



SIVILOMBUDET

Norwegian Parliamentary Ombud

The Parliamentary Ombud participated in a consultation procedure in the Norwegian Parliament (*Storting*) regarding a bill concerning the execution of sentences abroad

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In its statement to the Standing Committee on Justice during the consultation regarding execution of sentences abroad, the Parliamentary Ombud emphasised Norway's obligations in relation to the Convention Against Torture.

Statement to the Standing Committee on Justice during the consultation regarding execution of sentences abroad.

Thank you for allowing me to attend. My name is Helga Fastrup Ervik and I am the Head of the Parliamentary Ombudsman's National Preventive Mechanism against torture and inhuman treatment.

The Parliamentary Ombudsman has been assigned the mandate as national body for the prevention of torture and inhuman treatment following Norway's ratification of the UN Optional Protocol to the UN Convention against Torture. In light of this prevention mandate, we find it necessary to emphasise some key points from our consultation comment in the same case, provided on 27 February of this year. Please note that, because of time constraints, I will only address some of the aspects that are discussed in our consultation comment here. Furthermore, I will briefly address matters were not discussed in the Ministry's consultation memorandum and which therefore have not been discussed in the Parliamentary Ombudsman's consultation response.

To date, the Parliamentary Ombudsman has conducted 14 visits to places where persons are deprived of their liberty, as part of the exercising of its mandate as National Preventive Mechanism. Six of these visits have been to prisons, six to police custody facilities and two to compulsory psychiatric care. During the visits, attention was directed to areas that may pose a risk of inhuman treatment of inmates.

Based on this experience, I will concentrate on two main points; first, the main challenges relating to inmates' due process and their protection against inhuman treatment and; second, the possibility for the Parliamentary Ombudsman to fulfil its mandate in relation to inmates who are transferred to serve their sentences in another state.

First, regarding findings of relevance for the serving of sentences abroad.

The visits have uncovered three key areas of risk:

- lack of good primary and specialist health services;
- problems for inmates relating to understanding staff members or making themselves understood, and;
- local practices relating to the use of force.

This autumn, Oslo University Hospital presented a nationwide study of the mental health of 850 inmates in Norwegian prisons commissioned by the Norwegian Correctional Service and the Norwegian Directorate of Health. The study revealed that more than 90 per cent of inmates in Norwegian prisons have one or more psychiatric disorders.

During the Ombudsman's prevention visits, health is also key, as this is a known area of risk for inmates. This entails that conversations with health personnel and inspections of the premises of health services are always carried out. From the private conversations the National Preventive Mechanism has had with the inmates, we see that the health service is of great importance for the functioning and living conditions of the inmates.

The current proposal entails that it will not be the Norwegian state that is tasked with ensuring the health services for persons who are transferred to serve their sentences abroad. Instead, health services will be procured by the state in which prison capacity is being leased. The Parliamentary Ombudsman notes that the Norwegian authorities have limited opportunities to carry out inspections of how foreign health authorities opt to implement health services following the entering into of an agreement. We also note that, according to the proposal, it will be the Norwegian Correctional Service that will be responsible for ensuring the safeguarding of inmates health-related rights. This is the responsibility of the health authorities in Norway. The Parliamentary Ombudsman is also concerned about the practical challenges of ensuring access to health services, including the handling of language barriers. For an accurate health assessment and treatment, it is crucial that the patient and health personnel fully understand each other.

The concern that language barriers might impact the safety of both inmates and staff members remains. The Parliamentary Ombudsman has learned that the lack of a common language between staff members and inmates in all daily interactions is a clear risk factor for inhuman treatment, including outside of the health services.

The European Committee for the Prevention of Torture, CPT, expressed concerns precisely regarding this matter in its report from its visit to Tilburg Prison, which is leased by Belgian authorities. The Belgian inmates who did not speak Dutch has considerable difficulties understanding and making themselves understood. We have noted, in relation to the specific agreement with the Netherlands, that most of the officers will have Dutch as their first language.

Finally, it is also emphasised that the use of force, the strongest encroachment on individual liberty, is, in practice, often subject to local practices and that culture and training locally is of major importance. Even though it is Norwegian legislation that is to be applied in this area, there is a risk that the most intrusive measures will be exercised by persons who are employed by other states, who have not undergone Norwegian education for prison officers and who are not subject to the Norwegian criminal law. It also emerges from this agreement

that Dutch instructions regarding the use of force in the prison will be observed in the Norwegian department of Ullersmo Prison.

Here, we express particular concerns regarding the agreement with the Netherlands, as Norway loses the opportunity to investigate possible criminal offences committed by Dutch officers in the prison in relation to Norwegian inmates. Here, we refer to Norway's obligations under the UN Convention Against Torture, Article 2 (1), where it is stated that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." The UN Committee Against Torture has in a separate General Comment, published on the basis of several states' practices of sending prisoners to other countries for interviews or execution of sentences, emphasised that the state's responsibility for "any territory under its jurisdiction", also includes "places of detention or other places over which a State exercises de jure or de facto effective control". It is not discussed in the proposition how Norway's obligations under the Convention Against Torture are to be safeguarded in the administration of the Norwegian department of the prison in the Netherlands.

Visitation mandate

In its consultation comment, the Parliamentary Ombudsman requested more detailed discussions regarding the implementation of the Parliamentary Ombudsman's prevention mandate in the territories of other states. The current bill does not discuss what parts of the execution of sentences are to be handled according to Norwegian rules and by authorities that will be subject to Norway's OPCAT obligations. However, it appears from the agreement with the Netherlands that use of force will in several areas be handled according to Dutch rules. It also appears that criminal acts that are suspected to have occurred during the serving of sentences will be subject to Dutch criminal law and that health services will be procured from the Dutch authorities. These are examples of matters that contribute to strongly limiting the scope of the Parliamentary Ombudsman's prevention mandate in relation to the persons who will be transferred to serve their sentences abroad. We note that the Parliamentary Ombudsman's mandate was expanded to also cover private institutions, when the OPCAT mandate was assigned here, precisely to ensure that the National Preventive Mechanism is able to conduct visits to all places where persons in practice are deprived of their liberty.

After having conducted 14 visits to places where persons are deprived of their liberty, it is the Parliamentary Ombudsman's clear understanding that prevention requires a comprehensive approach. Reference is in this connection made to published reports from the Parliamentary Ombudsman's conducted visits under the OPCAT mandate. In these reports, it emerges that medical departments in prisons, emergency primary care centres, the specialist health services and handling of risks during transport are covered by the mandate and are included as part of a visit. To illustrate this problem, it can be mentioned that approximately 30 per cent of the recommendations issued by the Parliamentary Ombudsman under its prevention mandate, relate to health matters.

We note that the UN Subcommittee on Prevention of Torture, which is mandated to carry out visits to all persons who are deprived of their liberty by Norwegian authorities, has issued a statement regarding its understanding of Norway's international obligations in cases

of transfers of inmates to serve sentences in another country. The Committee's statement emphasises that the National Preventive Mechanism must be able to make recommendations to and enter into dialogue with both the "sending state" and the "receiving state", in order to be able to fulfil its mandate. The Parliamentary Ombudsman questions on what basis it can enter into dialogue with another state's authorities regarding matters that are outside of Norwegian jurisdiction and at the same time recognises that this will be key in order to safeguard the mandate under the Optional Protocol. In this connection, we have also noted that the agreement that has been entered into between Norway and the Netherlands describes neither the states' obligations under the Optional Protocol nor the mandates of the UN Subcommittee and the countries' National Preventive Mechanisms.

Finally, it is emphasised that the Parliamentary Ombudsman cannot see that the impacts on inmates' opportunities to bring cases before the Parliamentary Ombudsman are addressed.