

TOLERATED RESIDENCE STATUS
- BEHIND THE CASE



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The Ombudsman carries out regular monitoring visits to institutions for detainees in order to ensure that they live under humane and dignified conditions. The target group includes, among others, prison inmates, patients at secure psychiatric wards and children placed in care.

Many monitoring visits are not carried out solely by the Ombudsman and his staff. The Ombudsman has a close cooperation with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. Consequently, the two organisations often participate in monitoring visits.

Therefore, there was nothing unusual about the Ombudsman and representatives from the two organisations visiting the asylum centre ‘Center Sandholm’ in 2014 in order to look into conditions for persons under tolerated residence status. But the case touched on very sensitive and much discussed questions which would influence the Ombudsman’s report.

Persons under tolerated residence status at ‘Center Sandholm’ are subject to a number of special restrictions. They are obligated to live at the centre (some of them in rooms together with one or two other people), they have a duty to report to the police (typically every day), they are not allowed to take on paid work, they receive a limited cash allowance (a maximum of DKK 31 a day), and in reality it is not possible for them to cook their own food; instead they get meal coupons for the centre’s cafeteria.

There is no limitation to the duration of tolerated residence, and basically the tolerated residence may last indefinitely. Contrary to, for instance, the majority of prison inmates, it is thus not possible for persons under tolerated residence status to adjust to a situation which they know will last for a fixed period of time, and therefore they cannot look forward to a normalisation of their lives.

Statistics also confirm that tolerated residence can last for a very long time. In 2014, for instance, three persons living at 'Center Sandholm' had spent more than 10 years under tolerated residence status, and 12 persons had been under tolerated residence status for five to 10 years. Previously, only a few people were living under tolerated residence status in Denmark, but the number has increased in recent years. In 2002, 17 persons were living under tolerated residence status, whereas 67 persons were living under tolerated residence status in 2014.

The object of the monitoring visit was to get an impression of the conditions for persons under tolerated residence status and to assess whether these conditions are in conflict with, for instance, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the European Convention on Human Rights. The purpose was also to assess whether the conditions are in conflict with the terms of the Ombudsman Act called 'universal human and humanitarian considerations'.

Who is living under tolerated residence status?

Persons under tolerated residence status live in Denmark even though they do not have the right to stay here. There are various reasons why they are not allowed to stay in Denmark: Some are excluded from obtaining asylum in Denmark because they have been deported and have been barred from entering the country due to crime committed in Denmark. There is also a group of people barred from obtaining asylum, for instance if there are serious reasons to believe that they have committed a grave, non-political crime abroad. Furthermore, there are a few people who live under tolerated residence status because they are considered a risk to state security.

The reason why these people live in Denmark is that it would be unlawful to deport them. They are covered by a provision in the Aliens Act according to which it is prohibited to deport people to another country where they risk the death penalty or risk being subjected to torture or inhuman or degrading treatment or punishment. According to this provision, it is also prohibited to deport people to a country where they are not protected against deportation to another country in which they may be exposed to such risks.

A LEGAL CHALLENGE

The investigation of the issue raised a number of legal issues. Firstly, we had to assess whether the conditions for persons under tolerated residence status at 'Center Sandholm' are in conflict with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the

European Convention on Human Rights. The aforesaid conventions stipulate that no individual must be subjected to torture nor to inhuman or degrading treatment or punishment.

However, after having compared the general conditions at 'Center Sandholm' to the conventions we reached the conclusion that no conventions had been breached.

But, as mentioned before, our task was also to assess the conditions on the grounds of 'universal human and humanitarian considerations' pursuant to the Ombudsman Act. Naturally, this assessment has a wider scope than when the Ombudsman on a daily basis assesses for instance whether a ministry has given access to documents in accordance with the regulations.

The Ombudsman has assessed many previous cases on the basis of 'universal human and humanitarian considerations', but the conditions for persons under tolerated residence status at 'Center Sandholm' differ in several important aspects from our previous observations.

Therefore, we examined all the individual elements of the measure. We assessed how the measure affects persons under tolerated residence status in general. We also assessed the importance of the fact that the measure is of indefinite duration. In this connection, we noted that the Danish Red Cross, which is in charge of 'Center Sandholm', described common traits for persons under tolerated residence status in the form of, for instance, declining resources, abuse and isolation. And DIGNITY – Danish Institute Against Torture spoke of 'clear signs of severe mental stress' based on a medical assessment.

POLITICAL QUESTIONS

Another important consideration was that the conditions for persons under tolerated residence status are partly laid down in the Aliens Act. It is not the Ombudsman's task to take a position on, for instance, the reasonableness of legislation passed by Parliament, and we did not take a position in this case either. But on the other hand, we could not, as is our task pursuant to the Ombudsman Act, assess the conditions for persons under tolerated residence status without including the purpose of the legislation for this target group.

In his report, the Ombudsman pointed out that the group of persons under tolerated residence status is very complex. Therefore, the considerations behind the legislation take effect to a varying degree. One of the purposes of tolerated

residence is that it should be possible to find a person quickly if the person is to be deported. But if there is no prospect that the person can be deported from Denmark, this consideration must be of less importance than if a person comes from a country where there is a prospect of deportation. As another example, the Ombudsman pointed out that considerations in regard to national security and public order seem to be of varying importance, depending on whether the person in question is considered a risk to state security or has 'only' committed ordinary crime.

What did the Ombudsman say?

It was the Ombudsman's opinion that the overall conditions for people under tolerated residence status at 'Center Sandholm', compared to the indefinite duration aspect, were very stressful and restrictive for a normal life. However, the general conditions are not in conflict with the prohibition on, for instance, degrading treatment pursuant to the UN Convention against Torture and article 3 of the European Convention on Human Rights. Still, the Ombudsman could not rule out that the overall impact of the restrictions which people under tolerated residence status at 'Center Sandholm' face, might over time in specific cases result in what must be considered a violation of the conventions.

It was, however, also the Ombudsman's opinion that there is reason for the authorities to consider in more general terms to which extent, based on the regards behind the relevant legislation, it is necessary in all respects to maintain such overall stressful and restrictive living conditions as is currently the case. The Ombudsman's opinion was based on 'universal human and humanitarian considerations' which he must observe according to the Ombudsman Act.

(Annual Report 2014, Case No. 2014-42)

PARTNERS WITH DIFFERENT MANDATES

After the monitoring visit to 'Center Sandholm', we worked really hard to make the necessary assessments, but just as much to communicate the conclusions as precisely as possible to prevent misunderstandings.

During this process, it was an advantage for us that we could work together with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights. DIGNITY has a comprehensive medical knowledge and a detailed knowledge of the fight against torture, etc. while the Danish Institute for Human Rights has great expert knowledge within human rights legislation.

Denmark has acceded to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

which stipulates that each country must appoint a supervisory body in order to monitor that the convention against torture is not violated. In Denmark, this task is carried out by the Parliamentary Ombudsman in close cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

DIGNITY is a private non-governmental organisation with the aim of fighting torture, and the Danish Institute for Human Rights is a public organisation with the aim of promoting human rights. In our opinion, the cooperation has strengthened the Ombudsman's monitoring work because it has provided an opportunity to draw on expert knowledge in the two organisations.

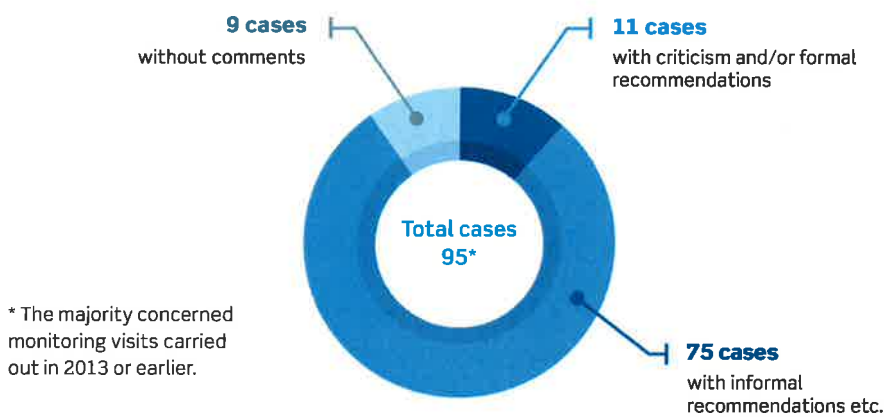
THE OMBUDSMAN'S TASK

In his report, the Ombudsman wrote that 'there are grounds for a more general discussion of the extent to which – based on the regards behind the legislation, among other things – it is in all respects necessary to maintain such an overall stressful and restrictive way of life as is currently the case'.

It rarely happens that the Ombudsman in this way calls for a reconsideration of a measure that is partly stipulated by law. In addition to this, the case involves an issue which is much debated politically. But fundamentally, the Ombudsman only carried out the task as directed by the Ombudsman Act: to monitor the conditions of persons deprived of their liberty and to state his opinion on the matter.

MONITORING ACTIVITIES IN FIGURES

MONITORING CASES CONCLUDED IN 2014



In regard to monitoring visits to institutions for adults, the Ombudsman also concluded:

21 cases, taken up by the Ombudsman on his own initiative, related to monitoring activities. All cases were concluded without criticism.

48 cases about suicide attempts, deaths, etc. at Danish Prison Service institutions. Criticism was expressed in 1 case.

In regard to monitoring visits to institutions for children, the Ombudsman also concluded:

10 cases, taken up by the Ombudsman on his own initiative, related to monitoring activities. Criticism was expressed in 5 cases.

NEW MONITORING VISITS IN 2014

Adults

The Ombudsman carried out monitoring visits to 22 different institutions. During some of these visits, the Ombudsman visited a number of independent sections within the same institution.

1 visit was unannounced ('Lavendelvej' at Viborg).

DIGNITY – Danish Institute Against Torture participated in 14 monitoring visits.

The Danish Institute for Human Rights participated in 4 monitoring visits.

The Ombudsman's monitoring staff had 129 talks with users (prison inmates, patients, residents, etc.).

5 meetings were held with foreign ombudsmen, involving dialogue and exchange of experience regarding the OPCAT work.

Children

The Ombudsman carried out monitoring visits to 11 different institutions. During some of these visits, the Ombudsman visited a number of independent sections within the same institution.

1 visit was unannounced ('Kanonen' at Hinnerup).

DIGNITY – Danish Institute Against Torture participated in 1 visit.

The Ombudsman's monitoring staff had 46 talks with children/young people.

The Ombudsman held meetings with representatives from the UN Subcommittee on Prevention of Torture and the European Committee for the Prevention on Torture, etc. about the OPCAT work within the children's sector as well as the adult sector.

MONITORING ACTIVITIES ADULTS

MONITORING VISITS IN 2014

Date	Institution	Type and target group
17 February	'Børsholt' at Sindal	Social-psychiatric accommodation facility for adults with psychiatric disorders
18 February	'Vendelbo' at Vrå	Accommodation facility for adults with mental disorders
20 February	'Ebberød' at Birkerød	Accommodation facility for older adults with learning disabilities and an individual project involving socio-educational treatment
26 February	'Kongelunden' at Dragør	Special centre for asylum seekers with special needs and a unit for women with or without children
5 March	'Pensionen Avedøre', Kastanienborg unit, at Hvidovre	Prison and Probation Service Institution for, among others, inmates in a social re-entry phase or inmates serving alternatively
10 March	Psychiatric ward at Randers	Two bed units for mentally ill patients and patients with disorders relating to forensic psychiatry
11 March	'Lavendelvej' at Viborg	Accommodation facility for adults with a severe mental disorder
27 March	Prison at Copenhagen Police Headquarters	Special prison unit for, among others, negatively strong inmates
9 April	Aalborg University Hospital – psychiatric ward	Two psychiatric units for, among others, patients in need of emergency treatment and patients with disorders relating to forensic psychiatry
10 April	Aalborg University Hospital – psychiatric ward	Two psychiatric bed units relating to forensic psychiatry, especially for patients who have been sentenced to placement or treatment at an institution
8 May	'Psykiatrisk Center Frederiksberg' at Frederiksberg, Copenhagen	Two bed units for adults with a psychiatric disorder and patients with a disorder relating to forensic psychiatry

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Date	Institution	Type and target group
7-9 May	'Psykiatrien i Region Syddanmark' at Middelfart and Odense	Five bed units for patients with a disorder relating to forensic psychiatry who have been sentenced to placement or treatment
21 May	'Solvang' at Kirke Hyllinge	Social-psychiatric accommodation facility for adults with, for instance, a psychiatric disorder
26-27 May	Mental Health Centre Sct. Hans at Roskilde	Forensic psychiatric bed unit for patients where the mental disorder and the legal measures are complex and require a special expert knowledge
11 June	'Psykiatrisk Center Hvidovre' at Brøndby	Two bed units for mentally ill patients and patients with a disorder relating to forensic psychiatry
17 June	'Psykiatrisk Center Bornholm' at Rønne	Two bed units for mentally ill patients and patients with a disorder relating to forensic psychiatry
18 June	The detention facility at Rønne	Especially for persons who are unable to care for themselves due to intoxication and have been encountered by the police in a dangerous situation
26 June	'Johannes Hages Hus' at Nivå	Social-psychiatric accommodation facility for adults with a psychiatric disorder
30 September	Asylum centre 'Center Sandholm' at Birkerød	Persons who have been living under tolerated residence status at 'Center Sandholm' for a long time
4 November	The state prison 'Statsfængslet i Nyborg'	Three units at a closed prison, including a special prison unit for, among others, negatively strong inmates
5 November	The local prison at Svendborg	Local prison unit, especially for remand prisoners during investigation of their case
26-27 November	'Psykiatrien Region Sjælland' at Nykøbing Sj.	Secure unit for, among others, mentally ill patients sentenced to placement or with an order for compulsory admission to mental hospital, and two forensic psychiatric bed units

EXAMPLES OF IMPORTANT STEPS TAKEN BY THE OMBUDSMAN IN 2014

Verbal recommendations made to institution managements

Prevention of suicide: A number of institutions have been recommended to draw up guidelines on how to prevent suicides and suicide attempts.

Violence and threats: Recommendation has been made on how to implement a more methodical follow-up on the development in the number of cases involving violence and threats of violence.

Work and leisure time activities: Recommendations have been made to ensure that users are offered at least the same time for outdoor activities as laid down in the European prison rules.

Mechanical restraint of long duration: An institution has been recommended to give more priority to future statistics on forced immobilisation lasting for more than 48 hours.

Statistics: The institution has been recommended to continuously prepare and make active use of statistics on the use of force at unit level. The purpose of doing so is to provide the institution management with information about patterns and reasons for forcible measures undertaken in order to make it possible to reduce the use of force at the institution.

Guidance: A number of institutions have been recommended to intensify focus on providing users with a guide on how to complain and to provide written guidelines. The reason for doing so is to provide the users with proper guidance.

Rights: Recommendation has been made to be more aware of the possibility of providing staff with instructions by using check lists. By doing so, the institution ensures that user rights are observed.

Documentation: Some institutions have been recommended to intensify focus on completion of detention reports and protocols on the use of coercive measures.

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Follow-up visits

Measures against inmates: After a monitoring visit to the Prison Headquarters of the Police, the Ombudsman asked if there was a need to formalise decisions on increased security levels for certain inmates – decisions which, according to information given, lead to immediate consequences for the inmates' possibility of activities and/or social contact. These inmates are now considered barred from joint activities. The Ombudsman followed up on this during a new monitoring visit.

Persons under tolerated residence status: The Ombudsman needed a follow-up on the asylum centre 'Center Sandholm', specifically in regard to persons under tolerated residence status, through a new visit to 'Center Sandholm'. The target group of the follow-up visit included persons who have been living at 'Center Sandholm' under tolerated residence status for a long time. (Annual Report 2014, Case No. 2014-42)

Discussions with key authorities

Unintended events: During the annual meeting with the Ministry of Health, the Ombudsman asked why there is no obligation for health staff working within, for instance, the Prison Service and at asylum centres to report unintended events, unlike staff working within other parts of the health sector. An unintended event could, for instance, include errors in connection with medication. The Ministry will examine the issue.

Standard house rules: When carrying out monitoring visits to psychiatric wards, the Ombudsman noticed a significant difference in the content between the house rules of individual wards. The authority for some of the rules may be uncertain. During the annual meeting, the Ombudsman asked the Ministry of Health whether it would be advisable to lay down guidelines for a recommended standard house rule. The Ministry will consider the issue.

Feedback on protocols on the use of coercive measures: The use of coercive measures at psychiatric wards must be registered in the ward's protocol on the use of coercive measures, and the information registered in the protocol on the use of coercive measures must be reported to the Danish Health and Medicines Authority. During monitoring visits, the Ombudsman was informed that the wards did not receive any feedback from the Danish Health and Medicines Authority on the reports. Therefore, the Ombudsman took up the issue with the Ministry of Health. The Ministry will discuss the issue with the Danish Health and Medicines Authority.

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Own-initiative cases and requests for statements

Rights of dementia sufferers: The Ombudsman took up a case on the use of special door openers following a visit to an accommodation facility for, among others, persons suffering from dementia. The accommodation facility had been using the special door openers for a while without permission from the municipality. When the municipality approved the use of the door openers later on, the municipality did not inform anyone about the decision. The case was concluded with criticism. (Annual Report 2014, Case No. 2014-2)

Inmates with psychiatric disorders: After two monitoring visits to the hospital wing of the state prison 'Vestre Fængsel', the authorities have now decided to implement various initiatives in order to improve the conditions for inmates with psychiatric disorders – for instance by employing a sector leader who must ensure that the inmates are activated, that a room for multiple activities is established and possibly a room for therapy, together with supplementary education of the staff. The Ombudsman asked to be kept informed in order to follow the process.

Transfer to psychiatric ward: The Ombudsman has taken up a case with the Danish Prison and Probation Service, the Capital Region of Denmark and the prosecution service about an inmate with a severe mental disorder who had to wait a long time before being transferred to a psychiatric ward. The case is pending.

Minors and women: Monitoring visits to four institutions for convicted persons in Greenland led to the Ombudsman asking the Danish Prison and Probation Service and the Prison Service in Greenland how the staff deal with minors and women at the institutions. The case is pending.

Rights of persons placed in detention facilities: After a monitoring visit to a detention without constant police surveillance, the Ombudsman asked the Ministry of Justice, the Danish National Police and the chief police constable in Greenland whether the conditions complied with the rules laid down in the European Convention on Human Rights. The case is pending.

MONITORING ACTIVITIES CHILDREN

MONITORING VISITS IN 2014

Date	Institution	Type and target group
30 January	'Den socialpædagogiske døgninstitution Sønderbro' at Copenhagen	Secure residential institution with in-house school for children and young people, typically aged 15-17 years, who, for instance, serve a surrogate prison sentence or have been placed at the institution as part of a youth sanction
11 March	Family institution 'Skovvænge' at Rønnede	Day care and 24-hour residential care facility for socially vulnerable and dysfunctional families
27 March	'Den sikrede døgninstitution Koglen' at Stakroge	Secure residential institution with in-house school for children and young people, typically aged 15-17 years, who, for instance, serve a surrogate prison sentence or have been placed at the institution as part of a youth sanction
29 April	'Fonden Ulvskov' at Odder	Accommodation facility for young people aged 12-18 years with emotional and social problems, who, for instance, have been exposed to child neglect or have a psychiatric diagnosis.
30 April	'Fonden Bryggergården' at Samsø	Socio-educational accommodation facility with in-house school for young people aged 12-18 years with mental and social problems
27 May	'Fonden Kanonen' at Hinnerup	Socio-educational accommodation facility with in-house school for young people aged 12-23 years with emotional and social difficulties and a psychiatric diagnosis
2 September	Foster family, Regional Municipality of Bornholm	Foster family
3 September	Foster family, Regional Municipality of Bornholm	Foster family
24 September	Residential centre 'Clemens' at Vordingborg and 'Clemens Gaarden' at Lundby	Socio-educational treatment centre for children aged 6-17 years with emotional, behavioral and social problems
28 October	'Himmelbjerggården' at Ry	Treatment facility with in-house school for children needing long-term treatment
29 October	'Småskolen Christianshede' at Bording	Socio-educational accommodation facility with in-house school for children with social problems and adjustment difficulties

EXAMPLES OF IMPORTANT STEPS TAKEN BY THE OMBUDSMAN IN 2014

Verbal recommendations made to institution managements

Forcible measures: A number of institutions have been recommended to ensure that their staff receive a copy of the executive order on the use of force and that children and young people in care and their custodial parents are informed about the regulations of the executive order on the use of force, including the regulations about possible channels of complaint. Registration and reporting to the municipality of residence and the social supervision authorities if an institution decides to search the rooms of the children/young people were also recommended. Furthermore, recommendations to prepare a list of items confiscated from children/young people and to give a copy of the list to the children/young people were also made.

Follow-up visit

After a visit to the accommodation facility 'Fonden Kanonen', the Ombudsman commented in October 2013 on the accommodation facility's use of the so-called time-out. A follow-up visit concentrated on whether the accommodation facility was still making use of time-out in relation to young people. The case is pending.

Own-initiative cases and requests for statements

Forcible measures etc.: After a visit to the secure institution 'Koglen', the Ombudsman took up a case on his own initiative about some of the measures taken by 'Koglen' to prevent smuggling of euphoriants into the institution – for instance by washing the young people's clothes and confiscating their jackets and shoes. In addition to this, the Ombudsman asked the authorities to explain their authority to lock the young people up in their rooms. The case is pending.

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Action plans: After two visits to foster families, the Ombudsman took up three cases on his own initiative about missing or insufficient action plans. The cases were concluded with criticism of the municipality.

Violence within foster family: After a monitoring visit to a foster family, the Ombudsman informed the social supervision authorities that one of the foster children had told him that she had been subjected to violence in her previous foster family.

In-house schools: After a monitoring visit to a private accommodation facility with an in-house school, the Ombudsman initiated an investigation of whether the in-house school complied with the rules on minimum size (number of pupils), whether the pupils received the lessons they were entitled to receive, and whether the municipality carried out sufficient supervision of the school. The case is pending.

After a visit to another private accommodation facility, the Ombudsman took up a case on his own initiative about the municipality's supervision of the facility's in-house school. The case was concluded with criticism of the municipality in regard to form and content of the supervision.

Emergency placement: After a monitoring visit to a residential institution, the Ombudsman initiated an investigation of why some of the children had been subject to emergency placement. One of the cases was concluded with criticism. (Annual Report 2014, Case No. 2014-19)
