



# Thematic Report 2015 on children and young persons at institutions for the disabled

Doc. No. 16/01412-3  
IRL/MJE

## **What has the theme led to?**

Children and young persons attending or residing at institutions due to their extensive and permanent functional impairment were one of the themes for the monitoring visits which the Ombudsman carried out in the children's social care sector in 2015 in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

It was the Ombudsman's overall assessment that the staff at the institutions were generally reflective in relation to the many practical and ethical dilemmas of everyday life and that they were caring and development-oriented towards the children and young persons.

On the basis of his monitoring visits, the Ombudsman generally recommends that institutions, where children and young persons due to their extensive and permanent functional impairment are attending or residing, draw up written guidelines on how the institution prevents sexual abuse and which procedure the institution follows if there is suspicion of abuse.

The Ombudsman is going to discuss the follow-up of this general recommendation with the Ministry of Social Affairs and the Interior, the National Board of Social Services and the social supervision authorities. In addition, the Ombudsman is going to follow up on the recommendation during his monitoring visits.

The Ombudsman is also going to discuss with the Ministry of Social Affairs and the Interior, the National Board of Social Services and the social supervision authorities whether there is a need to extend the knowledge of – and in this connection communicate on an ongoing basis – the development of the IT assistive aids which can support the communication of children and young persons with limited verbal or non-verbal language.

Furthermore, the Ombudsman is going to discuss the problem of the dilemmas between force and care with the Ministry of Social Affairs and the Interior and the Ministry of Health.

The Ombudsman has sent this report to the Ministry of Social Affairs and the Interior, the National Board of Social Services, the social supervision authorities and the Ministry of Health with the purpose of drawing the authorities' attention to the report in order for it to form part of their deliberations in this sector. The report is also sent to

the institutions which the Ombudsman visited as part of this theme. Moreover, the Ombudsman has informed the Legal Affairs Committee, the Domestic and Social Affairs Committee and the Health Committee of this report.

Please read more about the Ombudsman's work on various themes in the appendix to this report.

### **Reasons for the choice of theme**

Children and young persons who, due to their extensive and permanent functional impairment are attending or residing at institutions, may because of their disability find it difficult themselves to make use of the general services and help that exist for children and young persons. This can for instance be using the Children's Telephone (the chat line at the NGO "Børns Vilkår") or contacting the Ombudsman's Children's Division. Therefore, the Ombudsman chose these children and young persons as a theme for his monitoring visits.

Choosing this theme, the Ombudsman wanted to gain an increased insight into and to assess the conditions of these children and young persons.

The investigation took as its point of departure some of the general focus areas which the Ombudsman has during his monitoring visits. Generally, the Ombudsman focuses for instance on forcible measures. The Ombudsman also generally focuses on the users' relationship, for instance the relationship between the children and young people living at institutions and their families and the institution's staff.

The Ombudsman's monitoring visits are particularly aimed at society's most vulnerable citizens. The group of vulnerable citizens are, among other things, characterised by having very few resources, meaning that their rights can easily be put under pressure. This may also apply to children and young persons with extensive and permanent functional impairment.

The children and young persons whom the Ombudsman met during his monitoring visits suffered from various rare syndromes, chromosome disorders and severe brain damage. Most of the children and young persons had a severe mental disability and no or limited verbal language.

## What did the Ombudsman do?

The theme was relevant at 10 out of the 11 monitoring visits which the Ombudsman carried out in the children and young persons social care sector.

The theme had the following topics:

- The Ombudsman visited institutions in all five regions: The institutions included one private, seven regional and two municipal institutions. They were 24-hour residential institutions, respite institutions, day-care facilities and an accommodation facility.
- In advance, the Ombudsman asked the institutions:
  - to write a list of the children and young persons at the institution with information about the individual child's and young person's means of communication and communication skills
  - to give information about the number of cases of abuse, violence and threats during the last three years, both between the children and the young persons, by the adults towards the children and young persons, and by the children and young persons towards the staff
  - to give information about guidelines on prevention and processing of cases involving violence and abuse (policy on violence, etc.).
- The talks which the Ombudsman's visiting team had with the management, staff, relatives, children and young persons at the institutions, focused, among other things, on the well-being of the children and young persons who, due to their extensive and permanent functional impairment, were attending or residing at institutions.

In order to get insight into the communicative challenges and difficulties of this group of children and young persons, the Ombudsman visited the private national association "LEV" (in Danish 'Live') in the beginning of 2015. During the visit at "LEV", the Ombudsman was introduced to various ways of communication with children and young persons with limited or no verbal language and to alternative and supportive methods of communication.

The monitoring visits were carried out as part of the Ombudsman's general monitoring activities pursuant to section 18 of the Ombudsman Act and as part of the

Ombudsman's task of preventing exposure to for instance inhuman or degrading treatment of persons who are or may be deprived of their liberty, cf. the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Ombudsman's work to prevent degrading treatment, etc. pursuant to the Protocol is carried out in cooperation with the Danish Institute for Human Rights and with DIGNITY – Danish Institute Against Torture. DIGNITY and the Institute for Human Rights contribute to the cooperation with special medical and human rights expertise, meaning among other things that staff with this expertise participate in the planning and execution of and follow-up on monitoring visits on behalf of the two institutes.

The Ombudsman has a special responsibility to protect children's rights in accordance with, among other things, the UN Convention on the Rights of the Child. The Ombudsman's Special Advisor on Children's Issues participates in monitoring visits to the children and young persons social care sector.

### **What did the Ombudsman find?**

Based on his monitoring visits, the Ombudsman noted the following, among other things:

- The Ombudsman's overall impression was that the staff at the institutions were generally reflective in regard to the many practical and ethical dilemmas of everyday life as well as being caring and development-oriented towards the children and young persons.
- None of the institutions had written guidelines on how the institution prevented sexual abuse and which procedure the institution would follow if there was suspicion of abuse.
- The institutions were generally concerned with and attentive to the communication with the children and young persons and also the various ways in which the children and young persons communicated.
- The institutions differed widely in their awareness of IT developments regarding communication-supportive aids which can help children and young persons with a limited or non-verbal language.
- Every institution faced dilemmas on a daily basis, especially on the relationship between force and care.

## Guidelines regarding sexual abuse

In accordance with Article 34 in the UN Convention on the Rights of the Child, Denmark has accepted to protect the child against all kinds of sexual exploitation and sexual abuse.

None of the institutions had written guidelines on how the institution prevented sexual abuse and which procedure the institution planned to follow if there was suspicion of abuse.

By far the main part of the children and young persons who lived at the institutions had a mental formative age which did not correspond to their physical age due to their functional impairment. As an example, the Ombudsman's visiting team met a tall, young man in his late teens. His physical development matched his age, also sexually, but his mental age was approx. 2-5 years, and his verbal language was very limited. In addition, the visiting team met a young woman who was also in her late teens and with the mental age of approx. 1½ years and with no verbal language. She was very attracted to men and sought physical contact with the boys and men she met.

The institutions generally paid attention to teaching the children and young persons appropriate sexual behaviour. However, because of the functional impairment and the limited or lacking (verbal) language, it was almost impossible for the main part of the children and young persons to say no to others.

None of the institutions could report any specific incidents of sexual abuse. On some occasions, the staff had noticed a behavior in the young persons which had been regulated by the staff in cooperation with the parents in order to safeguard the young persons themselves as well as ensuring that the young persons' interrelations were reciprocal and voluntary. The regulation might for example be that the young persons were not allowed to spend time together in a room without supervision.

The visits showed that the staff were generally not sure whether they would find out if a child or young person had been subjected to abuse.

According to the Crime Prevention Board's (Det Kriminalpræventive Råd) report *Sexual Violence amongst Young Persons: A Systematic Approach to Primary Prevention* (March 2012), studies show that children and young persons with disabilities are at an increased risk of sexual abuse, among other things because of the functional impairment which make them easy prey to offenders.

Based on his monitoring visits, the Ombudsman generally recommends that institutions, where children and young persons due to their extensive and permanent functional impairment are attending or residing, draw up written guidelines on how the institution prevents sexual abuse.

When drawing up the guidelines, it may be advisable that the institution thoroughly considers the situations where children and young persons may be subjected to abuse from other children and young persons, from the institution's staff or from persons outside the institution.

The guidelines may, among other things, describe procedures for preventing the child and young person being subjected to abuse but also to prevent the staff from baseless accusations of abuse. The procedures can, for example, counterbalance the regard for preventing abuse with the regard for respecting the child and young person when they need help with intimate hygiene such as bathing and diaper change.

The Ombudsman also recommends that the institutions draw up written guidelines on how the institution prevents sexual abuse and which procedure the institution follows if there is suspicion of abuse.

The Ombudsman is going to discuss the follow-up of this general recommendation with the Ministry of Social Affairs and the Interior, the National Board of Social Services and the social supervision authorities. In addition, the Ombudsman is going to follow up on the recommendation during his monitoring visits.

### **Supportive methods of communication**

Article 12(1) in the UN Convention on the Rights of the Child stipulates that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

According to Article 7(3) in the UN Convention on the Rights of Persons with Disabilities, a child with a disability has the right to express its views in all matters affecting the child on an equal basis with other children, the views of the child being given due weight in accordance with the age and maturity of the child, and to be provided with disability and age-appropriate assistance to realise that right.

In practice, communication forms the basis for people having a say in their own lives. For children and persons with disabilities, the access to get help and assistance to communicate can be crucial when it comes to them actually getting this right and influence.

Many of the children and young persons, whom the Ombudsman met during his monitoring visits, had no or very limited (verbal) language. These children and young persons were dependent on others compensating for their lacking or limited ability to talk and being able to interpret the children's and the young persons' communicative utterings.

The institutions were generally concerned with and attentive to the communication with the children and young persons and also with the various ways in which the children and young persons communicated.

The visiting team encountered these ways of communication, among other things:

- Some children were able to use 'Signs to Speech' ("Tegn til Tale") where the verbal language is supplemented with hand signs.
- Some children were able to use images so that the communication took place when the child pointed at images of an activity or of something the child wanted.
- Some children solely communicated using eyes, sounds and/or facial expressions.
- One institution recorded videos of the individual child in order to be able to analyse the child's communication method.
- At some institutions, it was possible for the children and young persons to have a regular and ongoing contact with their families using Skype or FaceTime.
- At most of the institutions, the children had a 'communication passport' which is a small, laminated booklet containing a description of the child and its needs plus a description of the child's communication methods. Please find more information (in Danish only) on "kommunikationspas" on the National Board of Social Services' homepage ([www.socialstyrelsen.dk](http://www.socialstyrelsen.dk)).
- One institution had QR codes on the children's wheelchairs, stands and walkers. When scanning the codes on the institution's iPads, information about the child and short film clips were shown on, for example, how to tuck the child in and how the child communicated, etc.
- In one institution, the common room had a big touch screen which enabled the children – either individually or together – to choose from activities such as learning games, music and films.

These ways of communicating can serve as inspiration.

The institutions differed widely in their awareness of IT developments regarding communication-supportive aids which can help children and young persons with a limited or non-verbal language.

The Ombudsman is going to discuss with the Ministry of Social Affairs and the Interior, the National Board of Social Services and the social supervision authorities whether there is a need to extend the knowledge of – and in this connection communicate on an ongoing basis – the development of the IT assistive aids which can support the communication of children and young persons with limited verbal or nonverbal language.

### **Dilemmas between force and care**

All the visited institutions faced dilemmas on a daily basis, especially concerning the balance between force and care. Typically, it was in situations where the children and young persons as a result of their functional impairment did not understand the consequence of a measure or the consequence of own actions and where legislation does not generally allow the use of force.

One dilemma, which the visiting team were informed of, was that the child or young person maybe wanted to leave the institution and could do so because of an unlocked main entrance door, but the child/young person was not able to cope outside the institution, neither in traffic, nor in encounters with other people. Another dilemma dealt with a young person who exposed himself/herself outside the institution. There were also examples of situations with the child or young person opposing blood sampling or vaccination or the brushing of teeth.

The issue is mentioned in legislative report No. 1551/2015 on use of force towards children and young persons who are placed outside the home. The legislative report has been followed up by a legislative proposal on the responsibility of adults towards children and young persons in care (L 162, proposed on 30 March 2016, Folketinget 2015-16).

Similar dilemmas are found in the adult social care sector.

The Ombudsman informed the Ministry of Health of the dilemmas in a meeting on 19 January 2016.

The Ombudsman is going to discuss the issue with the Ministry of Social Affairs and the Interior and with the Ministry of Health.

Copenhagen, 21 April 2016

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Jørgen Steen Sørensen

## **Themes for monitoring activities 2015**

Every year, the Ombudsman selects one or more themes for the year's monitoring visits, in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

Dok.nr. 16/01412-4/RI/SOS

The choice of themes is particularly dependent on which areas are in need of an extra monitoring initiative. The Ombudsman will often select a narrow theme, such as for instance the Prison and Probation Service's use of security cells. Other times, the Ombudsman will select broad themes, such as for instance children and young people who, due to a substantial and permanent impairment of their physical or mental function, attend or reside at an institution

The themes give the Ombudsman the opportunity to include current topics in his monitoring activities and also to make in-depth and transverse investigations of particular problematic issues and to gather experience about practice, including best practice.

A principle aim of any year's monitoring visits is to shed light on and investigate the year's themes. The majority of the year's monitoring visits will therefore go to institutions where the chosen themes are relevant.

## **Thematic reports**

At the end of the year, the Ombudsman, together with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture, reports on the outcome of the year's monitoring activities.

The themes are especially reported in separate reports on the individual themes. In these reports the Ombudsman sums up and imparts the most important results of the themes.

## **General recommendations**

Results of the themes may be general recommendations to the authorities, such as for instance a recommendation to draw up a policy for the prevention of violence and intimidation between the users/residents.

General recommendations are based on the Ombudsman's experience of the field in question. Usually, they will also have been given as concrete recommendations to particular institutions during previous monitoring visits.

Typically, the Ombudsman will discuss the follow-up to his general recommendations with the central authorities. In addition, the Ombudsman will follow up on the recommendations during monitoring visits.

The general recommendations have a preventive aim. The basis for the preventive work in the monitoring field is that the Ombudsman has been appointed national preventive mechanism (NPM) according to the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The thematic reports will be published on the Ombudsman's homepage, [www.ombudsmanden.dk](http://www.ombudsmanden.dk). In addition, the Ombudsman will send the reports to all relevant authorities so that the authorities can include the reports in their deliberations regarding the various sectors.