

Ombudsman and Prisons Oversight

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Inspections and investigations make prisons more transparent and draw attention to problems and conditions endured by vulnerable prisoners. In Norway, the Ombudsman has paid attention to prisons and closed institutions since 1963, and this paper reviews the processes followed. Experience has shown that systemic investigations and investigations covering multiple problems can be more effective than dealing with individual complaints, both in discovering and in correcting unjust, unfair, unsound and illegal conditions. However, the new requirements of the international Optional Protocol to the UN Convention Against Torture will mean the Ombudsman will require more resources – routine inspections will not be enough to meet the obligations of the protocol, which sets out, for the first time, criteria and safeguards for such visits. The cooperation between ombudsmen and international control mechanisms will be of paramount importance in this respect.

Let me first congratulate our Swedish friends for the organization of this World Conference. It is good to be here to get more acquainted with one another in a country where the first ombudsman was born. The international conferences we attend provide valuable new perspectives on our work. In preparation for this session today, I was reflecting on my numerous visits to prisons in Norway as Ombudsman and I now see them in a new perspective. I have also had the opportunity, when meeting colleagues around the world, to visit prisons in Russia, China, Denmark and Finland. These visits have given me both inspiration and valuable information.

The Role of the Ombudsman

An ombudsman's task is to promote justice to the citizen. In the words of the Norwegian Ombudsman Act the purpose of the Ombudsman's work is "to endeavour to ensure that injustice is not committed against the individual citizen by the public administration, and to help ensure that human rights are respected". The Council of Europe's efforts to guarantee human rights have placed increasing emphasis on preventing violations. Article 3 of the European Convention on Human Rights provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." This article inspired the drafting, in 1987, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Ombudsman has a role as a legal oversight institution and has various means at his disposal. The Ombudsman is a flexible instrument and can be used to perform different kinds of tasks. His main means are his investigative tools. He may deliver opinions on law and reasonableness and give recom-

mendations, but he cannot render legally binding decisions. However, his recommendations are usually complied with.

The Ombudsman is also concerned that the principle of transparency in public administration is respected. The principle is laid down by the Norwegian Freedom of Information Act of 2006. Section 3 of the Norwegian Freedom of Information Act states that case documents of the public administration are public. The principle of transparency helps to uncover irregularities, and may thus have a preventive and deterrent effect. It contributes to better supervision of the public administrations' activities and functions. The principle also strengthens democracy and increases the citizens' confidence in public administration.

Ombudsman's tasks in relation to prisons and prisoners

Any person who believes that he or she has been subject to injustice by the public administration may submit a complaint or, if it is a decision, an appeal to the Ombudsman. The Norwegian Ombudsman's work in relation to prisons is very much based on handling complaints or appeals from prisoners. However, he also has the authority to take up cases on his own motion, for example, when he becomes aware of unlawful conditions or irregularities in prisons or in the prison administration through his visits to or inspections of the prisons, or from information in the media.

Decisions made by the prison authorities concerning prisoners can be appealed to the Ombudsman, and the Ombudsman may start investigations on the lawfulness of the decisions. All kinds of decisions concerning prisoners may be complained about; for example, disciplinary decisions and decisions about the transition of prisoners from one prison to another, can be appealed to the Ombudsman. Decisions concerning medical assistance, education, social benefits, etc. can also be appealed to the Ombudsman. The Ombudsman may review both the lawfulness of the decisions and the fairness of procedural rules application. The Ombudsman also in general closely follows how cases are dealt with. He ensures that the prison authorities comply with relevant procedural regulations while exercising their jurisdiction. Procedural provisions are important as they contribute to correct decision-making in public administration.

The ombudsman institution in the Nordic countries is a legal, but quasijudicial, institution. The Ombudsman is independent of the complainant and the administration, and his work shall be based on the law. His mandate is rooted in a written Constitution and in Acts of the Storting, the National Assembly of Norway.

The Ombudsman is elected by Parliament, but is not an instrument for Parliament in the parliamentary control of the government. He shall perform his tasks independently of the Storting.

How to control prisons? Key words: Monitoring, supervision, oversight, inspections, visits, complaints handling and review of decisions

The Ombudsman is not an advocate for the complainants, but he will normally start his investigations on the basis of complaints or appeals. It is important to emphasize that the Ombudsman is also entitled to start investigations on his own motion. Information in the media or information sent to the Ombudsman anonymously or information from other sources may give the Ombudsman reason to start investigations on his own motion.

In Norway, since the establishment of the institution in 1963, the Ombudsman has paid attention to prisons and other closed institutions. The Ombudsman's inspections make prisons more transparent. Prisoners' complaints and appeals to the Ombudsman draw attention to problems and conditions within a closed society not open to the public.

It is, however, necessary to emphasize that even prisons are more open today than before. Prisoners of today can even go to the media, and the media come to prisons. In general, the prison conditions of today are more open than before. But many prisoners prefer to be anonymous in their isolation, and that makes them more vulnerable. It is therefore of paramount importance that prisoners are able to make complaints without having to go through the prison authorities. A prisoner can deliver his or her complaint in a "closed envelope" to the Ombudsman.

Complaints handling and cases initiated on the Ombudsman's own motion

The Ombudsman's control of prisons is done in different ways in the Nordic countries, but in general, complaints from prisoners, inspections and visits to the prisons are the most important factors. Prisoners write to the Ombudsman and the Ombudsman determines whether or not investigations shall be initiated. Normally, the files of the cases brought before the Ombudsman are requested from the prison administration. Accordingly, all complaints or appeals are investigated, more or less. What to do will be considered in each individual case.

Complaints and appeals to a higher administrative authority and to the Ombudsman

Complaints handling and appeals are important parts of the Norwegian Ombudsman control. Such complaints handling can also be considered as being handling of appeals on decisions and is a supplement and an alternative to judicial review. Judicial review is not very practical in these cases, and the Ombudsman review is normally more effective, rational and economical. Also, Ombudsman review is more accessible to the prisoners than judicial review.

In Norway we have a system of administrative appeals. All decisions made by public authorities may be appealed to a higher administrative authority. Norway does not have administrative courts like, for example, Sweden.

If a prisoner wants to appeal or complain to the Ombudsman, he or she must first exhaust all the administrative appeal remedies – the Ombudsman’s review is subsequent. If there are special monitoring administrative agencies, these agencies shall have the opportunity to handle the matter before the Ombudsman is dealing with the case.

Traditionally, the Norwegian Ombudsman spends a great deal of resources on handling appeals and complaints from prisoners.

Inspections and visits

The Ombudsman and his staff conduct visits to prisons. These visits can also be characterized as inspections. We have a checklist and follow certain formal procedures when conducting our visits.

The prisons are informed about the visits from the Ombudsman in advance. The Ombudsman may also make inspections without warning, but this is never done. The prisons are required to inform the prisoners of the intended visit. In this way, prisoners who wish to talk to the Ombudsman may be given the opportunity to do so, if not with the Ombudsman himself, then with a member of his staff.

On each visit, the Ombudsman meets in person with the prison management in order to acquire firsthand information about the prison’s conditions and its particular set of problems. He also has a meeting with the prisoners’ representatives, to ensure that their rights are being respected and that the inmates have received sufficient information concerning their rights, including their right to make appeals or complaints to the Ombudsman. Should the Ombudsman or his staff find any irregularities in the course of a visit, the Ombudsman may proceed to start an investigation on his own motion.

For example, when the Ombudsman conducted a visit in the Oslo police region, he became aware that remand prisoners were being brought from far-off prisons and placed in detention cells at the Oslo Police Station while their trials were in process. Rather than being brought from their respective prisons in the morning and returned there every night, they were kept in detention cells. This was due both to the travelling distances involved and the lack of vacant cells at Oslo Prison. In some cases, the trial took several days and weeks, with the consequence that the remand prisoners involved were kept in detention cells for the duration of their trials. This practice was criticized by the Ombudsman.

The purpose of the Ombudsman’s visits or inspections is to collect information about the prison conditions and the conditions of the prisoners. The Ombudsman institution is very much considered to be a judicial supervisory body, but today must also be seen as a supervisory and investigative institution. The Ombudsman may start investigations both on the basis of complaints or on the general knowledge he acquires during visits and inspections. However, the Ombudsman’s office lacks sufficient staff to conduct inspections in all prisons and police stations across the country. Even when receiving complaints from prisoners, the Ombudsman usually does not visit the

prison concerned. In general, complaints are dealt with in writing only. Questions are put forward in writing to the prison authorities.

It should be mentioned that in Norway there are also Supervisory Councils conducting visits and inspections of prisons around the country. The members of these Councils also conduct meetings with prisoners on a regular basis and as necessary.

Some time ago, after having conducted visits to several police stations and detention cells, I came to the conclusion that it was necessary also to establish independent supervisory bodies similar to the Supervisory Regulations for prisons. In order to oversee the use of detention cells new regulations were introduced in 2006.

The inspections and visits are very important means to find out if conditions are not as they should be. The Ombudsman in Norway does not go to a prison without informing the authorities in advance, but our prison administrative system also includes monitoring boards, which do visits without warning and receive complaints from prisoners. When visiting prisons, the Ombudsman and his staff have talks with the prison authorities, asking questions about the conditions and any problems the Ombudsman wants to focus on. The Ombudsman also has interviews with prisoners.

The Ombudsman is normally accompanied by 2 or 3 staff persons who also will talk with the prisoners. These talks will be of a mutually informative nature, but occasionally the prisoner will deliver a formal complaint. In several Norwegian prisons there are established committees of prisoners, representing the inmate population. The Ombudsman speaks with these committees and they normally provide valuable information about the prison conditions.

During the visits, the Ombudsman and his staff may be aware of problems to investigate further, and normally the Ombudsman will ask specific questions or have follow-up inspections.

Follow-up visits and inspections

Normally, visits and inspections give rise to further investigations. After an inspection, the Ombudsman will ask the prison authorities about problems he has seen. Such investigations are normally performed in writing, but further visits and inspections are also conducted.

The Ombudsman and international control mechanisms on prisons (CPT, OPCAT)

Two international control mechanisms must be mentioned, because they are closely linked to the Ombudsman control systems.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment states that a "Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment." The Convention provides non-judicial preventive machinery to protect prisoners. It is

based on a system of visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Secretariat of the CPT forms part of the Council of Europe's Directorate General of Human Rights.

The CPT members are independent and impartial experts from a variety of backgrounds. They are, for example, lawyers, medical doctors and specialists in prison or police matters. The CPT visits places of detention (e.g. prisons and juvenile detention centres, police stations, holding centres for immigration detainees and psychiatric hospitals), to see how persons deprived of their liberty are treated and, if necessary, to recommend improvements to states.

CPT delegations visit contracting states periodically but may organize additional *ad hoc* visits if necessary. Before the visits, the CPT will have contact with the Ombudsman, asking if the Ombudsman has information of interest for the work of CPT.

Another international control mechanism is OPCAT. The United Nations adopted, in December 2002, a novel international treaty for the prevention of torture: The Optional Protocol to the UN Convention against Torture (OPCAT). This treaty re-affirms that the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment must be respected and protected in all circumstances. The OPCAT system is based on the premise that a system of regular visits to places of detention is one of the most effective means to prevent torture and improve conditions of detention. The OPCAT entered into force on June 22, 2006.

The OPCAT is the first international instrument which seeks to prevent torture and other forms of ill treatment through the establishment of a system of regular visits to places of detention, carried out by independent international and national bodies. International and national bodies will work together to conduct regular visits to all places of detention in all states that are party to the convention, and will make recommendations to the authorities to establish effective measures to prevent torture and ill treatment and to improve the conditions of detention of all persons deprived of liberty.

At the international level, the OPCAT creates a new preventive body, called the UN Subcommittee for the Prevention of Torture. At the national level, party states have to create or designate National Preventive Mechanisms (NPMs) within one year of ratification of the OPCAT. The Ombudsman institution is considered to be such an NPM in many Nordic countries; a new role for the Ombudsman. However, the routine visits of the sort being done today in Norway will not be sufficient to meet the conditions of OPCAT; therefore, extensive resources have to be given to the Ombudsman to meet these obligations.

The Optional Protocol also breaks new ground by setting out, for the first time in an international instrument, criteria and safeguards for effective preventive visits by national bodies, ensuring the implementation of international standards at the local level.

Some reflections on how to improve the Ombudsman's control of prisons

It is a general experience that systemic investigations and investigations covering multiple problems can be more effective than dealing with individual complaints, both in discovering and in correcting unjust, unfair, unsound and illegal conditions. Further development of the Ombudsman's inspection activities should therefore be emphasized. The cooperation between the Ombudsman and the international control mechanisms is of paramount importance in this respect.