

the federal **Ombudsman**

A dark green silhouette of a person is positioned behind a grid of vertical and horizontal bars, representing prison bars. The person's head is bowed, and their arms are slightly outstretched, touching the bars. The background is a lighter shade of green.

INQUIRY / 04 - SUMMARY

STRIP SEARCHES

**THE BALANCE BETWEEN SECURITY IN PRISONS
AND THE DIGNITY OF INMATES**



INQUIRY

For a number of years now, the Federal Ombudsman has been receiving complaints and signals about the way inmates are strip-searched in prison.

The Directorate-General Prison Administration of the FPS Justice is in charge of enforcing sentences and measures that deprive people from their freedom. Its task is a complex one because, on the one hand, it is responsible for the protection of inmates while, on the other hand, it must ensure that prisons are secure and that prison staff and visitors are safe.

Complaints from inmates, members of their families and a number of supervisory committees have brought a number of recurrent problems to light that merit an in-depth examination. Incidentally, strip-searching gives rise to a fair share of tension in prisons because, contrary to other measures, they directly affect human dignity.

The Federal Ombudsman asked himself the question to what extent strip searches suitably contribute to the balance between prison safety and the dignity of inmates. It tried to establish:

- whether the decisions to strip-search inmates are consistent with the regulations and
- whether the strip searches are carried out by qualified staff and conducted under appropriate conditions.

The inquiry analysed the prison practices identified, checked them against the regulations and the material and human resources the prisons have at their disposal to carry out their task. The inquiry

also identified the obstacles that prevent prisons from resorting to strip-searching as a last resort.

The preliminary report was forwarded to the administration on 29 August 2019.

All in all, the Federal Ombudsman issued 37 recommendations. 4 were sent to the Federal Parliament and 33 to the Directorate-General Prison Administration of the FPS Justice.

The main findings and recommendations of the inquiry have been summarised here.



COMPLIANCE WITH THE REGULATIONS

The Federal Ombudsman found that the regulations governing strip searches are not always adhered to in prison. He draws the attention to four practices that pose a real risk to the human dignity of inmates.

1. Although forbidden by law, **all prisons systematically organise strip searches**. The prisons do not check whether these searches are truly necessary and, for that matter, don't even take inmates' profile into consideration. Systematic strip-searching submits inmates to a genuine risk of degrading treatment and, at times, leads to intolerable humiliation. For one, in some prisons, inmates who have been given a specific job are strip-searched several times a day.
2. **A great many strip searches are conducted without prior authorisation**. Prison management perfunctorily signs off on the decisions after the strip search has taken place. In other words, at no point in time did they assess the need or the proportionality in a given case. Strip-searching inmates without prior authorisation is illegal and carries a major risk of abuse. The Federal Ombudsman found that, in practice, it is not always possible to meet this requirement for prior authorisation. One solution would be to make provisions for delegation to certain members of the prison staff.
3. The overall majority of **strip-search decisions are stereotyped** and were not triggered by any concrete fact in particular. Inmates are not always able to establish the exact reasons that would warrant them being strip-searched. This situation fuels feelings of arbitrariness, which is only reinforced by the

significant difference in practices between prisons, and inevitably leads to tension.

4. **When inmates change their clothes or are subjected to a urine test** to check whether they have taken drugs, they are often told to take off all their clothes so that they can be checked. This procedure is tantamount to strip-searching. However, as the prisons don't equate these two measures with strip-searching, safeguards go out the window. Situations like these do not obviate abuse.

The Federal Ombudsman in particular recommends that

→ the Directorate-General Prison Administration:

- puts an immediate stop to systematic strip searches
- only resorts to strip-searching as a last resort and encourages the use of alternative measures
- ensures that each strip search has been authorised beforehand
- significantly improves the manner in which decisions are substantiated

→ the Federal Parliament:

- provides for the option to delegate the powers to authorise strip searches under a number of strict conditions by law
- amends the law to the effect that inmates are informed of any such decisions at the very latest when a strip search is being conducted



THE STRIP-SEARCHING PROCESS

The inquiry identified six issues that put inmates at risk of degrading treatment.

1. On the whole, **the strip-search method is not applied correctly**. Some prisons still use techniques that have been abolished because they are particularly degrading. There is no doubt that the countless changes to the rules and administrative instructions have helped to perpetuate these malpractices. The staff hasn't been properly trained either.
2. There is no suitable method to strip-search **vulnerable inmates**. The current method does not take account of the specific needs of certain inmates like people with a disability, transgender people or inmates with mental disorders.
3. **When inmates refuse to be strip-searched**, prisons by and large resort to physical restraint even though that is not always necessary. The refusal to cooperate may be legitimate, especially if it is illegal because it is systematic or brings back old traumas. In cases like these, it may be particularly humiliating to be subjected to a strip search.
4. **The staff's attitude towards the inmates** during a strip search varies greatly from prison to prison, not to say from one officer to the next. In one particular prison, the Federal Ombudsman noted that a policy of genuine courtesy prevailed. Elsewhere, inmates complained of inappropriate, sometimes provocative, not to mention violent, behaviour on the part of certain officers. An unprofessional and disrespectful attitude only hampers the

strip-searching process, heightens tension and increases the risk that the use of physical restraint is abused.

5. By law, strip searches must be conducted by members of staff of the same gender as the inmates. By contrast, **members of staff who have no need to be there sometimes assist with the strip searches**. The presence of too many people during a strip search undoubtedly adds to its humiliating nature.
6. Even though strip searches are not always conducted in an enclosed space, the places where they are conducted usually allow inmates **privacy to be guaranteed**. However, the Federal Ombudsman did notice that they sometimes took place in unsuitable places in view of prying eyes.

The Federal Ombudsman in particular recommends that

→ the Directorate-General Prison Administration:

- develops a stringent, continuous and mandatory training policy and integrates this policy into staff planning
- puts a strip-search method in place that is suitable for vulnerable inmates
- does everything in its power to ensure that inmates undress of their own accord and avoids resorting to physical restraint inasmuch as possible
- develops a policy of courtesy and respect vis-à-vis inmates and takes action when prison officers behave inappropriately
- limits the number of officers who take part in strip searches to an absolute minimum and gives each one of them a specific role
- no longer uses rooms that do not afford inmates privacy.



REPLY FROM THE ADMINISTRATION

In its reply, the Directorate-General Prison Administration did not negate the Federal Ombudsman's findings. It acknowledged that practices differ between prisons and indicated that it has already made several improvements.

It is currently working on putting a new directorate in place, the Integral Security Directorate, which will be tasked with future improvements in prison safety and with monitoring that they are put in place.

The Directorate-General Prison Administration has indicated that it will integrate the Federal Ombudsman's recommendations in its security policy by issuing guidelines to prisons and, where necessary, organising training programmes.



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