



Supplementary Report of the Danish Parliamentary Ombudsman to the UN Committee on the Rights of the Child on Denmark's Fifth Periodic Report to the Committee

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I. INTRODUCTION

1. This supplementary report concerns the Danish Government's fifth periodic report on the UN Convention on the Rights of the Child, submitted by the Danish Government in February 2016. The supplementary report is compiled by the Danish Parliamentary Ombudsman's Children's Division.
2. The purpose of the supplementary report is to provide the UN Committee on the Rights of the Child with insight into the part of the work of the Ombudsman, and in this context particularly the Children's Division, that is relevant to the implementation of the UN Convention on the Rights of the Child.
3. Parts II-VIII of the report contains a description of the Children's Division and 'The Danish Children's Ombud Model' together with a number of examples of cases which the Ombudsman has investigated since 2011. The report ends in Part IX with some concluding remarks on the Ombudsman's work of ensuring children's rights and on the 'Children's Ombud Model'.

II. GENERAL MEASURES OF IMPLEMENTATION (ARTICLES 4, 42 AND 44.6)

The Children's Division of the Parliamentary Ombudsman

(Concluding observation, para. 20, and the Government's fifth periodic report, para. 3, 14 and 148)

4. The Parliamentary Ombudsman's Children's Division was created in 2012 as part of an overall strengthening of several bodies for the purpose of promoting and protecting the rights of children pursuant to the UN Convention on the Rights of the Child. The initiative was a follow-up on the recommendation from the UN Committee on the Rights of the Child that the Ombudsman system in Denmark takes full account of the Convention and establishes therein a facility to monitor the implementation of child rights that is transparent, well-resourced and specialized and that is empowered to deal with individual complaints.
5. The Children's Division is one of three bodies constituting the combined 'The Danish Children's Ombud Model' in Denmark, each handling a number of tasks in the cooperation to protect and promote the rights of children. The 'Children's Ombud Model' is composed of the National Council for Children ('Børnerådet'), Children's Welfare ('Børns Vilkår', through the Children's Telephone, 'Børnetelefonen'), and the Ombudsman's Children's Division ('Børnekontoret').
6. The task of the National Council for Children is, inter alia, to advise the Government and the Danish Parliament, the Folketing, on conditions for children in the Danish society, to work on ensuring the rights of children and to point

out factors in legislative and administrative practice where conditions for and rights of children are not sufficiently taken into account in relation to the UN Convention on the Rights of the Child.

7. The private organisation Children's Welfare offers anonymous and open advice and counselling for children and young persons via the Children's Telephone which is widely known to children and young people. The Children's Telephone constitutes one general entry to anonymous advice where all children and young people can seek advice and counselling, including guidance on rules and on which public authorities to approach for complaints.
8. The Children's Division is part of the office of the Ombudsman who is elected by the parliament to investigate complaints about the public administration, though not, however, about the courts of law. The parliament lays down general provisions for the Ombudsman's activities, but he is otherwise independent of the parliament in the discharge of his duties. The Ombudsman can criticise the authorities and recommend that the authorities consider a case again and possibly change their decision in the matter but the Ombudsman cannot himself make decisions. The Ombudsman can take a position on legal issues but not on issues which require other expert knowledge, for instance technical or medical knowledge. The Ombudsman investigates cases on the basis of complaints or on his own initiative and carries out monitoring visits to a number of institutions.
9. The Ombudsman is appointed to perform a number of specific tasks. These include, among others, the task of national preventive mechanism (NPM) pursuant to the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Ombudsman works together with the Danish Institute for Human Rights and the Danish Institute Against Torture – DIGNITY on this task. The Ombudsman also follows issues regarding the equal treatment of people with disabilities and will call attention to any problems when these are within his jurisdiction.
10. The Children's Division's task of ensuring and monitoring the implementation of the rights of children pursuant to the UN Convention on the Rights of the Child is based on a legal investigation of individual complaints concerning conditions for children, on carrying out own initiative investigations, on visiting institutions, etc. where children attend or reside, and on a duty to inform the parliament and the Danish Government and sometimes municipal and regional councils of any problems in connection with the compatibility of Danish legislation with international obligations to ensure the rights of children. The duty to call attention to any problems does not imply that the Ombudsman takes a position on proposals for new legislation. That task is carried out by the National Council for Children and the Institute for Human Rights and others.
11. The Children's Division is competent both with regard to public authorities and private institutions which carries out tasks directly related to children.

12. The Children's Division is obligated to inform the public of its activities and to give guidance and assistance to persons whose complaints the Children's Division cannot itself investigate. Consequently, the Ombudsman's website contains a separate section, particularly aimed at children. It is also possible for children and young persons to 'chat' with the Division's case officers twice a week, and children and young persons can phone, write or send e-mails to the Children's Division. During monitoring visits, the visiting team endeavours to speak with or otherwise communicate with the affected children to the greatest possible extent, including children who do not have the possibility or the resources to contact the Children's Division themselves.
13. All calls and letters from children to the Children's Division are taken very seriously. The Ombudsman cannot always help with a full investigation of the case. However, the Children's Division will always strive to help the child move on with the case, for instance by sending the complaint on to the relevant authority, by putting the child's wishes or complaints into the right legal context, or by ensuring that a decision is made in the case.
14. The Division's staff consist of legal case officers and a special advisor on children's issues.
15. Since the inception, a grant of DKK 5 million has been awarded annually for the running of the Children's Division. The annual grant has been increased by DKK 2.2 million from 2016.
16. Please see the appendix on the statistics for the Division's work in 2014 and 2015.

Compliance by primary and lower secondary schools with administrative law (article 4)

17. If a school principal makes a decision regarding a pupil – for instance a decision on individual teaching or exclusion from classes for a period of time – there are no general channels of complaint. A number of concrete cases in 2015, inter alia, indicated that it can be difficult for primary and lower secondary schools (folkeskoler) to follow the rules of administrative law when the schools on rare occasions have to make decisions regarding the pupils. In these situations, the children (and the parents) thereby lose some important procedural safeguards. The issues are, inter alia, the duty to take notes, to carry out consultation with the parties, and to give grounds for the decision.
18. Based on an enquiry from the Children's Division, the Ministry for Children, Education and Gender Equality is currently examining the challenges that schools face regarding compliance with the rules of administrative law.

The right of children and young people to complain (articles 3, 4 and 20)

19. Thisted Municipality decided to move a 14-year-old girl from the foster family with whom she had been living for 13 years. The girl did not want to move from the foster family but she received no guidance on the possibility of submitting a complaint about the decision.
20. In 2016, the Ombudsman made it clear that such decisions shall be communicated in writing and be accompanied by guidance on complaint. The municipality subsequently laid down measures to ensure that children and young persons over the age of 12 are given guidance on channels of complaint when such are available to them.

New act on, among other things, the use of force (articles 3, 12, 16, 17, 20 and 37)

Concluding observation, para. 39, Denmark's fifth periodic report, para. 60)

21. In extension of his monitoring visits in 2011 to a number of socio-educational accommodation facilities, the Ombudsman raised some questions with the Government regarding the rules on, inter alia, demands for submission of urine samples and the right to restrict access to mobile phones, computer and internet. The reason for the questions was that the rules for using force against children and young persons were unclear.
22. The Government subsequently appointed a committee which recommended that the basic rights of children and young persons pursuant to the UN Convention on the Rights of the Child be clarified in a new set of rules on the use of force against children and young persons placed in care.
23. As a follow-up on the committee's recommendations, a new act – the Act on Adult Responsibility for Children and Young Persons placed in Foster Care – has now been adopted and will come into force on 1 January 2017.
24. The purpose of the Act is to stipulate the scope for the access of foster families and staff, as part of the task of safeguarding the day to day care, to use coercion and to make other restrictions in the right to self-determination of children and young persons in care, and to ensure the legal rights of the children and young persons in that connection.
25. The Act stipulates that the parents to foster families and the staff at placement facilities can make the necessary restrictions in the right of self-determination of the child or young person in order to safeguard the child's or young person's interests, including to safeguard that the physical needs of the child or young person are met and that the child or young person acquires skills to enter into social relationships, thrives and acquires learning.
26. The care of a child or young person shall be safeguarded on the basis of a concrete balancing of the child's or young person's fundamental rights and

with due regard to the child's or young person's age, maturity and functional ability and in compliance with the principle of proportionality.

27. It is expressly stipulated that the use of force and other restrictions in the right of self-determination shall be exercised as gently and as briefly as possible, and that physical fixation and humiliating, abusive or other degrading treatment is not permissible.
28. In addition, the Act contains concrete provisions on, inter alia, the authorisation to physically guide a child or young person in care, to use physical force against children and young people, to monitor correspondence, telephone conversations and other communication, and to inspect the body or room of the child or young person.

III. GENERAL PRINCIPLES (ARTICLES 2, 3, 6 AND 12)

III.1. The child's best interests

Measures pursuant to the Act on Social Services for children without a legal basis for residence (articles 2, 3 and 19)

(Concluding observation, para. 32 and 35, and the Government's fifth periodic report, para. 33 and 36)

29. In a substantive decision by the Danish National Social Appeals Board (Ankestyrelsen) in 2015, it was established that a municipality cannot implement measures pursuant to the Act on Social Services towards children and young persons who do not have a legal basis for residence (for instance rejected asylum seekers) without the consent of the parents. This implied, among other things, that a municipality would not be able to place in care a child who had been subjected to abuse or neglect, etc. by his or her family.
30. After the Ombudsman had raised the matter with the Ministry of Social Affairs and the Interior, the Ministry informed the Ombudsman in 2016 that according to administrative practice, measures can be implemented for children without a legal basis for residence in Denmark, pursuant, among others, to the principles of the Act on Social Services and pursuant to a special procedure which takes into account that it is the immigration authorities which will pay the expenses. According to current practice it is thereby possible to place in care a child, who does not have a legal basis for residence, without the consent of the parents. The practice is also being tried in the courts.

Adopted children's contact with biological parents (article 3)

31. In 2013 the Children's Division handled a case on adopted children who prior to the adoption had an actual family life with his or her biological parents and

who after the adoption had been placed in care. In the course of the case, it was clarified that the children in question have the right of access to visitation and contact with his or her biological parents based on an assessment according to the Act on Social Services, including an assessment of the best interests of the child or young person.

32. It was also concluded that the adoptive parents have a right to regulate the child's contact with his or her biological parents when the adopted child is living at home with the adoptive parents. But it is possible in quite exceptional circumstances for the biological parents to be granted visitation rights or other forms of contact with the adopted child. The decision in this matter is made on the basis of the child's best interests.
33. Lastly, it was concluded that there is nothing to prevent that the State Administration (Statsforvaltningen), after a concrete assessment of the child's best interests, counsels the child on how to contact the biological parents, including how the child can obtain information about the biological parents.

Time allowed to say goodbye to classmates (article 3)

(The Government's fifth periodic report, para. 35)

34. A school principal decided with short notice that a boy in the first grade would no longer be taught in his class but instead receive so-called temporary individual teaching for 10 hours a week. The boy's parents received the school's decision on a Thursday and the temporary individual teaching began on the following Monday.
35. The Ombudsman stated, in 2013, that the notice given was too short. In his opinion, it would have been more in keeping with good administrative practice if the school had fixed a slightly later starting time for the temporary individual teaching. In the Ombudsman's opinion, with a somewhat longer notice, the school would to a higher degree have taken into account the best interests of the boy.

Long stays at an overcrowded crisis centre (articles 3 and 20)

(Concluding observation, para. 44, and the Government's fifth periodic report, para. 95)

36. In 2013, Esbjerg Municipality's crisis centre 'Nordstjernen' was over-crowded, and the children lived at the crisis centre for up to 2½ years without clarification of their future. The centre's target group was abused or neglected children who had severe problems due to an upbringing in a socially disadvantaged family, who had been removed from their family as an emergency measure, and who were to stay at the crisis centre until a permanent solution could be found.
37. The Ombudsman said, inter alia, that a crisis centre cannot be considered the placement facility best suited in the long term to meet the needs of the child or

young person. Out of regard for the child's best interests, a municipality therefore has to make a decision as to a possible placement at a more long-term facility as quickly as possible. The Ombudsman made reference to the provisions in the Act on Social Services whereby support to children and young persons in special need thereof shall be provided with a view to safeguarding the best interests of the child or young person.

38. The Ombudsman found that overcrowding can have a number of negative consequences for the children, and that it would have been desirable if the municipality – with constant overcrowding for at least 18 months – had created more crisis centres at an earlier stage. He made reference to the fact that a municipality shall choose the placement facility best suited to meet the needs of the child or young person.
39. The municipality subsequently launched a number of initiatives in order to ensure that children are no longer staying at a crisis centre for a longer period of time than necessary, and to avoid overcrowding.

Guldborgsund Municipality's cost-cutting plan (articles 3 and 20)

(Concluding observation, para. 44, and the Government's fifth periodic report, para. 95)

40. In 2013, Guldborgsund Municipality had made a cost-cutting plan for placement of children in care. The purpose of the plan was to take home 30-40 per cent of the children placed in foster families and to take home or shorten 30 per cent of the placements of children needing especially qualified care at an accommodation facility or a 24-hour care facility.
41. The Ombudsman expressed his concern that the cost-cutting plan did not mention the procedural and substantive provisions on placement in care, the purpose of which is, among other things, to ensure placement continuity, and that the focus must always be on the best interests of the child. In the end, the municipality did not put the cost-cutting plan into effect.

Odense Municipality's cost-cutting plan (articles 3 and 18)

(The Government's fifth periodic report, para. 36)

42. In 2015, Odense Municipality decided to discontinue support to every fifth child and family receiving so-called preventive measures.
43. The Ombudsman took up the case, and the municipality itself then launched an external investigation. On the basis of this investigation, the municipality conceded that the cases had not been processed in accordance with the legislation and stated that all families would get back the support that had been taken away.

Other cases regarding the best interests of the child

44. Please see the cases introduced under para. 19, 21, 55, 66, 69, 72, 75 and 89.

III.2. Involvement of children and young persons

Private schools' involvement of children (article 12)

(Concluding observation para. 37, and the Government's fifth periodic report, para. 47)

45. The fundamental right of a child to express his or her own views in all matters relating to the child is not reflected in the rules for private primary and lower secondary schools, just as private primary and lower secondary schools are not subject to the rules of the Danish Public Administration Act on consultation of parties. In 2014, the Ombudsman raised with the Ministry of Education (now the Ministry for Children, Education and Gender Equality) the question of children's right to be heard before a private school makes a decision to exclude or expel them.
46. In 2015, the Ministry chose to send out new guidelines targeted at both pupils and schools on the right of children to be involved according to the Convention. The Ministry expected that the combined guidance and information effort would create such awareness at the schools that legislation would not be necessary. A survey conducted for the Ministry shows that the pupil was involved in 56 per cent of the cases regarding expulsion of pupils from private primary and lower secondary schools. The survey covers both the time before and after the new guidance material was issued. The Ombudsman has had a meeting with the Ministry in October 2016 and is now awaiting additional information from the Ministry.

Children and young persons at institutions for the disabled (articles 12 and 23)

(Concluding observation, para. 37, and the Government's fifth periodic report, para. 44)

47. The monitoring visits of the Children's Division in 2015 were primarily focused on children and young persons at institutions for the disabled. Overall, the visits left a positive impression of conditions. However, it was apparent that the institutions differ widely in how good they are at making use of technology in the communication with children and young persons with impairment of physical or mental functional ability. In 2016, the Ombudsman has urged the institutions to be inspired by each other and will discuss with the Ministry of Social Affairs and the Interior whether there is a need to extend the knowledge of the IT aids which can support communication with children and young persons.

48. The Ombudsman has also recommended in general that the institutions draw up written guidelines on how the institution will prevent sexual abuse and what procedure the institution will follow when there is suspicion of abuse.

Children and young persons at psychiatric wards (articles 12, 16, 24 and 37a)

(The Government's fifth periodic report, para. 73)

49. In 2016, the Children's Division is carrying out monitoring visits mainly to psychiatric wards where children and young persons are hospitalised. One of the focus areas for the visits is the involvement and co-determination of children and young persons. In that context, the Children's Division seeks to get a clearer impression of the effect on children and young persons of the 2015 amendments to the Mental Health Act. In addition, the focus is on the teaching received by the children and young persons during their hospitalisation, and on the use of force, particularly in the form of forced physical restraints.
50. So far, recommendations have been given to the individual ward to, as a standard procedure, inform the custodial parents of patients under the age of 15 about the possibility of waiving the right to decide on the use of force which will imply that any use of force comes under the Mental Health Act with the rights pursuant thereto.
51. In addition, recommendations have been issued for ensuring compliance with the rules on involving and consulting the patient regarding the content of the treatment plan and on the patient's advance notice about preferences regarding the treatment, including possible use of force, and follow-up sessions with the patients and follow-up sessions with the parents of children under the age of 15.
52. Recommendations have also been given to the individual ward to draw up written material on the rights of children and young persons which is targeted at children and young persons and perhaps divided according to age. Following the end of the year, the Children's Division will write a thematic report on the monitoring visits in 2016.

Other cases regarding involvement of children

53. Please see the case introduced under para. 21.

III.3. Discrimination

54. Please see the cases introduced under para. 29, 83 and 87.

IV. CIVIL RIGHTS AND FREEDOMS (ARTICLES 7, 8, 13-17 AND 37a)

IV.1. Private and family life and access to information

Separation of spouses in asylum facilities (articles 3, 8 and 16)

55. The Ombudsman is currently looking into a case regarding the immigration authorities' change of practice according to which asylum seekers aged 15-17 no longer were lodged with their spouse or civil partner.

Other cases involving private and family life and access to information

56. Please see the cases introduced under para. 21 and 49.

IV.2. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (including the use of force)

Young persons placed in care cannot be forced to accept pedagogical support (articles 20 and 37a)

(Concluding observation, para. 39, and the Government's fifth periodic report, para. 60 and 74)

57. In several instances, the accommodation facility 'Fonden Kanonen' used force to make young persons sit on a sofa and reflect on some questions when they had not adhered to the rules.
58. In 2013, the Ombudsman stated that physical coercion can be used when a young person constitutes a danger to him- or herself or to others. Using coercion to impose a pedagogical method is not lawful. The Ombudsman found that the accommodation facility's understanding of when physical coercion can be used was not sufficiently precise. In addition, the facility's management conceded that it did not have an adequate knowledge of the rules for the inspection of bodies and rooms. Besides, the young persons described the use of the pedagogic tools as, inter alia, meaningless and as punitive measures, and the Ombudsman asked the management to consider reviewing the staff's use of the aforementioned pedagogic methods.

The use of force on executing a decision to change facility (articles 20 and 37a)

59. The Children's Division is investigating a case on, inter alia, use of force against a young person placed in care when executing a decision on change of facility.

No authority to force a boy to school (article 37a)

(The Government's fifth periodic report, para. 73)

60. The staff at Children's Mental Health Centre Bispebjerg took hold of a 9-year old boy, who was a day patient at the Centre, and dragged him inside for school lessons at the Centre. The authority to use force pursuant to the Mental Health Act does not, however, apply to day patients. In 2014, the Ombudsman asked Capital Region Denmark to ensure that the staff at psychiatric centres are familiar with the regulations on the use of physical force.

The rules on forcible measures according to the Act on Social Services cannot be applied in asylum centres (articles 22 and 37a)

61. During a monitoring visit in 2014 to 'Center Kongelunden', an asylum centre which also houses children, the Ombudsman recommended that the asylum centre drew up guidelines on the use of force and in that context made it clear that the Executive Order on the use of physical force against children placed in care does not apply in asylum centres. According to the Executive Order, the staff at other institutions have wider powers to use force than asylum centre staff.

15-year old in solitary confinement (articles 37a and 40)

(Concluding observation, para. 9 and 66, and the Government's fifth periodic report, para. 7 and 181)

62. In 2016, staff from the Children's Division, the Institute for Human Rights and DIGNITY visited a 15-year old girl remanded in custody in solitary confinement. The Ombudsman's jurisdiction does not include the courts of law, and the grounds for the solitary confinement could therefore not be taken into consideration. The purpose of the visit was to check that the girl was treated with dignity, consideration and in accordance with her rights. The visiting team did not find any conditions that gave the Ombudsman grounds for any further steps.

Theme for monitoring visits by the Children's Division in 2017 (articles 37a and 40)

(Concluding observation, para. 66, and the Government's fifth periodic report, para. 183)

63. The Children's Division intends to carry out monitoring visits in 2017 to young persons who are remanded in custody and to convicted persons at the Prison and Probation Service institutions and at secure institutions. A thematic report will be written subsequently.

Other cases on prohibition on torture, etc., including the use of force

64. Please see the cases introduced under para. 21, 49 and 75.

V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE (ARTICLES 5, 9, 10, 11, 18.1, 18.2, 19, 20, 21, 25, 27.4 AND 39)

V.1. Family environment

Contact with children of a different marriage (articles 5, 9 and 10)

65. A Danish man had visitation rights with his two underage children of a different marriage in Denmark. His spouse was refused a residence permit. After the Ombudsman had opened a case on the matter, the immigration authorities, in 2013, resumed the case and found that it would not be possible for the man to sustain visitation with his children if he was forced to exercise his family life with his spouse abroad.

The independent rights of children – the right not to be separated from parents (articles 3, 9 and 10)

(The Government's fifth periodic report, para. 90-92)

66. A woman had stayed longer in Denmark than her visa allowed. The authorities made a decision that she would not be able to obtain a visa again for a number of years. The decision also included her child. This meant that the child could not visit his father who resided in Denmark.
67. In 2013, the Ombudsman found it regrettable that the child had been given a penalty period even though he could not be blamed for not leaving Denmark before the expiry of his mother's visa. In connection with this case, the Ombudsman stated that children have independent rights.
68. In similar cases in the future, the immigration authorities would state expressly that a visa penalty period does not apply to accompanying underage children.

Children of foreign nationality who wish to go back to Denmark (articles 3, 9 and 10)

(The Government's fifth periodic report, para. 90-91)

69. The residence permit of children of foreign nationality can lapse as a result of a stay abroad, for example if the children have been on a so-called re-education journey. If the residence permit has lapsed, an assessment has to be made on whether the regard for the child's best interests indicates that a new residence permit should be granted.
70. In 2104, following an enquiry from the Ombudsman, the immigration authorities informed the Ombudsman that this assessment had been adjusted as a result of a Supreme Court decision from November 2012.

71. The assessment is now more discretionary and is especially based on a concrete assessment of the extent to which the child's original stay in Denmark has been of such a character that the child must be said to already have been formed by Danish society. The assessment will no longer be dependent on a specific age-related delimitation of the so-called formative years. Nor does the assessment any longer take into consideration that the child may not independently have tried to return to Denmark after being sent to the native country, just as it can no longer be taken into consideration if the child, following a holiday sojourn in Denmark, for example has gone back independently to the native country in order to continue the schooling.

V.2. Vulnerable children and young persons

Municipality's failure to protect two socially vulnerable children (articles 3 and 19)

(The Government's fifth periodic report, para. 62-63)

72. A municipality took no real steps in relation to two siblings, even though the municipality in the course of one year received 11 serious notifications from, inter alia, police, school and private citizens. It was not until one of the two siblings, 9 years old, was hospitalised with an alcohol level of 2.57 that emergency placement of the children at a 24-hour residential facility was carried out.
73. The Ombudsman found, in 2014, the municipality's inadequate reaction completely irresponsible. The municipality subsequently started, inter alia, a comprehensive process of change in the handling of vulnerable children and young persons.

Other cases involving vulnerable children and young persons

74. Please also see the case introduced under para. 29.

V.3. Children deprived of a family environment

Deportation of child placed in care (articles 3, 20 and 37a)

(Concluding observation, para. 35, and the Government's fifth periodic report, para. 41)

75. In 2014, it came to the Ombudsman's attention that the immigration authorities in 2011 had refused an application for a residence permit from a 10-year old boy and his grandmother who was the boy's guardian. Prior to the deportation, the boy had been placed in an institution in order to check whether the boy's health and development was at serious risk or harm, and it was doubtful whether the grandmother would be able to take relevant care of the boy.

76. Back in 2011, the then Ministry of Integration had in general stated that children placed in care must be presumed to need the protection of the Danish State, cf. the UN Convention on the Rights of the Child and Article 3 of the European Convention on Human Rights on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and Article 8 on the right to a private life. Thus, the Ministry stated that, in relation to Article 8 of the European Convention on Human Rights, children could not generally be required to take up residence in another country, or to leave the country with their parents.

77. The Ombudsman found that it was a matter for extraordinary criticism and a fundamental failure of duty towards the boy that the immigration authorities refused to allow submission of residence permit application in Denmark and at the same time informed the police that there was no hindrance to the deportation. The boy was subsequently granted a residence permit, and the authorities implemented a number of initiatives in order to avoid similar situations. The Ombudsman has not yet considered these initiatives.

Emergency placements at a hotel (article 20)

(Concluding observation, para. 44, and the Governments fifth periodic report, para. 95)

78. Slagelse Municipality had in certain instances used a hotel as an emergency placement facility for young persons between the age of 15 and 18.

79. In 2012, the Municipality stated that it would in future refrain from placing in a hotel young persons under the age of 18 with an urgent need of accommodation and instead place them where they have round-the-clock contact with professional adults. The Ombudsman then took no further action in the case.

Action plans (article 25)

(Concluding observations, para. 44, and the Government's fifth periodic report, para. 97)

80. In connection with its monitoring visits, the Children's Division has been able to observe a number of instances where action plans for children and young persons placed in care have not been established which is not in accordance with the rules in the Act on Social Services thereon. The Children's Division is in the process of looking into several concrete cases on the subject.

Other cases on children deprived of a family environment

81. Please see the cases introduced under para. 19, 36, 40, 42, 57 and 59.

VI. DISABILITY, BASIC HEALTH AND WELFARE (ARTICLES 6.2, 18.3, 23, 24, 26, 27.1, 27.2 AND 27.3)

VI.1. Children with disabilities and their families

Incorrect guidance of family with disabled child (article 23)

(The Government's fifth periodic report, para. 108)

82. In 2013, the Ombudsman criticised that a municipality had not guided a family with a disabled child correctly on the rules for reimbursement of necessary extra costs resulting from having a disabled child. The municipality's incorrect guidance meant that the family refrained from applying for help to find accommodation suited to persons with disabilities. The municipality subsequently changed its working procedures so as to be better able to inform its citizens of their access to support.

Accessibility for the disabled – 'Skovvangsskolen', primary and upper secondary school (articles 2 and 23)

(The Government's fifth periodic report, para. 106)

83. Following an accessibility visit in 2015 to the primary and upper secondary school 'Skovvangsskolen', the Ombudsman – relying on both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities – recommended, inter alia, that the school and Allerød Municipality would at the first opportunity ensure accessibility for pupils with motor function impairment to the school's special subjects rooms. He further recommended that the school set up playground facilities for the group of children with motor function impairment.

Other cases involving children with disabilities

84. Please also see the cases introduced under para. 47 and 87.

VI.2. Health

Care for live-born, inevitably dying babies (article 24)

85. In 2012, the Ombudsman raised a case on the basis of information that live-born – but inevitably dying – children in some instances were left to die alone in a sluice room on the maternity ward. The authorities responsible followed up the issue with the country's maternity wards in order to ensure that fitting care was provided for the dying child.

Other cases regarding health

86. Please also see the case introduced under para. 49.

VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES (ARTICLES 28, 29 AND 31)

Education in all subjects at in-house schools (articles 2, 23 and 28)

(The Government's fifth periodic report, para. 106)

87. Children and young persons who attend an in-house school at a placement facility are entitled to be taught the same subjects as pupils at a primary and secondary education school (folkeskole). However, the Ombudsman has ascertained that a number of in-house schools do not provide adequate teaching, and he has contacted the Ministry for Children, Education and Gender Equality in order to ensure that the municipal supervision of the in-house special needs education works. So far, the Ministry, in 2016, sent a circular to the municipalities on the rules for in-house schools. Currently, the Ombudsman awaits further information from the Ministry about a survey on the teaching in in-house schools.

Issuing textbooks when old textbooks have not been returned (article 28)

88. In 2012, the Ombudsman criticised that a school refused to hand out textbooks to pupils who had not returned their old textbooks. The municipality's obligation to provide the necessary teaching material applies even if the pupils have not returned previously provided material.

VIII. SPECIAL PROTECTION MEASURES (ARTICLES 22, 30, 32-36, 37(b)-(d), 38-40)

VIII.1. Children in Situations of Emergency (articles 22, 38 and 39)

Guidance of unaccompanied minors (articles 3 and 22)

89. In 2015, the Ombudsman raised a case regarding guidance of unaccompanied minors seeking asylum, who had been granted temporary protection status, on the possibility of family reunification. According to available information, the minors could be left with an erroneous impression of their possibility of getting family reunification.
90. The Ombudsman closed the case because the authorities had adjusted their guidance. The guidance now states that regard for the best interests of the child can have an influence on the question of whether or not to allow family reunification.

Other cases regarding children in situations of emergency

91. Please also see the case introduced under para. 61.

VIII.2. Children in Conflict with the Law (articles 37, 39 and 40)

Reporting children to the police (article 40)

(Concluding observation, para. 66, and the Government's fifth periodic report, para. 7 and 178)

92. In 2015, the Ombudsman stated that it is a fundamental consequence of the principle of the age of criminal responsibility pursuant to the Criminal Code Act that the authorities shall only report children under the age of criminal responsibility to the police if exceptional circumstances make it relevant to do so.

Other cases regarding children in conflict with the law

93. Please also see the cases introduced under para. 62 and 63.

IX. CONCLUDING OBSERVATIONS

94. When the Ombudsman, and in this context the Children's Division, investigates cases involving children and young persons, the focus will be on both conditions for the individual child and on more general conditions.

95. The work of the Ombudsman, and in this context the Children's Division, may thus bring about concrete changes to conditions for the individual child. As an example, please see the case of the deportation of a 10-year old boy who was subsequently granted a residence permit (see para. 75-77).

96. Though a case may start out as an individual complaint case or be raised as an own initiative case on the basis of information about a concrete matter, there will, however, always be a focus on whether the issue in the concrete case may (also) reflect a more general problem in the practice of the authorities, etc. or in current legislation.

97. A number of cases originating from an individual complaint or an own initiative case have thus led to adjustments – or considerations on a need for adjustments – of the authorities' practice or the legislation. One example was the case of a municipality's neglect of two socially vulnerable siblings where the municipality implemented, inter alia, a radically changed process of dealing with vulnerable children and young persons (please see para. 72-73). Another example is the case of the involvement of children before private schools make a decision to expel them. Here, the ministry responsible has so far issued new guidelines, among other things (please see para. 45-46).

98. Correspondingly, monitoring visits can result in recommendations to the individual institution or authority, but they can also result in questions being raised on a more general level. One example is the monitoring of institutions for disabled children and young persons, where the Ombudsman has urged the institutions to let themselves be inspired by each other, and he will discuss with the Ministry of Social Affairs and the Interior whether there is a need for extending knowledge of the IT aids which can support communication with children and young persons who have a limited or non-existent verbal language (please see para. 47-48). Another example is the case which resulted in a new law on, inter alia, the use of force against children (please see para. 21-28).
99. The principles and the rights of children stipulated in the UN Convention on the Rights of the Child may have an impact on the cases handled by the Ombudsman in a variety of ways.
100. First of all, the rights and principles vested in the Convention may be expressed or implemented in the Danish legal basis. However, the authorities may not have acted in compliance with the Danish legal basis and thereby not taken the rights and principles vested in the Convention duly into account when handling a case regarding a child. One example of this is the case on long stays at an overcrowded crisis centre where the Danish provisions on placement, which were supposed to safeguard the best interests of the child, had not been observed (please see para. 36-39).
101. Secondly, there may also be rights or principles in the Convention which national legislation has not taken into account. An example was the case of the involvement of children by private schools (please see para. 45-46).
102. Thirdly, the Ombudsman can draw upon the rights and principles in the Convention when interpreting national legislation, among these national legal doctrines. This occurred for example in the case of the boy who was not given sufficient time to say goodbye to his classmates, and where the Article 3 of the Convention had an influence on the legal doctrine of good administrative practice (please see para. 34-35).
103. The Children's Division, and the Ombudsman generally, does not stand alone with the task of ensuring the implementation of the UN Convention on the Rights of the Child. This is done by the combined 'The Danish Children's Ombud Model' where the individual actors do what they are best at. Children's Welfare ('Børns Vilkår') ensures a general entry for children, and the National Council for Children ('Børnerådet') acts as spokesperson for children. The Ombudsman's contribution to the 'Children's Ombud Model' consists of the legal expertise and authority of the Ombudsman. In combination the 'Children's Ombud Model' constitutes a fundamental support for the children in Denmark (please also see para. 4-16).

104. In December 2015, the Ministry of Social Affairs and the Interior evaluated the 'Children's Ombud Model', and the Ministry's assessment is that on an overall basis, the scheme is being used as intended when it was set up, and that the present division of tasks between the three parties lives up to its purpose and continues to be relevant within the specified framework for the scheme.

Appendix: Statistical information about concluded cases in the Children’s Division in 2015 and 2016

Tables 1-3 below contain statistical information about concluded cases regarding children in the Children’s Division in 2015 and 2016 (1 January – 1 October 2016).

Please note that in the statistics system of the Ombudsman institution the outcomes of the cases are classified under the following three major headings:

- Investigations
- Other forms of processing and assistance to citizens
- Rejections for formal reasons

The overall category ‘Investigations’ comprises cases in which the Ombudsman made various investigations and assessments, including cases where the Ombudsman carried out an in-depth investigation after obtaining statements from the authorities involved.

In the category “Other forms of processing and assistance to citizens”, the processing of the case may consist of:

- Sending the complaint on to the right authority
- Helping the citizen get more detailed grounds for a decision
- Getting the authority to consider whether a deadline can be waived
- Accentuating the most important arguments in the complaints in connection with sending the complaint on to the relevant authority
- Contacting the authority to ascertain where the complainant’s case is in the ‘system’, what the case is waiting for, or when the authority expects to make a decision in the case
- Guiding the citizen on any other available assistance in the case
- Giving the citizen the opportunity to discuss the case on the telephone with one of the Ombudsman’s legal staff

Cases are rejected for formal reasons if, for instance, the authority to which a complaint relates is outside the Ombudsman’s jurisdiction, if a citizen has exceeded the one-year deadline for lodging a complaint with the Ombudsman or if an appeal option has not been used and can no longer be used.

Table 1: Concluded cases in 2015

2015	Rejected cases for formal reasons	Other forms of processing and assistance to citizens	Investigations	Criticism etc. in investigated cases	Total number of cases
Number of cases regarding children	130	470	132	19	732
%	17,8	64,2	18,0	14,4	
Number of cases regarding children with a complaint from a child or a young person *	8	38	4	0	50
%	16	76	8	0	

Table 2: Concluded cases in the period of 1 January – 1 October 2016

2016	Rejected cases for formal reasons	Other forms of processing and assistance to citizens	Investigations	Criticism etc. in investigated cases	Total number of cases
Number of cases regarding children	84	351	83	9	518
%	16,2	67,8	16,0	10,8	
Number of cases regarding children with a complaint from a child or a young person *	6	30	0	0	36
%	16,7	83,3	0	0	

Table 3: Distribution of concluded cases regarding children between complaint cases, cases opened by the Ombudsman on his own initiative and monitoring cases in 2015 and 2016 (1 January- 1 October 2016)

	Complaint cases	Complaint cases with a complaint from a child or a young person *	Cases opened on own initiative	Monitoring cases	Total
2015	701	50	20	11	732
2016	499	36	7	12	518

* Experience has shown that the biggest tasks for the Ombudsman's Children's Division are monitoring visits, own initiative cases, and complaints from adults about child cases. These are also the very activities which have provided a basis for uncovering general, significant and fundamental problem areas regarding the rights of children.

Complaints from children and young persons constitute a smaller part of the work in the Children's Division. These cases typically concern very concrete and urgent assistance. When children and young persons complain, their complaints are a top priority. No child or young person has complained to the Ombudsman without having their complaint considered, and if the Ombudsman does not start an actual investigation of a complaint, the Children's Division always tries to help the child in another way.

The Children's Division of the Ombudsman is and must be open and accessible to children. But it is not decisive whether a case before the Ombudsman is raised on the basis of complaints from children, complaints from adults, on his own initiative or in connection with monitoring visits. The crucial factor must be that the Children's Division actually helps as many children as possible and thereby ensures the implementation of the UN Convention on the Rights of the Child.

It is important in this context to emphasise the significance of Children's Welfare (the Children's Telephone) as the central "systems portal" for children (see the supplementary report, para. 7), and that Children's Welfare is, i.a., very focused on referring relevant cases on to the Children's Division. This ensures both that children do not have to keep track of too many authorities and agencies and that the relevant cases find their way to the Children's Division.