

THEMATIC REPORT FROM THE OPCAT UNIT 2020

# Situation for people deprived of their liberty during the Covid-19 pandemic

The Parliamentary Ombudsmen's investigation  
of the measures taken by four public agencies



As from 1 July 2011 the Parliamentary Ombudsmen have a special unit – the OPCAT unit – which task is to monitor that individuals deprived of their liberty are not exposed to cruel, inhumane or other degrading treatment or punishment. The unit's work is based on the Optional Protocol of the United Nations Convention against Torture of 2002 (OPCAT). This protocol requires states to have a national system, a National Preventive Mechanism, NPM, to monitor this area.

On behalf of the ombudsmen the OPCAT unit regularly inspects places in Sweden where individuals deprived of their liberty are being held, reports on its visits and takes part in international cooperation in this area.

Thematic report from the Opcat Unit 2020

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All photos were taken by employees of the Parliamentary Ombudsmen.

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Cover: Part of a sketch of a panopticon, a prison where all cells can be monitored from one point. A design launched by the British philosopher Jeremy Bentham in the late 18th century.

## Foreword

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The pandemic we have lived with since the beginning of the year has affected our society and daily life in a way that is unparalleled in modern times. Some groups have run the risk of suffering particularly hard by both the infection and the extraordinary measures taken by public agencies. The Parliamentary Ombudsmen's mission to promote the rule of law and ensure that citizens' fundamental rights and freedoms are not violated has become of even greater importance under these circumstances. Among the groups at particular risk of suffering from the effects of the pandemic are people deprived of their liberty. They have little opportunity to influence their own life situations, are highly dependent on their respective institutions' handling of the crisis and often live together in close proximity with limited opportunities for physical distancing. Among them are, for example, inmates in the Prison and Probation Service's prisons and remand prisons, in the Swedish Migration Agency's detention centres or in various homes for compulsory care in the social services. They also includes people who are subject to compulsory psychiatric care or forensic psychiatric care.

In order to reduce the spread of Covid-19, many state and municipal agencies introduced various types of restrictions in the spring of 2020. These included restrictions on the opportunities for various groups deprived of their liberty to receive visits, be granted leave, and so on. In order to illustrate the situation for individuals deprived of their liberty during the pandemic and to prevent any unauthorised restrictions on their rights, we Ombudsmen decided that we, within our respective areas of responsibility, each carry out an investigation of an agency that deprives people of their liberty.

The rapid spread of infections in the spring of 2020, as well as the strains the pandemic placed on much of our own work, also meant that we had to make special considerations in order to responsibly fulfil our mission as National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Tre-

atment or Punishment (Opcat). We have also made special considerations regarding our other supervisory activities.

This report compiles the Parliamentary Ombudsmen's most important observations and statements in connection with the investigations carried out. My hope is that this report will be able to provide an overview of the handling of the very special conditions that prevailed in the spring and early summer of 2020 by the agencies investigated. I also hope that the experiences detailed in the report will contribute to an increased knowledge of the various factors which need to be taken into account in order for the measures against the spread of infection taken by public agencies where people are deprived of their liberty to be both effective and proportionate as well as consistent with the rule of law.



Elisabeth Rynning  
Chief Parliamentary Ombudsman

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## Specific abbreviations

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2019-nCoV 2019	Novel Coronavirus 2019
CAT	UN Committee against Torture
Covid-19	Corona Virus Disease 2019
Europeiska fängelsereglerna	Council of Europe, Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules (revised 1 July 2020)
INTIK	The Prison and Probation Service 's telephone system
MSB	Swedish Civil Contingencies Agency
NPM	National Preventive Mechanism according to Opcat
OPCAT	UN Optional Protocol to the Convention against Torture
SARS-CoV-2	Severe acute respiratory syndrome coronavirus 2

# 1 Overview of the investigations in the spring and summer of 2020

## 1.1 The Parliamentary Ombudsmen's Opcat activities

Since 2011, the Parliamentary Ombudsmen have been fulfilling their role as a National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Opcat). An important part of the task of an NPM is to inspect regularly places where people are deprived of their liberty and report on the conditions. The purpose is to prevent people deprived of their liberty from being subject to torture and other cruel, inhuman or degrading treatment or punishment.

The risk of the spread of infection during the spring and summer of 2020 affected the possibility to conduct physical inspections in the usual way. The Parliamentary Ombudsmen deemed it important to continue, as far as possible, to inspect places where people are deprived of their liberty and, therefore, developed some partially new methods for collecting information. The alternative methods used during the spring were inspections via questionnaires, telephone calls, video calls and outdoor interviews. The questionnaire that was sent to inmates in prisons can be seen in Appendix A.

## 1.2 Investigations performed

In the spring of 2020, each of the Parliamentary Ombudsmen decided to investigate, via an own-initiative in-

quiry<sup>1</sup> within their respective areas, an agency that deprives people of their liberty, and in that way illustrate the consequences of Covid-19 for people deprived of their liberty. The following investigations have been performed:

- *Chief Parliamentary Ombudsman Elisabeth Rynning* investigated the conditions at the National Board of Forensic Medicine's two forensic psychiatric examination divisions<sup>2</sup>,
- *Parliamentary Ombudsman Thomas Norling* investigated the conditions at one of the National Board of Institutional Care's special residential homes for substance abusers and at one of the agency's special residential home for young people<sup>3</sup>,
- *Parliamentary Ombudsman Katarina Pålsson* investigated the conditions at a number of the Swedish Prison and Probation Service's remand prisons and prisons<sup>4</sup>, and
- *Parliamentary Ombudsman Per Lennerbrant* investigated the conditions at two of the Swedish Migration Agency's detention centres<sup>5</sup>.

<sup>1</sup> The Parliamentary Ombudsmen's supervision is carried out by examining complaints from the public and by inspections and other investigations, which the Parliamentary Ombudsmen find necessary (Section 5, first paragraphs of the Act with Instructions for the Parliamentary Ombudsmen [1986: 765]). This means that a Parliamentary Ombudsman can start own-initiative inquiries.

<sup>2</sup> See Chief Parliamentary Ombudsman's decision of 15 October 2020, ref. no. O 21-2020.

<sup>3</sup> See the Parliamentary Ombudsman's decision of 3 September 2020, ref. no. O 13-2020.

<sup>4</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

<sup>5</sup> See the Parliamentary Ombudsman's decision of 9 October 2020, ref. no. O 18-2020.

**Table 1.1. Inspected establishments**

Agency	Establishment	Method
The Prison and Probation Service	Färingsö remand prison	Questionnaire (inmates)
The Prison and Probation Service	Kronoberg remand prison	Questionnaire (inmates) and video meetings (staff)
The Prison and Probation Service	Beateberg prison	Questionnaire (inmates) and video meetings (staff)
The Prison and Probation Service	Färingsö prison	Questionnaire (inmates)
The Prison and Probation Service	Hall prison	Questionnaire (inmates) and video meetings (staff)
The Prison and Probation Service	Svartsjö prison	Questionnaire (inmates)
The Swedish Migration Agency	Flen detention centre	Video meetings (detainees and staff)
The Swedish Migration Agency	Märsta detention centre	Video meetings (detainees and staff)
The National Board of Forensic Medicine	Psychiatric Examination Division in Göteborg	Questionnaire (patients) and telephone meetings (staff)
The National Board of Forensic Medicine	Psychiatric Examination Division in Stockholm	Questionnaire (patients) and interviews outside the division (staff)
The National Board of Institutional Care	Tysslinge special residential home for young people	Outdoor interviews (residents and staff)
The National Board of Institutional Care	Hornö special residential home for substance abusers	Outdoor interviews (residents and staff)

For further information regarding the inspections, see Appendix B.

Within the framework of these investigations, a total of eleven inspections were carried out. The Parliamentary Ombudsman sent out 200 questionnaires to inmates in prisons and remand prisons. 145 inmates responded to the questionnaire, which gives a response rate of 72 per cent. All 28 patients at the National Board of Forensic Medicine were given the opportunity to respond to a similar questionnaire. Of these patients, 18 responded, which gives a response rate of 64 per cent.

The Parliamentary Ombudsmen's investigations began by each Parliamentary Ombudsman holding initial meetings with representatives of the agency under inspection. All investigations were then concluded by the Parliamentary Ombudsman holding meetings with the Director-General of the agency under inspection.

### 1.3 Overview of the operations of the agencies under investigation

According to the Swedish Civil Contingencies Agency (MSB), “vital societal functions” is a collective term for the activities, facilities, nodes, infrastructures and services that are of vital importance in upholding important societal functions within a sector of society.<sup>6</sup> These functions are conducted by a large number of private and public actors.

In their investigations, the Parliamentary Ombudsmen have established that the relevant agencies are conducting vital societal functions. Together, the Prison and Probation Service, the Swedish Migration Agency, the National Board of Forensic Medicine and the National

<sup>6</sup> See the Swedish Civil Contingencies Agency, Guidance for the identification of socially important activities (2019), p. 7.

Board of Institutional Care are responsible for more than 7,500 people deprived of their liberty.

### **The Prison and Probation Service**

The Prison and Probation Service is responsible for enforcing sentences, operating remand prisons and preparing pre-sentencing reports of persons in criminal cases. The agency conducts its activities in, inter alia, 32 remand prisons and 45 prisons with places for over 6,000 inmates (spring 2020). Provisions that regulate the treatment of inmates are found in, inter alia, the Remand Prisons Act (2010:611) and the Prisons Act (2010:610).

### **The National Board of Institutional Care**

The National Board of Institutional Care is responsible for special residential homes for substance abusers as well as the special residential homes for young people. The agency conducts its activities in 11 special residential homes for substance abusers and 22 special residential homes for young people with places for more than 1,000 residents (spring 2020). In the special residential homes for young people, young people who have been sentenced to secure youth care are also placed. Provisions that regulate the treatment of residents are found in, inter alia, the Care of Abusers Act (1988:870), Care of Young Persons Act (1990:52) and the Enforcement of Secure Youth Care Act (1998:603).

### **The National Board of Forensic Medicine**

The National Board of Forensic Medicine is the central administrative agency for forensic psychiatric, forensic chemistry, forensic and forensic genetics activities to the extent that such matters are not dealt with by another agency. The National Board of Forensic Medicine plays a central role in forensic psychiatric examinations in criminal cases and medical certificates referred to in Section 7 of the Special Pre-sentence Investigations of Per-

sons in Criminal Cases Act (1991: 2041). The agency has two forensic psychiatric examination divisions (Gothenburg and Stockholm) with just over 30 places (spring 2020). People who are held on remand can be placed in an examination division during the time they undergo a forensic psychiatric examination. In certain situations, the National Board of Forensic Medicine may decide that a person should receive forensic psychiatric care. Provisions that regulate the treatment of people placed here are found in the Remand Prisons Act and the Forensic Psychiatric Care Act (1991:1129).

### **The Swedish Migration Agency**

The Swedish Migration Agency is responsible for, inter alia, operating detention centres in an appropriate manner. The agency has six detention centres with approximately 500 places (at the beginning of 2020). Foreigners who have been detained under the Aliens Act (2005:716) are held in detention centres. The provisions that regulate the treatment of detainees are, inter alia, in the law mentioned above.

## **1.4 Purpose of this report**

The decisions are based on the situation as it was in the spring of 2020. The decisions, and the presentation of them in this report, provide a kind of snapshot of how the pandemic has affected people deprived of their liberty during this time period. The agencies investigated have subsequently taken further actions and changed previously introduced restrictions. These measures and changes are not described in this report, and, as such, it does not describe the situation for people deprived of their liberty during the autumn of 2020.

The report, therefore, summarises the most important observations and statements made by the Parliamentary

Ombudsmen in each own-initiative inquiry. The intention is that these summaries will enable the reader to see the similarities and differences in how the four agencies investigated have handled similar situations. The hope is that it will be possible to learn from the experiences of the early stage of the pandemic. The Parliamentary Ombudsmen's decisions contain, in some parts, more in-depth reasoning. Furthermore, the decisions partly address further aspects of what was observed in the Parliamentary Ombudsmen's investigations. The Parliamentary Ombudsmen's decisions in each own-initiative inquiry can be found on the Parliamentary Ombudsmen's website.<sup>7</sup>

The report contains five sections that describe various aspects of the impact Covid-19 has had on the situation for people deprived of their liberty. In the following section, there is a brief presentation of the measures that, inter alia, the Parliament and Government have introduced in the form of legislation and ordinances in connection with the pandemic. The following sections address the following aspects of the situation for people deprived of their liberty:

- Measures in the case of suspected or confirmed infection (section 3)
- People deprived of their liberty who belong to an at-risk group in the case of infection (section 4)
- The possibilities to keep a physical distance and information to inmates (section 5)
- Restrictions on visits and leave (section 6)
- Other issues (section 7)

Section 8 summarises the Parliamentary Ombudsmen's conclusions.

<sup>7</sup> See <https://www.jo.se/sv/JO-beslut/>.



## 2 Measures to deal with the consequences of the pandemic

### 2.1 A disease that poses a danger to the public or society

The rules regarding diseases which pose a danger to the public or society can be found in, inter alia, the Communicable Diseases Act (2004:168) and the Communicable Diseases Ordinance (2004:255). The Public Health Agency of Sweden is tasked with issuing regulations and general advice regarding such diseases.

Since 2 February 2020, Covid-19 has been defined as a disease which poses a danger to the public or society<sup>1</sup>.

A disease posing a danger to the public is a contagious disease that can be life-threatening, involve long-term illness or severe suffering or have other serious consequences, and one where it is possible to prevent the spread of infection through measures aimed at infected people. A disease dangerous for society is a generally dangerous disease that can spread through society, and which entails a serious disturbance or imminent risk of a serious disturbance in important societal functions and which requires extraordinary infection control measures.<sup>2</sup>

Through careful and reasonable precautionary measures, everyone must contribute to preventing the spread

of infectious diseases. Anyone who knows or has reason to suspect that they are carrying an infectious disease is obliged to take the necessary measures to protect others from the risk of infection. Anyone who knows that they are carrying a disease dangerous for the public is obliged to inform other people with whom they come into contact concerning the infection and that a significant risk of transmission of infection may arise.<sup>3</sup>

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### 2.2 Measures to reduce the risk of spreading infection

Both the Swedish Parliament and Government have taken measures to reduce the risk of the spread of Covid-19. Besides the disease being defined as both a danger to the public and society as a whole, provisions were introduced in the spring of 2020 with the aim of limiting physical contact between people and protecting people who are particularly vulnerable in the event of the spread of infection. This meant, inter alia, a limit on people physically gathering was introduced and that the National Board of Health and Welfare was able to redistribute protective equipment and testing equipment.

The Public Health Agency of Sweden issued regulations and general advice for everyone to follow in order to reduce the spread of infection of Covid-19.<sup>4</sup> Based on the wording of these regulations and the general advice that applied during the period in which these investigations took place, it follows that all organisations

<sup>1</sup> See the Ordinance (2020:20) that the provisions of the Communicable Diseases Act (2004:168) on diseases posing a risk to the public and society should apply to infection with 2019-nCoV. The Ordinance expired on 1 July 2020 and was replaced by new descriptions found in Annexes I and II to the Communicable Diseases Act. See the Act (2020:242) amending the Communicable Diseases Act. The virus formerly known as 2019-nCoV is now called SARS-CoV-2.

<sup>2</sup> Chapter 1, Section 3, second and third paragraphs of the Communicable Diseases Act.

<sup>3</sup> Chapter 2, Section 1 and 2 of the Communicable Diseases Act.

<sup>4</sup> See the Public Health Agency of Sweden's regulations and general advice (HSLF-FS 2020:12) on everybody's responsibility to prevent the infection of COVID-19 et al.

in Sweden (e.g. government agencies, companies and municipalities) must ensure that they take appropriate measures to avoid the spread of infection based on the recommendations from the Public Health Agency of Sweden and infectious diseases doctors. The Public Health Agency of Sweden has provided general advice on how organisations can act to prevent the spread of infection, for example by displaying information for visitors, marking distances on the floor and modifying physical areas, or otherwise creating space to avoid crowding.

### Public Health Agency of Sweden has provided general advice to prevent the spread of infection

The Public Health Agency of Sweden has also provided general advice aimed at the public at large. This advice is based on the premise that everybody has a responsibility to prevent the spread of Covid-19. In order to limit the spread of infection, everybody should, inter alia, be aware of their hand hygiene, maintain a distance from one another both indoors and outdoors in places where people gather, and refrain from participating in large social gatherings and events. To protect others from infection, anyone who knows they are infected or who has symptoms of Covid-19 should stay at home and avoid physical contact with others.

Of particular interest to the Parliamentary Ombudsmen's investigations is the additional general advice the Public Health Agency of Sweden has also provided to the Prison and Probation Service, the Swedish Migration Agency and the National Board of Institutional Care. In order to avoid the spread of Covid-19, it follows that these agencies should have routines in their management systems on how their respective organisation will pre-

vent the spread of infection. Furthermore, these agencies should regularly carry out risk assessments based on recommendations from the Public Health Agency of Sweden and infectious diseases doctors, as well as produce instructions for how staff and people deprived of their liberty can prevent the spread of infection.



## 3 Measures in case of a suspected or confirmed infection

The Parliamentary Ombudsmen's investigations have shown that all the agencies investigated developed routines for how staff should act in the event of a suspected or confirmed infection of Covid-19. The routines were designed differently due to, inter alia, differences in the agencies' regulations. However, all the routines were alike in that staff were supposed to separate people under their responsibility who had suspected or confirmed infections from others.

### 3.1 The Swedish Communicable Diseases Act and the Public Health Agency of Sweden's general advice

In general, it is crucial in the work of preventing the spread of infection that a person, who is suspected or confirmed as being infected with a disease covered by the provisions of the Communicable Diseases Act, takes their responsibility and voluntarily does what is required of them. The treating doctor must give the person carrying, or suspected of carrying, the disease individually designed medical and practical advice on how they should avoid exposing others to the risk of infection. Furthermore, the treating doctor can decide on individually designed rules of conduct in order to prevent the spread of infection.<sup>1</sup>

Only if it is clear from the circumstances that an individual is not prepared or able to comply voluntarily with the measures required to prevent or, as far as possible, reduce the risk of the spread of infection can the administrative

court take a decision on isolation. The same applies if there is a valid reason to assume that an individual is not following the rules of conduct that have been decided. A decision on isolation may only be taken if there is a significant risk that other people may become infected.<sup>2</sup> Furthermore, the infectious diseases doctor may decide on temporary isolation if someone carries or is suspected of carrying a disease that poses a danger to the public and, through their behaviour, exposes someone else to immediate risk of infection. Such isolation is to take place in a care facility operated by a region.<sup>3</sup>

Infectious diseases doctors can request that a person be placed in isolation

According to the Public Health Agency of Sweden's general advice, anyone who knows they are infected or who has Covid-19 symptoms should stay at home and avoid social contact.<sup>4</sup>

The regional infectious diseases doctor can decide on quarantine if there is a risk of spreading a disease dangerous for the general public.<sup>5</sup> Furthermore, the infectious diseases doctor may decide that the person who has, or can be assumed to have been exposed to, the disease should be quarantined in a specific building as a whole or part of a building or within a certain area. Such a decision entails a ban on leaving the building, part of the building or area and a ban on receiving visits there.

<sup>2</sup> Chapter 5, Section 1 of the Communicable Diseases Act.

<sup>3</sup> Chapter 5, Sections 3 and 4 of the Communicable Diseases Act.

<sup>4</sup> The Public Health Agency of Sweden's regulations and general advice (HSLF-FS 2020-12) on everybody's responsibility to prevent infection of Covid-19 et al.

<sup>5</sup> Chapter 3, Section 9 of the Communicable Diseases Act.

<sup>1</sup> Chapter 4, Sections 1 and 2 of the Communicable Diseases Act.

The Public Health Agency of Sweden can decide that a certain area must be cordoned off.<sup>6</sup> This may happen if a disease posing a danger to the general public has, or is suspected of having, spread within a defined area without the source of infection or the spread of infection being completely clarified. A decision on closure means a ban on people living in the area leaving it and a ban on anyone outside the area visiting it.

### 3.2 Testing for Covid-19

The Public Health Agency of Sweden has developed a national strategy for expanding the testing and laboratory analysis of Covid-19.<sup>7</sup> One of the primary objectives of the strategy is to ensure that the need for testing for Covid-19 is met in the healthcare, care and sectors. In the strategy, the agency has assessed that testing means that another state agency can take protective measures to minimise the infection of residents in care and other vulnerable groups. A reduced risk of infection means that any increased burden on these agencies lowers. Residential institutions refer to institutions where people live together, for example in prisons and remand prisons, forensic psychiatry or the Swedish Migration Agency's residences. *Chief Parliamentary Ombudsman Elisabeth Rynning* and *Parliamentary Ombudsman Thomas Norling* have stated that the National Board of Forensic Medicine's examination divisions and the National Board of Institutional Care's special residential homes for substance abusers and special residential homes for young people are additionally defined as institutional residences.

<sup>6</sup> Chapter 3, Section 10 of the Communicable Diseases Act.

<sup>7</sup> The Public Health Agency of Sweden, National Strategy for Extended Testing and Laboratory Analysis of Covid-19 (version 4), 10 June 2020, pp. 6, 18 and 19.

#### The Prison and Probation Service

During the Parliamentary Ombudsmen's inspections of remand prisons and prisons, it emerged that the Prison and Probation Service's healthcare during spring 2020 did not have access to testing equipment so as to test inmates continually for Covid-19 infection. On the other hand, the agency had the so-called capillary test to determine if inmates had antibodies to the virus. Such a test can only be performed after an inmate has shown symptoms for seven days. *Parliamentary Ombudsman Katarina Pålsson* emphasised that the safety and security of inmates is dependent on there being a capacity to test for infection and that such tests are also carried out.

#### The National Board of Institutional Care

At the beginning of the pandemic, the National Board of Institutional Care produced a special support document that its institutions could use, inter alia, to develop local routines. Initially, the support document stated that there was no possibility to, on the basis of the provisions in the Care of Abusers Act, the Care of Young Persons Act and the Enforcement of Secure Youth Care Act, decide on testing for suspected Covid-19 against the will of residents. The regional infectious diseases doctor would not be contacted in these cases either.

In a dialogue meeting with the management of the National Board of Institutional Care, *Parliamentary Ombudsman Thomas Norling* pointed out that the above-mentioned instruction in the support document could lead to the infectious diseases doctor not being informed about a suspected infection of Covid-19. After the dialogue meeting, the National Board of Institutional Care revised the document with an addition that the region's infectious diseases doctor should be contacted for



guidance if a resident does not voluntarily participate in testing.

In his decision, *Parliamentary Ombudsman Thomas Norling* stated that there is an obligation under the Communicable Diseases Act for doctors on duty at the National Board of Institutional Care's institutions to report to the infectious diseases doctor if a resident carrying a disease posing a danger to the public is not taken care of in such a way that the spread of infection can be limited.<sup>8</sup> The purpose is that the infectious diseases doctor should, inter alia, be able to give advice and investigate what efforts are needed to prevent the spread of infection. Furthermore, there is an obligation for someone who belongs to the healthcare staff and who works at one of the National Board of Institutional Care's institutions to inform the appropriate agencies in certain situations if they become aware that a resident has a disease posing a danger to the public. In the view of the Parliamentary Ombudsman, one of the preconditions for the National Board of Institutional Care to be able to take the appropriate measures is partly that the disease is tested for, and partly that the health and medical staff notify the National Board of Institutional Care in the event of a confirmed case of infection. The Parliamentary Ombudsman stated that the routine following the adjustment was in line with the intentions of the legislator that the actors concerned should act to prevent infection.

### **The Swedish Migration Agency**

In the decision following the investigation of the Swedish Migration Agency, *Parliamentary Ombudsman Per Lennnerbrant* emphasised that testing for Covid-19 is an important part of the work to prevent the spread of infection

among detainees. It was clarified during the investigation that detainees and staff at the detention centre were given priority for testing. During the inspections of the detention centres in Flen and Märsta, it emerged that staff only knew of one case at each detention centre where a detainee had been tested for Covid-19. In the opinion of the staff, it was a shortcoming that testing in the detention centre had not been a priority for a long time. By 22 June 2020, only two inmates

**The safety of inmates depends on the existence of testing capacity**

had been found to be infected with Covid-19. By May, however, a total of around 40 detainees had been moved to a quarantine department because they were suspected of being infected with the disease. The Parliamentary Ombudsman stated that the safety and security of detainees in a pandemic situation is largely dependent on the fact that there is a capacity to test for infection and that such tests are also carried out.

### **The National Board of Forensic Medicine**

At the time of the inspections of the National Board of Forensic Medicine's examination divisions, the division in Stockholm had had two patients who were suspected of being infected with Covid-19. One of the patients tested negative for Covid-19, while the other described flu-like symptoms but showed no symptoms for the following 48 hours. During the inspection, it emerged that if a patient opposes testing, the staff must contact an infectious diseases doctor for advice concerning which measures may be medically justified.

In the decision following the investigation, *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that it is important that the agency responsible for patients takes adequate measures to protect other patients from

<sup>8</sup> Section 26 a of the Care of Abusers Act, Section 19 of the Enforcement of Secure Youth Care Act and Section 12 a of the Care of Young Persons Act.

infection. An important aspect is the possibility to test patients and staff who are suspected of being infected with Covid-19. From the minutes of the final dialogue meeting, the National Board of Forensic Medicine stated that it had four more suspected cases in Stockholm. All tests for Covid-19 were found to be negative.

### 3.3 People deprived of their liberty's ability to distance themselves voluntarily from others

The inspections also examined what opportunities inmates, detainees and patients had, in accordance with the Communicable Diseases Act that applies to everybody, to contribute voluntarily to preventing the spread of Covid-19 by maintaining a physical distance from others.<sup>9</sup>

#### The National Board of Institutional Care

During the inspection of the special residential home for young people in Tysslinge, it emerged that a resident with Covid-19 symptoms voluntarily agreed to be cared for separately from other residents. The staff had not taken a decision on the placement of this person in so-called separate care. In the decision after the investigation, *Parliamentary Ombudsman Thomas Norling* stated that it should be possible to request that a resident at an institution takes responsibility for their situation and voluntarily contributes to counteracting the spread of a disease dangerous for the general public. He then stated the following:<sup>10</sup>

“Separating people who are suspected or confirmed infected with Covid-19 from others is one of

the most important measures that the agency has to take. Therefore, the premise should be that the National Board of Institutional Care should provide a resident with a suspected or confirmed infection of a disease posing a danger to the public with the opportunities needed for them to be able to take on the responsibility that they have under the Communicable Diseases Act to protect others from the risk of infection.”

The Parliamentary Ombudsman stated that an institution needs to organise itself to ensure suspected or confirmed infected people can stay voluntarily separated from others within the institution. During this time, the resident must have access to the necessary health and medical care. If necessary, the resident must be taken to hospital. There is a great responsibility on staff to explain to residents that the measure is not taken within the framework of his or her compulsory care. The resident must be aware that the measure can only take place if they consent to it. In the opinion of the Parliamentary Ombudsman, staff may not subject residents to direct or indirect pressure by, for example, stating that coercive measures will be taken if the person does not consent to the measure. It is also important that staff document that the person has been separated from others and that this has taken place at the person's own request.

People with suspected or confirmed infections must be able to be separated from others

#### The Swedish Migration Agency

At the Parliamentary Ombudsman's initial meeting with the Swedish Migration Agency, the agency's management stated that all its detention centres had set up special

<sup>9</sup> As *Parliamentary Ombudsman Katarina Pålsson's* investigation covered the situation early in the pandemic, her decision did not touch on this issue.

<sup>10</sup> See the Parliamentary Ombudsman's decision of 3 September 2020, ref. no. O 13-2020.

so-called quarantine departments where detainees with suspected or confirmed infections of Covid-19 could be placed. The management's view was that staying in such a department does not entail a restriction of the detainees' rights and that no decision, therefore, is required for a placement there.

*Parliamentary Ombudsman Per Lennerbrant* stated that the premise should be that a detainee with a suspected or confirmed infection of a disease posing a danger to the public is given the opportunities to take the responsibility that they are obliged to take in accordance with the Communicable Diseases Act. This means that the Swedish Migration Agency needs to make the necessary arrangements so that a person suspected of being infected does not reside with other detainees for the time required to confirm that the detainee does not risk transferring the infection to others. The Parliamentary Ombudsman then stated the following:<sup>11</sup>

“A premise should be that a detainee suspected of being infected does not reside with a person who is confirmed as infected. In the preventive work to prevent the spread of infection, the agency, therefore, needs to ensure that people suspected of being infected do not spread the infection between each other but are also not exposed to infection by people confirmed as infected. In order to reduce the risk of the spread of infection, the detainees should, if possible, be allocated their own living areas and hygiene facilities and be given the opportunity to maintain a physical distance in common areas.”

<sup>11</sup> See the Parliamentary Ombudsman's decision of 9 October 2020, ref. no. O 18-2020.

Furthermore, the Parliamentary Ombudsman stated that the measure of moving a detainee to a quarantine department may mean that they temporarily reside there alone. Staff, therefore, need to take measures to ensure that detainees understand that this is a voluntary measure. It is important that staff document the circumstances surrounding the measure to move a detainee as well as the detainee's willingness to do so.

### **The National Board of Forensic Medicine**

At the time of the inspections of the National Board of Forensic Medicine's examination divisions, the division in Stockholm had had two patients who were suspected of being infected with Covid-19. They stayed for a limited time voluntarily in their living areas separate from other patients. According to the management of the National Board of Forensic Medicine, it is preferable for patients to participate voluntarily in measures taken to counteract the spread of infection. The management stated, however, that it would be good to clarify what level of coercion is possible to take in accordance with the legislation that applies to the National Board of Forensic Medicine's activities.

*Chief Parliamentary Ombudsman Elisabeth Rynning* stated that the fact that a person has been deprived of their liberty does not, of course, mean that they are thereby considered to lose their ability to fulfil the obligations that may be incumbent on everyone in society. On the other hand, with regard to measures that are more generally considered as requiring a special legal basis, in activities such as prison care or other compulsory

**It is doubtful how far it is possible to rely on voluntariness when a person is detained**



care, it is more difficult to assess to what extent it is possible to proceed on a voluntary basis. This is especially true in the case of consent that can be perceived as a waiver of a constitutionally protected right. In the opinion of the Chief Parliamentary Ombudsman, in such contexts, there is a significant risk that volunteering will become an illusion. In the opinion of the Chief Parliamentary Ombudsman, this applies not least to people with suspected or confirmed mental illnesses, which may affect their decision-making abilities. The Chief Parliamentary Ombudsman was, therefore, hesitant concerning the extent of the possibility to rely on the principles of the Communicable Diseases Act concerning voluntariness and personal responsibility, without risking the rule of law. She then stated the following:<sup>12</sup>

“However, I perceive it as that the National Board of Forensic Medicine, in the absence of other alternatives, has allowed people suspected of being infected to stay voluntarily in their rooms and not be with other patients. The agency has thus – in accordance with the principles of the Swedish Communicable Diseases Act – allowed patients to take their own responsibility for reducing the risk of the spread of infection. I have no basis for assessing what the conditions for any real voluntariness looked like in these particular cases, but would like to emphasise the importance of the National Board of Forensic Medicine taking the necessary measures to ensure, in such situations and as far as is possible, that the inmate or patient clearly understands that it is a voluntary measure and that it documents the individual’s position and what information it is based on.

<sup>12</sup> See the Chief Parliamentary Ombudsman’s decision of 15 October 2020, ref. no. O 21-2020.

### 3.4 Decisions on separating people deprived of their liberty from others

People deprived of their liberty have the right to associate with others. For the activities investigated, different preconditions apply for the possibility of limiting this right.

#### The Prison and Probation Service

In a number of situations, the Prison and Probation Service can decide that an inmate should be segregated from the other inmates. Inmates in a prison may, inter alia, be temporarily segregated from each other, if this is necessary to maintain order or safety and security. In a petition to the Government on 8 May 2020, the Swedish Prison and Probation Service highlighted a need to change the provision in the Prisons Act that allows for inmates in prisons to be temporarily segregated from others.<sup>13</sup> According to the agency, there was a need to clarify that such segregation may last for longer than one day if there are special reasons.<sup>14</sup> The intention is for the Swedish Prison and Probation Service to be able to decide on segregation for longer periods of time in order to deal with large staff losses as a result of the spread of infection. The agency considered that, in any case, a temporary regulation should be introduced that provided this possibility.

*Parliamentary Ombudsman Katarina Pålsson* emphasised that in a crisis, there are significant risks that amendments to the law are made in very short timeframes and based on limited preparation, which will restrict the freedoms and rights of individuals. She stated that the Swedish Prison and Probation Service already has far-reaching possibilities under the Prisons Act to place

<sup>13</sup> See Chapter 6, Section 5 of the Prisons Act. Other provisions governing segregation were not covered by the petition.

<sup>14</sup> See the Swedish Prison and Probation Service’s petition for amendments in legislation regarding segregation in a prison for reasons of order and security (The Prisons and Probation Service ref. no. 2020-6677).

inmates in segregation in different situations and that an extension of this possibility would mean a further restriction of prisoners' freedoms. She referred to the fact that the Parliamentary Ombudsmen has, on several occasions, highlighted a need to strengthen inmates' basic right to associate with others during the day. In the opinion of the Parliamentary Ombudsmen, there are reasons in both the Prisons Act and the Remand Prisons Act to define the concept of association and to regulate the scope of inmates' right to associate with others on a daily basis, and there needs to be a review of the exceptional situations in which the Swedish Prison and Probation Service is able to limit this right. If there is reason to also investigate the amendment that the Swedish Prison and Probation Service has petitioned for, all issues should, in the opinion of the Parliamentary Ombudsman, be thoroughly analysed in one context.

### The National Board of Institutional Care

The National Board of Institutional Care is able to prevent a person from meeting others through a decision on separate care.<sup>15</sup> The agency may decide on such care if it is required with regard to a resident's special need for care, their own safety or the safety of others. Separate care must be adapted to a resident's individual care needs. A decision on separate care must be assessed continuously and always reviewed within seven days from the last review.

In connection with the pandemic, the National Board of Institutional Care introduced a routine according to which people who were suspected or confirmed to be infected with Covid-19 would regularly be provided with separate care. During the inspection of the National Bo-

ard of Institutional Care's special residential home for young people in Tysslinge, it was noted that decisions on separate care due to suspected infection of Covid-19 were justified as necessary with regard to the person's special need for care. A decision also stated that staff "experienced" it as if the resident had agreed to the coercive measure.

Needs for care due to Covid-19 are not covered by the legal preconditions for separate care

*Parliamentary Ombudsman Thomas Norling* stated that separate care is a very intrusive measure, and the premise is that such a decision should correspond to the individual having a well-defined need for separate care. The intention is not that the coercive measure should be a resort in handling an emergency situation, but that the need should be foreseeable. The Parliamentary Ombudsman further stated:<sup>16</sup>

"Based on the statements in the preparatory work, it is clear in my opinion that the provision is aimed at the need for care that has resulted in the person being placed in one of the National Board of Institutional Care's institutions. The coercive measure, therefore, must be necessary for the purpose of the decision in line with the Care of Abusers Act or the Care of Young Persons Act or in the enforcement according to the Enforcement of Secure Youth Care Act to be achieved. The need for care that may arise as a result of a suspected or confirmed infection of Covid-19 is, therefore, not covered by this legal condition."

<sup>15</sup> Section 34 a of the Care of Abusers Act, Section 14 a of the Enforcement of Secure Youth Care Act and Section 15 d of the Care of Young Persons Act.

<sup>16</sup> See the Parliamentary Ombudsman's decision of 3 September 2020, ref. no. O 13-2020.

The Parliamentary Ombudsman stated that the purpose of the routine description in the National Board of Institutional Care's support document was not aimed primarily at an individual's need for care. Therefore, the Parliamentary Ombudsman was very doubtful that it was possible to apply the provisions in the manner described in the document.

*Parliamentary Ombudsman Thomas Norling* also raised the issue of segregation. A resident may be segregated if specifically required because they behave violently or are so affected by intoxicants that they cannot be kept in order.<sup>17</sup> In the view of the Parliamentary Ombudsman, it should not be excluded that a situation may arise where a person, who is suspected or confirmed to be infected by a disease which poses a danger to the public, through their own actions constitutes such a danger to other people that there is reason to take a decision on segregation. In such a case, in the view of the Parliamentary Ombudsman, the decision cannot target anything other than averting a hastily arising and potentially dangerous situation. The National Board of Institutional Care's opportunity to decide on segregation to protect residents and staff against infection cannot, therefore, in the opinion of the Parliamentary Ombudsman, replace the measures that may need to be taken in accordance with the Communicable Diseases Act.

### **The Swedish Migration Agency**

The premise is that an alien detained must be able to associate with other detainees. However, an alien's freedom of movement may be restricted if they pose a serious danger to themselves.<sup>18</sup> An alien who is detained and has reached the age of 18 may be segregated from other de-

tainees, if this is necessary for the order and safety on site or if they pose a serious danger to themselves or others.<sup>19</sup>

The Swedish Migration Agency's central document for how detention centres should act in the event of suspected or confirmed infection of Covid-19 amongst detainees states, inter alia, that staff must make a decision on restricting the freedom of movement of, or segregating, detainees who have been found to be infected with Covid-19. During the inspection of the detention centre in Flen, information emerged that infected detainees were to be placed in segregation.

*Parliamentary Ombudsman Per Lennerbrant* stated that he did not rule out that a situation may arise where a detainee, who is suspected or confirmed as infected with a disease posing a danger to the public, for example through behaviour that risks exposing others to infection, poses such a danger that the legal preconditions exist to take a decision on segregation. In such a case, the decision can only aim at averting a hastily arising and potentially dangerous situation. Therefore, the agency must not regularly take decisions on segregation as an infection control measure. In the opinion of the Parliamentary Ombudsman, the possibility to take a decision on segregation or other restrictions of the freedom of movement cannot replace the measures that may need to be taken on the basis of the Communicable Diseases Act.

**Needs for care due to Covid-19 are not covered by the legal preconditions for separate care**

### **The National Board of Forensic Medicine**

For the majority of the National Board of Forensic Medicine's patients at the agency's examination divisions, the

<sup>17</sup> Section 17 of the Enforcement of Secure Youth Care Act, Section 34 b of the Care of Abusers Act and Section 15 c first paragraph of the Care of Young Persons Act.

<sup>18</sup> Chapter 11, Section 6 of the Aliens Act.

<sup>19</sup> Chapter 11, Section 7 of the Aliens Act.

Remand Prisons Act's provisions on coercive measures apply. A patient may be segregated if it is deemed necessary for security reasons.<sup>20</sup> The legislative history of the act shows that, for example, it may be necessary to segregate a patient if there is a risk of flight or escape, or if the patient is violent or under the influence of drugs.<sup>21</sup> A patient cared for under the Forensic Psychiatric Care Act may be kept in segregation only if it is necessary because the patient, through aggressive or disruptive behaviour, seriously impedes the care of other patients.<sup>22</sup>

*Chief Parliamentary Ombudsman Elisabeth Rynning* stated that the Remand Prisons Act's provisions on segregation are applicable in more situations than the corresponding provisions in the Forensic Psychiatric Care Act. The Chief Parliamentary Ombudsman found that it cannot be excluded that a patient with a suspected or confirmed Covid-19 infection acts in such a way that it is necessary, for security reasons, to separate them from other patients in accordance with the Remand Prisons Act. Situations may also arise where a patient with suspected or confirmed infection, through aggressive or disruptive behaviour, seriously impedes the care of other patients, and that there may therefore be the necessary preconditions for a decision on segregation with support of the Forensic Psychiatric Care Act. The Chief Parliamentary Ombudsman then stated the following:<sup>23</sup>

“I would like to emphasise that, regardless of the regulations that the National Board of Forensic Medicine applies, this concerns dealing with a dangerous

situation and segregation cannot, for example, replace the measures that may need to be taken in accordance with the Communicable Diseases Act.”

Thereafter, *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that a decision on segregation according to the Communicable Diseases Act has a wider purpose than just protecting others from infection, as the intention is that it should also provide an opportunity to provide the person separated, inter alia, the care they need. Furthermore, courts decide on segregation and such decisions must be made on a more comprehensive basis than what usually forms the basis for a decision on segregation. She stated that these circumstances further clarify that a possible decision to segregate a patient temporarily does not mean that the examination that must occur in accordance with the Communicable Diseases Act can be omitted. Due to this, the Chief Parliamentary Ombudsman stated the following:<sup>24</sup>

“Until the end of my investigation in July 2020, the National Board of Forensic Medicine had not taken a decision to segregate an inmate or patient due to Covid-19. At the final dialogue meeting, the management stated that if this occurs, an infectious diseases doctor will be contacted, so that they can decide on temporary isolation or apply for isolation in accordance with the Communicable Diseases Act. I would like to emphasise the importance of such contact taking place urgently.”

<sup>20</sup> Chapter 5, Section 2 of the Remand Prisons Act.

<sup>21</sup> See Government Bill. 2009/10: 135 pp. 186.

<sup>22</sup> Section 8, first paragraph of the Forensic Psychiatric Care Act (1991:1128), with reference to Section 20, first and second paragraphs of the Compulsory Psychiatric Care Act (1991:1128).

<sup>23</sup> See the Parliamentary Ombudsman's decision of 15 October 2020, ref. no. O 21-2020.

<sup>24</sup> See the Parliamentary Ombudsman's decision of 15 October 2020, ref. no. O 21-2020.



## 4 People deprived of their liberty belonging to an at-risk group in cases of infection

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Each of the investigated agencies may be responsible for people deprived of their liberty who are at risk of contracting a serious illness if they are infected with Covid-19. These are people who are particularly vulnerable due to, for example, age or underlying illnesses. These people are dependent on the agencies taking the appropriate measures to protect them against the spread of infection.

### 4.1 At-risk groups for serious illness

The Public Health Agency of Sweden has published information on its website detailing how certain groups can have more severe symptoms if infected with Covid-19.<sup>1</sup> For example, they can suffer from pneumonia and have difficulty breathing. An important factor is the age of the infected person and the older the person, the greater the risk of serious illness and death. If the person also has other underlying illnesses, the risk increases further. According to the Public Health Agency of Sweden's general advice to avoid the spread of Covid-19, which applied during the spring and summer of 2020, people over the age of 70 and those belonging to other at-risk groups should, inter alia, limit their social contacts and avoid places where people gather.<sup>2</sup>

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<sup>1</sup> See <https://www.folkhalsomyndigheten.se/smittskydd-beredskap/utbrott/aktuella-utbrott/Covid-19/skydda-dig-och-andra/rad-och-information-till-riskgrupper/> (read on 3 September 2020).

<sup>2</sup> See the Public Health Agency of Sweden's regulations and general guidelines (HSLFFS 2020: 12) on everybody's responsibility to prevent infection of Covid-19 et al.

### 4.2 Measures to protect people deprived of their liberty who belong to an at-risk group

The Parliamentary Ombudsmen's investigations show that the Prison and Probation Service, the Swedish Migration Agency, the National Board of Forensic Medicine and the National Board of Institutional Care have acted differently with regard to the measures implemented to identify which people belong to an at-risk group for Covid-19 infection and the special measures taken to protect them. During the spring of 2020, the Prison and Probation Service had taken the most far-reaching measures.

#### The Prison and Probation Service

At the beginning of April 2020, the management of the Prison and Probation Service estimated that between 600 and 700 of all inmates in its remand prisons and prisons belonged to one of the groups who risk becoming seriously ill if infected with Covid-19. Of these, between 160 and 170 inmates belonged to risk group 1 or 2.<sup>3</sup> At the outbreak of Covid-19, the Prison and Probation Service developed a strategy for separating inmates who belong to an at-risk group from other inmates. In the routine the following, inter alia, was stated:

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<sup>3</sup> Risk group 1 includes inmates over the age of 70 and those with a vulnerable general condition and/or with treatment that suppresses the immune system. Risk group 2 includes inmates over the age of 60 with complicated diseases such as heart/lung disease, diabetes, cancer and/or high blood pressure.

“If the preconditions exist – place inmates from at-risk groups in a department which other inmates do not access. What is then decisive concerning whether these at-risk inmates should be physically close to one another or be spread out in the facility depends on access to a toilet in the living area. It is not preferable for inmates from at-risk groups to share a toilet with others. If it is not possible to protect clients from at risk groups through differentiation – strive to ensure they maintain a distance of at least 2 metres from other clients. “

During the investigation, it emerged that there was overcrowding in the remand prison and prison system, and inmates stated that they could not maintain a physical distance from others. *Parliamentary Ombudsmen Katarina Pahlsson* stated that it appeared difficult for the Prison and Probation Service to protect inmates who belong to an at-risk group in other ways than differentiating them from other inmates. During the inspection of Beateberg prison, it emerged that inmates belonging to at-risk groups were given the opportunity to stay in a special department. However, the Parliamentary Ombudsman was concerned that information had emerged that, in Hall prison, inmates who were in an at-risk group had been offered the chance to stay in a department in the prison’s high-security unit (Fenix). These are departments that are designed to be able to receive inmates in cases where the Prison and Probation Service has made a special decision on a security placement. This is the most closed and restrictive environment within the prison regime, and the Parliamentary Ombudsman has previously directed serious criticism at the Prison and Probation

Service for using these departments for placing inmates for reasons other than security.<sup>4</sup>

In the questionnaire provided by the Parliamentary Ombudsman to inmates in, inter alia, Hall prison, one inmate gave the following description:

“I declined because of the restrictive environment staying there would entail. Walks in exercise yards with grid cages, no chance to exercise, no sports hall, no work or occupational activity and we would live there together with a maximum of 6 people in the department. This includes people who cannot speak Swedish. I would also lose my regular place here at Hall, which means that I would remain in the “bunker” indefinitely. That is why I said NO. ”

During the Parliamentary Ombudsman’s inspection of the prison, it emerged that all the inmates except one refused a placement in the Fenix building. *Parliamentary Ombudsman Katarina Pahlsson* stated that there existed a fear among inmates that they would lose their regular places and as a result remain in the department. Furthermore, she also questioned whether the measure was compatible with the Prisons Act’s basic provision that a controlling or coercive measure may only be used if it is in reasonable proportion to the purpose of the measure. If a less intrusive measure is sufficient, it must be used. She then stated the following:<sup>5</sup>

“In order to achieve the desired purpose, it would have been sufficient to place inmates who belong to an at-risk group in a regular department. The Prison

<sup>4</sup> See ref. no. 6384-2014 in the Parliamentary Ombudsmen Annual Report Summary 2015/16..

<sup>5</sup> See the Parliamentary Ombudsman’s decision of 30 June 2020, ref. no. O 12-2020.

and Probation Service’s measure unfortunately resulted in inmates refusing to be differentiated from other inmates, despite the fact that the agency had made the assessment that a need for this existed. As a result, these inmates have received less protection than inmates in a similar situation who are placed in other prisons. This is serious and I am critical of how the Prison and Probation Service has handled this situation. “

In the opinion of *Parliamentary Ombudsman Katarina Pählsson*, the Prison and Probation Service needs to take immediate measures to ensure that inmates belonging to an at-risk group are given the chance to stay in a department in the security class in which they are usually placed but separate from other inmates who do not belong to an at-risk group.

### **The National Board of Institutional Care**

It is not uncommon for people who receive care under the Care of Abusers Act to be in poor physical condition and suffer from various illnesses caused by long-term addiction. There is a risk that these people will be severely affected by Covid-19 infection. At the inspection of the special residential home for substance abusers Hornö, it emerged that staff had knowledge of which people belonged to an at-risk group. However, these people stayed together with the others. Prior to the final dialogue meeting with the management of the National Board of Institutional Care, the agency was asked how many residents as of 1 June 2020 belonged to an at-risk group. In its response, the National Board of Institutional Care stated that it could not answer the question as it did not have the full knowledge of all its residents’ possible somatic diseases.

At the closing dialogue meeting, the management of the National Board of Institutional Care stated that people who suffer from alcohol dementia or other dementia conditions, liver, kidney or heart failure or who have problems with the trachea are usually placed in the special residential home for substance abusers Östfora, or in the in departments in Ekebylund in the special residential home for substance abusers Rebecka/Ekebylund. This placement routine was not introduced due to Covid-19. Further, the management of the National Board of Institutional Care stated that it had not made a complete survey of which residents in youth care might belong to an at-risk group.

In his decision, *Parliamentary Ombudsman Thomas Norling* referred to *Parliamentary Ombudsman Katarina Pählsson’s* statement that it appeared difficult for the Prison and Probation Service to protect this at-risk group of inmates in any other way than by differentiating them from other inmates. In the opinion of *Parliamentary Ombudsman Thomas Norling*, the same reasoning applied regarding residents in homes operated by the National Board of Institutional Care. He then stated the following:<sup>6</sup>

”For this reason, the National Board of Institutional Care must immediately remedy the shortcoming resulting in the agency thus far lacking routines for how this group of residents should be protected from Covid-19 infection. I have previously stated that information has emerged of overcrowding at some of the National Board of Institutional Care’s institutions and that it is, therefore, difficult for residents and staff to maintain a physical distance. For

<sup>6</sup> See the Parliamentary Ombudsman’s decision of 3 September 2020, ref. no. O 13-2020.

this reason, the National Board of Institutional Care placing these people in special departments seems to be the only reasonable measure to take.”

### The Swedish Migration Agency

At the Parliamentary Ombudsman’s concluding dialogue meeting with the management of the Swedish Migration Agency, the management stated that it is the task of the

### The detention centre should have a routine for identifying detainees who belong to an at-risk group

public health service to identify detainees who might belong to an at-risk group. There is no prior information if a new arrival belongs to an at-risk group. When

a detainee arrives at a detention centre, they are asked about their state of health. During the inspections of the detention centres, it was noted that the detention centre in Flen had a clear routine for identifying and treating detainees belonging to an at-risk group. At the detention centre in Märsta, staff did not know if there were any special routines for the placement or treatment of at-risk groups. *Parliamentary Ombudsman Per Lennerbrant* stated that the Swedish Migration Agency did not have an agency-wide routine for the treatment of detainees who belong to an at-risk group for Covid-19. For this reason, he stated the following:<sup>7</sup>

“In order to ensure the safety and security of detainees during their stay in a detention centre, in my opinion it is a reasonable requirement that the Swedish Migration Board takes measures to ensure that a routine corresponding to that applied at the

Flen detention centre is also applied at other detention centres.”

### The National Board of Forensic Medicine

In the dialogue meetings with the management of the National Board of Forensic Medicine, it stated that the agency has a good knowledge of patients’ medical conditions even before they are admitted. Their conditions are also checked during the daily rounds which are carried out Monday to Friday. At the time of the inspections, however, the National Board of Forensic Medicine had not taken any special measures to protect patients who belong to an at-risk group in the event of Covid-19 infection. After the final dialogue meeting with *Chief Parliamentary Ombudsman Elisabeth Rynning*, the National Board of Forensic Medicine stated that it had adopted a routine for how patients belonging to an at-risk group should be treated. The Chief Parliamentary Ombudsman stated in her decision that it was positive that the agency now has a documented routine for how its staff should act in these situations.

<sup>7</sup> See the Parliamentary Ombudsman’s decision of 9 October 2020, ref. no. O 18-2020.



## 5 The possibilities of keeping a physical distance and providing information to people deprived of their liberty

An important element in the Public Health Agency of Sweden's recommendations on how everybody should behave to reduce the risk of Covid-19 infection is to keep a physical distance from other people. The recommendation applies to everybody and, as such, not only to people showing symptoms that may indicate Covid-19 infection. A general premise during the spring and summer of 2020 was that the minimum suitable physical distance was between one and two metres.

### 5.1 Physical distance

#### The Prison and Probation Service

In the questionnaire that the Parliamentary Ombudsmen distributed in remand prisons and prisons, several inmates expressed the view that the Prison and Probation Service had not taken sufficient measures to prevent the spread of infection. The complaints concerned, inter alia, overcrowding in the agency's premises, which makes it difficult to maintain a physical distance. An inmate at Färingsö prison provided the following description:

“Staff members do not use protective equipment such as gloves/masks to protect us clients. Why does the prison ignore the Public Health Agency of Sweden's instructions? We do not keep our distance, on several occasions we have had to ask staff to keep a distance. Social gatherings are held in a small space, even though we do not want that. But the management has decided that these (activities) should continue.”

*Parliamentary Ombudsman Katarina Pålsson* stated that so many thoughts of inmates had had been expressed on this that, in her opinion, there were reasons for the Prison and Probation Service to review which measures needed to be taken to ensure that both inmates and staff could follow the Public Health Agency of Sweden's advice. Due to the strained occupancy situation, the Prison and Probation Service regularly double-occupies cells in remand prisons and prisons. Inmates in a remand prison should, as a rule, be placed in a single cell, but two or more inmates may be placed in the same cell if this is necessary for reasons of lack of space or some other special reason.<sup>1</sup> There is no corresponding provision in the Prisons Act. It follows from the European Prison Rules, however, that inmates should normally be accommodated in their own cell during the night unless it is preferable for them to share. Shared accommodation may only occur if it is suitable for this purpose and shared by inmates who are suitable to be placed together. As far as possible, inmates shall be given a choice before they have to share a sleeping space with others.<sup>2</sup>

In the questionnaire distributed by the Parliamentary Ombudsmen to inmates, 12 per cent of those who responded stated that they had shared a cell with another inmate. An inmate at Svartsjö prison made the following comment:

<sup>1</sup> Chapter 2, Section 1 of the Remand Prisons Act.

<sup>2</sup> See rules 18.5 to 18.7, European Prison Rules. The prison rules are, inter alia, applicable to anyone detained by a judicial authority or detained as a result of a judgment (Rules 10.1 and 10.3).

“Visits and leave have been withdrawn due to the spread of infection, i.e. a risk and safety aspect. But new inmates from the outside continue to pour in. Personally, I was forced to spend [a number of days] in a shared cell with a person newly admitted. Then it is no longer about safety and risk, it is for the benefit of the Prison and Probation Service. The staff come and go, as do handymen and other workers. There does not seem to be any risk with this, but it is these people who will bring the infection in.”

*Parliamentary Ombudsman Katarina Pålsson* stated that she had difficulty seeing how inmates who double occupy a normal-sized cell should be able to maintain the necessary physical distance. Referring to the fact that infected people may only have vague or atypical symptoms, the Parliamentary Ombudsman stated that it was not sufficient for the Prison and Probation Service to intervene and remove a person from a double-occupied cell when an inmate shows clear symptoms of infection. She further emphasised that situations can also arise when an inmate begins to show symptoms after being locked up for the night and that the fellow inmate, therefore, risks having to spend a long time with an inmate who may well be infected with Covid-19.

In the view of *Parliamentary Ombudsman Katarina Pålsson*, there was reason to question whether the double occupancy of cells during the current conditions are compatible with the European Prison Rules. The double occupancy of cells exposes inmates to unnecessary risks and is not compatible with the requirement for physical distancing. The Parliamentary Ombudsman further doubted whether the double occupancy of cells is compatible with the requirement that inmates be tre-

ated with respect for their human dignity and with an understanding of the special difficulties associated with deprivation of liberty.<sup>3</sup> In the view of the Parliamentary Ombudsman, the Prison and Probation Service should immediately take measures to ensure there is no double occupancy of cells where it is not possible for inmates to

There must not be double occupancy of cells where inmates cannot maintain a physical distance to one another

keep the necessary physical distance. In the view of the Parliamentary Ombudsman, a newly admitted person should not be placed directly into a cell together with another inmate.

### **The National Board of Institutional Care**

During the spring inspections, information emerged that people deprived of their liberty and staff had difficulty maintaining a physical distance to others. At the closing dialogue meeting, the management of the National Board of Institutional Care stated that the premise is that people deprived of their liberty should limit themselves to staying in their own department. The objective is also that staff should only work in one department. Contacts between departments are limited and the agency considers each department as a household. For this reason, the National Board of Institutional Care had assessed there to be no need to recommend that its institutions should, for example, rearrange furniture so that residents and staff could maintain a distance to one another.

*Parliamentary Ombudsman Thomas Norling* stated that he did not share the National Board of Institutional Care's view that it is possible to equate a department with

<sup>3</sup> Chapter 1, Section 4 of the Prisons Act and Chapter 1, Section 4 of the Remand Prisons Act.



a household. Everyday a department receives a number of staff who are otherwise out in the community when not working. Furthermore, the pandemic had not resulted

### The National Board of Institutional Care needs to take measures so that residents and staff are able to follow the Public Health Agency of Sweden's recommendations

in a general halt to new admissions. As such, residents at the National Board of Institutional Care's institutions, therefore, came in contact with significantly more people in their "home environment",

and they were exposed to a higher risk of infection than a person would normally be in their home. The Parliamentary Ombudsman stated that the National Board of Institutional Care should immediately review what measures it must take in order for residents and staff to be able to follow the Public Health Agency of Sweden's general advice and recommendations.

#### The Swedish Migration Agency

During the inspections of the detention centres in Flen and Märsta, information emerged from both detainees and staff that maintaining a physical distance from one another had been difficult to achieve. As a general rule, detainees share a living area with one or more other detainees. It emerged that six detainees were placed in the same living area at the detention centre in Märsta. If a detainee was suspected of being infected with Covid-19, they were placed in their own living area at specially set up quarantine departments. The management of the Swedish Migration Agency stated that the possibility for detainees to keep a physical distance had increased be-

cause the number of places in the detention centre had been temporarily reduced.

*Parliamentary Ombudsman Per Lennerbrant* stated that it should not be excluded that detainees share living areas even during an ongoing pandemic. A prerequisite for this is the Swedish Migration Agency taking the necessary measures required for detainees to be able to maintain a physical distance from one another. The Parliamentary Ombudsman called on the Swedish Migration Agency to take note of this information and, for example, seek support from infection control experts in the various regions for assessments of what is an acceptable number of detainees in, for example, a shared living area or how physical distance can be maintained in other ways.

#### The National Board of Forensic Medicine

During the inspections of the National Board of Forensic Medicine's examination divisions, it emerged that there had been difficulties for patients to maintain a physical distance from one another, for example when they queued for meals. In the spring of 2020, the National Board of Forensic Medicine introduced a temporary routine whereby staff urged patients at both examination divisions to eat their meals in their rooms. Furthermore, the National Board of Forensic Medicine temporarily made it possible for patients to watch TV in their rooms even during the day. At the division where there were problems with maintaining distances to one another whilst being served food, the agency

### The National Board of Forensic Medicine took measures which meant patients were able follow the Public Health Agency of Sweden's recommendations

made markings on the floor to make it easier for patients to maintain a distance to one another in the queue. *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that the National Board of Forensic Medicine had taken measures to make it possible for both patients and staff to follow the Public Health Agency of Sweden's recommendations. She stated that it was positive that the agency was actively trying to find ways to improve conditions.

Part of the National Board of Forensic Medicine's investigations consists of staff observing patients' social interactions. These observations are described in notes. Prior to the change, the National Board of Forensic Medicine feared that the quality of these observations would deteriorate if the patients were given a greater opportunity to spend time by themselves. However, the National Board of Forensic Medicine's management stated that the quality of these observation notes, in the opinion of the staff, had not been affected. It was also stated that a project had been initiated with the aim of reviewing the quality of the observation notes made during the pandemic.

## 5.2 Information to people deprived of their liberty

Each of the agencies investigated are obliged to keep the people under their responsibility informed concerning the conditions of their deprivation of liberty. This information can be with regard to, inter alia, their rights during the deprivation of liberty but also what obligations they may have. The fact that people deprived of their liberty receive correct information is a prerequisite for them to be able to exercise their rights.

### The Prison and Probation Service

In the questionnaire that the Parliamentary Ombudsman provided to inmates in the prisons and remand prisons,

a majority (65 per cent) of those who responded stated that they had not received any special information from the Prison and Probation Service concerning Covid-19. A majority (67 per cent) also stated that they did not know what measures the agency had taken to prevent the spread of infection. A quarter (25 per cent) stated that they did not know if they belonged to an at-risk group that could suffer greater upon infection of Covid-19.

When the Prison and Probation Service introduced restrictions on visits and leave, the agency also produced some written information regarding Covid-19. According to the agency, it was primarily for the staff who had daily contact with inmates to be responsible for communicating relevant information orally. Due to this, *Parliamentary Ombudsman Katarina Pahlsson* stated the following in her decision:<sup>4</sup>

“In my opinion, such an approach requires that staff be aware of their obligation to provide information, be knowledgeable concerning what information is to be provided and that they regularly inform and also ensure that inmates absorb the information. The questionnaire provided to inmates shows that there is a clear discrepancy between the Prison and Probation Service's ambition and the result it has achieved in this regard.”

In the questionnaires, inmates stated that they lacked information concerning, inter alia, what measures the Prison and Probation Service is taking to prevent the spread of infection, how long the current situation would last, what measures the Prison and Probation Service takes if an inmate was suspected of being infected with Covid-19,

<sup>4</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

and what measures staff take to ensure that they do not bring the virus into a remand prison or prison. An inmate at the Svartsjö prison made the following comment:

“The Prison and Probation Service has been incredibly bad at providing information about the situation, what happens with leave, visits etc. Most of the information is about washing your hands. The prison staff, who are unqualified, cannot provide information about basically anything. [One of the Prison and Probation Service junior managers] at Svartsjö has held one good information meeting in each department.”

The Parliamentary Ombudsman’s questionnaire also revealed that some inmates had received incorrect information. Inmates at Färingsö prison stated that they had been informed that they were forbidden from applying for leave. At Hall prison, one inmate stated that he had been informed that hospitals did not accept patients who were infected with Covid-19 at all. There were also reports that staff at Hall prison had answered inmates’ questions with “we do not know more than you” or “we do not know”. The importance of correct information was captured by an inmate at Hall prison who made the following comment in the questionnaire:

“Then I think that inmates with symptoms may be reluctant to say anything as no one knows what happens if you are carrying the virus, if we would be locked up or put in solitary [segregation cell; Parliamentary Ombudsman’s note], everything is so terribly unclear. Then, we inmates must get more info about what the symptoms might be. There are inmates who [neither] speak Swedish nor English

and therefore cannot follow news updates, teletext, etc. I mean, if I do not get any info from staff or healthcare personnel here at the prison then how can those who cannot understand the language get information. There is at least one person in every department here [in the building] who cannot make himself understood nor understand the information we receive through the media.”

*Parliamentary Ombudsman Katarina Pählsson* stated that this information showed the danger of inmates receiving poor or limited information, as well as interpreters not being used to a sufficient extent. This lack of information can create a general feeling of anxiety. An anxiety or ignorance concerning the measures

**A lack of knowledge of what measures will be taken in the case of infection can lead to an inmate not disclosing their symptoms**

taken by the Prison and Probation Service in the event of a suspected or confirmed infection can lead to inmates being reluctant to make it known in the event they develop symptoms. This, in turn, can result in a spread of the infection with devastating consequences.

At the concluding dialogue meeting, the management of the Prison and Probation Service stated that it would take the results of the questionnaire into account and would consider the need to produce further written information. *Parliamentary Ombudsman Katarina Pählsson* welcomed this. She further stated that primarily the information should be provided in writing. As such, inmates would have the opportunity to read the information in peace and quiet and, if necessary, return to the information sheet and ask questions. Written information

also helps to reduce the risk of misunderstandings. The Parliamentary Ombudsman finally stated that individual prisons have chosen to produce their own written information. In the view of the Parliamentary Ombudsman, it was unsatisfactory that the Prison and Probation Service did not have a uniform approach. She also highlighted the need to follow up on whether inmates understood the information and have clear routines with instructions on who is responsible for disseminating information.

### **The National Board of Institutional Care**

During the inspection of the special residential home for young people Tysslinge, all of the residents that the Parliamentary Ombudsmen's employees spoke to stated that

### **The Public Health Agency of Sweden's information may need to be supplemented with information about the agency's own operations**

they had received oral information concerning Covid-19. The written information they received referred to instructions for hand washing. During the inspection of the special residential home for substance abusers Hornö, however, several residents stated that they had not received any information from the National Board for Institutional Care regarding Covid-19. One resident stated that he had received oral information.

Another resident stated that the only information he had received on arrival at the special residential home for substance abusers was that one should not hold hands with others. Another resident stated that he received information concerning visitor restrictions from other residents and not from staff.

At the closing dialogue meeting, the management of the National Board for Institutional Care stated that

the premise was that its institutions should, if necessary, print out information on Covid-19 from the Public Health Agency of Sweden's website. *Parliamentary Ombudsman Thomas Norling* stated the following:<sup>5</sup>

“I have no objection to such an approach. The [Public Health Agency of Sweden] is an expert authority on public health issues and has a comprehensive knowledge of Covid-19 and the ongoing outbreak. It seems reasonable that other agencies use this resource instead of producing their own information material. However, individual agencies usually need to supplement this more general information with details on what the outbreak of the disease entails and the consequences for its own operations. When designing the information material, the agency must consider who the information is aimed at, for example children and young people. “

*Parliamentary Ombudsman Thomas Norling* also stated that the people deprived of their liberty should primarily receive information in writing.

### **The Swedish Migration Agency**

During the inspections of the detention centres in Flen and Märsta, it emerged that some detainees had received information orally concerning Covid-19 from staff, but also that only some of them had received information in writing. The information mainly concerned how to wash your hands and general hygiene. It also emerged that detainees at Flen detention centre interpreted information for other detainees regarding the visiting restrictions that had been introduced at the Swedish Migration Agency's detention centre. The agency had also produced an in-

<sup>5</sup> See the Parliamentary Ombudsman's decision of 3 September 2020, ref. no. O 13-2020.

formation sheet regarding the restriction of visits. It contained brief information that the possibility of receiving visits had been limited.

During the inspection of the detention centre in Märsta, it emerged that detainees were concerned that it was unclear to them what a placement in quarantine or segregation due to suspected Covid-19 would entail. There were also reports that detainees at the detention centre had had symptoms of Covid-19, such as a cough and fever, for several days but did not tell this to the staff or the nurse at the detention centre.

At the closing dialogue meeting, the management of the Swedish Migration Agency stated that detainees had mainly received information orally during the residents' meetings that were held every week in the detention centre. Like the National Board of Institutional Care and the National Board of Forensic Medicine, the Swedish Migration Agency used the Public Health Agency of Sweden's information material to inform inmates concerning how they should act to reduce the risk of infection. The material is translated into a variety of languages.

### An inmate hiding symptoms due to a lack of information can lead to serious consequences

It is a necessity for the detainees to be able to both exercise their rights and take appropriate measures to protect themselves and others from infection. Like *Parliamentary Ombudsman Thomas Norling* and *Parliamentary Ombudsman Katarina Pähls-son*, *Parliamentary Ombudsman Per Lennerbrant* argued that information should first and foremost be provided in writing. He then stated the following:<sup>6</sup>

“An example of the importance of providing correct information is shown from the details emerging that detainees at the detention centre in Märsta had not understood what a placement in a quarantine department actually meant and that they had not mentioned that they had symptoms of Covid-19. The fact that individual detainees choose to hide symptoms can have very serious consequences for themselves, fellow detainees and staff as well as the possibility of operating the detention centre in a safe manner. Due to this, I would urge the Swedish Migration Agency to produce written information material that clearly states how the agency acts in connection with suspected or confirmed outbreaks of Covid-19.”

### The National Board of Forensic Medicine

In the Parliamentary Ombudsman's questionnaire, patients in the National Board of Forensic Medicine's examination divisions were asked, inter alia, about what information they had received from the agency regarding Covid-19. Of the patients who responded to the questionnaire, 39 per cent stated that they lacked some form of information and as many responded that they did not. Furthermore, 72 per cent of the patients who responded to the questionnaire stated that they did not know what measures the agency had taken to prevent the spread of infection. At the closing dialogue meeting, the management of the National Board of Forensic Medicine stated that patients should have access to the same information as everyone in society concerning Covid-19. The agency informed patients at the initial conversation upon arrival concerning the obligation to follow the Public Health Agency of Sweden's recommendations,

<sup>6</sup> See the Parliamentary Ombudsman's decision of 9 October 2020, ref. no. O 18-2020.

etc. As of the last week of June 2020, the National Board of Forensic Medicine had posted some information material from the Public Health Agency of Sweden on its departments' notice boards. Furthermore, the examination division in Stockholm used information material produced by Region Stockholm. In her decision, *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that she had no objection to the National Board of Forensic Medicine choosing to use information material produced by, inter alia, the Public Health Agency of Sweden. She further stated that the National Board of Forensic Medicine might, however, need to supplement this more general information with, inter alia, what measures the agency is taking to prevent the spread of infection.

At the closing dialogue meeting, the management of the National Board of Forensic Medicine stated that patients were not informed of what measures the agency would take if a patient became infected. The reason for this was that the National Board of Forensic Medicine deemed there to be a risk that patients would not dare to say that they had symptoms if they knew that it could lead to them being separated from the other patients. *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that a fundamental element of the Swedish strategy for reducing the spread of Covid-19 is that everybody takes

An agency must be generous in its provision of information concerning which measures may be taken

their personal responsibility. Even a person deprived of their liberty, depending on their ability, must be expected to help prevent the spread of infection.

The fact that a person is deprived of their liberty means that situations may arise where they are in need of sup-

port from the agency that deprives them of their liberty in order to be able to contribute to reducing the spread of infection. The patients and the agency can as such, in the view of the Chief Parliamentary Ombudsman, be said to be dependent upon one another in achieving the best results in the efforts that should be made to prevent the spread of infection. Such cooperation must be based on a sense of mutual trust that all the parties concerned will take the necessary measures. Thereafter, the Chief Parliamentary Ombudsman stated the following:<sup>7</sup>

“An important aspect of this is that patients feel sure the agency is doing all it can to protect them from possible infection. For these reasons, I believe that an agency must be generous in its provision of information concerning what measures may be taken in different situations. At the same time, it is important that information is provided in such a way that it is not perceived as a threat or some unauthorised pressure. In my view, the National Board of Forensic Medicine should review the way in which the provision of information to patients can be improved.”

<sup>7</sup> See the Parliamentary Ombudsman's decision of 15 October 2020, ref. no. O 21-2020.



## 6 Restrictions on visits and leave

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Each of the agencies investigated have – with the aim of reducing the spread of Covid-19 – introduced restrictions on the opportunities people deprived of their liberty have to receive visits. Some of the agencies have also limited the possibilities for people deprived of their liberty to spend time outside of the institution in which they are placed.

### 6.1 Opportunities to receive visits

The Prison and Probation Service may limit an inmate's opportunity to receive a visit if it poses a risk to, *inter alia*, safety and security. The National Board of Forensic Medicine may do the same with regard to patients covered by the Remand Prisons Act.<sup>1</sup> The Swedish Migration Agency may restrict visits in special cases if it is deemed to create difficulties for the activities within a detention centre.<sup>2</sup> The three agencies may therefore, in individual cases, limit the opportunities for people deprived of their liberty to receive visits.

This should be compared with the National Board of Institutional Care which – in addition to restricting visits in individual cases – can decide on more general visiting restrictions in relation to people deprived of their liberty under the Care of Abusers Act and the Care of Young Persons Act.<sup>3</sup> The agency may limit visits to one or more institutions if it is deemed necessary with regard to, *inter*

*alia*, the risk of transmission of infection. The National Board of Forensic Medicine also has the opportunity to decide on general visiting restrictions in relation to patients who receive care in accordance with the Forensic Psychiatric Care Act.<sup>4</sup>

The National Board of Institutional Care, however, does not have the possibility to decide on general visiting restrictions in relation to young people who receive care under the Enforcement of Secure Youth Care Act. In these cases, the National Board of Institutional Care – similar to what applies to the Prison and Probation Service, the Swedish Migration Agency and the National Board of Forensic Medicine in relation to the majority of the people deprived of their liberty – must decide in each individual case to limit a person's ability to receive visits. A young person may be refused a visit if it is necessary with regard to maintaining order or security within a special residential home for young people or if it could negatively affect the young person's rehabilitation back into society or otherwise be detrimental to them or others.<sup>5</sup>

#### The Prison and Probation Service

The Prison and Probation Service has a system in place that means that individuals are approved as visitors to a specific inmate upon application. A person who has been granted such a visiting permit has the opportunity then to book a visit to the remand prison or prison where the inmate is located. If the prerequisites for the granting of a visiting permit change, the Prison and Probation Service

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<sup>1</sup> Chapter 7, Section 1 of the Prisons Act and Chapter 3, Section 1 first paragraph of the Remand Prisons Act.

<sup>2</sup> Chapter 11, Section 4 first paragraph of the Aliens Act.

<sup>3</sup> Section 15 a of the Care of Young Persons Act and Section 33 a of the Care of Abusers Act state, *inter alia*, that visits may be refused or limited if they pose a risk to the care or order at the home.

<sup>4</sup> Section 3 of the Restrictions on Visits in Certain Compulsory Care Act (1996: 981).

<sup>5</sup> Section 16 of the Enforcement of Secure Youth Care Act.

can then revoke a visiting permit. A decision to revoke a visiting permit can be appealed after it has been reviewed by the Prison and Probation Service.<sup>6</sup>

On 12 March 2020, the Prison and Probation Service decided on a new annex (Annex 7) to its health and medical care handbook. The annex contained, inter alia, a description of the routine for processing inmates' visits, and it appeared that inmates were only allowed to receive so-called official visits. Other visits to inmates were not allowed until the Public Health Agency of Sweden deemed that the risk of the spread of the disease considered to be dangerous to the public was low. Furthermore, it appeared that the Prison and Probation Service's staff would continue to make decisions in matters concerning visiting permits.

*Parliamentary Ombudsman Katarina Pålsson* stated that there are strong humanitarian reasons for inmates in remand prisons and prisons to have the opportunity to meet, for example, their children and close relatives

**The temporary routine has made it uncertain whether an inmate could have the right to receive visits tested by a higher instance**

during the time they are deprived of their liberty. In the view of the Parliamentary Ombudsman, visits, as well as other opportunities to communicate, are important parts of a humane prison regime and help to counteract the negative consequences of

deprivation of liberty. She further stated that the Prison and Probation Service's approach – limiting the rights of inmates through a description of a routine in an annex to a handbook – appeared to be problematic, not least from

a perspective taking the hierarchy of norms into account. The Parliamentary Ombudsman further stated that, in the legislative history of the Prisons Act and the Remand Prisons Act, there had been no reasoning concerning the Prison and Probation Service's need to be able to introduce general visiting restrictions to prevent the spread of an infection. The agency is also not covered by the Restrictions on Visits in Certain Compulsory Care Act. The Parliamentary Ombudsman stated that the Prison and Probation Service had nevertheless decided this general routine which meant that the agency continued to grant applications on visiting permits, and had not revoked already granted permits.

*Parliamentary Ombudsman Katarina Pålsson* stated that the effect of this scheme was the same as if the Prison and Probation Service had temporarily revoked visiting permits, and in practice the agency had applied it so as to achieve the same result as would have been the case if the Restrictions on Visits in Certain Compulsory Care Act had been applicable to the agency's activities. The Parliamentary Ombudsman did, however, note that decisions under the above-mentioned law can be appealed. Thereafter, the Parliamentary Ombudsman stated, inter alia, the following:<sup>7</sup>

“[It is] in my opinion doubtful whether it is possible for an inmate to appeal a decision where the Prison and Probation Service has approved an application for a visiting permit but at the same time provided general information that visits cannot currently be made. The application for a visiting permit has, after all, been approved. It is true that it is for a court to ultimately decide whether a decision is subject

<sup>6</sup> For a detailed description of the system of visiting permits, see the Royal Supreme Administrative Court Annual Report 1992, case ref. 65 (RÅ 1992 ref 65) and the Supreme Administrative Court case no. 6950-14.

<sup>7</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

to appeal or not, but I can state that the temporary routine has meant that there is considerable uncertainty as to whether an inmate can have their right to receive visits tried in a higher instance. This is deeply unsatisfactory.”

### The National Board of Institutional Care

On 24 March 2020, the National Board of Institutional Care decided on general visiting restrictions at all of its institutions due to Covid-19. The decision was valid until further notice, but no later than 7 April, and entailed a restriction on the possibility of receiving visits for residents who were covered by the Care of Abusers Act and the Care of Young Persons Act. Initially, only young people under the age of 18 were allowed to receive visits from guardians and parents with access rights under the new routine. These visits should then, as far as possible, take place outdoors to prevent the spread of infection. These visiting restrictions expired on 1 July 2020.

The National Board of Institutional Care’s decision on general visiting restrictions did not cover young people serving sentences in accordance with the Enforcement of Secure Youth Care Act. Despite this, these young people were mentioned under a special heading in the agency’s decision. *Parliamentary Ombudsman Thomas Norling* stated that there was, therefore, a risk that those who received the document perceived it as if the general decision on visiting restrictions also applied to residents placed in a home under the Enforcement of Secure Youth Care Act. This risked leading to the misconception that this group of young people could not apply for a visit under the Enforcement of Secure Youth Care Act, and, as such, there was also no obligation for the National Board of Institutional Care to consider such applications.

At the final dialogue meeting that *Parliamentary Ombudsman Thomas Norling* had with the management of the National Board of Institutional Care, it emerged that the basic idea was that residents covered by the Enforcement of Secure Youth Care Act would be allowed to receive visits on the same terms as other residents in the agency’s special residential homes for young people. In the opinion of the Parliamentary Ombudsman, however, the routines in the National Board of Institutional Care’s support document stated that applications from young people covered by the Enforcement of Secure Youth Care Act to receive visits from guardians or parents with access rights would be assessed. The decision on visiting restrictions, which covered the Care of Young Persons Act, showed that it did not cover guardians or parents with rights of access. The Parliamentary Ombudsman then stated the following:<sup>8</sup>

“An important factor in this context is that the law on visiting restrictions does not cover the Enforcement of Secure Youth Care Act, and, as a result, the National Board of Institutional Care has to consider two different sets of rules. The National Board of Institutional Care should consider whether the agency should again introduce general visiting restrictions for residents covered by the Care of Young Persons Act, if it is possible to formulate the instruction concerning the Enforcement of Secure Youth Care Act in a way that better describes the agency’s intention on the matter. Furthermore, in its evaluation the agency should analyse whether, based on its own intention, there have been any unjustified differences in the extent to which residents covered by

<sup>8</sup> See the Parliamentary Ombudsman’s decision of 3 September 2020, ref. no. O 13-2020.



the Enforcement of Secure Youth Care and the Care of Young Persons Act have been allowed to receive visits during the period for which the decision on general visiting restrictions applied.”

### The Swedish Migration Agency

At the Parliamentary Ombudsman’s initial dialogue meeting, the management of the Swedish Migration Agency stated that they had made the assessment that there was no legal basis for the agency to be able to decide on a general ban on visits to detention centres. On 15 March 2020, the Swedish Migration Agency took an administrative decision to limit temporarily the possibility for detainees to receive visits. This restriction meant that only legal representatives were given the opportunity to visit a detainee. In a risk analysis attached to the decision, it was stated, inter alia, that a decision would be provided once an inmate had applied to receive a visit. The Swedish Migration Agency also produced an information sheet for detainees concerning the visiting restrictions. It stated the following:

“Due to the Public Health Agency of Sweden’s recommendations aimed at reducing the spread of the corona virus, we will temporarily limit the possibility of visits to the detention centre. We do this out of consideration for the detainees and our employees. The decision is valid until further notice. “

*Parliamentary Ombudsman Per Lennerbrant* stated that, in his opinion, there was an obvious risk that this information provided to the detainees could be perceived as the Swedish Migration Board having introduced a general ban on visits and, as such, detainees not being able to

apply for visits. For the same reason, there was a risk that the staff had the misconception that they did not need to assess such applications. The Parliamentary Ombudsman then stated the following:<sup>9</sup>

“In my opinion, however, it is inappropriate to give instructions in the way that the Swedish Migration Board has done, as they can be perceived as a general decision on visiting restrictions, which in turn risks leading to detainees not receiving an individual assessment of their right to receive visits and appeal any subsequent decision. The Swedish Migration Agency needs to consider how it can ensure that detainees’ rights to receive visits are processed in accordance with the prevailing rules.”

The Parliamentary Ombudsman also stated that there was reason for the legislator to consider whether the provision in the Aliens Act fully corresponds to the need for visiting restrictions due to any infection control reasons that may arise as a result of an epidemic.

### The National Board of Forensic Medicine

In connection with the investigation of the National Board of Forensic Medicine, it emerged that, at the beginning of July 2020, the agency had only considered a few applications to receive visits. In one of the decisions, the agency had only stated the very high risk of the spread of Covid-19 as the reason for the refusal. *Chief Parliamentary Ombudsman Elisabeth Rynning* emphasised the importance of stating in the assessment which factual circumstances exist which then mean that the prerequisites in the invoked law are deemed satisfied.

<sup>9</sup> See the Parliamentary Ombudsman’s decision of 9 October 2020, ref. no. O 18-2020.

## 6.2 Opportunities for leave

The question of the restriction of people deprived of their liberty's opportunities to spend time outside the institution where they are currently placed only came up in the investigations of the Prison and Probation Service and the National Board of Institutional Care. Inmates in the Prison and Probation Service's remand prisons and prisons may, under certain conditions, be granted leave. An inmate in a prison or remand prison may also, on special compassionate grounds, be granted permission to stay outside the prison or remand prison for a certain short period of time (special leave).<sup>10</sup>

Residents in the National Board of Institutional Care's institutions can, under certain circumstances, be held in a closed unit or in some other way set up for particularly close supervision (care in a closed unit). These residents must be given the opportunity to spend time outdoors on a daily basis and be given the opportunity to engage in physical activity or other leisure activities.<sup>11</sup> The type of outdoor activities, exercise or leisure activities offered to a resident must be assessed in each individual case with regard to treatment and safety considerations.<sup>12</sup> A young person who has been sentenced to secure youth care must begin the enforcement of the sentence in accordance with the Enforcement of Secure Youth Care Act at a closed unit in a special residential home for young persons and must be given the opportunity to engage in activities, stimulation and have outdoor access. As soon as the circumstances allow, a young person serving their sentence is to be given the opportunity to reside in a

more open manner. This person is to be allowed to spend time outside the special residential home for young people upon fulfilment of certain conditions.<sup>13</sup>

### The Prison and Probation Service

In the first version of the new annex (Annex 7) to the Prison and Probation Service's health and medical care handbook, there was a special routine which meant that inmates were only allowed to leave if absolutely necessary. According to this routine, already granted leave would be postponed and new decisions on granted leave would contain information that the date for leave would be announced at a later date. According to the management of the Prison and Probation Service, the described scheme meant that leave applications were "piling up". As this was perceived as unsatisfactory, the routine was changed on 17 March 2020, and thereafter all applications for leave that were not deemed absolutely necessary were rejected. Permits already granted were revoked. *Parliamentary Ombudsman Katarina Pålsson* stated that the change in the routine appeared to be appropriate, as there was, therefore no doubt that an inmate could request a review and appeal the Prison and Probation Service's decision.

According to the first version of Annex 7, all new decisions to grant leave would include a statement that any leave would be granted only when the Public Health Agency of Sweden assessed the risk of the spread of the disease posing a danger to the general public as low, and that the date for any leave would, therefore, be announced at a later date. Based on this information, *Parliamentary Ombudsman Katarina Pålsson* stated that the change in the routine appeared to be appropriate, as there was, therefore no doubt that an inmate could request a review and appeal the Prison and Probation Service's decision.

**The Prison and Probation Service must make an individual assessment of each and every application for leave**

<sup>10</sup> Chapter 14, Section 1 first paragraph of the Prisons Act and Chapter 7, Section 3 first paragraph of the Remand Prisons Act.

<sup>11</sup> Section 34 of the Care of Abusers Act and Sections 15–15 b of the Care of Young Persons Act.

<sup>12</sup> See Government Bill 2017/18: 169 p. 113.

<sup>13</sup> Sections 12, 14 and 18 of the Enforcement of Secure Youth Care Act.

mentary Ombudsman Katarina Pålsson found reason to emphasise the importance of the Prison and Probation Service making an individual assessment of each and every application for leave.

In a later version of Annex 7 (dated 8 April 2020), the Prison and Probation Service stated that only such leave as the agency deemed absolutely necessary could be granted until the Public Health Agency of Sweden assessed the risk of the disease posing a risk to the general public spreading as low. According to the Prison and Probation Service, this could be, for example, for emergency dental visits. The annex further stated that already granted leave would be revoked, and that new leave would normally be refused until the spread of infection was assessed as low. Parliamentary Ombudsman Katarina Pålsson stated that there should be no sweeping instructions that leave already granted should be revoked “as a general rule” and applications for leave “in normal cases” should be rejected. This risked sending the wrong signal that there was no need for any individual assessments of applications received.

### **The National Board of Institutional Care**

At the outbreak of Covid-19, the National Board of Institutional Care decided to limit residents’ opportunities to spend time outside of its institutions. The decision did not affect residents’ opportunities for outdoor access to, for example, exercise yards or spaces directly adjacent to their departments. The National Board of Institutional Care’s supporting documentation showed that only leave outside the department that was necessary, or that could take place without the risk of infection, could be carried out. This could be, for example, time spent outside the home to participate in an oral hearing in court, an urgent home visit or an outdoor activity.

In his decision, Parliamentary Ombudsman Thomas Norling stated that if it was applied correctly, the routine would result in only leave that entailed a risk of spreading Covid-19 being cancelled. Outdoor activities that entailed such a risk were permitted only where deemed necessary. In the opinion of the Parliamentary Ombudsman regarding applications for leave, it appeared that the National Board of Institutional Care had, as such, found a reasonable balance between measures to prevent the spread of infection and the residents’ needs for, and interest in, being outside the confines of their homes.

**The National Board of Institutional Care had a reasonable balance between the need for infection control measures and residents’ need for leave**

## **6.3 Consequences of the restrictions imposed**

### **The Prison and Probation Service**

The restrictions introduced by the Prison and Probation Service meant that inmates, at least at Svartsjö prison (security class 3), were not given the opportunity for short periods of leave to spend time with their children.

Previously, inmates could spend time outside of prison for an hour and have contact with their children via their private cell phones. In view of the

**The temporary routines have meant that inmates have fewer opportunities to have contact with their children**

purpose of this type of leave and the fact that there is no physical contact with another person, Parliamentary Ombudsman Katarina Pålsson stated that the applica-

tion of the routine in these cases was not proportionate. She further stated that it was unclear whether the Prison and Probation Service had taken into consideration the Convention on the Rights of the Child in its decision to impose restrictions.<sup>14</sup> The Parliamentary Ombudsman stated that there were reasons for the Prison and Probation Service to consider how the other restrictions that had been introduced and relate to children of inmates comply with the Convention.

As a rule, inmates must make telephone calls within the Swedish Prison and Probation Service's INTIK system. However, an inmate in a security class 1 prison may not call IP telephony within INTIK, and a previous investigation by the Parliamentary Ombudsmen shows that prisons in higher security class (1 and 2) are restrictive in granting telephone permission to use mobile phones. In order to compensate for the lack of opportunity to make calls within INTIK, the Prison and Probation Service, in certain cases, may grant inmates permission to call outside of this system. Such conversations are to be intercepted by the Prison and Probation Service's staff unless that is clearly unnecessary.<sup>15</sup>

In the questionnaire conducted by the Parliamentary Ombudsman, inmates at Hall prison (security class 1) expressed the view that the restriction on the possibility to receive visits had not resulted in any compensatory measures outside the INTIK system. One inmate described the situation as such:

“I am not allowed to receive visits from loved ones, I can understand this. What is more problematic for

me and the others is that we are not allowed to call our relatives even though we are not on restrictions. We are told that contact must be made by letter. With the INTIK-system, the person you want to call must have fixed telephony, not IP telephony or mobile, which almost everyone has. This also applies to those who have young children on the outside. This is stressful.”

Information emerged that inmates' contact with adult relatives could amount to as little as one ten-minute conversation a month. *Parliamentary Ombudsman Katarina Pålsson* stated that this was a very limited opportunity for contact with relatives, and she emphasised that both the Parliamentary Ombudsman's medical expert and its expert in psychology had stated that this is a risk factor for significant psychiatric ill health amongst inmates.

### The National Board of Institutional Care

Likewise for those admitted to the National Board of Institutional Care's institutions, the restrictions on visits and the possibility of spending time outside of the institution's confines had negative consequences for its residents. An obvious consequence of the general restriction on visits was that residents covered by the Care of Abusers Act and the Care of Young Persons Act were not able to receive visits from relatives. During the inspection of the special residential youth home Tysslinge, several residents stated that they had been informed that their parents were not allowed to visit. During the inspection, information also emerged

**It is central that both residents and visitors receive the right information about what the imposed restrictions entail**

<sup>14</sup> Article 9 (3) of the Convention on the Rights of the Child states, States Party shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

<sup>15</sup> See Chapter 7, Sections 12–14 of the Prison and Probation Service's regulations and guidelines and ref. no. 2689-2015 in the Parliamentary Ombudsmen Annual Report Summary 2017/18.

that only one resident had received a visit from a relative on one occasion during the period 24 March to 15 May 2020. *Parliamentary Ombudsman Thomas Norling* stated that the general restrictions on visits never included the opportunity for young residents to receive visits from guardians or parents with access rights. He then stated the following:<sup>16</sup>

“The information that emerged during the inspection indicates that the National Board of Institutional Care’s decision on restrictions had more far-reaching effects at the special residential home for young people Tysslinge than the decision-maker intended. I would like to emphasise the importance of the National Board of Institutional Care taking the necessary measures to ensure that the decision is applied correctly if the agency again introduces general restrictions on visits. Furthermore, it is central that both residents and visitors receive the correct information concerning what the decision means and what consequences it may have for them.”

During the inspection of the special residential home for substance abusers Hornö, details emerged indicating that residents and staff had differing views on what the temporary routine of limiting outdoor access entailed. According to staff, the routine was applied in such a way that residents were not allowed to spend time outdoors in places where other people were. Residents stated that the routine had meant that they were only permitted to have outdoor activities in order to be able to carry out

“very important” matters. *Parliamentary Ombudsman Thomas Norling* stated the following:<sup>17</sup>

“Since these activities constitute an important element during the time spent at the institution, I would also like to highlight the importance of the National Board of Institutional Care trying to offer some form of alternative if it concludes that an activity cannot be carried out. If the National Board of Institutional Care can offer some form of time spent outside the confines of the institution, then this can help to reduce the negative consequences of the imposed restriction.”

### **The National Board of Forensic Medicine**

Until the beginning of July 2020, the National Board of Forensic Medicine had not made any decision in accordance with the Restrictions on Visits for Certain Compulsory Care Act. The Parliamentary Ombudsman’s investigation further showed that it is not particularly common for patients covered by the Remand Prisons Act to apply to receive visits during the relatively short time they are at one of the National Board of Forensic Medicine’s examination divisions. When this does happen, the agency assesses the application before each visit, and, unlike the Prison and Probation Service, the National Board of Forensic Medicine does not issue visiting permits that are valid for an indefinite period. During *Chief Parliamentary Ombudsman’s Elisabeth Rynning’s* investigation, it emerged that until July 2020, the National Board of Forensic Medicine had only assessed and rejected two applications for receiving visits.

<sup>16</sup> See the Parliamentary Ombudsman’s decision of 3 September 2020, ref. no. O 13-2020.

<sup>17</sup> See the Parliamentary Ombudsman’s decision of 3 September 2020, ref. no. O 13-2020.



## 6.4 Compensatory measures

### The Prison and Probation Service

In connection with the Prison and Probation Service limiting inmates' opportunities to receive visits and take leave, the agency decided to remove temporarily the fee for calls within the INTIK system. Initially, this applied to both domestic and foreign calls. After a while, the agency decided to charge half the fee for international calls. The questionnaires distributed by the Parliamentary Ombudsman of inmates showed that the measure with removed/reduced fees was appreciated. However, views were expressed that the limited access to INTIK telephones and telephone hours meant that the measure in some prisons did not have any major effect on inmates' ability to have contact with, inter alia, relatives.

In mid-May 2020, the Prison and Probation Service made permanent a pilot project which aimed at giving inmates the opportunity to communicate with their young children through video calls via tablets. According to the management of the Prison and Probation Service, each remand prison and prison would initially have access to one tablet, and in total the agency would procure 300 tablets for this purpose. In the opinion of *Parliamentary Ombudsman Katarina Pålsson*, this pilot project was positive and it showed that the Prison and Probation Service was actively working to find new ways to reduce the negative consequences of the restrictions introduced on visits and leave for inmates. She noted that once the tablets were in place, it would mean a welcome relief for inmates. However, the number of tablets for inmates was relatively limited, and the Parliamentary Ombudsman stated that conducting video calls was dependent on staff being in attendance. In the view of the Parliamentary Ombudsman, there was, therefore, a risk that inmates' ability to use the tablets was severely limited.

At the final dialogue meeting that the Parliamentary Ombudsman had with the management of the Prison and Probation Service, it emerged that the agency would analyse the consequences of the restrictions on visits and leave. *Parliamentary Ombudsman Katarina Pålsson* stated that this was desirable, and she further stated that the Prison and Probation Service should immediately see whether it was possible to introduce further compensatory measures. In the opinion of the Parliamentary Ombudsman, the agency should also review whether the measures really have to be as far-reaching as they had hitherto been. With this in mind, the Parliamentary Ombudsman was of the view that the Prison and Probation Service needed to evaluate whether the restrictions additionally have to include shorter leave beyond the prison confines. Thereafter, the Parliamentary Ombudsman stated the following:<sup>18</sup>

**The Swedish Prison and Probation Service should review the possibilities of introducing further compensatory measures**

“In my opinion, the Prison and Probation Service should also investigate what possibilities it has for granting visits where both inmate and visitor can maintain a physical distance. This could include, for example, allowing visits outdoors or that visits are carried out in rooms, where inmates and visitors are separated from one another by a glass pane. The latter type of visit entails a significant restriction, but is, in my opinion, preferable to an inmate not being able to receive any visits at all.”

<sup>18</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

### The National Board of Institutional Care

The general restrictions on visits that were introduced meant a severe restriction on the possibility of receiving visits to the National Board of Institutional Care's institutions, especially for people in special residential homes for substance abusers who, for a certain period of time, were completely cut off from visits by, inter alia, relatives. The visits that were allowed would initially take place outdoors as far as were possible to prevent the spread of infection. Subsequently, the National Board of Institutional Care reviewed its decision on several occasions and introduced some relief from the original restrictions. At the beginning of May, all residents were able to receive visits from close relatives in cases where a video call was not possible. *Parliamentary Ombudsman Thomas Norling* emphasised that it was positive that the National Board of Institutional Care had tried to reduce the negative effects of its decision by continuously reviewing the need for the visiting restrictions and, when possible, introducing some form of relief.

### The Swedish Migration Agency

*Parliamentary Ombudsman Per Lennerbrant* noted that the Swedish Migration Agency had, to some extent, tried to compensate for the restriction on the possibilities for

**The Swedish Migration Agency should consider making arrangements so that detainees can receive outdoor visits**

that during the investigation of the National Board of Institutional Care's activities, details had emerged that the agency had tried to find alternatives so that it could

receiving visits by, for example, allowing detainees to make video calls with external parties, which was perceived as positive. He emphasised, however,

be possible to carry out visits in an "infection-safe" way. In the event that the Swedish Migration Agency made the assessment that there was a continued need for, or reason to return to, the far-reaching restrictions on visits to detainees that applied during the spring and summer of 2020, there were reasons for the Swedish Migration Agency to consider arranging outdoor visits or taking other measures which mean that the restrictions did not have to be as extensive.

### The National Board of Forensic Medicine

During the investigation, the National Board of Forensic Medicine's management stated that the agency examined what measures could be taken to reduce the risk of infection during visits, for example the ability to install protective screens. In a statement to the Parliamentary Ombudsman following the dialogue meeting, the National Board of Forensic Medicine stated that it had procured and tested screens at the examination division in Stockholm and that these screens would also be arranged at the examination division in Gothenburg. *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that the use of protective screens entails a certain restriction on a visit, but that the measure is less intrusive than a patient not being able to receive a visit at all. She, therefore, welcomed the fact that the National Board of Forensic Medicine had taken measures to achieve a reasonable balance between patients' interest in being able to receive visits and the need to protect them from infection during the ongoing pandemic.

## 6.5 The significance of the Public Health Agency of Sweden's assessments

The investigations have shown that the Prison and Probation Service, the Swedish Migration Agency and the Na-

tional Board of Institutional Care made changes to one or more introduced restrictions depending on the Public Health Agency of Sweden's assessments of the risk of the spread of Covid-19. According to the Prison and Probation Service's description of a routine, visits and leave would only be permitted when the Public Health Agency of Sweden deemed the risk of the spread of Covid-19 as low. The Swedish Migration Agency also stated that its administrative decision to restrict visits would apply until that time. The National Board of Institutional Care stated in its supporting documentation that denied leave could only be implemented once the Public Health Agency of Sweden had changed its assessment of the risk of the infection spreading.

*Parliamentary Ombudsman Katarina Pahlsson* stated she understood the need for the Prison and Probation Service to consider the Public Health Agency of Sweden's assessments.

**When assessing the need for further restrictions, the Prison and Probation Service consider all relevant circumstances.**

In her opinion, however, the Prison and Probation Service must continuously consider relevant circumstances in assessing whether there are grounds for further restrictions. In this process, the Public Health Agency of Sweden's assessments must be taken into account, but the Prison and Probation Service must also consider other factors. These can be with regard to, inter alia, the availability of testing for Covid-19, the type of leave in question and whether it is possible to receive visits at a physical distance. The Parliamentary Ombudsman then stated the following:<sup>19</sup>

<sup>19</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

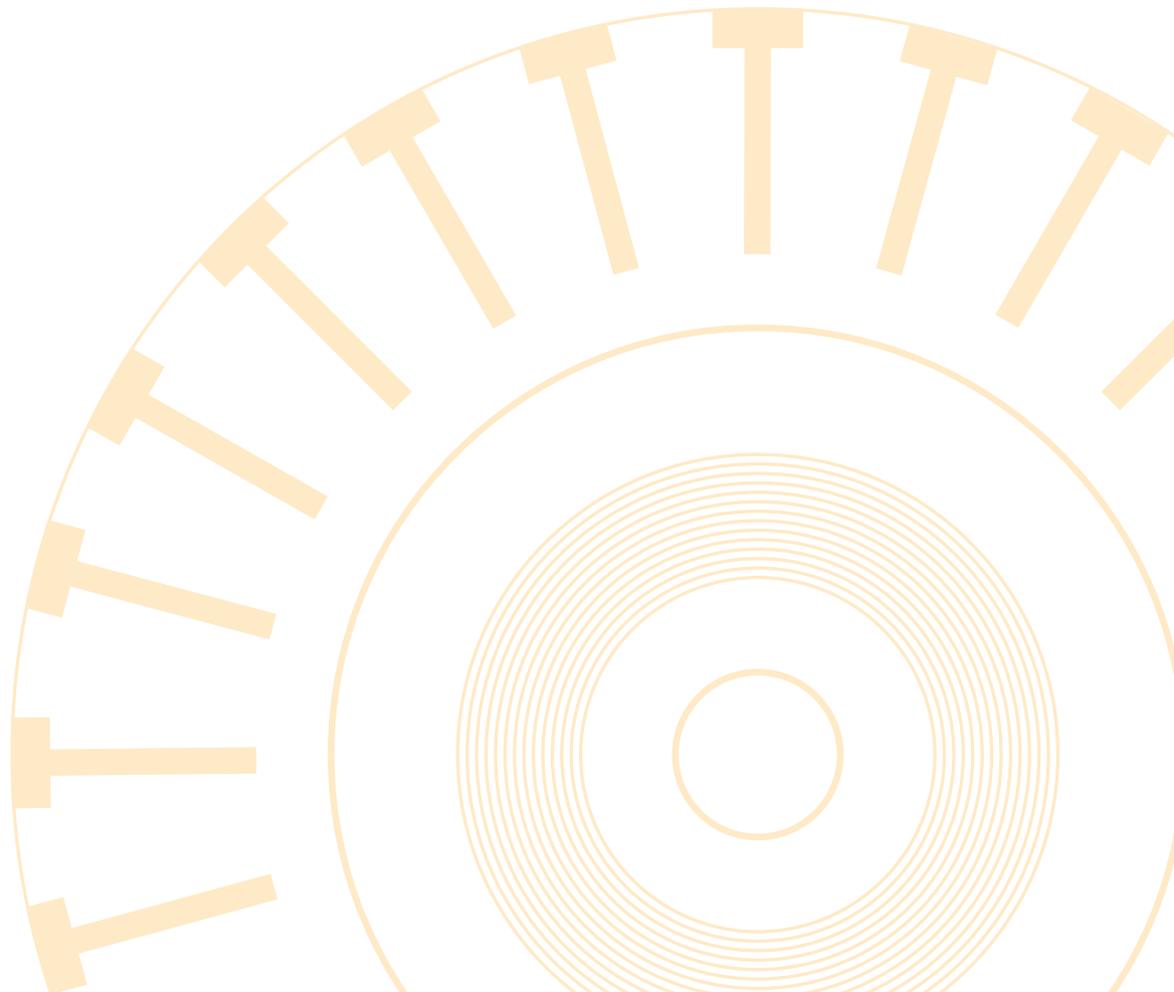
“The fact that the Prison and Probation Service has linked the duration of the measures to the Public Health Agency of Sweden's assessment of the spread of infection in the manner specified might give the impression that the Prison and Probation Service has transferred responsibility for decision-making to another agency. The wording can also send the signal that the situation is beyond the Prison and Probation Service's control, and, as such, the agency cannot or does not need to take any measures to ensure that inmates can once again receive visits, etc. For these reasons, I would like to emphasise the importance of the Prison and Probation Service, even in a crisis, making independent assessments of whether control and coercive measures decided are proportionate, and whether it is possible to achieve the same purpose with less intrusive measures.”

*Parliamentary Ombudsman Thomas Norling* made a similar statement in his decision. *Parliamentary Ombudsman Per Lennerbrant* stated the following in his decision after investigating the Swedish Migration Agency:<sup>20</sup>

“The administrative decision has had far-reaching effects for detainees in the Swedish Migration Agency's detention centres. In my opinion, an agency should regularly review these types of intrusive measures, in order to ensure that they do not last longer than necessary. The Swedish Migration Agency should, therefore, have limited the validity of the decision to a specific final date and thereafter made a new, time-limited decision on the prerequisites for it to continue to exist. In its review, the Swedish Migration Agency must naturally consider the Public

<sup>20</sup> See the Parliamentary Ombudsman's decision of 9 October 2020, ref. no. O 18-2020.

Health Agency of Sweden's recommendations and forecasts for the spread of infection, but there are additionally other aspects that the agency may need to consider in such an assessment. This could be, for example, with regard to what other ways there are to limit the risk of the spread of infection during visits. In my opinion, the review decision should state how the agency has assessed these and other relevant circumstances.”



## 7 Other issues

This section presents some specific issues that are specific to one of the agencies investigated. The issues addressed are:

1. Convicted persons presenting themselves at prison and other new admissions
2. Access to healthcare in prisons and remand prisons
3. The actions of prison and remand prison staff
4. A former detainee who died of Covid-19

### 7.1 Convicted persons presenting themselves at prison and other new prison admissions

Anyone given a prison sentence has the right to start serving the sentence upon request if the sentence has attained legal force. If the person convicted is not deprived of their liberty when the sentence becomes enforceable, they must be ordered without delay to present themselves at the prison where the sentence is to be served no later than a certain date.<sup>1</sup> Despite a convicted person having the right to begin serving a prison sentence, the Prison and Probation Service may still refuse to admit them into a remand prison or prison in the event of a riot, illness or other similar extraordinary circumstances.<sup>2</sup>

In order to prevent the spread of Covid-19, the Prison and Probation Service introduced certain restrictions in the spring of 2020 regarding new admissions to prisons of convicted people who were not in custody. In a first version of Annex 7 to the Prisons and Probation Ser-

vice's handbook, the agency postponed all obligations for persons to present themselves at remand prisons or prisons. This was changed on 17 March 2020, and the new version of the routine stated that obligations to present themselves at remand prisons and prisons would be postponed by two weeks at a time if the person showed symptoms of the virus.

*Parliamentary Ombudsman Katarina Pålsson* noted that the Prison and Probation Service had not made full use of the opportunity provided by the Length of Sentence Ordinance regarding the possibility of postponing enforcement of the serving of sentences. Furthermore, she stated that the risk of being infected with Covid-19 had been assessed as very high and continued:<sup>3</sup>

“It is a disease which poses a danger to the general public and society as a whole, and infected people can show slight or atypical symptoms. It has emerged that the health check carried out upon new admissions can be very limited and sometimes not even performed by trained healthcare staff. These are circumstances that the Prison and Probation Service must, in my opinion, consider when applying section 3 of the Length of Sentence Ordinance.”

In the Parliamentary Ombudsman's investigation, details emerged that prisons managed new inmates differently. In one of the Prison and Probation Service's prisons, new inmates were placed separately from other inmates for a certain period of time. Meanwhile, in two other

<sup>1</sup> Sections 5 and 6 of the Length of Sentence Act (2018:25).

<sup>2</sup> Section 3 of the Length of Sentence Ordinance (2019:95).

<sup>3</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

prisons, new inmates who did not show any symptoms were initially given the opportunity to mix directly with other inmates. These differing routines were explained by the management of the Prison and Probation Service by the fact that the prisons have different practical pre-conditions for separating groups of inmates from each other. In the questionnaire that the Parliamentary Ombudsman conducted of inmates, it emerged that when new inmates were given the opportunity to associate with other inmates, this created concern among existing inmates. There were also views expressed that such an arrangement counteracted the possible gains achieved with the decision to cancel virtually all leave. From *Parliamentary Ombudsman Katarina Pålsson's* statement, it appears that, in view of the devastating consequences the spread of Covid-19 can have in a remand prison or prison, the measure of separating new inmates from other inmates for a certain period of time seemed reasonable.

## 7.2 Access to healthcare in prisons and remand prisons

An inmate in need of healthcare must be examined by a doctor. A doctor must also be called upon an inmate's request and where it is not obvious that an examination is not required.<sup>4</sup> Furthermore, an inmate in a remand prison or prison who requires healthcare must be treated in accordance with the instructions given by a doctor. If an inmate cannot be examined or treated in an appropriate manner in a remand prison or prison, regular public medical care must be sought. If necessary, an inmate is to be transferred to a hospital.<sup>5</sup> Each remand prison and

prison is to have access to a certified doctor and staff with appropriate medical training.<sup>6</sup>

In the questionnaire distributed by the Parliamentary Ombudsman to inmates, details emerged that the spread of Covid-19 had had a negative impact on their access to healthcare. Nine inmates at Kronoberg prison stated that, due to the pandemic, they were only allowed to see healthcare professionals for matters related to Covid-19. This was, however, rejected by staff during the inspection of the prison.

An inmate in the prison provided the following description in the questionnaire:

“I had symptoms and fever and was ill for two weeks. I did not receive any medical care. They said there is no help, just lie in your room. The staff said that even if you would be ill in the community, the hospitals do not accept you. Now after three weeks I have gotten better. But still [I] have not seen the nurse. Got a note that due to the spread of infection, health care is not seeing anyone.”

An inmate at Hall prison described the situation as follows:

“They said, ‘If you get sick, we’ll lock you in the room. You will not be sent to hospital unless we think you are going to die.’ Strange considering the guards lack the medical knowledge to make that assessment.”

At the end of March 2020, the Prison and Probation Service's regions produced routine documents entitled “Changed healthcare procedures related to Covid-19.”

<sup>4</sup> Chapter 5, Section 1 of the Remand Prisons Act.

<sup>5</sup> Chapter 9, Section 1 first paragraph of the Prisons Act and Chapter 5, Section 1 of the Remand Prisons Act.

<sup>6</sup> Section 25 of the Prisons Ordinance (2010:2010) and Section 15 of the Remand Prisons Ordinance (2010:2011).

The documents are largely identical and Region South's routine was dated 27 March 2020. The routine showed, inter alia, that it was important that healthcare staff only met clients with medical conditions which could not wait. In order to reduce the workload on nurses and reduce close contact with new clients, a less detailed note-taking template had been developed for initial health examinations. Furthermore, the follow up to these examinations had been removed. Finally, it was stated in the routine that the number of tests taken would be minimised.

*Parliamentary Ombudsman Katarina Pålsson* explained that she could not interpret the situation in any other way than that the spread of Covid-19 through society had

### The Prison and Probation Service needs to ensure that there are no unauthorised restrictions on access to health care

led to inmates' access to healthcare being limited. She stated that she did understand that healthcare staff, in the event of suspected or confirmed infection of Covid-19, could need to reprioritise and take precautionary measures, but said that the routine in question was not based on the premise that there would be reprioritisations in the event of a suspected or confirmed infection. She further stated the following:<sup>7</sup>

“Instead, the routine is based on staff generally minimising all contact with inmates. In my opinion, this is unacceptable. This also applies to the fact that it is not clear for how long the general restriction will apply. There are reasons for the Prison and Probation Service to review its routines and how they

are applied to ensure that there are no unjustified restrictions on inmates' access to health and medical care.”

### 7.3 The actions of remand prison and prison staff

With regard to the responsibility of staying at home in the event of displaying or feeling symptoms of the virus, several inmates in remand prisons and prisons stated in their responses to the Parliamentary Ombudsman's questionnaire that staff had been at work despite the fact that they had a cough or runny nose. An inmate at Hall prison described the situation as follows:

“I think there are several members of staff who have or have had symptoms when I've heard them walking around and coughing and so on. Then there are a lot of new staff here and a lot of regular staff away, and when you ask if they are home because they have symptoms and so on, it feels like it is being covered up since the staff who are away have had a lot of contact with us inmates and it worries me that the prison is not transparent enough to tell us when the staff has fallen ill so we get to know if we are at risk of contracting the virus.”

In her decision, *Parliamentary Ombudsman Katarina Pålsson* stated she understood that it can create anxiety among inmates if staff show symptoms that may indicate infection of Covid-19. As a rule, inmates do not have the opportunity to choose which staff they should be in the vicinity of. Additionally, inmates often come into close contact with staff (less than the two metres under the general guidelines on physical distance), for

<sup>7</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

example during body searches. For these reasons, in the view of the Parliamentary Ombudsman, there is a great responsibility on staff working in secure environments to stay at home even with very limited symptoms. In the questionnaire, several inmates stated that there was also a large staff turnover. An inmate at Svartsjö prison made the following comment:

“Since the decision to remove visits + leave was made with the motivation to protect us inmates + staff, it is a bit strange that the staff changes have more or less doubled. Fever checks should be performed on staff when entering the prison, but does not happen since staff show up for work with fever and a sore throat. Introducing a ban on visits and leave has not limited or [reduced] the risk of becoming infected with any virus, instead we have had the same risk of infection as the rest of society. The only thing that has been limited is my opportunity to meet [my family]. Otherwise, everything is the same and the same applies to the risk of being exposed to infection.”

After Parliamentary Ombudsman Katarina Pålsson’s final dialogue meeting with the management of the Prison and Probation Service, the agency announced that there were now strategies where the question of limiting the number of inmates that the employees came into contact with was “included”. Due to this, the Parliamentary Ombudsman emphasised that a reasonable starting point must be that contact between departments is reduced

and that the activities are organised in such a way that staff do not work in different places as much as is possible.

During conversations that the Parliamentary Ombudsmen employees had with staff in prisons and remand prisons, it emerged that inmates who were suspected or confirmed to be infected with Covid-19 at Kronoberg prison had been placed in the prison’s department assigned for caregiving. Five of a total of ten places were intended for these inmates, and the other five places were used for placement of inmates with other care needs. It was stated that the same staff came into contact with the inmates there regardless of the reason why they were placed in the department. *Parliamentary Ombudsman Katarina Pålsson* stated that there was, therefore, a risk of Covid-19 infection being transmitted to inmates who had other types of care needs. For this reason, she assumed that the staff there at least had access to the right protective equipment and were, in addition, trained in how to use it.

#### 7.4 A former detainee who died of Covid-19

During the investigation of the Swedish Migration Agency’s measures in connection with Covid-19, details emerged that a man previously detained at the detention centre in Märsta had been infected with Covid-19 and then died in hospital. After the Police Authority had decided to revoke his detention order, the man was still allowed to remain in the detention centre. The head of the detention centre made a note stating that they had kept the man in the detention centre and that the decision had been made with “consideration of the situation in Sweden where we have a responsibility to reduce the spread of infection.” According to the note, the person

was aware that he could leave the detention centre whenever he wanted.

When the man's condition deteriorated after a few days, the detention centre staff called an ambulance. After examining the man, the ambulance staff decided not to take him to hospital. Two days later, the nurse on duty at the detention centre assessed that the man needed hospital treatment. The man was taken by ambulance to hospital where he died.

At the closing dialogue meeting, the management of the Swedish Migration Board stated that it cannot detain someone only on the grounds that they have expressed their consent to the measure. The health service made the assessment that the person would not be admitted into hospital care, and the infectious diseases doctor did not want the person to be out in the community. According to the management, the Swedish Migration Agency chose to resolve the situation that arose in a pragmatic way and that the agency would probably act in the same way again if a similar situation arose.

In his decision, *Parliamentary Ombudsman Per Lennerbrant* stated that he had no reason to question the information that the man understood that he could le-

### People not subject to a detention decision are not to be housed in a detention centre

ave the detention centre when he so wished. In the opinion of the Parliamentary Ombudsman, there was a clear risk that there was a misunderstanding or ambiguity about what rights and options for action the man had, which could lead to his freedoms and rights not being fully respected. Another important circumstance is that it must be considered as unclear the extent of responsibility for the man's state of health the Swedish

Migration Agency had after the detention order had ceased to be in force.<sup>8</sup> The Parliamentary Ombudsman then stated the following:

“It must not happen that people who are not subject to a valid detention decisions are accommodated in a detention centre. In the situation that arose, the Swedish Migration Agency had an obligation to do its utmost to find a solution that meant that the man could leave the detention centre as soon as possible. In this situation, the man spent several days in the detention centre after the detention order had been revoked. It is problematic that the Swedish Migration Agency did not ensure that the the situation was solved before the man was taken later to hospital. “

Simultaneously, *Parliamentary Ombudsman Per Lennerbrant* noted that the circumstances in the case in question were very unique and that the detention centre's options for action were limited. He called on the Swedish Migration Agency – if it had not already been done – to urgently make a comprehensive analysis of the incident. The analysis should illustrate on, inter alia, what alternatives were available, and it should be made in consultation with other agencies and actors. In the view of the Parliamentary Ombudsman, it should also cover the contact that the Swedish Migration Agency's staff had with the infectious diseases doctor and whether there was a need to clarify in a dialogue with the infectious diseases doctor what the legal options was for the Swedish Migration Agency in the situation that arose.

<sup>8</sup> Chapter 11, Section 2 second paragraph of the Aliens Act.



## 8 Summary of the Parliamentary Ombudsmen's conclusions

On the basis of what has emerged in the investigations of, inter alia, shortcomings in the agencies' crisis preparations as well as shortcomings in the legislation, each Parliamentary Ombudsman has submitted their decisions to the Government for attention. *Chief Parliamentary Ombudsman Elisabeth Rynning* and *Parliamentary Ombudsman Per Lennerbrant* have also submitted for attention the decisions to the so-called Corona Commission, which was established by the Government on 30 June 2020.<sup>1</sup>

### 8.1 Shortcomings in the agencies' preparations

The Prison and Probation Service, the National Board of Institutional Care, the Swedish Migration Agency and the National Board of Forensic Medicine conduct functions vital to society. In the decisions concerning the Prison and Probation Service and the National Board of Institutional Care, *Parliamentary Ombudsman Katarina Pålsson* and *Parliamentary Ombudsman Thomas Norling* stated that it is crucial that the agencies make preparations for any possible crises, such as a pandemic, and that they train staff and plan for measures to be taken. The purpose of such preparations is, inter alia, to ensure that any measures then taken can be considered as appropriate, proportionate and legally secure.

In their investigations, the Parliamentary Ombudsmen have been able to establish a number of shortcomings in the agencies' crisis preparations. For example, *Parliamentary Ombudsman Katarina Pålsson* stated that one

of the first measures taken by the Prison and Probation Service in mid-March 2020 restricted inmates' rights to receive visits and take leave. However, this measure was part of a routine description introduced as an appendix to the Swedish Prison and Probation Service's health and medical care handbook. In the opinion of the Parliamentary Ombudsman, the manner in which the Prison and Probation Service introduced the restrictions was problematic and she therefore questioned whether the agency was sufficiently prepared for the crisis caused by the pandemic. She further stated:<sup>2</sup>

**Well-prepared crisis management contributes to predictability for both inmates and staff**

“[It should] be reasonably possible to demand that there is better preparation for how the Prison and Probation Service is to handle the spread of a disease that pose a danger to public or society. Well-prepared crisis management with clear rules and structures contributes to predictability for both inmates and staff regarding which measures may be taken in a crisis. I assume the Prison and Probation Service will evaluate and analyse how the agency has handled the ongoing pandemic. This also ensures that any measures taken in relation to inmates in the next crisis are legally secure, appropriate and proportionate.”

<sup>2</sup> See the Parliamentary Ombudsman's decision of 30 June 2020, ref. no. O 12-2020.

<sup>1</sup> See the Commission terms of reference in dir.2020:74

Parliamentary Ombudsman Thomas Norling made a similar statement in his decision following the investigation of the National Board of Institutional Care.

## 8.2 The possibilities to separate inmates in order to counteract the spread of infection

All of the agencies investigated have introduced routines, at short notice, for how staff should act in the event of a suspected or established Covid-19 infection. During the investigation, however, it has emerged that there was some uncertainty concerning how staff should act. Following the investigation of the National Board of Institutional Care, *Parliamentary Ombudsman Thomas Norling* stated that the agency had applied the provisions on separate care in a way that was very dubious.

The investigation carried out by *Chief Parliamentary Ombudsman Elisabeth Rynning* of the National Board

Since a person deprived of their liberty is in a vulnerable situation, there is a significant risk that volunteering will become an illusion

of Forensic Medicine's forensic psychiatric examination divisions raised the question of how far the Communicable Diseases Act's provisions on voluntary measures can be applied in situations where a person is deprived of their liberty, without risking to undermine the rule of law. In particular, this applies to agreements that can be perceived as the waiving of a constitutionally protected right. Since a person deprived of their liberty is in a vulnerable situation, there is, in the opinion of the Chief Parliamentary Ombudsman, a significant risk in this context that voluntariness becomes an illusion. This

applies not least in relation to people susceptible to, or with diagnosed, mental disorders that may affect their decision-making abilities.

It is possible for the agencies under investigation to separate inmates in certain situations. Following his investigation of the Swedish Migration Agency, *Parliamentary Ombudsmen Per Lennerbrant* stated that he did not rule out that a situation may arise where an inmate, who

A decision to separate cannot replace measures under the Communicable Diseases Act

is suspected or confirmed to be infected with a disease posing danger to the public and who, for example, displays behaviour that risks exposing others to infection, constitutes such a danger that there exists a legal basis for a decision on segregation. However, such a decision can only be aimed at averting a fast arising and potentially dangerous situation. In the Parliamentary Ombudsman's view, it must not therefore be the case that the agency routinely takes decisions on segregation as a measure to counteract infection. Nor can a decision on segregation replace the measures that may need to be taken in line with the Communicable Diseases Act. *Chief Parliamentary Ombudsman Elisabeth Rynning* and *Parliamentary Ombudsman Thomas Norling* made similar statements in their respective decisions.

Against this background, *Chief Parliamentary Ombudsman Elisabeth Rynning* pointed out that an agency responsible for people deprived of their liberty is dependent on the existence of well-functioning cooperation with the regions' infectious diseases doctors who

Well-functioning crisis management is based on, inter alia, having the preconditions in place for good cooperation

know the preconditions under which the agency operates and the measures it is able to take to prevent the spread of infection. In addition, *Parliamentary Ombudsman Per Lennerbrant* stated that a well-functioning crisis organisation is based on, inter alia, agencies' and other actors' abilities and preconditions for good cooperation.

*Chief Parliamentary Ombudsman Elisabeth Rynning* also stated that the details that emerged during the investigation of the National Board of Forensic Medicine highlighted the difficulties that may arise for agencies responsible for people deprived of their liberty in a situation where there exists a risk of spread of infection. In her view, neither the Communicable Diseases Act nor the laws governing the National Board of Forensic Medicine's activities provide sufficient support for the measures that may be necessary to prevent the spread of infection in a way that provides sufficient protection whilst simultaneously being proportionate and legally secure. In her view, it appeared obvious that the preconditions for such measures in activities where people are held deprived of their liberty should be urgently reviewed.

The issue of cooperation between agencies was also raised with regard to the possibility of testing for infection. Representatives of the Swedish Migration Board,

### Testing is an important part of preventing the spread of infection among people deprived of their liberty

the National Board of Forensic Medicine and the National Board of Institutional Care stated that, at the beginning of the pandemic, there were limited opportunities to test for Covid-19. In his decision following the investigation of the National Board of Institutional Care, *Parliamentary Ombudsman Thomas Norling* noted that, as recently

as the beginning of June 2020, the agency experienced differences between the different regions in the extent to which staff were given the opportunity to test. Both *Parliamentary Ombudsman Katarina Pålsson* and *Parliamentary Ombudsman Per Lennerbrant* stated in their decisions that testing is an important part of the work in preventing the spread of infection among people deprived of their liberty. *Parliamentary Ombudsman Per Lennerbrant* noted that the safety and security of inmates during a pandemic largely depends on the capacity to test for infection and that such tests are carried out. The investigations of the Swedish Migration Board, the National Board of Forensic Medicine and the National Board of Institutional Care continued until the summer, and it was reported that the possibilities to perform tests had gradually improved over the course of the pandemic. In her decision, *Chief Parliamentary Ombudsman Elisabeth Rynning* pointed out that the Communicable Diseases Act is based on the premise that the testing of suspected cases of diseases covered by the law can take place.

The lack of coordination was also made clear when state agencies were not subject to the mandate given by the Government to the National Board of Health and Welfare to secure protective equipment and other protective materials for use.<sup>3</sup> In her decision, *Chief Parliamentary Ombudsman Elisabeth Rynning* stated that it was serious that it was not until the end of May that the National Board of Forensic Medicine had sufficient protective equipment. This led to – as she understood it – staff not being able to use protective equipment in all the situations recommended by the Public Health Agency of Sweden and Region Stockholm.

<sup>3</sup> See the Government's decision of 16 March 2020, S2020/01558/IFS.

### 8.3 Physical distance

The strategy chosen by Sweden to limit the spread of Covid-19 is largely based on everyone taking individual responsibility and, among other things, keeping a physical distance from other people. In their investigations, each Parliamentary Ombudsman has found that it has been difficult for inmates and staff to maintain an acceptable physical distance in secure environments. During the investigation of the Prison and Probation Service, it was found that the agency continued to double-occupy cells during the current pandemic. *Parliamentary Ombudsman Katarina Pahlsson* stated that she believed that the Prison and Probation Service should take immediate measures to ensure that there is no double-occupancy of cells where it is not possible to maintain the necessary physical distance.

*Parliamentary Ombudsman Per Lennerbrant* also raised this issue, stating that, provided the Swedish Migration Board took the necessary measures to enable detainees to maintain a physical distance, it should not be excluded that detainees are able to share living spaces during an ongoing pandemic. However, it became clear during the investigation that both staff and detainees

**If detainees can maintain a physical distance, they should be able to share living areas** found it difficult to maintain a physical distance from others in the detention centre. In the opinion of the Parliamentary Ombudsman, the Swedish Migration Board needed to consider these details and, for example, seek support from the different regions for assessments of what – from a disease control perspective – is an acceptable number of inmates in, for example, a residential room or how physical distance can be maintained in other ways.

### 8.4 Inmates belonging to an at-risk group

For people belonging to an at-risk group, Covid-19 infection and the onset of illness can have serious consequences. The Prison and Probation Service developed procedures for handling this category of inmates at an early stage. In her decision, *Parliamentary Ombudsman Katarina Pahlsson* made statements regarding how the agency had applied the procedures. She stated that the Prison and Probation Service needed to have a long-term view in its planning for the handling of this group of inmates. When *Chief Parliamentary Ombudsman Elisabeth Rynning* began her investigation of the National Board of Forensic Medicine, the agency lacked a specific routine for the handling of inmates in at-risk groups. After the issue had been raised at the final dialogue meeting, the National Board of Forensic Medicine's management announced that the agency had adopted such a routine. The investigations of the Swedish Migration Board and the National Board of Institutional Care also highlighted a lack of agency-wide procedures. However, one of the Swedish Migration Board's detention centres had adopted a local routine, and *Parliamentary Ombudsman Per Lennerbrant* stated that it was reasonable to require the agency to take measures which ensured that the routine was applied in all detention centres. *Parliamentary Ombudsman Thomas Norling* called on the National Board of Institutional Care to develop procedures for the handling of this group of inmates.

**Some agencies have lacked routines for handling people deprived of their liberty who belong to a risk group**

### 8.5 Inmates' contact with the outside world

All the agencies investigated took infectious disease control measures to limit inmates' contact with the outside world. The measures were varied in their extent. However, the investigations show that all the agencies have introduced some form of compensatory measures to reduce the negative effects of the restrictions. These include technical solutions which were quickly introduced to enable video calls (the Prison and Probation

**The agencies have taken compensatory measures**

Service and the Swedish Migration Board), and the possibility for people to receive visits outdoors (the National

Board of Institutional Care). The National Board of Forensic Medicine has also taken measures and installed transparent screens to make it possible to conduct infectionsafe visits. Some agencies have lacked procedures for the handling of inmates belonging to an at-risk group.

Although compensatory measures have been introduced, the Parliamentary Ombudsmen have identified agencies that needed to take further measures. Following the investigation of the Prison and Probation Service, *Parliamentary Ombudsman Katarina Pahlsson* urged the agency to investigate whether it was possible both to allow inmates to receive visits outdoors and to separate inmates and visitors from each other with screens to reduce the risk of infection. The Parliamentary Ombudsman also expressed concern that the possibility of making video calls to underage children was not sufficient to cover the need. In the decision, she also noted that the restrictions on some inmates had become so far-reaching that their contacts with relatives had been reduced to a ten-minute telephone call once a month.

The investigation of the National Board of Institutional Care showed that it had continually reviewed the need

for visitor restrictions and, where possible, had eased restrictions. Initially, the visiting restrictions applied to all institutions. These expired on 7 July 2020. Since then, it has been for each institution to determine whether there exist grounds for continued restrictions on visits based on the local conditions and needs. *Parliamentary Ombudsman Thomas Norling* stated that this change was in line with an ambition that restrictions to prevent the spread of infection should not exceed those which are necessary.

### 8.6 Information to inmates

Each Parliamentary Ombudsman has found that there have been shortcomings in the way in which the agencies have provided people deprived of the liberty with information concerning Covid-19. In the opinion of the Parliamentary Ombudsmen, the people deprived of their liberty should be provided with written information in the first instance, which may be supplemented with oral information if necessary. *Parliamentary Ombudsman Per Lennerbrant* stated that relevant information is a necessity for inmates to be able to claim their rights and to take appropriate measures to protect themselves and others from infection. *Parliamentary Ombudsman Katarina Pahlsson* has pointed out that the lack of provision of information can create a general feeling of anxiety among inmates. More serious is that a worry or an ignorance of what measures the Prison and Probation Service takes

**Information to people deprived of their liberty is necessary for them to be able to protect themselves against infection**

in the case of feared or confirmed infection can lead to inmates being reluctant to reveal that they have symptoms. *Chief Parliamentary Ombudsman Elisabeth Ryn-*

*ning* stated that the inmates and the agency can be seen as depending on one another in order to achieve the best results in the efforts that should be made to prevent the spread of infection. Such cooperation must be based on a sense of mutual trust that the parties concerned are taking the necessary measures. An important part of this, in the opinion of the Chief Parliamentary Ombudsman, is that inmates feel confident that the agency is doing what it can to protect them against any possible infection.

One possible way to provide the inmates with accurate information is for the agencies to use the information material developed, for example, by the Public Health Agency of Sweden. *Parliamentary Ombudsman Thomas Norling* pointed out that individual agencies, as a rule, need to supplement this general material with information concerning the consequences of the outbreak of the disease in their own activities.





# Appendices

A. Questionnaire for inmates in prisons

B. Inspections in the spring of 2020 concerning Covid-19

### Questions to inmates in prison about the consequences of the spread of the coronavirus

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The Swedish Parliamentary Ombudsmen (abbreviated JO) monitor how authorities, courts and civil servants comply with laws and other statutes. The Ombudsmen are also tasked with ensuring the prevention of torture and other cruel, inhuman or degrading treatment or punishment. That means, amongst other things, that the Ombudsmen on a regular basis shall visit places where persons are deprived of their liberty.

The coronavirus and the Prison and Probation Service (Kriminalvården)  
The Prison and Probation service decided on 12 March 2020 to introduce temporary restrictions for inmates in remand prisons (häkten) and prisons (anstalter) to prevent the spread of the coronavirus.<sup>1</sup> The restrictions cover, amongst other things, visits and temporary leave (permission). The Ombudsman responsible for prisons has decided to investigate how persons deprived of their liberty are affected by the way the Prison and Probation Service is handling the ongoing spread of the coronavirus. For that reason, it is very important that the Ombudsman get information directly from inmates. However, because of the spread of the virus, the Ombudsman is not able to visit prisons and remand prisons for the time being. That means that the Ombudsman and her staff cannot meet inmates in prisons face-to-face. This is the reason we have chosen to conduct a survey.

#### What the Ombudsman would want from you

We are grateful if you take the time to respond to the questions in the survey. It is voluntary to participate. Your response is very useful to ensure that the Ombudsman will learn what the situation is like for persons who are deprived of their liberty.

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<sup>1</sup> The coronavirus SARS-CoV-2 cause the flu-like infectious disease COVID-19. The past weeks, the coronavirus has been spreading rapidly through Sweden and many other countries. Most people who are infected with the virus only get mild symptoms.

Dnr O 12-2020 Sid 2 (8)

Your response to the survey is anonymous. Thank you for your contribution.

Yours sincerely,

Karl Lorentzon

### Survey

Remember:

- Taking part in the survey is voluntary.
- Your response to the survey is anonymous. Do not write your name in the survey.
- Since your response to the survey is anonymous, it is not possible to submit a complaint to the Ombudsman in the survey.
- Respond as soon as possible. **The survey will be collected from the prison on 14 April 2020.** If you need more space, please feel free to write on the other side of the paper.
- When you are done, put the survey in the envelope addressed to the Ombudsman (JO) . Seal the envelope. Give it to a staff member of the Prison and Probation Service. There is no need for a stamp.
- The envelope with your response will be collected by, and only opened by, staff from the Ombudsmen's Office.

#### Introductory questions

1. What is your legal gender?

FEMALE            MALE            (circle your answer)

2. What is your year of birth?

3. Do you belong to an at-risk group for serious illness if you are infected by the coronavirus?<sup>2</sup>

YES    NO            DON'T KNOW            (circle your answer)

4. In which prison are you serving your sentence? When did you arrive in the prison?

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<sup>2</sup> People of higher age, combined with underlying diseases, such as high blood pressure, cardiovascular disease, lung diseases, or diabetes, are overrepresented among the serious cases of illness. People with several underlying diseases are more likely to become seriously ill from the coronavirus.

Dnr O 12-2020 Sid 4 (8)

5. Which ward (avdelning) in the prison are you placed in?

6. Are you segregated (avskild) from other inmates?

YES NO DON'T KNOW (circle your answer)

Questions on the information given to you by the Prison and Probation Service

7. Has the Prison and Probation Service given you any special information about the coronavirus?

YES NO DON'T KNOW (please circle your answer)

**If you answer is no, please go directly to question #13. If your answer is yes, please respond to questions #8-10.**

8. What was the information about? Please tick one or more alternatives for your answer.

- Health care (e.g. what you can do to minimize the risk of contracting or spreading the coronavirus, symptoms, how the virus infection would impact your health, who are the members of at-risk groups)
- The efforts of the Prison and Probation Service to prevent the spread of corona virus in remand prisons.
- Other.

**Please explain, in brief, what the information was about:**

9. In what way were you given the information? Was it in writing, verbally or in another way?

Dnr O 12-2020 Sid 5 (8)

10. Are you satisfied with the information you have been given?

YES NO DON'T KNOW (circle your answer)

11. Do you lack information about something?

YES NO DON'T KNOW (circle your answer)

**If your answer is yes, please describe the kind of information you are lacking:**

12. Do you know what the Prison and Probation Service is doing to prevent the spread of the coronavirus?

YES NO DON'T KNOW (circle your answer)

13. Do you know what the Prison and Probation Service will do if an inmate is infected with the coronavirus?

YES NO DON'T KNOW (circle your answer)

**Questions on whether the measures taken by the Prison and Probation Service have affected the situation in the prison**

14. Have the measures decided by the Prison and Probation Service to prevent the spread of the coronavirus affected your situation in the prison?

YES NO DON'T KNOW (circle your answer)

**If your answer is yes, provide examples of things that have been affected. Please explain if you consider that the changes are good or bad.**

Dnr O 12-2020 Sid 6 (8)

15. Have inmates been moved within the prison because of the coronavirus?

YES NO DON'T KNOW (circle your answer)

16. Is there double occupancy of cells (dubbelbeläggning) in the prison?

YES NO DON'T KNOW (circle your answer)

17. Have you shared a cell with another inmate the past month?

YES NO DON'T KNOW (circle your answer)

18. Please tick those practices within the prison that have been affected by the Prison and Probation Service's measures to prevent the spread of the coronavirus:

- Visits
- Phone
- Daily occupational activities (sysselsättning)
- Programs
- Outdoor exercise (promenad)
- Permission to stay away outside the prison (leave)
- Preparatory release measures (utslusningsåtgärder)
- Other: \_\_\_\_\_

**Please explain how the practices have changed:**

Dnr O 12-2020 Sid 7 (8)

Your contact with other inmates

19. Are you allowed to spend time with other inmates?

YES NO DON'T KNOW (circle your answer)

**If your answer is yes, go directly to question #21.**

20. Have any of the following activities been affected by the Prison and Probation Service's decisions on measures to prevent the spread of the coronavirus? Tick those activities that have been affected.

- Outdoor exercise (promenad)
- Meetings with staff for conversations or other activities

**Please explain in what way the activities have been affected:**

Dnr O 12-2020 Sid 8 (8)

21. If you are allowed to associate with other inmates: Are you able to do it in the same way now as you did before the Prison and Probation Service decided on certain measures to prevent the spread of the coronavirus? For instance, for as long, as often and in the same rooms and areas?

YES NO DON'T KNOW (circle your answer)

**Please explain how your possibilities to associate with other inmates have been affected:**

**Final question**

22. Is there anything else you want the Parliamentary Ombudsman to know about the situation inside the remand prison that may have to do with the spread of the coronavirus?

Thank you for your participation!

## Inspections in the spring of 2020 concerning Covid-19

In the spring of 2020, eleven Opcat inspections were carried out at twelve sites within the framework of the Parliamentary Ombudsmen's investigations of the agencies' measures in connection with Covid-19.

Agency	Place	Method	Date	Ref. no.
The Prison and Probation Service	Färingsö Remand Prison	Questionnaire (inmates)	April 8 <sup>*)</sup>	O 12-2020
The Prison and Probation Service	Kronoberg Remand Prison	Questionnaire (inmates) and video calls (staff)	April 8, 20 and 21 <sup>*)</sup>	O 12-2020
The Prison and Probation Service	Beateberg Prison	Questionnaire (inmates) and video calls (staff)	April 8, 20 and 21 <sup>*)</sup>	O 12-2020
The Prison and Probation Service	Färingsö Prison	Questionnaire (inmates)	April 8 <sup>*)</sup>	O 12-2020
The Prison and Probation Service	Hall Prison	Questionnaire (inmates) and video calls (staff)	April 8, 20 and 21 <sup>*)</sup>	O 12-2020
The Prison and Probation Service	Svartsjö Prison	Questionnaire (inmates)	April 8 <sup>*)</sup>	O 12-2020
Swedish Migration Agency	Flen Detention Centre	Video calls (detainees and staff)	May 25 and 27	O 22-2020
Swedish Migration Agency	Märsta Detention Centre	Video calls (detainees and staff)	May 25 and 26	O 23-2020
The National Board of Forensic Medicine	Forensic Psychiatric Examination Division in Göteborg	Questionnaire (patients) and telephone calls (staff)	June 10	O 24-2020
The National Board of Forensic Medicine	Forensic Psychiatric Examination Division in Stockholm	Questionnaire (patients) and interviews outside the division (staff)	June 11	O 25-2020
The National Board of Institutional Care	Special residential home for young people Tysslinge	Outdoor interviews (residents and staff)	May 15	O 19-2020
The National Board of Institutional Care	Special residential home for substance abusers Hornö	Outdoor interviews (residents and staff)	May 15	O 20-2020

\*) The questionnaires were distributed in remand prisons and prisons on 8 April 2020 and were collected by the Parliamentary Ombudsmen staff on 14 April. A number of questionnaires were also sent to the Parliamentary Ombudsmen by post.



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