must be conducted with rigorous adherence to procedures and all due respect to their human dignity.

45. In the case of these applicants, it has been found by the domestic courts that the prison officers who carried out the searches had failed to comply with their own regulations and had demonstrated “sloppiness”. In particular, it appears that the prison officers did not provide the applicants with a copy of the form which set out the applicable procedure to be followed before the search was carried out, and which would have put them on notice of what to expect and permitted informed consent; they also overlooked the rule that the person to be searched should be no more than half-naked at any time and required the second applicant to strip totally and the first applicant to be in a practically equivalent state at one instant. It also appears that the first applicant was visible through a window in breach of paragraph 1.2.7 of the applicable procedure (see paragraph 28 above). The Government have not contradicted her assertion in that respect, saying that she should have asked for the blinds to be drawn. It is however for the authorities, not the visitor, to ensure the proper procedure is followed.

46. The Court notes that although there was a regrettable lack of courtesy there was no verbal abuse by the prison officers and, importantly, there was no touching of the applicants, save in the case of the second applicant. That aspect was found to be unlawful by the domestic courts which gave damages for the battery involved; the second applicant cannot claim any longer to be victim of this element and it is excluded from the Court's assessment. The treatment undoubtedly caused the applicants distress but does not, in the Court's view, reach the minimum level of severity prohibited by Article 3. Rather the Court finds that this is a case which falls within the scope of Article 8 of the Convention and which requires due justification under the second paragraph of Article 8 (see paragraph 29 above).

47. As regards the criteria of "in accordance with the law" and "legitimate aim", the Court is not persuaded by the applicants that these were not complied with. The domestic courts found that the breach of internal procedure did not disclose any unlawfulness (battery aside) and the Court does not perceive any basis for finding unlawfulness in the broader Convention sense. It has accepted above that the search pursued the aim of fighting the drugs problem in the prison, namely the prevention of crime and disorder.

48. On the other hand, it is not satisfied that the searches were proportionate to that legitimate aim in the manner in which they were carried out. Where procedures are laid down for the proper conduct of searches on outsiders to the prison who may very well be innocent of any wrongdoing, it behoves the prison authorities to comply strictly with those safeguards and by rigorous precautions protect the dignity of those being searched from being assailed any further than is necessary. They did not do so in this case.

49. Consequently, the Court finds that the searches carried out on the applicants cannot be regarded as "necessary in a democratic society" within the meaning of Article 8 paragraph 2 of the Convention. There has been, accordingly, a breach of Article 8 of the Convention in that regard.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. Article 13 of the Convention provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

51. The applicants submitted that English law was deficient in its ability to provide any or any effective remedy for the violations in this case. The damages received by the second applicant were on the low side and he remained a victim of breaches of Articles 3 and 8 and should receive full compensation for the harm caused.

52. The Government submitted that that there was no arguable claim or basis for a separate finding of a violation of this provision. In any event, they pointed out that since the coming into force of the Human Rights Act 1998 any violation arising from similar facts could give rise to a remedy under that Act.

B. The Court's assessment

53. Article 13 requires a remedy in domestic law in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, for example, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, pp. 23-24, § 54). While it does not go so far as to guarantee a remedy allowing a Contracting State's laws to be challenged before a national authority on the ground of being contrary to the Convention (see *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 62, § 40), where an applicant has an arguable claim to a violation of a Convention right, however, the domestic regime must afford an effective remedy (ibid., p. 62, § 39).

54. In light of the finding of a violation of Article 8 above, the complaint is clearly arguable. The question which the Court must therefore address is whether the applicants had a remedy at national level to "enforce the substance of the Convention rights ... in whatever form they may happen to be secured in the domestic legal order" (see *Vilvarajah and Others v. the*

United Kingdom, judgment of 30 October 1991, Series A no. 215, pp. 38-40, §§ 117-27).

55. While it is true that the applicants took domestic proceedings seeking damages for the searches and their effects they had on them, they were unsuccessful, save as regards the instance of battery on the second applicant. As stated above, the Court considers that the finding of unlawfulness of that action and the provision of compensation deprived the second applicant of victim status for the purposes of Article 8 in that regard; it finds no basis, under Article 13 of the Convention, to consider that the amount of compensation awarded by the domestic courts was so derisory as to raise issues of the effectiveness of the redress. As regards the other objectionable elements of the strip searches, the Court observes that the House of Lords found that negligent action disclosed by the prison officers did not ground any civil liability, in particular as there was no general tort of invasion of privacy. In these circumstances, the Court finds that the applicants did not have available to them a means of obtaining redress for the interference with their rights under Article 8 of the Convention.

56. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

58. The applicants claimed compensation for non-pecuniary damage, referring to the after-effects of the searches which lasted at least eighteen months and from which they had still not fully recovered. They pointed out that the trial judge had considered their case appropriate for an award of aggravated damages. Taking into account that the effects were more severe on the second applicant but also that he had received an award for battery, they claimed 20,000 pounds sterling (GBP) each.

59. The Government submitted that these sums were excessive and not supported by the jurisprudence of the Court in other strip-search cases, some of which included other violations. They considered that 3,000 euros (EUR) must be regarded as the upper limit.

60. The Court does not, as a matter of practice, make aggravated or exemplary damages awards (see, for example, *Akdivar and Others v. Turkey* (former Article 50), judgment of 1 April 1998, *Reports* 1998-II, § 38).

Having regard to the undoubted and more than transient distress suffered by the applicants and to the awards made in other strip search cases, the Court awards EUR 3,000 each to the first and second applicants.

B. Costs and expenses

61. The applicants claimed legal costs and expenses of a total of GBP 29,646.25, inclusive of value-added tax (VAT) of which GBP 9,705.50 related to their solicitor (including 144 letters received or sent and 23.5 hours of work on perusing and preparation) and GBP 19,940.75 to counsel.

62. The Government did not accept that these sums had been necessarily incurred or that they were reasonable as to quantum. They considered the hourly rate of GBP 200 was excessive for a solicitors' firm outside London and that the number of hours claimed was not reasonable. An automatic charge of GBP 20 for each occasion of sending or receiving correspondence was also unreasonable. They proposed GBP 2,500 for solicitors' fees and pointed out that if the applicants' complaints were only partly successful that should be taken into account.

63. The Court recalls that that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 79, and *Smith and Grady v. the United Kingdom (just satisfaction)*, nos. 33985/96 and 33986/96, § 28, ECHR 2000-IX). It notes the Government's objections and finds that the claims may be regarded as unduly high given the procedure adopted in the case and the amounts awarded in other comparable United Kingdom cases. Taking into account the amount paid by way of legal aid by the Council of Europe, it awards EUR 17,500 for legal costs and expenses inclusive of VAT.

C. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 3 of the Convention;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) to each applicant in respect of non-pecuniary damage;

(ii) EUR 17,500 (seventeen thousand five hundred euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 September 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

J. CASADEVALL
President