



Thematic report 2016 on body searching and urine sampling

Doc. No. 16/04107-32

What has the theme led to?

Body searching and urine sampling were chosen as themes for the 2016 monitoring visits by the Ombudsman in the adults' social care sector in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

These were recurring themes for the Ombudsman's monitoring visits to the Prison and Probation Service institutions, to the psychiatric sector and to social residential institutions for adults. All in all, the Ombudsman visited 21 institutions where these themes were relevant. See list of the institutions visited in Appendix 1.

It was the Ombudsman's overall assessment that both body searching and urine sampling in all the institutions visited were conducted according to the rules and in a dignified and respectful manner towards the citizens. The Ombudsman's visiting teams talked with a total of 174 inmates, patients and residents during their visits (see Appendix 1). Generally, the talks showed that the citizens involved perceived body searching and urine sampling as unpleasant procedures but that the staff conducted them professionally, with consideration and with dignity.

However, in the Prison and Probation Service sector (prisons and local prisons), the Ombudsman's visits also showed that even though the rules were observed, there was a need for improved information to the inmates about channels of complaint and the grounds for body searching and urine sampling, among other things. This led to the Ombudsman giving one or more recommendations on these matters to all the institutions visited.

The Ombudsman's visits to the psychiatric units showed that body searching conducted with the use of psychical force hardly ever takes place, and that urine sampling always took place with the patient's consent and without use of physical force. The Ombudsman also noted that the legislation's conditions for body searching were observed, and that body searching as well as urine sampling were conducted with respect and dignity.

Finally, the Ombudsman's visits to social residential institutions showed that none of the institutions visited conducted body searches, and that urine sampling only took place in rare cases and, if so, always with the consent of the residents.

In overall terms, the Ombudsman's investigation of these themes in 2016 did not give any cause for concern about inmates, patients or residents in social residential institutions.

The result of the themes of the Ombudsman's monitoring visits is described in more detail below, see sub-headings 1-3.

The Ombudsman has sent this report to the Department of the Prison and Probation Service, the Ministry of Health, the Ministry for Children and Social Affairs, the National Board of Social Services and the five social supervision authorities. Where appropriate, the Ombudsman is going to discuss the results of the investigation at annual meetings with the authorities during 2017. As part of his future monitoring visits, the Ombudsman is going to follow up on the recommendations given in connection with the investigation of the 2016 themes.

Reasons for the choice of theme

Body searching may involve the citizen undressing completely and in certain cases even having to spread their buttocks and lift their scrotum or their breasts. Urine sampling involves urinating with a person in authority watching.

By their very nature, body searching and urine sampling are procedures which can be perceived as transgressive – and possibly offensive – to the persons subjected to the procedures.

Over the years, the Ombudsman has from time to time learned from citizens that the procedures were conducted in a degrading manner or even with the intent to harass the citizen.

Based on the inherently unpleasant nature of the procedures for the citizen, and because the procedures are conducted often – as routine in the Prison and Probation Service institutions – the Ombudsman found that there were grounds for investigating further whether the authorities observed the legislation's conditions for undertaking the procedures, and whether the procedures were conducted with the appropriate respect and consideration for the citizens.

The theme was chosen in cooperation with the Danish Institute for Human Rights and DIGNITY.

What did the Ombudsman do?

Prior to the monitoring visits, the Ombudsman received detailed information from the institutions about body searching and urine sampling. Among other things, each institution was asked to submit statistics on the number of body searches and urine samplings for the past three years and any guidelines on how these were conducted in practice. The Ombudsman also asked the institutions to state, among other things, how the management ensured that body searching and urine sampling were conducted as respectfully and with as much consideration as possible, which information inmates/patients/residents received – in writing or verbally – about their legal rights and about the consequences of possible findings and results.

In the course of the monitoring visits, the Ombudsman received more detailed information on the themes via talks with the management, staff and inmates/patients/residents.

The monitoring visits were conducted 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 who 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. The Institute for Human Rights and DIGNITY 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.

1. The Prison and Probation Service institutions

In 2016, the Ombudsman has visited nine institutions under the Prison and Probation Service where body searching and urine sampling take place.

1.1. Body searching

According to the Sentence Enforcement Act, the Department of the Prison and Probation Service and the prison and probation sector have the right without a court order to examine which items an inmate holds in his or her possession – either in the inmate's individual cell or on his or her person. However, this only applies if such an examination is necessary in order to ensure that regulations are observed or as a safety measure. For example, when the inmate is placed in the institution, if the inmate is suspected of illicit possession of items, before and after visits or after absence from the institution or the accommodation ward in the institution.

The rules of the law on body searching (and urine sampling) are formulated in more detail in the Danish Executive Order on examination of inmates' persons and rooms in the Prison and Probation Service institutions (in Danish only). In addition to this, rules on body searching are also found in the European Prison Rules and in the UN Standard Minimum Rules for the Treatment of Prisoners – the Nelson Mandela Rules.

Body searching can be conducted using physical force. However, during the Ombudsman's visit, neither the management nor the inmates in the institutions visited reported that body searching was conducted using physical force.

On the subject of body searching, there is a distinction between an external body *inspection* and an intimate body *examination*.

1.1.1. External body inspection

When the authorities examine which items an inmate carries on his or her body, it is called a body inspection. This kind of body search does not involve any penetration of the human body, nor any actual touching of the body.

During the body inspection, the staff are, however, allowed to for example pat on the inmate's pockets to find out whether the inmate is in possession of illegal items. It occurs frequently that the inmate is asked to take his or her clothes off, after which the inmate's clothes are examined.

The monitoring visits showed that a number of body inspections were conducted daily in all the institutions visited under the Prison and Probation Service, among other things if there was a reasonable suspicion of an inmate being in possession of illegal items, including narcotics, as a random check and in connection with the inmate having visitors or returning from leave.

In the institutions visited by the Ombudsman, the starting point was that the inmates were asked to undress completely in connection with the body search. Whether the inmates were also asked to open their mouth, to squat or themselves lift breasts or male genitals depended on whether or not there was a possible increased suspicion that the inmates were in possession of illegal items.

1.1.2. Intimate body examination

If the authorities have specific grounds for assuming that the inmate holds items which he or she is not allowed to hold, a special right applies for the authorities to carry out “a further examination of the inmate’s body” – a body examination. This is more comprehensive in that the staff are allowed to palpate the cavities of the body and the body itself, and it is mandatory that a physician is present.

The Danish Executive Order on examination of inmates’ persons and rooms in the Prison and Probation Service institutions (in Danish only) stipulates that the authorities must register if they conduct a body examination of this nature. None of the institutions visited had conducted body examinations through 2013-2015. And only at Vestre Prison Hospital was the Ombudsman informed that such examinations had been conducted previously. These previous examinations had all been conducted on the grounds of concrete suspicion of the inmate being in possession of illegal items, and the examinations had been conducted by a physician.

1.1.3. Common rules on body searching

It applies to both types of body searching that the body searches must be conducted as considerately as possible (the principle of care).

A proportionality requirement also applies, meaning that a body search is not to be conducted if, according to the objective of the measure and the violation and discomfort which the measure must be assumed to cause, it would be a disproportionate measure.

As a reflection of the principle of care, it is a requirement that a body search which involves the inmate undressing has to be conducted and observed by persons of the same gender as the inmate (except for health-care professionals). This requirement may mean that the body search cannot be conducted straightaway. In extreme cases, the requirement for examinations by staff of the same gender can be departed from, for example if a suicidal inmate has to be body-searched prior to being placed in a security cell. In such cases, considerations of *jus necessitates* may give grounds for a

staff member of the opposite gender than the inmate conducting the necessary examination.

Normally, it is also a requirement that at least two staff members of the same gender as the inmate participate in the body search. However, this requirement can also be departed from so that the examination is conducted by one staff member only, if certain circumstances make it necessary.

In all the institutions visited by the Ombudsman, the requirement for examinations by staff of the same gender was always met, just as by far the majority of the body searches were conducted by two staff members.

In cases necessitating only one staff member conducting a body search, there is a duty to register the search. During his visits, the Ombudsman noted that this duty was observed.

A search of the inmate can also be conducted using sniffer dogs but only if the inmate gives his or her consent to this. If the inmate refuses to be searched by a sniffer dog, or if the sniffer dog indicates possible finds, either a body inspection of the inmate can take place, or – if the criteria for this are met – a body examination.

In two of the institutions visited, the Ombudsman was informed that sniffer dogs were used regularly in connection with body inspections.

Lastly, pursuant to the Danish Executive Order on examination of inmates' persons and rooms in the Prison and Probation Service institutions (in Danish only), an inmate who has been asked to undress and/or has been intimately examined (a body examination) can complain about the body search to the Department of the Prison and Probation Service.

1.1.4. The visits' conclusions and the Ombudsman's recommendations

None of the institutions visited kept statistics on the number of body searches, and it is therefore difficult to state the exact number of body searches conducted annually. However, body searches were conducted on a large scale. As an example, one single institution with room for 162 inmates reported that they carried out between 300 and 400 body searches annually, based solely on reasonable suspicion that the inmates were in possession of illegal items.

The visits also showed that the regulations for body searching are known to the staff and as a predominant rule are observed.

During the monitoring visits, the Ombudsman's visiting team spoke with a total of 109 inmates about, among other things, how and when body searching is conducted, cf. Appendix 1. The talks with the inmates confirmed the assessments of the institutions' managements: that the body searches were conducted with as much respect and consideration as possible. However, the inmates also voiced that even though the prison officers behaved in a professional manner, it was *per se* uncomfortable or even intrusive to have to be naked in front of two prison officers.

Moreover, the visits showed that none of the institutions visited had had any complaint cases about body searches. But the visits also showed that no information about the possibility of complaining was given to the inmates – not in the house rules nor in any other way. Often, the inmates received no advance information about the grounds for or the procedures in connection with a body search, either, or about the consequences of refusing to cooperate in a body search.

To ensure that the inmates know in advance that they may be subjected to intrusive measures, the Ombudsman **recommended** during all of his nine visits to the Prison and Probation Service institutions that the inmates, for example in the house rules, are informed of the grounds for body searches and the procedures in connection with a body search and what the consequences are if refusing to cooperate in a body search.

To ensure that the inmates know their legal rights if they have been subjected to a body search, the Ombudsman **recommended** during eight of his visits that the inmates were informed of the statutory complaint possibility. In addition, the Ombudsman **recommended** during all of his nine visits that the inmates were informed of the non-statutory right to complain to the management about the staff's behaviour. This right also applies in connection with body searching.

To ensure that the staff had the necessary knowledge of the body searching regulations, the Ombudsman **recommended** that – in institutions which had instructions to the staff on body searching – the staff were informed about the duty to register body searches, access to file a complaint and guidance in connection with filing a complaint, to the relevant extent. This recommendation was given to five out of the total of nine institutions.

Lastly, the Ombudsman **recommended** that the institution's management, in a way that the management found relevant, followed up on whether body searches were conducted in accordance with existing rules and guidance notes. This recommendation was given to seven institutions.

1.2. Urine sampling

According to the Sentence Enforcement Act, a Prison and Probation Service area can decide that an inmate has to provide a urine sample in order to find out if the inmate has used euphoriant or other drugs that are illegal pursuant to general legislation. A concrete suspicion that the inmate has actually taken such drugs is not required.

Urine sampling based on random testing was conducted in all the institutions visited by the Ombudsman. During most of the visits, the Ombudsman was also informed that an inmate was asked to provide a urine sample if there was a concrete suspicion that the inmate had taken illegal drugs. Lastly, in some places, urine sampling was conducted in connection with an inmate's leave.

All of the nine institutions kept statistics on the number of conducted urine samplings and the number of positive tests. However, it was not possible to extract data for each institution. For example, the conducted tests for the Copenhagen Prisons are not registered separately for each prison.

However, as was the case with body searching, it was the Ombudsman's understanding that urine sampling was conducted extensively. By way of example, it can be cited that in one institution with a capacity for 162 inmates, the years 2013-2015 saw an average of 2,094 urine samplings conducted annually.

Also in connection with urine sampling, the testing must be conducted with as much consideration as possible, and the testing is only to be conducted proportionally.

Furthermore, it is a requirement that urine sampling is only to be conducted and observed by persons of the same gender as the inmate (apart from health-care professionals). Compared to body searching, it is, however, not a requirement that the actual urination has to be observed by more than one staff member.

In a number of the institutions, a special toilet had been fitted with mirrors for the purpose of urine sampling. On the one side, such an arrangement should ensure that the inmate did not cheat at the testing, and on the other side ensure that the staff member did not have to stand up close to the inmate while the inmate was urinating.

Since it often occurs that a person is not able to provide a urine sample immediately, the inmate is given, if necessary, up to three hours to provide a urine sample. Those three hours are spent in solitary confinement, and the inmate is offered a couple of glasses of water during that time. However, most of the institutions visited by the Ombudsman gave the inmates a little longer if necessary.

If an inmate's test is positive, the inmate is interrogated, and the institution decides which sanction to impose on the inmate. Prior to such a decision regarding sanction, it has to be ensured that the case is sufficiently clarified. If the inmate – despite having been tested positive – denies the use of illegal drugs, it must be investigated if there are circumstances to invalidate such use.

If an inmate refuses to provide a urine sample, it is put on the same footing as if the inmate had provided a urine sample which tested positive. And the inmate will therefore also be sanctioned in such a case.

A positive urine sample might have an impact on the inmate's chances of leave, just as disciplinary sanctions may be decided, for instance fines.

There is no duty to register urine sampling as the case is for certain types of body searching (body examinations).

Nor does a specific statutory right to complain about a urine sampling apply. Therefore, solely the non-statutory right to complain to the management about the staff's behaviour applies.

During his visits, the Ombudsman only heard of a single case of an inmate complaining about a urine sampling. This was because the inmate had not been able to provide a urine sample within the set three hours due to illness.

1.2.1. The visits' conclusions and the Ombudsman's recommendations

The 109 inmates, with whom the Ombudsman talked during the monitoring visits, reported that urine sampling was conducted professionally and as inoffensively as possible. The talks also showed that the requirement of persons of the same gender as the inmate conducting the body search was observed. Lastly, the talks confirmed the management's information about the procedures for urine sampling.

To ensure that the inmates know in advance that they may be ordered to provide urine samples, the Ombudsman **recommended** during all nine visits that the inmates were

made familiar with the grounds for and the procedures in connection with urine sampling and the consequences of refusing to cooperate in this regard.

To ensure that the inmates are familiar with their rights after providing urine for testing, the Ombudsman also **recommended** during all of the nine visits that the inmates, for example in the house rules, were informed of their non-statutory right to complain to the management about the staff's behaviour which also applies in connection with urine sampling.

In the five institutions, which had in-house instructions for the staff in regard to urine sampling, the Ombudsman **recommended** that these in-house instructions, when relevant, contained information about channels of complaint and complaint guidance of the inmates.

Lastly, the Ombudsman recommended to seven institutions that the management – in the manner the management found relevant – followed up on whether urine sampling was conducted in compliance with existing rules and guidance notes.

2. Psychiatric hospitals

During the course of 2016, the Ombudsman visited a total of 13 units in six psychiatric hospitals where body searching and urine sampling were conducted.

2.1. Body searching

According to the Danish Mental Health Act, the consultant doctor can sanction a body search of a patient without a court order if it happens in order to prevent the introduction of intoxicants or dangerous items to the ward. However, there has to be a suspicion that such items are present in the ward. The suspicion requirement means that no random or routine body searching can be conducted.

In the Executive Order on opening and control of post, examination of patients' rooms and body search, etc. on psychiatric wards, the reasonable suspicion requirement is described in more detail. Here, suspicion is to be understood to mean that the consultant doctor or other ward staff have to have reasonable cause to suspect that medicines, intoxicants or dangerous items are present in the ward.

In practice, body searching covers everything from asking the patient to show the contents of his or her pockets or patting his/her clothes to examining the patient's

body after he or she has undressed. Body searching is usually conducted in connection with the patient's admission and after the patient has had visitors or leave.

Body searching can be conducted using physical force. However, as a consequence of the measure of last resort, a body search must be conducted as considerately as possible and with the greatest possible care for the patient. Examination of the body's cavities is not to be conducted using physical force.

The monitoring visits to the psychiatric units showed that body searching of the patients was conducted in all the units. In one unit, though, it only took place in connection with forcible restraint of the patients.

The psychiatric units stated that body searching is predominantly conducted on a voluntary basis, meaning that the patient has consented to this examination. In most units, no physical force at all was used in practice in connection with conducting body searches. In the other units, only a very few (in the staff's memory maybe one or two) cases of body searching were conducted using physical force during the last three years. The talks with the patients confirmed this.

Therefore, the Ombudsman found that even though the option of conducting body searches using physical force exists within the psychiatric sector, it very rarely occurred in the units visited.

The majority of the units visited did not keep statistics of the (voluntary) body searches so it has not been possible for the Ombudsman to review in further detail the scope of body searches within the psychiatric sector. In several units, daily body searches took place whereas the management of one hospital assessed that no more than 12 body searches had been conducted over the past three years.

One hospital only kept statistics on body searches, and these statistics showed that 1,519 body searches had been conducted from October 2014 till April 2016. However, it was not possible in the statistics to distinguish between the number of (voluntary) body searches of the patient and examination of the patient's belongings which was by far the most frequent kind.

In addition, the management of the units visited stated that the very low number of body searches conducted using physical force was a result of the staff's attempt to motivate the patients to give consent to body searches with reference to safety considerations, among other things.

In this connection, one hospital stated that a lack of consent to body searching could have consequences for the patient, for example in relation to the possibility of leave. These were patients who were not admitted to the hospital by court order or in surrogate custody. If a patient refused to give consent to a body search when he or she returned after the end of a leave, it could have the consequence that future leaves were revoked. Similarly, a preceding agreement about cooperating to body searching could be the basis for planning the patient's conditions for leave.

During a visit to another hospital, the management stated moreover that a patient (voluntarily admitted) had been sent back to the social residential institution because the person in question had refused to undergo a body search. Naturally, such direct consequences for the patients may also be a contributing factor when it comes to motivating the patients to undergo body searching voluntarily.

In the light of this, it could be questioned whether a voluntary consent from a patient in fact existed if the patient has solely agreed to a body search in order to obtain leave, for example. However, in the Ombudsman's opinion, such a practice did not give cause for concern.

The Ombudsman hereby emphasised that if the patient instead had explicitly applied for permission to leave, it would be legal to – according to a concrete assessment – set as a term for the permission that the patient would undergo an examination when returning from the leave. In these cases, the psychiatric units must have the authorisation to conduct an examination based on the patient's consent, no matter whether the consent is only given in order to, for example, obtain permission to leave.

During a visit, the Ombudsman noted a guideline from the psychiatric ward which specified that if a patient refused to consent to a body search, the refusal itself gave cause for suspicion, and in such a case, the consultant doctor decided as a consequence hereof that a body search had to be conducted using physical force. In the course of the visit, the Ombudsman remarked that conducting a body search using physical force implies that the staff have reasonable cause to assume the existence of medicines, intoxicants or dangerous items in the ward. The fact that a patient refuses to consent to a body search does not in itself give reasonable cause for such an assumption. The management took note of this.

During visits to two hospitals, the Ombudsman noted that the units' house rules contained demands for routine examinations. Therefore, the Ombudsman

recommended to the units' managements that the house rules were brought into line with the legislation so that they did not contain demands for routine body searches.

The monitoring visits showed that the most prevalent type of body search was the staff asking the patient to show the contents of his or her pockets, for instance. Besides this, the staff sometimes patted the patient on his or her clothing. Lastly, it occurred – or could occur – in a few places that a body search took place involving the undressing of the patient. However, this was very rare.

To the extent possible, body searching of patients has to be conducted by a person of the same gender. In two psychiatric hospitals, the Ombudsman found it necessary to emphasise this to the management because the hospital's or the Region's in-house guideline was not in compliance with the provisions of the Executive Order.

During the monitoring visits, the Ombudsman talked with the patients about body searching. The patients did not give information which indicated problems or undesirable situations for the patients in connection with body searching. On the contrary, the patients expressed understanding of the need for body searching considering their own and others' safety. On the same note, the patients said that the staff acted professionally when conducting body searches.

2.2. Urine sampling

The monitoring visits to the psychiatric units showed that urine sampling was conducted in all the units visited.

Urine sampling within the psychiatric sector is not regulated in detail by law, such as the case is with body searching. However, in accordance with the Danish Health Act, generally no treatment or diagnostics can be initiated without the patients' informed consent.

And all the units visited did state that urine sampling was not conducted using physical force. The patients had always consented to the urine sampling which thereby took place voluntarily.

During one visit, the management remarked that if a urine sample were to be collected using physical force, it would in its extreme mean that the patient would have to have a catheter inserted by the use of physical force, and they were not prepared to go to such lengths.

In one hospital, the Ombudsman found that a passage on urine sampling, among other things, in the house rules could give the patients the impression that the procedure could happen by the use of physical force. However, the management said that this was not the case – the procedure would only take place with the patient's consent. Therefore, the Ombudsman **recommended** that the house rules be amended so that it clearly stated that urine sampling could solely be conducted with consent from the patient.

The units used urine samples for various purposes but primarily for treatment purposes. It could for example be to detect diseases, reactions to medication or possibly the use of intoxicants. In relation to using intoxicants, the urine sampling might take place as a motivating factor in order for the patient to see how long he or she had been drug-free, or for safety reasons if the patient for instance turned violent under the influence of intoxicants. Furthermore, some units could have patients who were sentenced to psychiatric care. Such sentences may contain conditions about providing (clean) urine samples, also in connection with leave.

More generally and based on a specific assessment, urine samples in certain units were – as with body searching – used as a condition for the patient getting leave for instance, just as already assigned leaves might be revoked if the patient was tested positive or refused to provide a urine sample. Such rules, in different versions, were found in three out of six hospitals visited. In one hospital, it was regulated in the house rules whereas the patients were informed about the rules verbally in the other two hospitals.

In the same way as with body searching, it raised the question of whether there actually was voluntary consent from a patient if the patient had agreed to the urine sampling solely in order to obtain leave, for instance. However, as with body searching, the Ombudsman did not find that this gave cause for concern.

Also in this matter, the Ombudsman stressed that if the patient instead had actually applied for permission to leave, it would be legal to – according to a concrete assessment – set as a term for the permission that the patient had to provide (clean) urine samples. As a consequence hereof, already assigned leave can also be revoked if the patient is refusing to provide urine samples or is testing positive.

Two of the institutions visited kept statistics on urine sampling. In one hospital (two units visited), in 2014-2016, a total of 553 urine samples for diagnosing somatic disease had been collected, just as in 2013-2015 where urine samples had been

collected from 357 patients in order to investigate possible use of intoxicants (the so-called drug tests). However, each patient could have been tested for intoxicants several times, and the total amount of samples would then be higher than 357. In another hospital (two units visited), in 2013-2015, there had been a total of 449 urine samples collected on suspicion of the use of intoxicants.

None of the other units visited kept statistics on urine sampling, and therefore the management were only able to speak in general terms about the extent. For instance, the management of one ward said that some patients had maybe only two urine samples collected during their admission while others had them collected on a daily basis. But even though statistics were not kept, the purpose and the result of the urine samples would still show in the patient's medical record.

If the urine sample has to be provided under staff observation, it is particularly the practical procedure of providing the urine sample which may be perceived as offensive and demeaning by the patient. The Ombudsman learned that such observation took place in various ways. In four hospitals, the staff were standing outside the door, for instance, while the staff in the other two hospitals were present in the room while the patient provided the urine sample.

A specific aspect in relation to observation in connection with urine sampling is the question of whether the observation is by a same-gender person. This was also in all institutions handled on the basis of a concrete assessment. As an example, one institution said that there was a clear majority of female staff, and therefore it was not always possible for same-gender staff to be present in connection with urine sampling. However, if a male patient wished to have only male staff present when he provided a urine sample, this was respected.

After talks with management and staff in the units visited, it was the Ombudsman's opinion that the staff were mindful and reflective about urine sampling being conducted with as much care and dignity as possible.

The patients with whom the Ombudsman talked, who had provided urine samples, said that they understood the background for this and, for that matter, had found the urine sampling to have been conducted in a considerate manner.

3. Social residential institutions

In 2016, the Ombudsman visited nine social residential institutions in the social care sector where the theme on the use of body searching and urine sampling was also investigated.

The target group of the nine institutions visited was persons with mental disabilities. Seven of the nine facilities visited also housed convicted persons with mental disabilities, including persons convicted of violent crimes. According to the social residential institutions' information (on the Social Services Gateway, Tilbudsportalen in Danish) about the target groups, it was evident that a number of social residential institutions were also able to house residents with problems relating to substance abuse.

The social residential institutions could offer accommodation for persons in need of temporary support (section 107 of the Social Services Act) as well as for persons needing support on a long-term basis (section 108 of the Social Services Act).

The social residential institutions' access to use physical force and other measures is regulated in the Social Services Act. The Act does not allow body searching and urine sampling being conducted, against the resident's will, by the use of physical force. Therefore, body searching and urine sampling can only be conducted if it happens on a voluntary basis and with the resident's acceptance.

3.1. Body searching

None of the social residential institutions visited used body searching and did not consider conducting examinations without the citizen's consent either. If it was necessary to conduct a body search, which happened very rarely (only two social residential institutions mentioned it), the police would be called in. The social residential institutions and their staff knew that the Social Services Act does not allow body searching.

The visit to the secure unit at the Kofoedsminde institution showed one single case of body searching. It was a case of a severely self-harming resident. The Ombudsman agreed with Kofoedsminde that body searching was lawful, subject to the principle of *jus necessitates*.

None of the social residential institutions stated that the lack of authority to conduct body searches was a problem. Body searching would ruin the good relationship with

the residents, and, besides, body searching was considered unnecessary/unsuitable as a measure since drugs or knives could be hidden outside of the social residential institution or on the social residential institution's premises.

The talks with the residents and the residents' relatives in the social residential institutions confirmed that body searching did not take place.

3.2. Urine sampling

In three of the seven social residential institutions visited, urine sampling was conducted sometimes, but not often. In all the cases, the urine samples were collected with the consent of the resident and primarily also with the positive participation of the resident. The reason why it was sometimes necessary to carry out urine sampling was mainly for treatment purposes, including in relation to a resident being in treatment for addiction. In rare cases, convicted residents had to provide urine samples as a condition in their sentence.

In the cases where it was necessary for the social residential institution to observe urine sampling in order to ensure the correct procedure, a same-gender staff member would be present, close to the resident, while he or she provided the urine sample, for instance by having the staff member standing outside the lavatory but with the door ajar and therefore without direct contact to the resident.

Thus, in the Ombudsman's assessment, urine sampling was conducted with care and with the appropriate respect for the resident's integrity.

In two social residential institutions, it was explained that some residents were in municipal programmes for addiction treatment and that the residents therefore had to provide urine samples at the municipal treatment facility. The social residential institutions did not know how this took place in practice. The Ombudsman discussed with the two social residential institutions if it might be useful that the institutions obtained information on the procedures so that the institutions were guaranteed that their mentally disabled residents were not exposed to potentially degrading treatment.

The residents with whom the Ombudsman talked did not have knowledge of urine sampling.

Copenhagen, 17-05-2017



Jørgen Steen Sørensen

Appendix 1

List of institutions visited

Institution	Talks with users	Talks with relatives
Prisons and local prisons		
'Københavns Fængsler', Vestre Hospital	8	0
'Blegdamsvejens Fængsel', Copenhagen	5	0
'Horserød Fængsel', Elsinore	16	0
'Sønderborg Arrest'	7	0
'Aabenraa Arrest'	5	0
'Jyderup Fængsel'	25	0
The local prison in Tórshavn, the Faroe Islands	3	0
'Møgelkær Fængsel', Juelsminde	34	0
'Københavns Fængsler', Vestre Hospital	6	0
Psychiatric sector		
'Psykiatrisk Center, Sct. Hans', Roskilde	5	1
'Psykiatrien Syd', Vordingborg	9	5
'Brønderslev Psykiatriske Sygehus'	4	3
'Psykiatrisk Center Nordsjælland', Hillerød	4	3
'Regionspsykiatrien Horsens'	4	6
Aarhus University Hospital, Risskov	4	0
Social sector area		
'Køfoedsminde', Rødby	16	0
'Højsletten', Herlev	0	4
'Hellebo Hus', Holbæk	2	1
'Hedegaard', Skjern	3	0
'Nørholm', Herning	6	0
'Botilbuddet DNS', Ulfborg	3	4
'Lille Eje', Hornslet	1	1
'Botilbuddet Vestergård', Hornslet	1	1
'Alternativet', Hjørring	3	2
24 institutions in total	174	31

Appendix 2

Themes for monitoring activities

Every year, the Ombudsman chooses 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.

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 institutions for the elderly and addiction treatment.

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 take place in institutions where the 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 among the users.

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 website, www.ombudsmanden.dk. In addition, the Ombudsman will send the reports to all the relevant authorities so that the authorities can include the reports in their deliberations regarding the various sectors.