

**The National Preventive Mechanism of
Denmark
under the Optional Protocol to the UN Convention against Torture and Other Cruel,
Inhuman or degrading Treatment or Punishment
The Parliamentary Ombudsman**

The Ombudsman Institution is anchored in the Constitution of 1953:

“Statutory provision shall be made for the appointment by the Folketing (*the Danish Parliament*) of one or two persons, who shall not be members of the Folketing, to supervise the civil and military administration of the state” [art. 55].

Only one Ombudsman has been appointed at a time.

According to the Ombudsman Act of 1997, the Folketing elects the Ombudsman after each general election [section 1], which is at least every 4 years. In practical terms all ombudsmen have remained in office for as long as they wished. The present Ombudsman, Professor Hans Gammeltoft-Hansen, has been in office since 1987.

The Ombudsman’s jurisdiction covers all parts of the public administration, but not the courts of justice [section. 7].

The Ombudsman is primarily a complaint mechanism, but may take up a matter or general issues for investigation on his own initiative [section. 17].

Section 18 of the Ombudsman Act requires the Ombudsman to inspect any institution or company and any place of employment falling under his competence. The Ombudsman has always undertaken such inspections, but at the adoption of the present Ombudsman Act in 1996 it was presumed by the legislators that he would intensify these inspections on a more systematic basis. The inspections are carried out by a special inspection unit in the Ombudsman’s office.

The inspections cover places such as

- State prisons (including at asylum centres)
- Country gaols and remand centres
- Prison and probation service hostels
- Secure institutions for juvenile offenders/substitutions of custody
- Asylum centres
- Psychiatric hospitals

- Detentions
- Police waiting rooms, and
- Social care homes

The Ombudsman also has access to military institutions, but deprivation of liberty does not take place at such institutions in Denmark.

In 2006 the Ombudsman undertook 42 initial inspections.

Each initial inspection is followed up by correspondence and follow-up visits. For practical reasons most visits are announced at short notice, but unannounced visits are a possibility, which is used occasionally. The inspectors interview inmates' representatives, staff and inmates, who wish to see them, in private.

Authorities under investigation are obliged *ex officio* to furnish the Ombudsman with any documentation and produce any document etc. that he may demand [section 19].

Although the Ombudsman basically takes a legal approach, he deals not only with legal issues in exercising his inspection function. He covers the entire factual situation often in great detail.

The Ombudsman may express criticism, make recommendations and otherwise state his view of a case [section 22]. If he reveals errors of major importance, he shall report the matter to Folketinget (Legal Affairs Committee) and to the relevant minister or local authority [section 24]. The Ombudsman is required to notify the Folketing and the relevant Minister of any deficiency in legislation [section 12] and he participates in drafting relevant legislation. Only if the Folketing itself has initiated an investigation into an issue does the Ombudsman consider himself precluded from investigating the issue.

The Ombudsman is responsible to the Folketing only and it is the Folketing, which is responsible for financing his activities through its own budget. In the discharge of his functions the Ombudsman is however independent of the Folketing [section 10]. His independence of the executive branch is ensured in common law and never challenged.

The Ombudsman regularly publishes some of his decisions and all his inspection reports on his web site and he submits a public annual report to the Folketing [section 11].