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Body search

The Chancellor of Justice was contacted by a petitioner who was dissatisfied that he had been strip searched in Tartu Prison on 6 February 2023 before being taken to Tartu University Clinic. The petitioner explained that for religious reasons he cannot be naked in front of other people. Prison service officers used physical force and handcuffs as a means of restraint when searching the petitioner.

Under [§ 68\(1\)](#) of the Imprisonment Act and [§ 31\(1\) \(first sentence\)](#) of the Minister of Justice Regulation No 44 of 5 September 2011 on “The organisation of supervision in prison”, a prison service officer may search both a person staying in prison as well as their belongings. Under [§ 32 clause 1](#) of the regulation, a prisoner must also be searched when exiting the prison. Thus, the prison had the right and the duty to search the prisoner prior to being taken out of the prison.

However, the above provisions do not lay down the details of the conduct of a search. Prison security is extremely important but, in order to achieve it, measures proportionate to this objective should be implemented (§ 11 [Constitution of the Republic of Estonia](#)). The more restrictive a measure, the more thoroughly its application should be considered. A decision to strip search a person should be exceptional and rely on a specific risk assessment (e.g. in relation to a prisoner’s behaviour, previous violations, and the like). The Chancellor has repeatedly explained this to prisons (most recently, for example, in the [summary](#) of inspection visits to open prisons).

The same requirements have been emphasised in their recommendations both by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT, see e.g. the 2022 recommendation to [Greece](#), para. 42) and the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT, see e.g. the 2020 recommendation to [Poland](#), paras 110-111).

The European Court of Human Rights (ECtHR) on 11 May 2023 in the case of [Bojar v. Poland](#) (paras 15-16) noted that it is not sufficient if such an invasive and potentially debasing measure like a strip search is justified by general security needs of the prison. In the case cited above, the ECtHR found a violation of Article 8 of the [Convention on Human Rights and Fundamental Freedoms](#).

The materials submitted by Tartu Prison do not reveal what kind of behaviour by the petitioner or specific circumstances related to him were the basis to consider it necessary to strip search him in addition to the pat-down search on 6 February 2023. The prison cited a guard's right to search a person staying in prison but this justification is insufficient. In this case, it should also be taken into account that the petitioner was in the reception unit (i.e. in a closed cell), so that he had very few possibilities to get hold of any prohibited substances or items. Thus, the reasons for a strip search should have been even more compelling.

Someone's religious belief cannot preclude their extensive search. In each and every case it is always important that a person's dignity is respected during a search (§ 18 [Constitution](#)). The Chancellor has repeatedly told the prisons (including [Tartu Prison](#) in 2016, para. 6.2) that if a prison has a justified need to strip search a person, the clothes should be removed gradually, so that part of the body is always covered. The same has been repeatedly emphasised by the CPT (e.g. most recently in the 2022 recommendations to [Greece](#), para. 42).

Dignified treatment may also mean that a person's beliefs arising from religion are taken into account to a certain extent. For example, in the United Kingdom searches in prisons are carried out in line with the guidance on searching, which, among other things, is aimed at finding a fair balance between prison security and a person's religious needs (see e.g. Ministry of Justice 27 March 2023 [Searching Policy Framework](#), paras 4.33.20–4.33.28, 6.13).

The materials collected do not indicate that the guard gave the petitioner a possibility to carry out the search by gradual removal of the clothes. It is plausible that this may have been the main reason why the situation became tense and resulted in the use of physical force and handcuffs in respect of the petitioner and his forced search.

Based on the disciplinary proceedings notice of 28 March 2023 and the report on the health check following the use of direct coercion on 6 February 2023, a suspicion arose that the petitioner's examination took place before the removal of handcuffs from him, The medical practitioner has entered the following description in the health check report: *“Information from the main security that force in respect of the prisoner was used in reception. Went on-site, prisoner on the ground, handcuffed. On-site, visually visible only abrasions from handcuffs on both wrists. No other injuries noted at the moment.”*

The Chancellor has repeatedly (most recently in the 2020 recommendation to [Tartu Prison](#), para. 5) drawn the attention of Tartu Prison to the fact that a person's health must also be checked after the use of direct coercion and means of restraint (including after the removal of handcuffs) if physical force was applied when using the means of restraint (§ 71(7¹), (7²) [clause 1](#) Imprisonment Act). There may be cases where a person's health also needs to be checked before the removal of handcuffs, but in any case this must be done after the removal of handcuffs. For this, the person

does not need to separately contact the medical department, as was done by the petitioner. During the repeat check carried out at the petitioner's request, several physical injuries were found on him.

When carrying out searches, Tartu Prison should observe the principles of proportionality and respect for human dignity. A decision to conduct a full strip search must rely on a risk assessment based on specific circumstances (e.g. the prisoner's behaviour). If the prison has a justified need to strip search a person, this must be done gradually, so that the person is at least half covered with clothes at any time. If physical force is applied when using handcuffs, the person's health must also be checked after the handcuffs are removed.

I ask that this be explained to prison staff and medical practitioners once again.

Yours sincerely,

/ signed digitally/

Ülle Madise

Copy: petitioner
Ministry of Justice (without personal data)