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STRIP SEARCH IN PRISONS AND DETENTION CENTERS IN THE LIGHT OF ECHR DECISIONS

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Aim: The ECtHR's judgements on strip searches under Article 3 are evaluated within the scope of the Istanbul Protocol, and it is aimed to determine the current human rights standards regarding legal practices on strip searches.

Materials And Method: The files that the ECtHR examined and decided on the strip search applications between 2018 and 2022 were searched with the keyword "strip search" by filtering the decisions on Article 3 the relevant year range over the HUDOC database. The data were processed into the database prepared in Excel and the decisions were analyzed quantitatively and qualitatively.

Results: In 2021, in the body of law on penal institutions, the phrase of "strip search" was amended with the clauses "it should be done in a way that respects human dignity" and was changed to "detailed search" with the addition of the requirement to keep a report. With these amendments, no significant changes were made to protect the prisoners in terms of substantive and procedural aspects, and to abolish the forced strip search practices.

A total of 241 applications to the HRFT between 2010 and 2019 stated that they were subjected to strip search/baring in custody. In addition, 28 of these people stated that their body cavities were searched.

According to the data, 18 applications in which the ECtHR evaluated the strip search practices between 2018 and 2022, in 14 applications the Court decided that Article 3 was violated in terms of substantive or procedural aspects. In these decisions, attention was drawn to the findings about the necessity of strip searches, the incomplete functioning of forensic medicine mechanisms and the gross interventions on the physical, sexual and mental integrity of the applicants.

Conclusion: In the decisions within the scope of violations of Article 3 regarding the strip search practices; a very narrow margin of appreciation is attributed for the necessity of a strip search. The fact that the medical evaluation reports on the strip search, and their compliance with the Istanbul Protocol standards in terms of clarifying the concrete incident play an important role on the ECtHR judgements.

Within the scope of the study, it was evaluated how the evidences and reports contributed to the examination of the ECtHR or caused deficiencies, specific to the events subject to the decision.

Keyword: strip search, İstanbul Protocole, Torture, ECtHR