



Thematic Report 2015 on placement in security cells

Doc. No. 15/00324-8/ME



What has the theme led to?

Placement in a security cell was a theme for the monitoring visits to Prison and Probation Service institutions which the Ombudsman carried out in 2015 in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

In general, it was the Ombudsman's assessment that a greater effort is required in order to ensure that the rules for placement in security cells are observed. The Ombudsman reviewed 35 reports on placements in security cells, and 4 of the reports contained a description of the course of events which aroused suspicion that the placement in a security cell or forced immobilisation was unjustified. In addition to this, the report also gave rise to suspicion in 6 cases that the inmate was mentally ill, and 27 of the reports did not state specific grounds why the inmate was forcibly restrained.

On the basis of his monitoring visits, the Ombudsman generally recommends that prisons and local prisons make sure that the conditions for placement in a security cell and possibly forced immobilisation are observed, and that documentation for this is provided. Moreover, the Ombudsman generally recommends that prisons and local prisons ensure that all reports on placement in security cells include documentation that a continuous assessment has been made on a regular basis regarding the need for continued placement in a security cell and possible immobilisation of the person placed in the cell.

The Ombudsman also generally recommends that prisons and local prisons make sure that a doctor is called in to check on the inmate in all cases of forced immobilisation, and that the doctor, if necessary, is informed about the duty to check on the inmate unless the doctor deems it clearly unnecessary.

Finally, the Ombudsman recommends that prisons and local prisons ensure that follow-up sessions are held systematically after the inmate has been placed in a security cell.

One particular visit has given cause for the Ombudsman to extract a specific placement in a security cell and to open an own initiative case asking for a statement which concentrates on, among other things, the role of the Department of the Prison and Probation Service as reviewing authority.

The Ombudsman has sent this report to the Department of the Prison and Probation Service so that the Prison and Probation Service can include it in their deliberations on this issue. The Ombudsman will discuss the follow-up of the general recommendations with the Prison and Probation Service. In addition to this, the Ombudsman will follow up on the recommendations during his monitoring visits.

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

Reasons for the choice of theme

Most of the closed prisons and some of the larger local prisons have a security cell. There is no furniture in a security cell apart from a bed on which an inmate can be physically restrained (forced immobilisation). It is possible to forcibly restrain the inmate on the bed by means of an abdominal belt, wrist straps, foot straps and gloves.

An inmate can be placed in a security cell, and possibly physically restrained, if it is deemed necessary in order to prevent the threat of violence or to overcome violent resistance or to prevent suicide or other self-harm.

It is a serious restriction for an inmate to be placed in a security cell and to possibly be physically restrained. This is emphasised in a judgment by Østre Landsret (the High Court of Eastern Denmark) of 4 June 2014 (Ugeskrift for Retsvæsen 2014.3045 Ø, the Danish weekly law reports). The judgment said that to the extent that placement in a security cell and immobilisation by means of wrist straps and foot straps together with an abdominal belt and possibly also gloves have been considered unjustified, then especially the immobilisation must be considered to lead to such intense physical and mental suffering that the restriction is subject to Article 3 of the European Convention of Human Rights. The rules laid down in this Article stipulate that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The High Court found that the Prison and Probation Service had violated this Article of the European Convention of Human Rights in four cases by unjustified placement of an inmate with a custodial sentence in a security cell and forceful immobilisation of the inmate there to a plank bed, and in eight cases, where

immobilisation was justified, letting a basically reasonable placement in a security cell and immobilisation last longer than justified.

On these grounds, the Ombudsman wanted to investigate whether the Prison and Probation Service institutions comply with the rules for placing an inmate in a security cell and forceful immobilisation of an inmate, and whether placement in a security cell is maintained longer than justified.

Moreover, during his monitoring visits the Ombudsman is generally focusing on the use of force and other measures, disciplinary measures and informal actions.

The Ombudsman's monitoring visits are particularly aimed at society's most vulnerable citizens. The vulnerable citizens are, among other things, characterised by having very few resources, meaning that their rights can easily be put under pressure. This also applies for citizens who are detained, including inmates in the Prison and Probation Service institutions.

What did the Ombudsman do?

The Ombudsman investigated the theme in the following way:

- The Ombudsman visited 2 closed prisons and the closed sections of another prison with both closed and open sections and security cells. Furthermore, the Ombudsman also visited 4 local prisons with security cells. In total, the Ombudsman visited 7 institutions with security cells.
- Prior to the visit, the Ombudsman asked the prison or the local prison and the regional office of the Prison and Probation Service to forward a list of the total number of placements in security cells within the last three years. The authorities were also requested to state, together with the survey, the grounds on which the placement had taken place and the duration of the placement. In addition to this, the Ombudsman also asked to have the institution's latest 5 reports on placement in security cells and the individual supervision forms before the visit. In total, the Ombudsman received 35 reports with supervision forms from the 7 institutions.
- Prior to the visit, the Ombudsman's visiting team reviewed these reports and the supervision forms on the basis of a form that concentrated on compliance with essential procedural rules and of whether the measure could be considered justified both with regard to the placement in a

security cell as such and to the use of forced immobilisation. Please see the form in the appendix to this report.

- The discussions which the Ombudsman's visiting team had with the management, staff and inmates at the institution focused on the use of security cells, among other things.

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.

What did the Ombudsman find?

On the basis of the completed monitoring visits and review of the reports on placement in security cells and the individual supervision forms, the Ombudsman noted the following, among other things:

- In 34 out of 35 cases the inmate was not only placed in a security cell but was also forcibly immobilised to the bed with belts and foot straps. In 32 cases wrist straps were also used in connection with the forced immobilisation.
- 4 of the reports contained a description of the precedent course of events which raised the suspicion that the placement in a security cell or the forced immobilisation was unjustified.
- In 6 cases, the description in the report raised the suspicion that the inmate was mentally ill.
- 27 of the reports on placement in security cells did not state specific grounds for forcible immobilisation of the inmate. In 10 cases, however, the grounds

were indirectly stated in the description of the course of events which led to the placement in a security cell and the forced immobilisation.

- None of the reports on placement in security cells where other measures of immobilisation than belt were used (i.e. wrist straps, foot straps and gloves) included specific grounds for the use of these measures of immobilisation.
- 16 reports on placement in security cells did not clearly document whether it was justified to maintain the placement in a security cell until the time of the last supervision.
- In all 34 cases where the inmate had been forcibly immobilised, the inmate was permanently supervised.
- All 35 reports with supervision forms contain information about the staff's supervision of the inmate.
- 23 of the 34 supervision forms concerning cases where the inmate was forcibly immobilised include notes about the staff's supervision of the inmate every 15 minutes during the entire period of forced immobilisation.
- 30 supervision forms do not include information about a continuous need for upholding placement in the security cell.
- 9 reports on placement in security cells stated that a forcibly immobilised inmate had not received any medical attention.
- During the monitoring visits, the Ombudsman's visiting staff were informed that the Ombudsman's choice of selecting placement in a security cell as a theme for monitoring visits had led to a greater focus in the Prison and Probation Service institutions to ensure that the rules for placement in a security cell were observed and that the documentation of the individual placement in a security cell became more detailed.

Conditions for placement in security cell

An inmate in a prison or a local prison can be placed in a security cell pursuant to the Sentence Enforcement Act.

Placement in a security cell must only be used if it is deemed necessary in order to prevent the threat of violence or to prevent suicide or other self-harm.

However, an inmate should not be placed in a security cell if the purpose, the infringement and the discomfort, which the measure is considered to cause, result in a disproportionate measure. Placement in a security cell must be undertaken as gently as the circumstances permit.

The inmate is only to be placed in a security cell as long as deemed necessary. The inmate must be taken out of the security cell when less coercive measures than placement in a security cell in order to prevent threatening violence or overcoming heavy resistance or to prevent suicide or other self-harm are sufficient. Therefore, it must be frequently assessed whether the placement of the inmate in a security cell remains necessary.

The European prison rules, adopted by the Committee of Ministers of the Council of Europe in 2006, stipulate that mentally ill persons, whose mental state of health are irreconcilable with imprisonment, should be imprisoned in an institution specifically aimed at this purpose.

6 of the 35 security cell reports, reviewed by the Ombudsman, contained a description of the preceding course of events which gave rise to the suspicion that the inmate was mentally ill.

4 reports contained a description of the preceding course of events which gave rise to suspicion that the placement in a security cell or the forced immobilisation was unjustified.

19 reports contained a description of the supervision which indicated that it was justified to uphold the placement in a security cell until the time when the last supervision was carried out. 16 reports did not indicate – or did not clearly indicate – that this was justified.

30 security cell reports with supervision forms, received by the Ombudsman, do not contain information as to whether there was still a need for maintaining the placement in a security cell.

The visiting team informed an institution that one of the five security cell reports which the institution had sent to the Ombudsman contained a continuous assessment of the need for placement in a security cell and immobilisation while this information was not included in the four other reports. The visiting team recommended that the management take steps to ensure that all future security cell reports include documentation of an ongoing assessment of the placement and the immobilisation. Representatives from the prison and probation service sector supported this recommendation and the management agreed to the recommendation. The management stated that they would work on finding a

suitable procedure to ensure the necessary documentation in future security cell reports.

The visiting teams made similar recommendations to other institutions, apart from institutions where the management during the meeting informed the visiting team that they had already a more stringent focus on compliance with the terms of placement in a security cell and possible immobilisation together with focus on documentation in the security cell reports regarding a continuous assessment of the placement and the immobilisation.

At one institution the visiting team recommended that the staff avoided putting a pillow case over an inmate's mouth in order to protect themselves from spit and, for example, considered using a plastic screen instead.

Conditions for the use of forced immobilisation

When an inmate is placed in a security cell, there is – as mentioned – a possibility of forcibly strapping the inmate to a bed in the cell by using a belt and possibly also hand straps and foot straps as well as gloves.

The conditions for forcibly immobilising the inmate are the same as those which apply to the placement in a security cell itself. This means that the inmate must only be immobilised if it is deemed necessary in order to prevent the threat of violence or to defeat violent resistance or to prevent suicide or other self-harm. An inmate must not be immobilised if the purpose of the measure and the violation and the discomfort which the measure is presumed to cause would be considered a disproportionate measure. The immobilisation must be undertaken as gently as circumstances permit.

The fact that the conditions for immobilising an inmate correspond to the conditions for placing the inmate in a security cell does not mean that when it is deemed necessary to place an inmate in a security cell, the inmate must be immobilised. When a prison or a local prison decide to place an inmate in a security cell, an individual decision has to be made whether it is necessary to immobilise the inmate too and, if so, which kind of fixation measures (belt, hand straps and foot straps together with gloves) are considered necessary.

The inmate must only be immobilised as long as deemed necessary. Consequently, the prison or the local prison must release the inmate from the immobilisation when it is considered sufficient to make use of less coercive measures than immobilisation in order to prevent violent resistance or to prevent suicide or other self-harm. Therefore, the prison or the local prison must on a regular basis assess whether it remains necessary to immobilise the inmate.

A separate assessment has to be made whether the immobilisation is necessary even if the assessment is that it remains necessary to place the inmate in a security cell. If it is still necessary to immobilise the inmate, a separate assessment has to be taken whether other fixation measures than belt are necessary. An immobilisation must only as an exception last longer than 24 hours.

The review of the reports on placement in security cells indicated, among other things, that in most cases where placement in a security cell had been undertaken, the inmate was strapped to a bed in the security cell by means of a belt and foot straps. Only one out of 35 reports showed that the inmate was placed in a security cell without any kind of immobilisation. 32 reports out of a total of 34 reports on immobilisation stated that the inmate was not only immobilised by means of belt and foot straps but also by means of hand straps. In comparison, gloves were only used as an immobilisation measure in 3 cases.

In 7 cases the security cell report includes specific grounds for immobilisation of the inmate, whereas 27 reports do not include such grounds. However, in 10 cases the grounds appeared indirectly from the description of the course of events which led to the placement in a security cell and the immobilisation. None of the reports received by the Ombudsman state any information that the staff made a separate decision whether it was considered necessary to not only make use of a belt but to use hand straps and foot straps too, and possibly gloves in order to immobilise the inmate.

There were no cases of inmates having been immobilised by means of a belt or foot straps where the use of these fixation measures was brought to an end prior to termination of the placement in a security cell. There was, however, one case where the use of hand straps ceased while the inmate was still immobilised, and there was an additional case where the use of gloves ceased while the inmate was still immobilised.

In one institution the management said that an individual assessment was made on whether the conditions for placement in a security cell and immobilisation were met but usually immobilisation was used in all cases of placement in a security cell. On the basis of this information, the visiting team emphasised that a specific and individual assessment has to be made as to whether it is necessary to immobilise the inmate.

In one of the institutions visited by the Ombudsman, a clock hung on the wall and a fire alarm was placed in the ceiling. It was possible to put a piece of cloth around the clock or the fire alarm which could then be used to hang oneself, meaning that the security cell could not be used for placement of inmates in order to prevent suicide or other self-harm unless the inmate was immobilised on the bed. The visiting team recommended that the security cell was designed so that in terms of safety it was justifiable to place inmates in the cell in order to prevent suicide or other self-harm without using immobilisation.

Supervision

The staff must regularly check on an inmate placed in a security cell.

If an inmate is immobilised, the inmate must have a permanent guard. As permanent guard can be used either a prison officer or another qualified staff member who has no other task than taking care of the immobilised inmate. It must be ensured to the extent possible that an experienced, permanent staff member is used and that the staff member in question did not participate in the current immobilisation. The institution should consider whether it is advisable to use a staff member with a good knowledge of the inmate which will often, but not always, be the case.

The review of the security cell reports and the supervision forms indicated that in all the 34 cases concerning immobilisation of an inmate, the inmate was permanently supervised.

An institution informed the Ombudsman's visiting team that the work was typically carried out according to a "rolling staff rota" with change of guard every half to 1 hour because permanent watch takes a toll on the staff. The visiting team recommended that the management reconsider this procedure and consider an arrangement where regard for the inmate is taken into account to a higher

degree, such as an arrangement where the inmate does not have to relate to a new permanent guard every half hour and to make sure that the possibility of following a possible development is increased.

If an inmate is placed in a security cell without immobilisation, a doctor must be sent for to check on the inmate if there is suspicion of illness, including bodily injury of the inmate, or if the inmate himself requests medical attention. When an inmate is immobilised, the institution must immediately request a doctor to carry out medical attention on the inmate. The doctor must check on the inmate in question unless the doctor assesses that such medical attention is unnecessary. The doctor's task is to assess the inmate's state of health.

9 reports on immobilisation include information that a doctor did not check on the inmate.

In one of these cases, the inmate did not wish medical attention from a doctor and received medical attention from a nurse instead.

Two reports have reference to a case where the inmate received medical attention from a nurse who assessed that the inmate should receive medical treatment at the hospital casualty ward due to a suspected fracture/concussion of the brain. However, because the casualty ward was busy the inmate was sent back to the institution without receiving any medical attention, and he was immobilised in the security cell again. After this placement in a security cell, which lasted 1 hour and 43 minutes, the police took the inmate to the hospital casualty ward so that he could receive medical attention.

In the other cases, where a doctor had been sent for, the doctor considered that medical treatment was unnecessary.

At a number of institutions, the management said that it was a frequent problem to persuade the doctor on call to come and check on an inmate in a security cell. One institution management said that the institution was currently working on entering into continuous cooperation agreements in this regard. The visiting teams recommended to these institutions that they should, if necessary, inform the doctor that pursuant to the Sentence Enforcement Act a doctor is under an obligation to check on the inmate unless the doctor assesses it to be manifestly unnecessary.

The visiting team recommended to another institution that it would be advisable if the doctor's remarks in the security cell reports be more detailed, including an assessment in the reports of the inmate's health together with the appropriateness of the placement in a security cell and a possible immobilisation.

The visiting team, which, among others, included a doctor from DIGNITY, expressed to another institution that the doctors' records varied a lot, from a description of the inmate's appearance to assessments of possible causes for the agitated state. In general, it seemed that there was a need for a medical guide for – especially external – doctors who undertake supervision of inmates as to what factors a doctor must assess.

Recommendation was given to a number of institutions that they make sure that the inmate's medical records include a copy of the doctor's records regarding the placement in a security cell.

Reporting

The prison or the local prison must soonest possible draw up a report on the use of security cells, including immobilisation. The report must include information about the grounds for using a security cell.

In addition to this, the report must also include information about date and time when the use of the security cell ended as well as information on whether the inmate has been informed about the possibility of complaining to the Department of the Prison and Probation Service, and when the deadline for lodging a complaint expires. Furthermore, the report must also include information about the institution's considerations regarding medical attention.

When the staff supervise an inmate placed in a security cell, a note must be made in the supervision form, even if there are no changes in the inmate's condition. During the inmate's immobilisation in a security cell, a note must be made at least every 15 minutes about the supervision. The supervision form must include information about date and time of the supervision as well as information about the inmate's condition, including possible remarks concerning the need to maintain the placement in the security cell.

All 35 reports with supervision forms reviewed by the Ombudsman included notes about the staff's supervision of the inmate. 30 supervision forms stated date and time of all supervisions. 22 of the 34 supervision forms concerning cases where the inmate was immobilised include notes about the supervision at least every 15 minutes during the entire period of immobilisation.

33 supervision forms include notes with information about the inmate's condition during the placement in a security cell, whereas only 5 supervision forms include information as to whether there was a continuous need for maintaining the placement in the security cell.

At a number of the visited institutions, the visiting team recommended to the management that they increase their focus on ensuring that the reports include complete documentation of the course of events together with grounds for the placement in a security cell, the use of immobilisation, the use of each measure of fixation together with the continuance of the placement and immobilisation. In general, the institution managements agreed to these recommendations, and some of the institutions had implemented initiatives aimed at improving the documentation process. Recommendation was also given to a number of institutions to increase accuracy with regard to the frequency of the staff's supervision and registration of the time of supervision.

If the prison or the local prison decides to maintain the placement in a security cell for more than three days or to continue an immobilisation for more than 24 hours, the institution must immediately report this to the Department of the Prison and Probation Service. If the use of security measures, including security cell, lasts more than 24 hours, the doctor must also be kept informed on a daily basis so that the doctor in question on the basis of his knowledge of the inmate, among other things, can assess whether medical attention is necessary.

In one case, the immobilisation lasted 4 days, 7 hours and 2 minutes. It appears from the security cell report that the inmate received medical attention from a doctor on the first and the fourth day. Apart from this, there is no information whether a doctor was informed daily about the inmate's continuous placement in a security cell. In connection with the case mentioned below, the Ombudsman has received a copy of the case files from the Department of the Prison and Probation Service. It appears from the case files that the Department of the Prison and Probation Service was informed of the case by the institution approximately 13 hours later together with information that at present it seemed

that the immobilisation would probably last the entire weekend or at least more than 24 hours. This report, which was sent on a Friday, was followed up by new information to the Department of the Prison and Probation Service on the fourth day of the immobilisation. The Department of the Prison and Probation Service took note of the information from the institution.

The Ombudsman has opened a case on his own initiative about this security cell placement. Among other things, the Ombudsman has asked the Department of the Prison and Probation Service to give an account of the examination undertaken by the Department in the case, including whether the Department had assessed the case with a view to the judgment of the Østre Landsret (the High Court of Eastern Denmark) of 4 June 2014 which is mentioned on page 3 in this report. The case is pending.

Guidance of complaint and follow-up sessions

The inmate can lodge a complaint with the Department of the Prison and Probation Service about a decision to place the inmate in a security cell, including a decision to use forcible restraint. The inmate must lodge a complaint within two months, but in special cases the Department can disregard this deadline.

If an inmate is placed in a security cell, the prison or the local prison must give guidance to the inmate about the possibility of lodging a complaint with the Department of the Prison and Probation Service and information about the deadline of two months for lodging a complaint. It must appear from the security cell report that the inmate has received this guidance.

The review of the security cell reports showed that 21 of the 35 reports included information that the inmate had been given guidance about the possibility of lodging a complaint with the Department of the Prison and Probation Service and the deadline for lodging a complaint. It appears from 12 security cell reports that the inmate had been given guidance on lodging a complaint but it does not say whether the inmate was also given guidance on the deadline for lodging a complaint. Two reports did not state any information whether the inmate had been informed about the possibility of complaining or the deadline for lodging a complaint.

As an example, one of the institutions to which the Ombudsman paid a monitoring visit stated in all five security cell reports that the inmates had been given guidance on lodging a complaint but details of the contents of the guidance such as the deadline for complaining did not appear from the reports. Based on this, the visiting team recommended drawing up standardised texts to be used in these reports in order to provide more accurate documentation of the guidance given in connection with placement in security cells. The representatives of the regional office agreed to this recommendation which was also accepted by the management.

As soon as the inmate is taken out of the security cell, the prison or the local prison must offer the inmate a talk, a so-called follow-up session, with a permanent staff member. The follow-up session is aimed at giving the inmate the possibility of talking about his or her experience of the security cell placement.

Two of the institutions to which the Ombudsman paid a monitoring visit said that the inmate who had been placed in a security cell had a subsequent follow-up session with a nurse, and a third institution informed the visiting team that the procedure for follow-up sessions was probably not very systematic but that a session between the inmate and the staff normally took place after the inmate had been taken out of the security cell. Other institutions did not arrange follow-up sessions but some of them, however, said that after the placement there were often grounds for questioning during which the inmate was also given the opportunity of expressing his or her opinion on the course of events.

The visiting team recommended to the institutions which did not undertake systematic follow-up sessions to introduce such sessions.

Copenhagen, 12 May 2016



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