



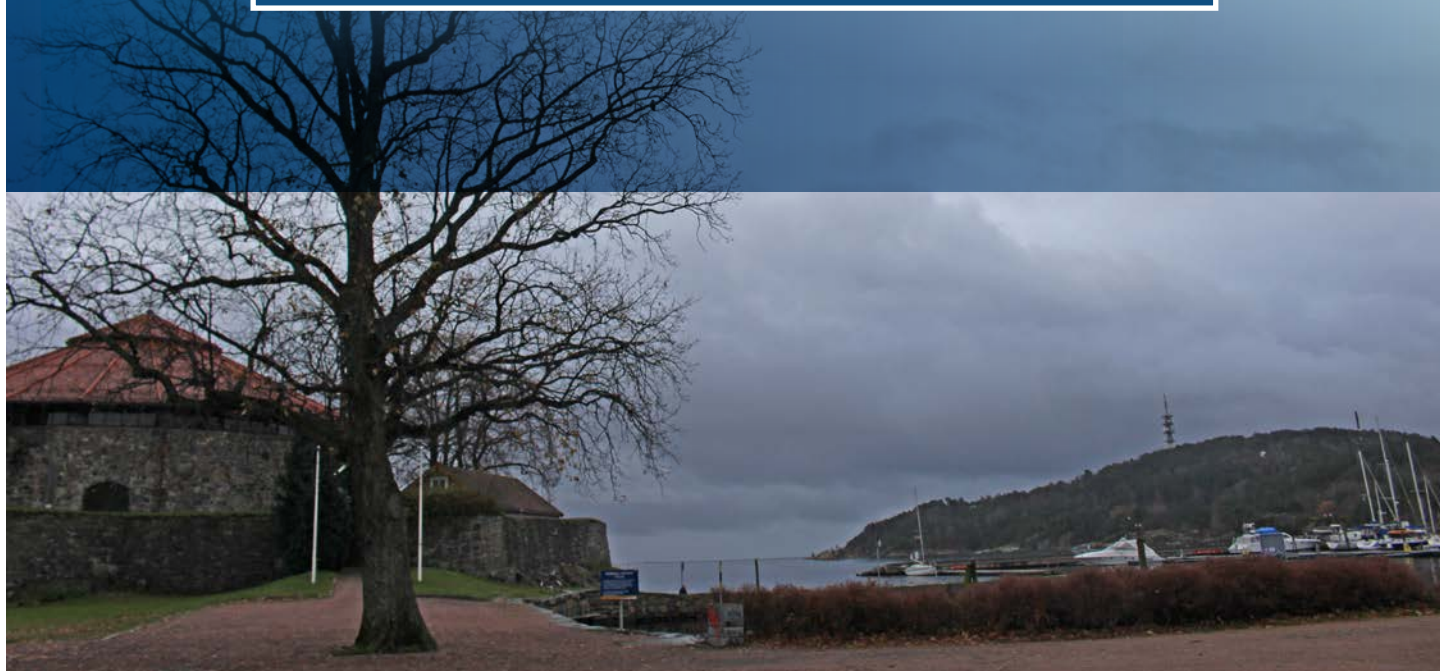
SIVILOMBUDET
Norwegian Parliamentary Ombud

VISIT REPORT

SUMMARY AND RECOMMENDATIONS

Homes for people with
developmental disabilities in
the Municipality of Kristiansand

16–18 November 2021





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Summary

Responsibilities of the municipality

In October 2021, the Parliamentary Ombud's National Preventive Mechanism visited seven people with developmental disabilities living in the Municipality of Kristiansand receiving an around the clock service. The subjects of the Ombud's visit were selected following a review of the Municipality's administrative decisions on the use of force for 71 people. Six people lived in three different group homes and one person lived in an independent apartment.

In one of the group homes we visited, the living conditions represented an intrinsic risk of disproportionate use of force, such as physical coercion, shielding and the locking-in of residents. The design of the premises, such as an insufficient number of exits, narrow common corridors, cluttered areas and poor sound quality created an increased risk of conflicts and the use of force. The risk was exacerbated by the size of the group home and many residents having extremely complex needs. The conditions gave rise to concern about the residents being exposed to the risk of inhumane or degrading treatment. Further, circumstances related to the organisation and staffing, such as the number of employees and temporary workers, a lack of qualified personnel and capacity to guide employees contributed to this.

The residents that we visited in two of the homes were exposed to illegal shielding and were locked in. Shielding is a particularly invasive measure, which according to the law shall only be used in an emergency situation. For example, an administrative decision on shielding had been passed for one resident to provide the resident with a more predictable everyday life and reduced stimuli. Shielding on such grounds is illegal. Shielding shall be carried out without locking doors except when safety considerations indicate the resident should be locked in. Several of the residents we visited were periodically shielded with locked doors or by other means, which in reality prevented the person from leaving their apartment. In some cases, shielding was carried out without an administrative decision, and in others an administrative decision had been passed, but without satisfying the conditions of the law. Routinely locking people in their own homes represents a risk of inhumane or degrading treatment.

One person, who lived in a separate apartment, had extremely complex needs that required close monitoring. The resident experienced comprehensive and extremely invasive physical coercion at the same time as the services offered to the resident were severely flawed. The risk factors included an inadequately adapted home, insufficient planning of the resident's monitoring and needs, and poor frameworks to provide guidance and follow-up for employees. The resident's pain and health condition were not hitherto properly followed up by the municipality or the specialist health service. Work on the prevention of invasive force appeared to be deficient. In combination, these conditions contributed to inadequate safeguarding of the resident's protection against inhumane and degrading treatment.

During the last few years, the municipality had worked on introducing methods to better monitor the health of people with developmental disabilities. The municipality also participated in a pilot project with a primary health care team to provide more adapted primary health care services for people with developmental disabilities, in addition to others. This way of organising the health care service appeared to be a good practice adapted to the complex needs of these residents.

Nonetheless, residents, who were in a lot of pain and required comprehensive health monitoring, had great difficulty in getting medical assistance, especially specialist health services. Serious self-harm and aggressive behaviour exposed them to considerable coercion. Several had lived for a long time with major loss of function and pain. Insufficient registration and measurements by municipal employees made it difficult to get a referral to the specialist health service. Better interaction between the municipality and the specialist health service was needed. The municipality did not use individual plans as an instrument to ensure that these residents received necessary and coordinated services. On the whole, it is concerning that this patient group does not appear to have access to equitable specialist health services.

The review of the municipality's administrative decisions and conclusions uncovered multiple flaws, for example, when assessing the proportionality of the force measures. Several residents we visited did not previously have a valid administrative decision for a prolonged period of time even though the force continued. This contravenes basic principles of protection under the law. Further, the municipality lacked adequate routines to ensure that the conditions for the administrative decision on the use of force were satisfied during the administrative decision's validity period, as required by law. The visit uncovered several cases of illegal force and force for which there was no administrative decision. No one in the municipality had noticed the illegal conditions. This demonstrated that the employees lack competence in relation to the conditions for using extensive coercion pursuant to the Norwegian Health and Care Services Act, Chapter 9.

No information emerged to suspect that employees had been violent towards or sexually abused the residents we visited. At the same time, the findings indicated that the municipality should work more systematically in relation to creating awareness around the fact that people with developmental disabilities are at higher risk of being exposed to violence or abuse.

Responsibilities of the County Governor

All administrative decisions on the use of force at the time when the Parliamentary Ombud's National Preventive Mechanism visited were approved by the County Governor. The County Governor approved most applications for dispensation from the education requirement. In one case, the force measures were to be carried out by a total of 43 employees, and dispensation was granted for all the 29 employees it was applied for. None of the County Governor's re-examinations had been appealed to the County Social Welfare Board during the last five years.

Our review of the re-examinations showed that it was often unclear how the County Governor assessed the force measures in each individual administrative decision weighed up against the requirements of the law. Since the statutory administrative requirements for the grounds are stricter the more invasive the measure is, it seemed that the County Governor's case processing during the re-examinations was problematic.

We found several flaws in the County Governor's re-examination and inspection of administrative decisions on the use of shielding and various confinement measures. The County Governor had repeatedly approved an administrative decision on shielding to cover the person's fundamental needs even though it is only allowed to use shielding in emergency situations. In the same re-examinations, the County Governor had also approved routine locking of the residents' apartment

entrance doors without questioning whether it was allowed. The County Governor had not carried out on-site inspections with this resident's administrative decision during the last five years.

The County Governor had also approved a force measure where a resident's apartment entrance door could be blocked with a gate at night. The measure was approved as a measure to cover the person's fundamental needs. No questions were raised as to whether the measure, which involved confinement, was legal in this case either. In the same group home, the County Governor approved an administrative decision on shielding where it was dubitable whether the municipality's grounds documented that the law requirements were satisfied. Additionally, the Country Governor did not problematise the fact that the resident's apartment entrance door was locked during the shielding.

These cases indicate serious failure to provide protection under the law during re-examination of invasive and illegal constraints on the residents' freedom of movement in their own homes. The findings indicate insufficient knowledge of legislation on the use of force. In the opinion of the Parliamentary Ombud's National Preventive Mechanism, the pinpointed flaws in the County Governor's assessments were significant and contributed to a higher risk of unauthorised, unnecessary and disproportionate use of force.

The County Governor shall provide the necessary training, guidance and assistance for guardians. Our findings indicated that the guardians did not receive training and guidance adapted to the content of the guardianship. Further, the guardians felt they did not receive enough guidance from the County Governor regarding available appeal options..

Recommendations

Recommendations: decisions on the use of force

- The municipality must ensure that individual force measures that are part of an administrative decision on the use of force are weighed up against all the conditions of the law, and are stated in the grounds for the decision.
- The municipality should strengthen the internal quality assurance of administrative decisions and decisions on the use of force.
- The municipality should ensure systematic evaluation of all force measures during the period of the administrative decision to make sure the conditions for force are satisfied at all times.

Recommendations: use of physical coercion and shielding

- The municipality should ensure that all offered housing is planned and adapted in a manner that enables residents to feel safe without exposure to unnecessary physical coercion and shielding.
- The municipality must ensure that residents are not prevented from leaving their homes (shielding) unless it is necessary as an injury prevention measure in an emergency situation, and an administrative decision already exists or a decision is passed regarding this.
- The municipality must ensure that a resident is never locked in their own home except in acute situations.

Recommendations: risk attached to insufficient health monitoring

- The municipality must continue the work on ensuring that the health conditions and pain of the residents are mapped and forwarded to the health services who will be further monitoring their health.
- The municipality should strengthen routines for collaborating with the specialist health service to ensure investigation and treatment for service recipients with complex health problems.
- The municipality should ensure that residents with complex and comprehensive health problems are offered individual plans and a coordinator.
- The municipality should ensure that residents, relatives and guardians receive information about appeal options to safeguard the resident's fundamental rights to equitable health services.

Recommendation: living environment and physical framework conditions

- The municipality should ensure that the living environment and physical framework conditions are adapted in such a manner that residents are not exposed to unnecessary use of force.

Recommendation: staffing and competence

- The municipality should strengthen its work on training so all employees have sufficient knowledge on the conditions for the use of force pursuant to the Norwegian Health and Care Services Act, Chapter 9.

Recommendation: protection from violence and abuse

- The municipality should implement measures to increase employee awareness and knowledge about violence and abuse to enable them to prevent, recognise and handle such incidents.

Recommendations: checks and protection accorded by the law:

- The County Governor must ensure that the municipality's administrative decisions are checked so all use of extensive coercion is only exercised when the conditions of the Act are satisfied and the legal assessments are clearly stated in the grounds for the decision.
- The County Governor should ensure that appointed guardians receive enough training and guidance to safeguard the residents' protection accorded by the law.

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