



SIVILOMBUDET

Norwegian Parliamentary Ombud

COMMENT BY THE PARLIAMENTARY OMBUDSMAN FOLLOWING THE CONSULTATION IN THE PARLIAMENTARY STANDING COMMITTEE ON JUSTICE ON 28 APRIL 2015

Comment given 06.05.2015. Translated in February 2022

Reference is made to the Standing Committee on Justice's open consultation on 28 April 2015 regarding Prop. 92 LS (Proposition to the Storting (bill and draft resolution)) (2014-2015) *Endringer i straffegjennomføringsloven (straffegjennomføring i annen stat), samtykke til inngåelse av avtale med Nederland av 2. mars 2015 om bruken av fengsel i Nederland og endringer i statsbudsjettet 2015 [Amendments to the Norwegian Execution of Sentences Act (execution of sentences in another state), consent to enter into an agreement with the Netherlands of 2 March 2015 regarding the use of a prison in the Netherlands and amendments to the National Budget]* where the Parliamentary Ombudsman, represented by the National Preventive Mechanism against torture and inhuman treatment in cases of deprivation of liberty, gave a written statement.

In the statement it was remarked that the proposition fails to discuss how Norway's obligations under the UN Convention Against Torture will be safeguarded during the serving of sentences in the Netherlands. Following the consultation, it has been deemed necessary to elaborate on this remark in writing.

The UN Subcommittee on Prevention of Torture has in General Comment no. 2 (24 January 2008, CAT/C/GC/2) emphasised states parties' responsibility to prevent, investigate, prosecute and punish torture and other cruel, inhuman or degrading treatment "in any territory under its jurisdiction". "[A]ny territory» includes "all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control".

In the proposition, it is stated that inmates serving their sentences in another state will be subject to Norwegian jurisdiction. From articles 14 and 17 of Norway's agreement with the Netherlands of 2 March 2015, however, it is stated that Dutch criminal law shall apply to criminal offences committed in the prison. Dutch authorities are responsible for the investigation and prosecution of criminal offences and deaths in the prison.

Under the agreement, Norwegian authorities will thereby not be able to initiate measures to investigate or prosecute if the inmates were to be subjected to torture or other cruel, inhuman or degrading treatment or punishment by Dutch staff members in the prison. The Parliamentary Ombudsman deems it necessary to question whether such

a limitation on Norwegian authorities' legal capacity is in compliance with Norway's obligations under the Convention Against Torture.

From articles 6 and 11 of the agreement, it emerges that the use of force in the prison shall have a basis in Norwegian law, but that the Norwegian prison administration is also to ensure that the Dutch instructions regarding use of force in prisons (*Geweldinstructive penitenciaire inrichtingen*) are observed. The Parliamentary Ombudsman questions how Norwegian authorities can ensure that the use of force is in compliance with Norwegian law and Norway's obligations under the Convention, when, at the same time, another country's instructions regarding the use of force and coercive measures are to be observed. It appears unclear whether force and other coercive measures that have a legal basis in the Dutch instructions, but not Norwegian law, e.g., the carrying of a weapon, can be used. Furthermore, it is unclear what procedures apply for the use of force and coercive measures, where there are discrepancies between the two sets of rules.

In the proposition, the Ministry states that it is a basic prerequisite for entering into an agreement regarding the execution of sentences in another state that this will not result in violations of the inmates' human rights. It is also emphasised that the Netherlands is bound by the same human rights treaties as Norway.

In light of the above question, the Parliamentary Ombudsman nevertheless finds it necessary to stress the importance of the agreement between Norway and the Netherlands of 2 March 2015 being in accordance with Norway's obligations under the Convention Against Torture.

Aage Thor Falkanger
Parliamentary Ombudsman