



SIVILOMBUDET
Norwegian Parliamentary Ombud

VISIT REPORT

SUMMARY AND RECOMMENDATIONS

Children in police custody

Visit to Oslo Police District and limited study
of the country's police districts

11–12 Mai 2021



**National Preventive Mechanism against
Torture and Ill-Treatment**



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CHILDREN IN POLICE CUSTODY

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1 The Parliamentary Ombud's prevention mandate

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment is established in several international conventions that are binding for Norway.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), adopted in 1984, plays a central role in this. The same prohibition is also embodied in the UN International Covenant on Civil and Political Rights (Article 7), the UN Convention on the Rights of the Child (Article 37), the UN Convention on the Rights of Persons with Disabilities (Article 15) and the European Convention on Human Rights (Article 3). Norway has ratified all of these conventions.

People who have been deprived of their liberty are vulnerable to violations of the prohibition against torture and inhuman treatment, which is why the UN adopted an optional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002.

The protocol requires that states establish bodies to ensure that persons who are deprived of their liberty are not subjected to torture and other cruel, inhuman or degrading treatment or punishment.¹ The Parliamentary Ombud has established its own national preventive mechanism (NPM) in order to fulfil this mandate.

The Parliamentary Ombud has access to all locations where persons are or may be deprived of their liberty. These range from prisons and police custody facilities to mental health care institutions and child welfare institutions. Visits are conducted with or without prior notice. The Parliamentary Ombud also has access to all necessary information of significance for how deprivation of liberty is implemented.

The risk of torture or inhuman treatment is affected factors such as legal and institutional frameworks, physical conditions, training, resources, management and institutional culture.² Effective prevention work therefore requires a broad approach that does not focus exclusively on whether the situation complies with Norwegian law.

The Parliamentary Ombud's assessments of conditions that pose a risk of torture and inhuman treatment are based on a broad range of sources. During the visits, the national preventive mechanism examines the conditions at the location through observations, interviews and documentation reviews. Private interviews with persons deprived of their liberty is a particularly important source of first-hand information about the conditions. Interviews are also conducted with staff, management and other relevant parties and documentation is obtained to clarify the conditions at the location, such as guidelines, decisions, logs and health documentation.

After each visit, a report is written, describing findings and recommendations for how the facility in question can prevent torture and other cruel, inhuman or degrading treatment or punishment.

The reports are published on the Parliamentary Ombud's website and the facilities visited are given a deadline for informing the Ombud about their follow-up to the recommendations. These letters are also published.

¹ Sections 1, 17, 18 and 19 of the Norwegian Parliamentary Ombud Act.

² UN Subcommittee on Prevention of Torture (SPT), Prevention Mandate Recommendations, 30 December 2010 CAT/OP/12/6.

In its endeavours to fulfil the prevention mandate, the Parliamentary Ombud also engages in extensive dialogue with national authorities, control and supervisory bodies in the public administration, civil society and international human rights organisations.

2 Summary

In this study, the Parliamentary Ombud has examined how children's rights are safeguarded when children are arrested by the police and placed in police custody. The background for the study was a reported increase in the use of police custody for children in Norway from 2018.

The study comprised a visit over the course of two days to Oslo Police District (11–12 May 2021). This is the largest police district in the country and the police district in which the highest number of children are placed in police custody, in total. Furthermore, we obtained information regarding the use of police custody from the remaining 11 police districts.

Our data collection revealed that national figures for the use of police custody for minors in Norway remain uncertain. This is concerning and a matter which the Parliamentary Ombud will be following up with the central authorities.

The criminal procedure requirement for arresting children is that the arrest must be "especially necessary". The Parliamentary Ombud's impression from visits to Oslo Police District was that personnel from the prosecuting authority and patrol sections appeared to be aware of the high threshold for arresting children. However, justifications for how this special condition for arrests of children had been assessed in each individual case were not recorded in writing.

Oslo Police District lacked appropriate alternatives to the use of cells for children who had been arrested or brought into the Police Custody Facility. It was noted that patrols in some cases would wait with minors in the vehicle to avoid using a cell or that interview rooms or other rooms could be used for shorter periods. None of these places were adapted for such stays and it appeared that they were rarely used for this purpose. The lack of alternatives to cells entails a clear risk that the strict requirement that it must be "absolutely necessary" in order to place minors in cells, is not always met.

At Oslo Police Custody Facility, attempts had been made to adapt five cells for minors. Parts of the cells were painted in a different colour and a television had been installed behind a window. In practice, the cells holding cells, nevertheless. Cells should only be used for children if it is absolutely necessary and the cell should in such circumstances be designed in such a manner that the distress involved in staying in the cell is minimised. In the report, the Parliamentary Ombud notes that minors should not be placed in holding cells.

When children, as a last resort, are deprived of their liberty, the duration thereof shall be for the shortest appropriate period of time. During the period

1 January 2021 until 12 May 2021, an average of 14 hours passed from detention until release for minors who were placed in a cell in the Police Custody Facility in Oslo Police District. The time of the arrest appeared to have a major impact on how long certain children were detained in police custody. Detentions after 6:00pm had, with few exceptions, resulted in overnight stays in police custody. The low number of interviews conducted late in the evening raises concerns for the Parliamentary Ombud that minors may be detained in cells for longer than necessary.

The risk of harm caused by isolation entails that minors in police custody shall "at all times" have the possibility to access adults. The Parliamentary Ombud's review of documentation showed that none of the minors who had been placed in a cell during the period 1 January 2021 until 12 May 2021, had

continuous access to adults. In most custody records, monitoring of minors was documented as being conducted every half hour, or every hour in the evenings and during the night. We found certain serious exceptions where nearly two hours had passed between one or several inspections of detained minors. In several custody records, assessments had not been recorded when the frequency of monitoring changed, as is required by the Norwegian Instructions relating to the use of police custody cells.

Thus, changes appeared random.

Oslo Police District had entered into an agreement with child welfare emergency unit, which ensured that all minors detained in police custody were offered the opportunity to speak with the child welfare emergency unit, irrespective of the time of arrest. During the period 1 January 2021 until 12 May 2021, less than half of the minors accepted this offer. A minority of those who requested a conversation were denied. This was due to capacity issues with the child welfare emergency unit. In the report, the Parliamentary Ombud noted that it is positive that such an offer of conversations had been established with the child welfare emergency unit. However, the Ombud stresses that the responsibility for ensuring the non-isolation of detained minors rests with the police.

Three basic protection measures should immediately be ensured in cases of deprivation of liberty: notification of relatives, access to defence counsel and medical care. For detention of minors in Oslo Police Custody Facility, children's parents or other relatives were systematically notified in accordance with national guidelines.

We also did not make findings indicating that detained minors were prevented from contacting defence counsel if this was requested. Minors are entitled to a publicly appointed defence counsel from the moment it becomes clear that the detained minor will not be released within 12 hours of the arrest, or if there are particular reasons for such an appointment. In many cases, entries of defence counsel information in custody record system were incomplete or did not provide a basis for ascertaining that the time limits for appointment of a public defence counsel were always met.

Oslo Police District stated that it was experiencing an increased need for medical attention in police custody. During visits, it emerged that medical care both in advance of and during stays in police custody could involve long wait times. Minors in police custody were assessed and triaged by the emergency primary care centre in the same manner as other patients, based on the assessments of health professionals. In the report, the Parliamentary Ombud notes that, at the same time, it is important that health personnel are aware of the fact that stays in holding cells or police vans may impact health in several ways.

Children who are arrested and placed in police custody may be in crisis, shock or under the influence of drugs. Some understand neither Norwegian nor English. This entails strict requirements of awareness regarding children's right to information. The visit to Oslo Police District revealed that minors receive the same written information upon detention in police custody as adults. The written information was designed in a language that could be difficult to comprehend and lacked information regarding the special rights of children, e.g., the possibility of having an adult staff member nearby during stays in cells. There were also differences in how oral information was communicated in connection with arrest, detention and stays in cells and during interviews. Recommendations by the European Committee for the Prevention of Torture (CPT) emphasise that information must be adapted according to the age and maturity of the child and be provided both in writing and orally.

A review of documentation showed that only exceptionally had information been recorded regarding use of physical force and coercive means, including handcuffs during the arrest and transportation to police custody. Therefore, it was not possible for the Parliamentary Ombud to examine the scope of such coercive measures. It appeared that coercive measures are rarely used against minors in police custody and very rarely in the cell. The Parliamentary Ombud has highlighted the lack of knowledge regarding the extent of coercive measures by the police against children and has noted a need for separate guidelines that can ensure such knowledge.

2.1 The following recommendations are made on the basis of the NPM's visit:

Recommendation: Use of police custody for children

- When minors are arrested, Oslo Police District should ensure that a police prosecutor is always involved as decision maker before the child is transported to the Police Custody Facility.
- When minors are arrested, Oslo Police District should ensure written documentation stating why the arrest is “especially necessary”.
- Oslo Police District should facilitate so that stays in police custody can be implemented in appropriate, alternative rooms when it is not “absolutely necessary” to place minors in cells.
- Cells that are to be used for children and adolescents when this is “absolutely necessary” should be designed in a manner that minimises the distress involved such stays.
- Oslo Police District should strive to conduct more interviews of detained minors in the evening where this can reduce the length of stays in police custody, to the extent this can be implemented in a child-friendly and justifiable manner.
- Oslo Police District should ensure the prompt release of detained minors when a decision regarding release has been made.

Recommendation: Safeguarding of minors in police custody

- Oslo Police District should ensure that detained minors have the possibility to access adults at all times.
- Oslo Police District should ensure that custody records are kept in accordance with national and international requirements.
- Oslo Police District should assess how the offer of isolation-reducing measures during stays in police custody can be expanded.
- Oslo Police District should ensure that all detained minors receive written information regarding the option to speak with the child welfare emergency unit in a simple and accessible language.

Recommendation: Access to defence counsel

- Oslo Police District should ensure that all information materials are updated and accessible to staff members so that the minor is ensured correct information regarding assistance from defence counsel.
- Oslo Police District should ensure that defence counsel are appointed for detained minors as soon as it becomes clear that release will not occur within 12 hours of arrest and that this is documented in the custody record.

- Minors who are arrested should, as a main rule, not be interviewed without a lawyer present.

Recommendation: Medical care of detained minors

- Staff members at the Emergency Primary Care Centre in Oslo Municipality should be acquainted with the Istanbul Protocol and acquire skills relating to the identification of possible abuses in relation to the Protocol.
- Oslo Police District and the Emergency Primary Care Centre in Oslo Municipality should ensure that all minors requesting contact with the health services are given the opportunity to speak directly and without restrictions with health personnel, including as part of the triaging of medical care by health personnel.
- Staff members at the Emergency Primary Care Centre in Oslo Municipality should be familiar with children's vulnerabilities and the potential health impacts on children caused by stays in police custody.

Recommendation: Children's right to information

- Oslo Police District should ensure that children who are arrested receive information regarding the basis for the arrest and rights relating to criminal procedure as soon as possible and in a language that is adapted to the needs and comprehension of the child, and that this is documented in a uniform manner.
- When detained at Oslo Police Custody Facility, all detained minors should receive written and oral information regarding their rights and the procedures at the police custody facility, in a language that is adapted to their needs and comprehension.
- Oslo Police District should ensure that all minors who are interviewed as a person charged are provided with adapted information regarding their rights and duties and that the interview is not continued until it is clear that the child has understood the information.

Recommendation: Use of coercive measures and control measures

- Oslo Police District should ensure that age and considerations for the child are included as an independent and continuous assessment when physical force and coercive measures are used against children as a last resort.
- Spit hoods should not be used on minors.
- Oslo Police District should introduce procedures that ensure that all use of physical force and coercive measures during arrest and transport of minors are documented in a uniform manner.
- Oslo Police District should inform minors who are subjected to strip searches in their cells and the personnel who carry out the search that the camera is censored during the search.

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