



TRIBUNAL CONSTITUCIONAL

Gabinete del Presidente

Oficina de Prensa

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THE CONSTITUTIONAL COURT REQUIRES “CONCRETE AND SPECIFIC” JUSTIFICATION TO CARRY OUT FULL BODY SEARCHES OF PRISONERS

The Constitutional Court has granted constitutional protection to ETA member Juan Carlos Balerdi Iturralde, who is serving judgment at the Penitentiary Centre of Jaén, by finding that the two full body searches performed on him on 6 and 7 November 2010, after two private visits, violated his right to privacy.

The Second Chamber of the Constitutional Court points out that *“the measure of personally examining the prisoner by performing a nude full body search may, in certain situations, constitute a necessary means for protecting the security and order of a penitentiary establishment.”* However, this measure must be implemented with respect for the prisoners’ personal privacy, and therefore it *“is necessary to weigh adequately, and in a balanced manner, the seriousness of the intrusion entailed on personal privacy, on the one hand, and, on the other, whether the measure is indispensable to ensure the defence of the public interest which one intends to protect.”*

The Court explains that, in order to determine whether the full body search is necessary, each case requires *“a reasoning of the measure by the penitentiary Administration, based on individual, verified grounds.”*

As for the case at hand, the judgment affirms that the decisions by the penitentiary centre *“lack any mention of the concrete and specific security reasons which led to the need for a full body search, because they make only a general reference to suspicions of concealment of some object, without stating any sort of individual, verified reason which makes it possible to identify the measure’s justification.”*

Regarding the decisions by the Central Court for Penitentiary Supervision and the Criminal Chamber of the Spanish National Court, which rejected the appeals for constitutional protection by the appellant, the Constitutional Court points out that *“they suffer from a patent blamelessness.”*

Madrid, 14 October 2013