



SIVILOMBUDSMANNEN
Norwegian Parliamentary Ombudsman
National Preventive Mechanism

VISIT REPORT

Norgerhaven Prison

19–22 September 2016

**National Preventive Mechanism against
Torture and Ill-Treatment**



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Table of contents

1	The Parliamentary Ombudsman's prevention mandate	4
2	Torture and ill-treatment	5
3	Summary	6
4	About the execution of sentences in another state	10
4.1	Amendments to national legislation	10
4.2	The Agreement between Norway and the Netherlands on renting prison capacity	11
5	General information about Norgerhaven Prison	13
5.1	Organisation, administration and personnel	13
5.2	Prison capacity and occupancy level	14
5.3	Section overview	14
6	How the visit was conducted	15
7	The Parliamentary Ombudsman's prevention mandate in another state	17
8	Particular challenges in relation to the execution of sentences in another state	20
8.1	Risk areas related to the execution of sentences in another state	20
8.2	Investigation of deaths and criminal offences in Norgerhaven Prison	22
8.3	Use of force and coercive measures	24
8.4	The transportation phase	26
8.4.1	Risk factors during transport	26
8.4.2	Rules and agreements on transport to and from Norgerhaven Prison	26
8.4.3	Preparations for transport in Norgerhaven Prison	27
8.4.4	Bus transport to Eelde Airport	27
8.4.5	Transfer to the Norwegian authorities at Eelde Airport	28
8.4.6	Assessment of the transportation phase	29
8.5	The right to equal health services	30
8.5.1	Safeguarding the inmates' rights pursuant to Norwegian health legislation	30
8.5.2	Access to patient records	31
8.5.3	Access to specialist health services	32
8.5.4	Complaints procedures for health care	32
8.5.5	Professional independence	34
8.5.6	Exchange of inmates' medical information	35
8.6	Visits and the sending of post	36
8.7	Language challenges and knowledge about Norwegian regulations and practice	37
8.8	Processing of applications for parole and transfer to a lower security level	38
8.9	Practice for informing inmates about decisions	41
8.10	Target group for transfer	42
9	Assessment of the conditions in Norgerhaven Prison	44
9.1	Invasive coercive measures	44

9.1.1	Human rights standards	44
9.1.2	Use of security cells	44
9.1.3	Exclusion from company as a preventive measure	46
9.2	Company and activities	47
9.2.1	Minimum requirements for company and activities	47
9.2.2	Company and freedom of movement	47
9.2.3	Employment and activities	47
9.3	Physical conditions	48
9.4	Protecting and safeguarding the inmates	49
9.4.1	Information on arrival and during the serving of sentences	49
9.4.2	Safeguarding the security of inmates	49
9.4.3	Relationship between staff and inmates	50
9.5	Health services	51
9.5.1	In general	51
9.5.2	Access to health services in the prison	51
9.5.3	Confidentiality	52
9.6	Telephone and video conferences	53

1 The Parliamentary Ombudsman's prevention mandate

Based on Norway's ratification of the Optional Protocol to the UN Convention against Torture, the Parliamentary Ombudsman has been issued with a special mandate to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹ The Parliamentary Ombudsman has established its own National Preventive Mechanism (NPM) in order to fulfil this mandate.

The NPM makes regular visits to places where people are deprived of their liberty, such as prisons, police custody facilities, mental health care institutions and child welfare institutions. The visits may be announced or unannounced.

Based on these visits, the NPM issues recommendations with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment.

The Parliamentary Ombudsman, represented by the NPM, has right of access to all places of detention and the right to speak privately with people who have been deprived of their liberty. The NPM also has right of access to all essential information relating to detention conditions. During its visits, the NPM will endeavour to identify risks of violation by making its own observations and through interviews with the people involved. Interviews with persons deprived of their liberty are given special priority.

In its endeavours to fulfil the prevention mandate, the Parliamentary Ombudsman also engages in extensive dialogue with national authorities, civil society and international human rights bodies.

¹ The Parliamentary Ombudsman Act Section 3 a.

2 Torture and ill-treatment

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment is established in several international conventions that are binding on Norway.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), adopted in 1984, plays a central role in this connection. The same prohibition is also enshrined in the UN International Covenant on Civil and Political Rights (Article 7), the UN Convention on the Rights of the Child (Article 37), the UN Convention on the Rights of Persons with Disabilities (Article 15), and the European Convention on Human Rights (Article 3). Norway has endorsed all these conventions.

People who have been deprived of their liberty are more vulnerable to violations in relation to the prohibition against torture and ill-treatment. That is why the UN adopted an Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2002.

3 Summary

The Parliamentary Ombudsman's National Preventive Mechanism (NPM) visited Norgerhaven Prison in the Netherlands on 19–22 September 2016. Norgerhaven Prison was informed in advance that a visit would be conducted between September and November 2016. The exact date of the visit was not stated.

The establishment of a scheme for convicted persons to serve their sentences under Norwegian law in another state creates new kinds of challenges related to safeguarding inmates' rights. Such a scheme does not relieve Norway of its duty to prevent human rights violations, and it is vital to ensure that a legal vacuum does not arise whereby the protection of inmates' human rights is undermined as a result of an unclear division of responsibility between two states. On this basis, the Parliamentary Ombudsman focused especially on the risk of violation of the prohibition against torture and ill-treatment due to the fact that Norgerhaven Prison shall function as a Norwegian prison in another state.

Findings made during the visit showed that inmates transferred to Norgerhaven Prison are not guaranteed adequate protection from the Norwegian authorities against torture and inhuman or degrading treatment. In line with Norway's commitments under the UN Convention against Torture, it is particularly problematic that the Norwegian authorities will not be able to initiate investigations of any suspected violations of the prohibition against torture and ill-treatment. The duties to investigate, prosecute and punish breaches of the Convention constitute core provisions of the Convention and follow from customary international law. It is also problematic that in certain situations, authorities from another state will be able to use weapons and restraints against inmates who have been transferred to the Netherlands to serve their sentences. From a point of view of prevention, a solution of this kind, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment.

It emerged that the Norwegian Correctional Service has established as a routine procedure that inmates transported by aircraft between Norway and the Netherlands shall wear a bodycuff restraint. This is not an acceptable practice. The use of a means of restraint, including during transport, shall only be used following an individual risk assessment. Nor were the inmates ensured access to an efficient complaints procedure for incidents during transport in the Netherlands.

The Parliamentary Ombudsman found that Norwegian authorities have never conducted a systematic review of how inmates' patient rights are safeguarded under Dutch health legislation. The inmates' access to their own patient records, a right inmates would have under Norwegian law, is substantially limited in that the records are written in Dutch. This was especially concerning because some inmates who had been transferred voluntarily had extensive and, in some cases, complex health challenges. This included, among others, inmates in opioid substitution treatment (OST) for drug dependency.

Findings made during the visit indicated that the health care complaints procedure for the inmates in Norgerhaven Prison is unclear and complicated. In the Ombudsman's view, the inmates do not have any real access to an efficient health care complaints procedure. More generally, the way in which the health service is organised in Norgerhaven Prison, whereby the health personnel are employed

by the prison, increases the risk of role confusion, particularly in relation to the health personnel's involvement in the prison's decision-making processes on restrictive measures.

During the visit, several findings were also made that indicate that the execution of sentences in Norgerhaven Prison does not adequately facilitate the reintegration of inmates back into society upon release. The education offered in the prison is not adapted for inmates who require upper secondary and higher education, and the inmates' actual opportunity for receiving visits from family and friend is severely limited. The way the postal service is organised in Norgerhaven Prison also makes it difficult for inmates to send and receive post. It was also found that language challenges and the staff's lack of knowledge of Norwegian regulations and practice have a negative effect on the inmates' serving of sentences.

The inmates' progression towards reintegration is made more difficult by the long processing times for applications for parole and transfer to less restrictive prisons. The long processing times for applications was a major source of frustration among the inmates the Ombudsman spoke to during its visit. There was a general consensus among the inmates that it was more difficult to be granted parole from Norgerhaven Prison than from prisons in Norway. Nor do the inmates at Norgerhaven Prison receive a provisional reply to their applications as required under Norwegian law. The fact that the prison did not provide sufficient information during consideration of the cases seems to have further increased the inmates' frustration, in that they cannot to any great extent plan the serving of their sentence and reintegration into society.

The overall findings made during the visit show that being transferred without consent to another state to serve a Norwegian sentence constitutes a major intervention in the inmates' lives. It also gives cause for concern that inmates who have extensive health care needs, young inmates and inmates who lack English skills are transferred, irrespective of whether this takes place voluntarily.

During the visit, an assessment was also made of how the inmates' rights and welfare are safeguarded at Norgerhaven Prison in areas considered less directly affected by the fact that the sentences are being served in another state. Findings were made in these areas that in the view of the Ombudsman, if considered in isolation, safeguard the inmates' rights more expediently than if they had served their sentences in Norway. Among other things, the Dutch authorities are obliged by the system of agreements to ensure that inmates have set times for daily contact with other inmates, which is not provided for in the Norwegian Execution of Sentences Act. It emerged in interviews with the inmates that they felt that they spent more time outside their cells and had greater freedom of movement during the day than they had had in Norwegian high-security prisons. The Ombudsman noted that the inmates at Norgerhaven Prison, in contrast to ordinary procedure in a Norwegian prison, were not locked in their cells when they did not want to take part in organised leisure activities. The opportunity to have contact with next of kin, lawyers and others via video conference programs is another positive scheme, which the Norwegian Correctional Service should consider introducing as a general scheme. The inmates were largely happy with how the prison facilitated contact via telephone and Skype, although a number of them pointed out that they do not regard it as adequate compensation for poor visit opportunities.

Relations between staff and inmates generally appeared to be good. A clear majority of the inmates described the Dutch staff in a positive light. The feedback from inmates and the Parliamentary Ombudsman's own observations suggested that the staff generally acted in a professional and

respectful manner with the inmates. The majority of the inmates interviewed stated that they felt safe in Norgerhaven Prison. However, a not insignificant proportion of the inmates stated that they felt unsafe. A review of the prison's incident reports documented relatively serious episodes of violence. Findings suggested that it can be challenging for staff to keep an eye on the inmates' activities in certain parts of the prison.

Access to health personnel in the prison appeared to be good compared with many high-security prisons in Norway. The information obtained suggested that the inmates were generally offered an appointment with a doctor or nurse within a short time span. The health department carried out admission interviews with the inmates within 24 hours of their admission, and the health assessments made were thorough. However, there were some instances of breaches of confidentiality, including during the distribution of medication.

In general, the physical conditions in the prison appeared to be good. The Ombudsman would like to emphasise that the large exercise yard, in combination with a flexible scheme for the serving of sentences, constitutes a good area for physical activity and recreation. The exception was the inmates' cells, which provided relatively limited opportunities for the inmates to move around in.

Main findings

- By entering into the Agreement, the Norwegian authorities have waived their possibility to investigate, prosecute and punish violations of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.
- In certain situations, another state's authorities are permitted use of coercive measures, including weapons, against inmates who have been convicted in Norway. From a preventative point of view, a solution of this kind, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment.
- Bodycuff restraints are routinely used on inmates during air transport without an individual assessment and written decision.
- The Norwegian authorities have not conducted a satisfactory review of how inmates' patient rights are safeguarded under Dutch health legislation.
- Inmates with chronic and non-acute illnesses were not ensured sufficient follow-up by the specialist health service.
- Inmates in Norgerhaven Prison do not have any real access to an efficient health care complaints procedure.
- The way in which health care is organised in Norgerhaven Prison increases the risk of role confusion, particularly in relation to the health personnel's involvement in the prison's decision-making processes concerning restrictive measures.
- The inmates' actual possibility of receiving visits is significantly limited.
- Language challenges and the staff's lack of knowledge of Norwegian regulations and practice have a negative effect on the serving of the inmates' sentences.
- The inmates' personal progression has been complicated by the long case processing times for applications for parole and transfer to less restrictive prisons.
- Transfer without consent to another state to serve a Norwegian sentence constitutes a major intervention in the inmates' lives.
- It gives cause for concern that inmates who have extensive health care needs, young

inmates and inmates who are not proficient in English are transferred to serve their sentence in another state.

4 About the execution of sentences in another state

4.1 Amendments to national legislation

On 19 June 2015, the Storting (Norway's Parliament) amended the Execution of Sentences Act by adopting a new Section 1a, which provided legal authority for transferring inmates to serve their sentences in another state with which Norway has entered into an agreement.

According to the Ministry of Justice and Public Security, the background for the legislative amendment was that the Correctional Service needed greater prison capacity for the execution of sentences and remand in custody. The measures intended to increase capacity were discussed in Report No 12 to the Storting (2014–2015) '*Utviklingsplan for kapasitet i kriminalomsorgen*' ('Development plan for increasing capacity in the Correctional Service'), which was submitted to the Storting in December 2014.

Section 1a of the Execution of Sentences Act reads as follows:

'Following a decision by the Norwegian Correctional Services, convicted persons who are sentenced to an unconditional prison sentence may serve the sentence in another state with which Norway has signed an agreement.

A convicted person who serves a sentence in another state pursuant to subsection 1, is considered to be imprisoned in Norway and shall, with the clarifications provided in subsection 3, have the rights and obligations arising from this.

The Norwegian Correctional Service shall ensure that convicted persons who serve their sentences in another state pursuant to subsection 1 are offered medical care that is equivalent to the offer the convicted person would have been offered while serving the sentence in Norway. The Norwegian Board of Health Supervision oversees the Norwegian Correctional Service's obligations under this provision. The Health Services Supervision Act will similarly apply. Chapter 7 of the Health & Rights Act regarding complaints applies to the Norwegian Correctional Service's obligations under this provision. Upon request, the Norwegian Correctional Service shall provide the Board of Health and the county governor with the information they require to carry out their duties under this provision. The information may be given irrespective of a duty of confidentiality.

The King may issue supplementary regulations and establish the exemptions from Sections 4, 7, 8(1) and 27, which are necessary in order for a sentence to be served in another state pursuant to subsection 1.'

The legal authority is temporary and will be repealed on 1 September 2020.

The amendments made to the Execution of Sentences Act are based on the condition that inmates can, if necessary, be transferred against their will.²

² Proposition No 92 to the Storting (Bill and Resolution) (2014-2015) page 14. In its final and enforceable judgment of 29 June 2016, Borgarting Court of Appeal decided a case concerning a decision on transfer without consent to serve a sentence in the Netherlands. The Court of Appeal finds that the decision to transfer without consent does not in itself constitute expulsion in breach of the Constitution Article 106 second paragraph

The Regulations on the execution of sentences in the Netherlands were set out 18 December 2015.³ The Regulations set out detailed rules on, among other things, the scope of the Execution of Sentences Act, transport, criminal offences committed while serving a sentence in the Netherlands, phone calls and video conferences, and the conditions for transfer to the Netherlands and for transfer back to Norway.

The conditions for transfer to Norgerhaven Prison follow from Section 4 of the Regulations. Male inmates over the age of 18 who have been sentenced to an unconditional prison sentence can be transferred to the Netherlands to serve their sentence. The decision is made by the Correctional Service following an individual overall assessment, in which the convicted person's health situation, family situation and the nature of the criminal offence must be considered. The Regulations also stipulate which convicted persons cannot be transferred.⁴

In addition to convicted persons who are Dutch nationals or who are resident in, or declared unwanted or wanted by the authorities in the Netherlands, the following convicted persons shall not be transferred: convicted persons who require health services that cannot be provided during the serving of a sentence in the Netherlands (letter f), convicted persons who receive or will be receiving regular visits from their own children who they normally live with or have access to, unless the transfer does not limit the child's right to access more than the visiting scheme or access scheme that is or will be established (letter g), and convicted persons who are entitled to education pursuant to the Education Act and have commenced education in Norway (letter h). Exceptions can be made from the second paragraph letters g and h above if the convicted person himself wishes to be transferred.

The Directorate of the Norwegian Correctional Service has also set out Guidelines for the execution of sentences in the Netherlands. The Guidelines shall be read in conjunction with the rest of the regulatory framework for the execution of sentences and shall take precedence over the general guidelines to the Execution of Sentences Act in the event of conflict.

4.2 The Agreement between Norway and the Netherlands on renting prison capacity

On 19 June 2015, the Storting consented to the Agreement entered into on 2 March 2015 between the governments of Norway and the Netherlands on renting places at Norgerhaven Prison for the execution of sentences for persons convicted of criminal offences in Norway.⁵

Under this Agreement, the Norwegian authorities rent a fully equipped prison with Dutch personnel and administrative staff, while it is stipulated that the execution of the sentence shall be regulated by Norwegian legislation and subject to Norwegian administration. The Agreement also sets out rules for the prison governor's authority and responsibility, complaints and legal actions by inmates,

second sentence. The Court of Appeal also found that the right to private and family life was not violated in this case (the Constitution Section 102 and ECHR Article 8).

³ Regulations of 18 December 2015 No 1579 on the execution of sentences in the Netherlands, adopted by Royal Decree pursuant to the Execution of Sentences Act Section 1a.

⁴ See Section 4 second paragraph letters a) to h) of the Regulations, with the specifications and exceptions that follow from the third to fifth paragraphs.

⁵ The Agreement between Norway and the Netherlands on the use of a prison in the Netherlands for the purpose of the execution of Norwegian sentences of imprisonment, signed 2 March 2015.

transport of inmates, health care, criminal offences committed in the prison, escape, death, security in the prison and rules for calculating fees and costs for the use of the prison, among other things.

Pursuant to the Agreement, inmates under the age of 18, women, persons remanded in custody and persons sentenced to preventive detention cannot be transferred to the Netherlands to serve their sentences.⁶ Leaves and temporary releases cannot take place in the Netherlands, so inmates who apply for this and have their applications granted shall be transferred back to Norway. An exemption is made from this rule for temporary releases due to an acute need for health care that cannot be given in the prison.⁷

The Agreement is valid for a period of three years and can be extended by at least one year at a time. The prison in Norgerhaven was opened in September 2015.

⁶ Article 1 letter h of the Agreement.

⁷ Cf. Article 12 No 2 of the Agreement.

5 General information about Norgerhaven Prison

5.1 Organisation, administration and personnel

Norgerhaven Prison is situated in the town Veenhuizen in the northern Netherlands.

It is organised under Ullersmo Prison and is managed by a prison governor and a deputy prison governor, both of whom are Norwegian. It also has a Norwegian team of five employees who are responsible for legal case processing, mercantile work, communication and reintegration work. The prison governor has been granted various powers that confer the authority to make independent decisions. Among other things, it is the prison governor at Norgerhaven who decides in cases concerning transfer to Norgerhaven.⁸

Ullersmo Prison functions as a transit prison for inmates under transfer to and from Norgerhaven and is responsible for transport within Norway and air transport to the Netherlands. In general, it is staff from Ullersmo Prison who escort the inmates during transport to the Netherlands. The address of inmates placed at Norgerhaven Prison is Ullersmo Prison, and their post is sent via Ullersmo. Ullersmo Prison also has certain control tasks in relation to Norgerhaven, for example communications control for phone calls and internet use in accordance with the Correctional Service's guidelines. It is also responsible for ensuring that visitors to inmates at Norgerhaven are checked in advance by the police.

On the part of the Netherlands, a staff and facility manager has been appointed who, in accordance with the agreement, is responsible for the prison facilities and the Dutch staff. The Dutch staff comprises 239 full-time equivalents and shall ensure the satisfactory operation of the prison, security, health services, employment of the inmates and leisure activities.

The Dutch prison officers have more specialised duties than is normal in the Norwegian Correctional Service. Some officers have maintaining security in the prison as their primary duty, while others provide individual follow-up of inmates (the latter are known as mentors). There are also separate transport officers. Each prison section is administered by a Dutch section manager. The head of security is also Dutch. Seven Dutch members of staff, known as case managers, have important tasks in connection with case processing in the prison and assist the Norwegian case processing staff in obtaining information and developing recommendations that form the basis for considering decisions, applications and complaints from the inmates.

The health personnel who provide health care in the prison are subject to Dutch legislation and comprise an administration manager, GPs, nurses, a psychologist, a psychiatrist and a dentist. The psychologist and nurses are employed by the Dutch Prison Service, while the GPs and psychiatrist are hired personnel from an external organisation. In general, the health personnel communicate with the inmates in English, but write patient records in Dutch.

In the event of an emergency situation, an internal response team has been established that is activated on the prison governor's orders, and there is an external response team under the Dutch Prison Service that can enter the prison in acute emergency situations, such as a riot or hostage situation.

⁸ Cf. The Guidelines for the execution of sentences in the Netherlands, section 1.2.

5.2 Prison capacity and occupancy level

The prison has a capacity of 242 inmates. It only contains single cells.

The prison stated that the occupancy percentage for the current year, calculated on 16 August 2016, was 98.1 per cent. On the same date, the average length of sentence for the inmates who had been transferred to Norgerhaven Prison was about 4 ½ years. The average stay at the prison for those who had been returned to Norway was 144 days.

At the time of the NPM's visit, there were 230 inmates in Norgerhaven Prison. Based on the prison's overview, the number of inmates who had been transferred against their will was 80 of 230 inmates (34.8 per cent).

5.3 Section overview

The prison has ten sections divided between four buildings that form a square around a large exercise yard.

- *Front Building* houses offices, administration and the health service.
- *Unit Noord* contains sections L, M, N and O, each with 24 cells. The ground floor houses the security section with four security cells (see section 9.1.2 *Use of security cells*).
- *Unit Westerkade* with a library, gym, kiosk and section E housing 24 cells.
- *Unit Oosterkade* with sections K and F, each with 24 cells, and G, H and J with 25 cells each.

All of the sections had large communal rooms with tables, chairs, TVs, billiards tables, darts, table tennis and board games, as well as a kitchen where the inmates could make their own food. The communal room in all of the sections was on the ground floor, and the cells were located on the floor(s) above. The staff did not have an overview of the communal rooms from the guardroom. There were shared showers in each section, each with about three showers.

The layout in Section K differed somewhat to that of the other sections. Here, the cells were sectioned into two sub-sections, with 12 cells on each floor. The guardroom in this section was placed near the kitchen and dining room, but did not allow supervision of the rest of the communal area. The two sections K1 and K2 had their own kitchens and dining areas, enabling communal activity to be limited as needed. The section also housed three 'time-out' cells (see chapter 9.1.3 *Exclusion from company as a preventive measure*).

Section K was mainly used for inmates who were deemed to be vulnerable and required more individual follow-up and access to a secluded outdoor area. According to the prison administration, there was no particular composition of inmates in each section based on the inmates' characteristics or areas of use aside from section K. An admission section had not been established and the inmates were placed in an ordinary section after completing the admission procedure.

6 How the visit was conducted

In August 2016, the Parliamentary Ombudsman informed Norgerhaven Prison that a visit would be conducted in the period September–November. The visit took place on 19–22 September. The NPM carried out an inspection of the prison on arrival. The inspection covered the registration area, security cells (including the restraint bed), outdoor areas and visiting rooms. During the inspection, the NPM also reviewed the routines for admission and the use of security cells. They also examined the communal rooms in the sections and selected cells, buildings used by the prison employment service, and the exercise facilities. After the inspection, an introduction meeting was held with the Norwegian prison administration, and later a meeting at which the local Dutch administration took part.

During the visit, private interviews with inmates from all of the ten prison sections were carried out. About 20 per cent out of the 230 inmates were interviewed. The NPM had special focus on inmates who found their time in prison particularly demanding. The interviews were mostly held in the inmates' cells, and in some cases, outdoors or in interview rooms. The NPM used a telephone interpreter on several occasions. Other interviews were conducted in Norwegian or English.

On 21 September, the NPM observed the transportation of inmates returning to Norway from Norgerhaven Prison until they were handed over to the Norwegian authorities at Eelde Airport outside Groeningen. They also observed the prison transport back to Norgerhaven Prison carrying inmates for whom a transfer decision had been made, and examined the prison's admission procedures.

Interviews were carried out with all the Norwegian staff members – mercantile staff, a reintegration coordinator and the legal advisers. The NPM also carried out several interviews with representatives from the Dutch group of employees, including the staff and facility manager, the head of the prison health service, separate interviews with the doctor and psychologist, prison officers, section managers and case managers.

The visit was formally concluded after returning to Norway with a Skype meeting with the prison's Norwegian and Dutch administration, at which the NPM presented its preliminary findings and asked some follow-up questions.

The administration and staff at Norgerhaven prison ensured that the NPM received quick and unrestricted access to all areas of the prison as well as to all requested documentation of treatment of the inmates.⁹ The Parliamentary Ombudsman's right to have private conversations with the inmates was respected and arrangements were made for conducting interviews with key persons in both the Norwegian and Dutch staff teams.¹⁰ Nonetheless, it must be noted that some interviews that took place in the inmates' cells were interrupted by the staff opening the cell door to give messages, without first knocking.

The following personnel from the Parliamentary Ombudsman participated in the visit:

- Aage Thor Falkanger, (Parliamentary Ombudsman)

⁹ The Optional Protocol to the Convention against Torture (OPCAT) Article 20 letters b and c.

¹⁰ OPCAT Article 20 letter d.

- Helga Fastrup Ervik (head of the NPM, legal adviser)
- Mette Jansen Wannerstedt (senior adviser, sociologist)
- Jonina Hermannsdottir (senior adviser, criminologist)
- Johannes Flisnes Nilsen (senior adviser, legal adviser)
- Kjetil Fredvik (senior adviser, legal adviser at the Parliamentary Ombudsman's complaints department)
- Georg Høyer (external expert, doctor)

7 The Parliamentary Ombudsman's prevention mandate in another state

The Agreement between Norway and the Netherlands states that transport on Dutch territory to and from the prison must be carried out by officers designated by the Receiving State's Minister of Security and Justice and that the Dutch instructions for the use of force in prison ('Geweldsinstructie penitentiaire inrichtingen') shall apply.¹¹ The Dutch authorities are therefore responsible for the inmates' welfare during such transport. During the consultation process related to the amendment of the Execution of Sentences Act, the Parliamentary Ombudsman questioned whether such schemes, where Norway lacks jurisdiction outside a prison in a receiving state, could lead to the Ombudsman not having access to places in which people are deprived of their liberty, such as means of transport or hospitals in the receiving state. The Ombudsman also expressed concern that it becomes more difficult to enter into dialogue about necessary follow-up measures in accordance with OPCAT Article 22, since the transport responsibility rests with the authorities of another state.

During the visit to Norgerhaven, the NPM, assisted by the prison administration, was given the opportunity to accompany the bus transport for inmates to and from Norgerhaven Prison and Eelde airport outside Groningen. The transport was carried out by the Dutch transport service 'Dienst Vervoer en Ondersteuning' (DV & O). The NPM was given the opportunity to examine the physical conditions of the bus transport and to observe the trip from Norgerhaven prison until the inmates were handed over to the Norwegian transport authorities at Eelde Airport.

The conditions set out in the Agreement between Norway and the Netherlands limit the Ombudsman's mandate. The formal limitations include lack of access to places outside the prison walls where inmates may spend time, such as means of transport or hospitals. Despite these formal limitations, the Ombudsman was given access during its visit to the places located on foreign territory and to all documentation subject to another state's legislation that was required in accordance with OPCAT and the Parliamentary Ombudsman Act Sections 3a, 7 and 8. The fact that the Ombudsman did not encounter any formal obstructions in the execution of its prevention mandate must be ascribed to flexibility and a willingness to cooperate on the part of the Dutch authorities. In a preventative perspective, it is problematic that exercising the Ombudsman's mandate must depend on the willingness to cooperate of the place it visits.

The Norwegian Ministry of Justice and Public Security stated the following in its amendment proposal to the Storting:

'The Ministry makes particular reference to the Parliamentary Ombudsman's consultation submission, which raised several questions and stated the need to clarify the role of the NPM. (...) As regards the execution of sentences in another state, jurisdiction, as the Parliamentary Ombudsman points out, will be shared. The Ministry agrees with the

¹¹ Article 11 of the Agreement between the Kingdom of Norway and the Kingdom of the Netherlands on the use of a prison in the Netherlands for the purpose of the execution of Norwegian sentences of imprisonment, signed in Veenhuizen in the Netherlands on 2 March 2015. The treaty is supplemented by a Cooperation Agreement entered into on the same date between the Directorate of the Norwegian Correctional Service and the corresponding public body in the Netherlands, 'Dienst Justitiële Inrichtingen' (DJI), see, in particular, Article 19 No 3 on transport.

Parliamentary Ombudsman that there is a need to clarify the boundaries between the Norwegian and Dutch supervisory authorities. It is also important to ensure that legal ‘gaps’ do not arise as a result of a solution of this kind’.¹²

In the amendment proposal, it is assumed that the Dutch national preventive mechanism (NPM) (in this case *The Inspectorate for Security and Justice*) will ensure that the inmates are protected against torture and ill-treatment during transport or emergency admission to hospitals on Dutch territory.¹³ The UN Subcommittee on the Prevention of Torture (SPT) has issued an advisory statement on how work on the prevention of torture should be carried out if a state enters into an agreement with another state on sending people there for detention purposes.¹⁴ Among other things, it must be ensured that it is legally and practically possible for the preventive mechanisms in both the ‘Sending State’ and the ‘Receiving State’ to visit the inmates in accordance with OPCAT and to make recommendations and enter into dialogue with the authorities in both countries. In its statement, the SPT recommends that:

‘The NPMs of the sending and receiving State should liaise regarding the conduct of such visits, and should consider undertaking joint visits in such circumstances and, where possible, to make joint recommendations.’

On the basis of the SPT’s advisory statement and the Ministry of Justice and Public Security’s clear assumptions, the Parliamentary Ombudsman contacted the Dutch national preventive mechanism several times before the visit for the purpose of initiating dialogue on cooperation.¹⁵ At the time of the visit, the Parliamentary Ombudsman had not received an answer to its enquiries. During the visit, it emerged that neither the Norwegian prison administration, the Dutch staff and facility manager, nor the representatives for the external transport team had been in contact with the Dutch national preventive mechanism about the inmates’ protection against torture and ill-treatment in the prison, during transport or on emergency admission to hospitals. The result of the shared jurisdiction that was established between Norway and the Netherlands therefore appears to be a legal ‘gap’ that lessens the inmates’ protection against torture and ill-treatment. It is also clear that a scheme such as the one described in the SPT’s statement, in which the receiving state’s national preventive mechanism can also visit the inmates in the prison on Dutch territory, has not been established.

The Ombudsman encountered several practical challenges related to exercising its mandate outside Norwegian territory. One challenge was that key documents that the Ombudsman must be able to access in order to check how the inmates’ rights and welfare are being safeguarded, such as the supervisory log for use of security cells and medical records, are written in whole or in part in Dutch. This is deemed to be problematic in light of Section 7 of the Parliamentary Ombudsman Act relating

¹² Proposition No 92 to the Storting (Bill and Resolution) (2014–2015), page 36.

¹³ Proposition No 92 to the Storting (Bill and Resolution) (2014–2015) *Endringer i straffegjennomføringsloven (straffegjennomføring i annen stat), samtykke til inngåelse av avtale med Nederland av 2. mars 2015 om bruken av et fengsel i Nederland og endringer i statsbudsjettet 2015* (‘Amendments to the Execution of Sentences Act (execution of sentences in another state), consent to enter into an agreement with the Netherlands of 2 March 2015 on the use of a prison in the Netherlands and amendments to the state budget 2015’), page 36.

¹⁴ The UN Subcommittee on the Prevention of Torture, *Compilation of SPT Advice in response to NPM’s requests*, Chapter V, *NPM’s and cross-border monitoring of persons in detention*, February 2015.

¹⁵ The Parliamentary Ombudsman, *Norgerhaven Prison – Establishing contact with the national preventive mechanism of the Netherlands*, letter to the Inspectorate of Security and Justice, 21 April 2016.

to the right to information. In addition, the use of a foreign language makes it difficult, and in some cases impossible, for the inmates' rights to be safeguarded pursuant to Norwegian legislation (see chapter 8.5.2 *Access to patient records*).

8 Particular challenges in relation to the execution of sentences in another state

8.1 Risk areas related to the execution of sentences in another state

Article 2(1) of the UN Convention against Torture states that: ‘Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’. Article 16 of the Convention stipulates that each State Party also has a duty to prevent ‘other acts of cruel, inhuman or degrading treatment or punishment’.

The UN Committee against Torture underlined in General Comment No 2 that the member states’ responsibility under the Convention to prevent torture and other cruel, inhuman or degrading treatment ‘in any territory under its jurisdiction’ covers ‘... all areas where the State Party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control’.¹⁶ The International Court of Justice (ICJ), the UN Human Rights Committee and the European Court of Human Rights (ECtHR) have also recognised a state’s responsibility to safeguard human rights outside its own borders in areas where it has effective control.¹⁷

The establishment of a scheme for convicted persons to serve their sentences under Norwegian law in another state creates new kinds of challenges related to safeguarding inmates’ rights. Apart from Belgium’s agreement on renting prison capacity in the Netherlands, which has formed the basis for the Norwegian agreement, the Ombudsman is not aware of similar agreements between states. The agreement between Norway and the Netherlands raises questions as to how the Norwegian authorities’ obligation to protect the inmates can be maintained in accordance with the Convention against Torture.

The former UN Special Rapporteur on Torture Juan Mendez has raised the issue of states’ extraterritorial responsibility for violations of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in a report to the UN General Assembly:

‘..., the increasingly transnational nature of State actions entails a need to ensure that States abide by their fundamental human rights obligations when acting beyond, or when their domestic acts cause injury outside, their territorial boundaries. (...)

‘Extraterritorial State acts (or omissions) — whether lawful or unlawful — often have a significant impact on the fundamental rights of individuals outside their borders, thereby implicating States’ responsibilities under international human rights law.’¹⁸

The UN Committee against Torture General Comment No 2, 24 January 2008, CAT/C/GC/2, paragraph 16. See also the UN Special Rapporteur on Torture, the report to the UN General Assembly (‘Prohibition of torture and other ill-treatment from an extraterritorial perspective’), 7 August 2015, A/70/303, paragraph 11 ff.

¹⁷ See *Legal Consequences of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, page 136; The UN Committee against Torture General Comment No 31 (2004), CCPR/C/21/Rev.1/Add. 1326, paragraph 10; ECtHR’s judgments, for example *Al-Saadoon and Mufdhi v. the United Kingdom*, 30 June 2009, (decision on admissibility), appeal number 61498/08; *Al-Skeini and Others v. the United Kingdom* (grand chamber), 7 July 2011, appeal number 55721/07.

¹⁸ The UN Special Rapporteur against torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, report to the UN General Assembly, 7 August 2015 A/70/303, see paragraphs 11–13.

The Special Rapporteur pointed out that ‘the practice of detaining persons abroad’, among other extraterritorial state acts, is a practice that brings up important questions about states’ extraterritorial responsibility to prevent human rights violation. The Special Rapporteur underlined that such state actions:

‘... can involve the commission or risk of torture or other ill-treatment as defined by the Convention, international humanitarian law, international criminal law or customary international law. Of particular concern are States’ attempts to undermine the absolute legal prohibition of torture and other ill-treatment by evading or limiting responsibility for extraterritorial acts or effects by their agents that contravene their fundamental legal obligations; to narrowly interpret treaty jurisdictional provisions; and to dilute well-established obligations to ensure and fulfil positive human rights obligations whenever they exercise control or authority over an area, place, individual(s) or transaction.’¹⁹

According to the Special Rapporteur, it is essential in such situations to ensure that ‘...there is no vacuum of human rights protection that is due to inappropriate and artificial limits on territorial jurisdiction’.²⁰

On this basis, the Parliamentary Ombudsman focused especially on the risk of violation of the prohibition against torture and ill-treatment due to the fact that Norgerhaven Prison shall function as a Norwegian prison in another state. As the Parliamentary Ombudsman interprets the UN Convention against Torture and statements from the UN Committee against Torture, the UN Special Rapporteur on Torture and the SPT, states cannot use an inter-state agreement to limit their responsibility under international law to prevent torture and ill-treatment.²¹

The Ombudsman’s assessment is based on the agreement that was entered into between Norway and the Netherlands on 2 March 2015 (hereinafter referred to as ‘the Agreement’) and a detailed cooperation agreement entered into on the same date between the prison authorities in both countries (hereinafter referred to as ‘the Cooperation Agreement’).²² The Storting consented to the agreement between Norway and the Netherlands on 8 June 2016.²³

A review of the agreements shows that different forms of shared jurisdiction have been established for matters that affect inmates in Norgerhaven Prison.²⁴ The Norwegian Execution of Sentences Act

¹⁹ See note above.

²⁰ Ibid.

²¹ The UN Committee against Torture General Comment No 2, 24 January 2008, CAT/C/GC/2; the UN Special Rapporteur against torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, report to the UN General Assembly, 7 August 2015 A/70/303A/70/303, and the UN Subcommittee on the Prevention of Torture, Compilation of SPT Advice in response to NPMs requests, chapter V, NPMs and cross-border monitoring of persons in detention, February 2015.

²² See the Agreement between the Kingdom of Norway and the Kingdom of the Netherlands on the use of a prison in the Netherlands for the purpose of the execution of Norwegian sentences of imprisonment, and the Cooperation Agreement entered into between the Directorate of the Norwegian Correctional Service and Dutch Custodial Institutions Agency (DJI), respectively.

²³ Consent to enter into an agreement with the Netherlands of 2 March 2015 on the use of a prison in the Netherlands, and amendments to the state budget 2015 resolution 614 and 615, 8 June 2015.

²⁴ See also Dr Elina Steinerte’s review of the situation in relation to the Agreement between Norge and the Netherlands, NPM’s and Extraterritorial Action, European NPM Newsletter, edition No 72 / 73, January–February 2016, page 5 ff.

shall apply for the treatment of inmates,²⁵ while deaths and criminal offences that take place in the prison are governed by Dutch criminal law.²⁶ The Dutch prison service is responsible for providing health care in the prison,²⁷ and complaints and lawsuits that concern health care is subject to Dutch legislation.²⁸ Transport on Dutch territory to and from Norgerhaven prison is decided by the Norwegian prison governor, but carried out by a Dutch public agency.²⁹ The Dutch instructions for the use of force in prison apply to all transport³⁰ and during emergency admission to a hospital in the Netherlands, and must be complied with in emergency situations inside the prison walls.³¹

The Dutch authorities are responsible for maintaining the buildings, furnishing and equipment in the prison and for ensuring that HSE (Health, Safety and Environment) requirements are satisfied in accordance with Dutch legislation.³² They are also responsible for the inmates' meals and ensuring that the Dutch food standards are satisfied.³³ Finally, the Dutch authorities are responsible for ensuring that documents intended for inmates are written in or translated into a language that the inmates understand and for making interpreting services available if necessary.³⁴

The scope of the Dutch authorities' responsibility illustrates the limitations for the Parliamentary Ombudsman to exercise its mandate in accordance with OPCAT (see chapter 7 *The Parliamentary Ombudsman's prevention mandate in another state*). This division of responsibilities also clearly modifies the point of departure stipulated in the Ministry of Justice and Public Safety's amendment proposal submitted to the Storting, concerning the fact that the inmates will be under Norwegian jurisdiction and have the same rights and obligations as they would have had if serving their sentences in Norway. This set-up raises several questions about the division of responsibility between the two states.

Chapters 8.2 and 8.3 of this report describe matters that entail a particular risk of violation of the prohibition against torture and ill-treatment.

Chapters 8.4–8.10 discuss further matters related to the Agreement and its implementation, which, in the Ombudsman's opinion, are problematic.

8.2 Investigation of deaths and criminal offences in Norgerhaven Prison

It follows from Articles 14 and 17 of the Agreement that Dutch criminal law and criminal procedure legislation exclusively shall apply if an inmate dies or criminal acts are committed in Norgerhaven Prison.³⁵ This means that the Norwegian authorities will not be able to take steps to investigate or prosecute matters if inmates were to be subjected to torture and other cruel, inhuman or degrading treatment or punishment in the prison.

²⁵ Article 4 No 1 of the Agreement.

²⁶ Article 17 No 1 of the Agreement.

²⁷ Article 32 of the Cooperation Agreement.

²⁸ Article 10 No 2 of the Agreement.

²⁹ Article 11 of the Agreement and Article 19 of the Cooperation Agreement.

³⁰ Article 11 No 2 of the Agreement.

³¹ Article 6 No 3 of the Agreement.

³² Article 4 No 5 of the Cooperation Agreement.

³³ Article 28 of the Cooperation Agreement.

³⁴ Article 38 No 2 and 3 of the Cooperation Agreement.

³⁵ Cf. Article 14 No 3 ('The law of the Receiving State is exclusively applicable to the launch of a follow-up investigation of any kind').

According to Article 12 of the UN Convention against Torture, cf. Article 16, each ‘State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture [or other cruel, inhuman or degrading treatment or punishment] has been committed in any territory under its jurisdiction’.

According to the UN Committee against Torture, the references to ‘jurisdiction’ in Articles 12 and 16 of the Convention mean the same as in Article 2 (1). Specifically, the state parties’ responsibility to prevent torture and other cruel, inhuman or degrading treatment covers ‘all areas where the State Party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control’ (see chapter 8.1 *Risk areas related to the execution of sentences in another state*).

This duty of *ex officio* investigation is supplemented by the UN Convention against Torture Article 13, which states that: ‘...any individual who alleges he has been subjected to torture in any territory under [a State Party’s] jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.’ The duties to investigate, prosecute and punish violations of the Convention constitute core provisions of the Convention.³⁶ The UN Special Rapporteur on Torture has also concluded that these obligations also follow from customary international law.³⁷ The European Court of Human Rights has concluded that the European Convention on Human Rights (ECHR) Article 2 was violated by the failure to investigate a death in a situation where a state exercised authority on another state’s territory.³⁸

After the 28 April 2015 hearing of the Storting’s Standing Committee on Justice, the Parliamentary Ombudsman questioned whether the limitations to the Norwegian authorities’ legal capacity, as described in the Agreement between Norway and the Netherlands, are in accordance with the UN Convention against Torture.³⁹

In the preparatory works to the Act, the Ministry of Justice and Public Security underlined that:

‘...it is a basic prerequisite when entering into an agreement on the execution of sentences in another state that this shall not infringe on the inmates’ human rights. The Norwegian authorities are obliged to safeguard and respect the rights of inmates who are serving their sentences in another state in the same way as those of inmates in Norwegian prisons.’⁴⁰

It is stated in the Agreement’s introduction that the parties ‘recognise and are bound by international human rights standards and norms’.

The agreement between Norway and the Netherlands, the conditions for transferring inmates to serve their sentences outside Norway’s borders and findings made during the Parliamentary Ombudsman’s visit indicate that the Norwegian authorities have an independent duty to investigate,

³⁶ Nowak M. and McArthur E., *The United Nations Convention against Torture – A Commentary*, Oxford University Press, 2008, page 413 ff.

³⁷ The UN Special Rapporteur on Torture, the report to the UN General Assembly (‘Prohibition of torture and other ill-treatment from an extraterritorial perspective’), 7 August 2015, A/70/303, paragraph 44.

³⁸ See, for example, ECtHR’s judgment in *Jaloud versus the Netherlands* (grand chamber), 20 November 2014, appeal number 47708/08.

³⁹ See also the Comment dated 6 May 2015 from the Parliamentary Ombudsman after the hearing of the Standing Committee on Justice on 28 April 2015.

⁴⁰ Proposition No 92 to the Storting (Bill and Resolution) (2014-2015), page 10.

prosecute and punish breaches of the Convention.⁴¹ In the light of the UN Convention against Torture's clear requirement that investigations must be initiated if a violation of the prohibition against torture and ill-treatment is suspected, the Ombudsman finds grounds to question whether Articles 14 and 17 of the Agreement are in accordance with Norway's commitments under international law.

Finding

- By entering into the Agreement, the Norwegian authorities have waived their possibility to investigate, prosecute and punish violations of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

8.3 Use of force and coercive measures

It is stated in Articles 6 and 11 of the Agreement that the use of coercive measures in the prison must be based on Norwegian law, but that the Norwegian prison governor shall also be responsible for ensuring that the Dutch instructions on the use of force in prisons ('Geweldsinstructie penitentiaire inrichtingen') are followed.

After the 28 April 2015 hearing of the Storting's Standing Committee on Justice, the Ombudsman questioned how the Norwegian authorities can ensure that coercive measures are used in accordance with Norwegian legislation and Norway's commitments under the UN Convention against Torture when they, at the same time, must adhere to another state's instructions for the use of force and coercive measures. The Ombudsman pointed out that it appeared unclear whether force and other coercive measures could be used that are authorised by the Dutch instructions, but not by Norwegian law, such as the use of weapons. Further, it is unclear which use of force procedures apply given the differences between the Norwegian law and the Dutch instructions.

According to Article 21 of the Agreement, the prison area is inviolable and only the Norwegian prison governor can grant access. An exception applies in '... the event of fire or accident in the prison, or a calamity or major crisis in or with consequences for the prison, where protective measures need to be taken immediately'. In the Netherlands, such protective measures can, aside from the intervention of police and other emergency services, include the mobilisation of an external response team under the Dutch Ministry of Justice. The external response team is authorised under the Dutch instructions on the use of force in prisons to use weapons. The semiautomatic Heckler & Koch MP5 as well as the semiautomatic pistols Walther P5 and Walther P99Q are authorized weapons.⁴²

During the visit, it emerged that discussions were still ongoing between the Norwegian and Dutch justice authorities as to who had decision-making authority in the prison in the event of an emergency. It also remained unclear whether the Dutch external response team had the same rights as the police to bring and use weapons in emergency situations. The NPM was informed that the matter would be raised at an upcoming cooperation meeting between the Norwegian and Dutch justice authorities.

⁴¹ See, *inter alia*, the Agreement Article 4 No 1, Article 6 No 1, Article 21 No 1 and Article 25.

⁴² Instructions for the use of force in prison, adopted by the Dutch Minister of Justice 30 September 2014, Article 1 f No 1.

After the visit, the Ministry of Justice and Public Security specified in its letter to the Parliamentary Ombudsman on 17 February 2017 that the Dutch police and external response team decide themselves which coercive measures they use in an emergency situation. The Ministry points out that this corresponds to the Norwegian system whereby the police are armed for particularly dangerous assignments in prisons, cf. the Police Firearms Instructions.

However, the preparatory works to the Act specify that ‘The Norwegian prison governor is also responsible for the use of coercive measures or other use of force in relation to the inmates’ and ‘shall [...] ensure that the Dutch instructions on the use of force in prison [...] are also followed’.⁴³ Moreover, the Directorate of the Norwegian Correctional Service’s Guidelines for the execution of sentences in the Netherlands state that ‘The prison governor at Norgerhaven Prison shall ensure that the implementation of the instructions for the use of force in prison, including the choice of coercive measures, is in accordance with Norwegian law at all times’ (point 3.11).

In the Parliamentary Ombudsman’s understanding, the Ministry’s interpretation as explained in the 17 February 2017 letter allows for situations whereby authorities from another state will, in certain situations, be able to use weapons and coercive measures against inmates who have been transferred to the Netherlands to serve their sentences. From the point of view of prevention, a solution of this kind, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment. The earlier discussion on the extraterritorial scope of Norway’s duty to investigate, prosecute and punish breaches of the Convention pursuant to the UN Convention against Torture is also relevant here (see chapter 8.2 *Investigation of deaths and criminal offences in Norgerhaven Prison*).

In its letter to Norgerhaven prison on 29 August 2016, the Directorate of the Norwegian Correctional Service clarified that coercive measures such as batons, shields and pepper spray are approved for use in Norgerhaven Prison. The Directorate approved use of the four security cells in its letter on 10 June 2016. Since it is impossible to install a squat toilet in the floor, which is standard in Norwegian prison security cells, it was decided that the supervision rules in Norgerhaven Prison would be somewhat more stringent than the standard set out in the Guidelines for the execution of sentences in the Netherlands. In cases where an inmate is deemed to be suicidal or at severe risk of self-harm, inmates shall be supervised at least every 15 minutes.

The handcuffs used in Norgerhaven Prison are different to those used in Norway. While the handcuffs in Norwegian prisons have flexible joints (chain), the officers in Norgerhaven use what are known as rigid handcuffs. Interim approval for the use of these handcuffs was granted by the Directorate in a letter on 20 August 2015. Following an overall assessment, the use of rigid handcuffs was permanently approved in the 10 June 2016 letter, with the assumption that the officers who would use these handcuffs have both training for and extensive experience using them. On similar grounds, the Directorate also approved in its 10 June 2016 letter the use of short batons, even though these are made of a harder material than the telescopic batons approved for use in Norway. During the visit, it also emerged that Norgerhaven Prison had purchased a new restraint bed approved by the Directorate of the Norwegian Correctional Service.

The approved means of restraint and procedures for their use were investigated during the Ombudsman’s visit (see chapter 9.1.2 *Use of the security cells*). The Ombudsman highlights the fact

⁴³ Proposition No 92 to the Storting (Bill and Resolution) (2014–2015) pages 11 and 30.

that operations started at Norgerhaven Prison in September 2015 and that it is unfortunate that the approval process for these means of restraint was not completed until June and August 2016.

Finding

- In certain situations, another state's authorities are permitted use of coercive measures, including weapons, against inmates who have been convicted in Norway. From a preventative point of view, a solution of this kind, in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment.

8.4 The transportation phase

8.4.1 Risk factors during transport

Inmates who are transported between places of detention are generally at high risk of integrity violations.⁴⁴ Complicated transport assignments in several stages, using different means of transport and involving the authorities of more than one state, has proved to further increase the risk.⁴⁵

The UN Minimum Rules for the Treatment of Prisoners (the Mandela Rules), which were adopted by the UN General Assembly in December 2015, set out rules for the transport of inmates. It follows from rule 73 that inmates who are transported to and from a prison are shielded as much as possible from the public view and measures shall be implemented to protect them from insults, curiosity and publicity of any form. The rules also set out that it is prohibited to transport inmates on forms of transport that lack sufficient ventilation and light, or in any way subject them to unnecessary hardship.

8.4.2 Rules and agreements on transport to and from Norgerhaven Prison

Pursuant to the Agreement between Norway and the Netherlands Article 11, transport of inmates to and from the prison on the territory of the Receiving State must take place by order of the prison governor, and must be carried out by officers designated by the Receiving State's Minister of Security and Justice. Transport on Dutch territory is carried out by the transport service 'Dienst Vervoer en Ondersteuning' (DV & O) under the auspices of Dienst Justitiële Inrichtingen (the responsible directorate in the Netherlands).⁴⁶ Pursuant to Article 11 No 2 of the Agreement, the persons responsible for transport can use direct force, including means of restraint, for reasons of security and to ensure the undisturbed progress of the transport, in accordance with the Dutch instructions for the use of force in prison. The Dutch authorities have prepared a transport description stipulating how DV & O are to carry out their transport assignments on Dutch territory.⁴⁷

The Norwegian authorities are responsible for the transport of inmates from Ullersmo Prison to the airport in the Netherlands, and correspondingly for collecting the inmates at the airport in the Netherlands on return to Norway. The Ministry of Justice and Public Security has assigned

⁴⁴ See e.g. the European Committee for the Prevention of Torture's (CPT) report after its visit to Ireland on 16–26 September 2014, CPT/Inf (2015) 38, page 52, paragraph 85.

⁴⁵ See, *inter alia*, APT, UNHCR and International Detention Coalition, Monitoring immigration detention, pages 102–103 and 110 ff.

⁴⁶ The Guidelines for the execution of sentences in the Netherlands, section 2.5.

⁴⁷ Dienst Justitiële Inrichtingen, Transport and support department, Scenario Norway, 14 December 2015.

responsibility for transport on the Norwegian side to the Correctional Service.⁴⁸ The Correctional Service Region East has set out its own instructions for transport to the Netherlands on assignment for the Directorate of the Norwegian Correctional Service.⁴⁹ The person in charge at the transit section at Ullersmo Prison ensures that personnel lists are prepared for the transport. This is generally done in cooperation with Oslo Prison, Ila Prison, Kongsvinger Prison and the Correctional Service's transport service. Staff from other prisons in Eastern Norway can also be used as necessary.

The Norwegian authorities have entered into a framework agreement with the air broker Aircontact AS on chartering aircrafts for trips to and from Oslo Airport (OSL) and Groeningen Airport Eelde (GRQ).⁵⁰ The terms and conditions require Widerøe to provide an aircraft that carries about 35 passengers. Pursuant to the current scheme, there is air transport to and from Norway every 14 days.

During the visit to Norgerhaven, two members of the NPM team accompanied the bus transport for inmates to and from Norgerhaven Prison and the Groeningen Airport Eelde on Tuesday 20 September. There were in total 15 inmates who were to be returned to Norway and 13 inmates who were to be transferred to Norgerhaven Prison.

8.4.3 Preparations for transport in Norgerhaven Prison

According to the prison administration, the inmates are normally notified that they have been allocated a place on the aircraft on the Friday before departure the following Tuesday. The administration at Norgerhaven prepare a transport threat assessment in advance, which is communicated to the persons responsible for transport at Ullersmo. The threat assessment gives information about the staff requirements, the inmates who are to be returned, the use of coercive measures and an assessment of each phase of the transport. An individual transport order is also prepared in English and Norwegian, which accompanies each inmate. The documentation also includes a description and photograph.

The inmates were prepared for transport at the visitors' entrance in the prison on the morning of Tuesday 20 September. A name tag was placed around the inmates' wrists, which corresponded to the name tags on their baggage. The inmates were then searched and placed together in holding cells for a short period while awaiting the green light for transport.

8.4.4 Bus transport to Eelde Airport

A prisoner transport bus with personnel from the Dutch transport team DV&O was waiting outside the prison. One person had the overall responsibility for the transport assignment (hereinafter called the transport team leader).

The transport staff allowed the visit team to examine the physical conditions of the bus before the inmates were escorted in. The prison transport bus had a capacity of 57 inmates. The bus had cells for the inmates with space for one or two in each. The cells were small and had a narrow window

⁴⁸ The Regulations relating to the serving of sentences in the Netherlands Section 5.

⁴⁹ The Correctional Service Region East, Transport description for phase 2 of the Netherlands project (2015–2018), 2 December 2015.

⁵⁰ The framework agreement between the Directorate of the Norwegian Correctional Service and Aircontact for purchase of air transport to and from Oslo Airport (OSL) and Groeningen Airport Eelde (GRQ), entered into on 13 October 2015.

you could see out of. Aside from the fact that the cells did not have seatbelts, the bus was designed in a way that ensured the safety of the inmates.

After the bus had been examined, the inmates were led in one by one and received by the transport team. The process took place in a relaxed and friendly manner. Means of restraint were not used on any of the inmates. They were placed in separate cells. The journey to the airport took place without any problems.

8.4.5 Transfer to the Norwegian authorities at Eelde Airport

The charter aircraft from Norway landed on the runway at Eelde Airport about five minutes after the bus's arrival. The bus was driven to the aircraft. The way in which the bus and aircraft were positioned ensured that the transfer of the inmates could not be seen by outsiders.

There were 13 inmates on the aircraft and the Norwegian transport escort with prison officer backgrounds, aside from the air crew. An escort leader was responsible for ensuring that the air transport was safely carried out. There was also an assistance team on the aircraft for the purpose of maintaining safety in the event of unforeseen incidents. An officer responsible for first aid had brought a sealed medical kit for the newly arrived inmates. This was handed over to the Dutch transport team leader.

When the aircraft had landed, contact was established between the Dutch transport team leader and the Norwegian escort leader. The 13 inmates were then escorted off the aircraft. They were all wearing bodycuffs with the straps tightened to restrain arm movement. The inmates were led down the aircraft's stairs individually by two Norwegian transport escorts. The bodycuff was removed on the runway. The inmates were then led to the bus entrance, where they were received by the Dutch transport team and placed in the prisoner transport bus. No new body searches were carried out before the inmates were handed over to the Dutch authorities. At the same time, the individual inmates' transport orders were examined and signed for to ensure correct transfer.

When all 13 newly arrived inmates had been placed in the bus, the visit team were given an opportunity to inspect the empty aircraft. This was an ordinary passenger plane with two seats on each side of the aisle. The aircraft had a normal aircraft toilet that the inmates were able to use. The team was informed that a member of staff normally held a foot in the door, but without looking in, since the door should not be possible to lock from the inside. The aircraft had a defibrillator on board. In the aircraft, the inmates were seated on the basis of the risk assessments. After this, the Dutch transport team escorted the inmates who were to be returned to Norway out of the bus one by one and handed them over to the Norwegian officers on the runway at the bottom of the aircraft stairs. Bodycuffs were then placed on all the inmates and they were led up the stairs and into the aircraft one by one by two transport escorts. According to the escort leader, bodycuffs were always used during air transport. The means of restraint was tightened on arrival and when leaving the aircraft. If the inmates remained calm when the aircraft was airborne, the bodycuffs were loosened so that the inmates could move their arms. According to the person responsible for first aid, all staff on the aircraft were equipped with belt cutters, so that the bodycuff could be quickly cut if necessary. The team was also informed that the inmates received food and drink during the flight.

The team then went on the bus back to Norgerhaven Prison. The return journey took place in a similar manner.

8.4.6 Assessment of the transportation phase

Transport between the prison and the airport took place in a planned, professional and respectful manner. The Ombudsman noticed that the inmates were received in a positive manner by the Dutch transport team, both before leaving Norgerhaven Prison and at the airport. To the Ombudsman's knowledge, all written procedures were followed.

One concern, however, is that the prisoner transport bus did not have seatbelts. This was raised with the Norgerhaven Prison administration afterwards, and it was explained that Dutch legislation does not require the use of seatbelts in bus transport, including the transport of inmates. The Ombudsman maintains that a lack of traffic safety measures represents a danger to the life and health of the inmates and should be followed up. Reference is made to how the European Committee for the Prevention of Torture (hereinafter the CPT) pointed out the fact that there were no seatbelts for inmates during transport after its visit to the Netherlands on 2–13 May 2013 and recommended that this be followed up to ensure the inmate's safety.⁵¹ Reference is also made to the Mandela Rules, Rule 73 (see point 8.4.1 *Risk factors during transport*).

Afterwards, it also emerged that the inmates were uncertain as to how they could submit complaints about situations that arose during transport on Dutch territory. The prison governor admitted that this was a challenge and that work was being undertaken in cooperation with the Dutch authorities to prepare a more simple complaints procedure.

In the view of the Ombudsman, the routine use of bodycuffs, a means of restraint, on inmates transported by aircraft between Norway and the Netherlands is not acceptable. The use of a means of restraint, including during transport, shall only take place following an individual risk assessment in accordance with Section 38 of the Execution of Sentences Act.⁵² A review of written instructions for air transport shows that the Correctional Service Region East assumes that 'means of restraint are placed on inmates' before transport from Ullersmo Prison.⁵³ It also emerged that tightening the bodycuffs before exiting the aircraft is a routine procedure that ensures that the inmates are not able to run.

It is difficult to see how the routine use of means of restraint is based on a real security need, including the routine tightening of the means of restraint when the inmates enter and exit the aircraft. A number of inmates felt that the intervention was both unnecessary and humiliating, in great contrast to what was described as respectful treatment by the Dutch team responsible for transport. Overall, the procedure appeared to be an unnecessary and disproportionate intervention to the inmates' dignity.

As regards transport by aircraft, the CPT underlined that 'the force and the means of restraint used should be no more than is reasonably necessary'.⁵⁴ On this basis, the Correctional Service is asked to assess this practice.

⁵¹ The CPT's report after a visit to the Netherlands 2–13 May 2016, CPT/Inf/(2017)1 paragraph 29.

⁵² See Section 38 first paragraph letter d) of the Execution of Sentences Act, cf. section 3.41 of the Guidelines on the use of handcuffs and transport cuffs or equivalent ('Handcuffs and transport cuffs or equivalent shall only be used when this is necessary to ensure that service can be carried out securely').

⁵³ The Correctional Service Region East, Transport description for phase 2 of the Netherlands project (2015–2018), 2 December 2015.

⁵⁴ The CPT Standards, page 78, paragraph 33.

Finding

- Bodycuff restraints are routinely used on inmates during air transport without an individual assessment and written decision.

8.5 The right to equal health services

8.5.1 Safeguarding the inmates' rights pursuant to Norwegian health legislation

The health services offered in Norgerhaven Prison and in the event of a hospital admission in the Netherlands are regulated by the agreements between Norway and the Netherlands.⁵⁵ The health service in Norgerhaven Prison is provided by Dutch health personnel who are thereby subject to their own state's legislation on professional practice. It is also Dutch legislation that regulates the provision of health care, such as the right to information and right to submit complaints.

Pursuant to the Execution of Sentences Act Section 1a third paragraph, the Correctional Service shall 'ensure that convicted persons who serve their sentences in another state pursuant to the first paragraph, are offered health care equivalent to that they would have been entitled to had they served their sentence in Norway'.

In its consultation submission on proposed amendments to the Execution of Sentences Act, the Norwegian Directorate of Health stated that the requirement for equal health services stipulated in Section 1a third paragraph requires the rights the inmates would have had pursuant to the Patient and User Rights Act and other health legislation during the execution of sentences in Norway to be satisfied in the Receiving State.⁵⁶ According to this interpretation of the law, the Correctional Service has a duty to ensure that the provisions of the Patient and User Rights Act, including on the right to participation and information, consent to health care, right to request access to patient records and protection of privacy, can be met in the serving of sentences in another state. To ensure that these rights are satisfied in another state, the Norwegian Directorate of Health recommended that it be regulated in law.

Since health care in Norgerhaven Prison is regulated by Dutch legislation, the Agreement between Norway and the Netherlands would have to contain a guarantee that these rights will be satisfied.

A review of the agreements in relation to health personnel shows that, as a rule, they regulate the Dutch authorities' responsibility to ensure that inmates have access to health services, including minimum requirements for health services from different health care professions, such as GPs and nurses. No terms and conditions are included in the agreements that can ensure that the rights that the inmates would have had pursuant to the Patient and User Rights Act and other health legislation had they served their sentence in Norway are satisfied.

In its amendment proposal to the Storting, the Ministry of Justice and Public Security made reference to the Norwegian Directorate of Health's consultation submission stating that an equal health service assumes that the inmates' rights pursuant to the Patient and User Rights Act and other health

⁵⁵ See the Cooperation Agreement Article 32 and the Agreement Article 12, respectively.

⁵⁶ The Directorate of Health, Consultation submission – Proposed amendments to the Execution of Sentences Act, 27 February 2015, pages 1–4.

legislation are met in the Receiving State.⁵⁷ The Ministry's view on this interpretation of the law appears to be unclear since the assumptions were not further commented. The amendment proposal does not contain a review of whether Dutch health legislation safeguards basic patient rights in such a way that the health services offered can be deemed to be equal to what the inmates would have been offered if serving their sentences in Norway. Nonetheless, reference is made to 'the Norwegian Directorate of Health having concluded in a report that the health service in Norgerhaven Prison is equivalent to the health services provided in Norwegian prisons, with an exception for inmates who have mental health issues and require services from the specialist health service'.⁵⁸ However, the available documents obtained from the Norwegian Directorate of Health did not give an assessment of whether the inmates' patient rights pursuant to Norwegian health legislation were sufficiently safeguarded. Only an assessment of the actual available health services in Norgerhaven Prison had been carried out.

Finding

- The Norwegian authorities have not conducted a satisfactory review of how inmates' patient rights are safeguarded under Dutch health legislation.

8.5.2 Access to patient records

Pursuant to the Patient and User Rights Act Section 5-1 first paragraph, 'the patient is entitled to have access to his or her medical records with enclosures and upon special request is entitled to a copy'. A review of the agreements showed that no requirements or conditions are set out that ensure that the inmates' rights pursuant to the Patient and User Rights Act can be satisfied in the Netherlands, such as the right to have access to personal medical records (see chapter 8.5.1 *Safeguarding the inmates' rights pursuant to Norwegian health legislation*). The preparatory works to the Act do not include an assessment of whether Dutch health legislation ensures a corresponding right.

Health care provided by the prison health service in Norgerhaven Prison is documented in Dutch in the patients' medical records. This means that, if the inmates are to have access to or receive a copy of their records, the Dutch authorities must provide translation services. The Norwegian authorities have assumed that the health department will arrange for interpreters to be used as necessary. It appears to be unclear whether the agreements between Norway and the Netherlands is intended to regulate responsibility for translation of the inmates' patient records.⁵⁹ It is also unclear whether other Dutch health personnel, for example in connection with short hospital stays, have access to Norwegian inmates' medical records.

The Ombudsman underlines that the right to have access to patient records is an important right pursuant to Norwegian legislation which enables the patient to prepare for meetings with the health service, receive information on treatment assessments and clarify misunderstandings, among other things. Access to medical records is also important if a patient wishes to submit a complaint about health care received or inadequate health care. The fact that the patient records are written in

⁵⁷ Proposition No 92 to the Storting (Bill and Resolution) (2014–2015), page 17.

⁵⁸ Proposition No 92 to the Storting (Bill and Resolution) (2014–2015), page 35.

⁵⁹ Cf. Article 38 No 2 of the Cooperation Agreement ('DJI shall ensure that formal documents addressed to a prisoner are written in or translated (written or orally) into a language that the prisoner can understand').

another language and that the patients depend on translations constitutes a real limitation in the inmates' possibility of submitting a complaint.

8.5.3 Access to specialist health services

Pursuant to the Agreement between Norway and the Netherlands, inmates in Norgerhaven Prison are in principle only entitled to such health care as can be provided in the prison.⁶⁰ The Regulations related to the serving of sentences in the Netherlands therefore stipulates that 'convicted persons who need health services that cannot be offered in connection with the execution of sentences in the Netherlands,' shall not be transferred.

If a need for such health care should arise while serving a sentence in Norgerhaven Prison, the inmate shall be transferred back to Norway. Inmates can nevertheless be transferred to a hospital in the Netherlands if treatment can be completed during the course of three days, or if transport back to Norway is not possible due to the inmate's medical condition.⁶¹

There appeared to be good access to health personnel in the prison (see chapter 9.5.2 *Access to health services in the prison*), and this included access to a dentist and a psychiatrist on certain days of the week. During the visit, it also emerged that short hospital admissions did not lead to an inmate being returned to Norway. The figures presented by the health department in the prison showed that inmates had been sent to hospital on 114 occasions during the period of weeks 1–34 in 2016.

However, it gave cause for concern that some inmates who had been transferred voluntarily had extensive and, in some cases, complex health problems. This included inmates undergoing opioid substitution treatment (OST) for drug dependency. Originally, inmates with long-term or serious health problems were not supposed to be transferred. In practice, this does not appear to have been complied with (see chapter 8.10 *Target group for transfer*).

Finding

- Inmates with chronic and non-acute illnesses were not ensured sufficient follow-up by the specialist health service.

8.5.4 Complaints procedures for health care

In principle, two complaints procedures have been established for inmates in Norgerhaven Prison who wish to submit a complaint about the health service. One of the procedures follows from amendments in Norwegian legislation while the other must be derived from the Agreement between Norway and the Netherlands.

According to the Execution of Sentences Act Section 1a third paragraph, it must be possible for inmates who believe that the health care provided in Norgerhaven Prison is not equivalent to the health care they would be entitled to in Norway, to submit a complaint to the county governor in accordance with the provisions of the Patient and User Rights Act Chapter 7.

Complaints and legal actions from the inmates that concern the health personnel's professional practice and the provision of health care in Norgerhaven Prison, however, must be considered

⁶⁰ Article 12 No 2 of the Agreement 1.

⁶¹ Article 12 No 2 of the Agreement 2.

pursuant to Dutch legislation. This follows from Article 10 No 2 of the Agreement between Norway and the Netherlands.

Since the Dutch authorities are responsible for the health services provided, the inmates' right to submit complaints pursuant to the Patient and User Rights Act Chapter 7 is both formally and practically limited compared to the right to submit complaints in a prison in Norway. The county governor cannot consider complaints from inmates in Norgerhaven Prison in the same way as other complaints pursuant to the Patient and User Rights Act Chapter 7.

The county governor cannot order health personnel in another state to provide information for the consideration of complaints, but must base its decision on information obtained by the Correctional Service or received from the patient. The patient's consent only gives Dutch health personnel the right to disclose medical information, but does not oblige them to do so. The county governor's decision must be addressed to the Directorate of the Norwegian Correctional Service, which must then, on behalf of the Norwegian State, ensure that the convicted person serving a sentence in another state is provided with health care equivalent to that provided in Norway.

It appears uncertain which material assessments should be carried out, how complaints are to be considered in practice and what the outcome of a complaint might be. Reference is made to the Board of Health Supervision's consultation submission on amendments to the Execution of Sentences Act, in which these and other issues were raised.⁶² The Parliamentary Ombudsman cannot see that the manner in which complaints are to be considered pursuant to the Patient and User Rights Act Chapter 7 has been clarified in such a manner as to ensure that the inmates in Norgerhaven Prison are given health care equivalent to that provided in Norway.

Complaints concerning the health personnel's professional practice, the provision of health care or inadequate health care will often be core issues considered in connection with complaints. In such cases, the inmates in Norgerhaven must use the Dutch complaints procedures, with the exceptions set out in the Agreement between Norway and the Netherlands Article 10 No 2.

In its consultation submission, the Parliamentary Ombudsman pointed out that it had not been discussed how the inmates could safeguard their interests when submitting complaints about foreign health personnel's health care practices without knowing the language or being expected to know the regulatory framework of the Receiving State.⁶³ In a Proposal to the Storting, the Ministry underlined the importance of the Correctional Service ensuring that inmates receive the necessary information about the health service and their right to submit a complaint in a language they understand.⁶⁴

Findings made during the visit show that the complaints procedure for health care provided to the inmates in Norgerhaven Prison is unclear, laborious and complicated. The Norwegian prison administration referred the NPM visit team to the Dutch administration and personnel manager for an explanation of the procedure. As far as the Ombudsman could determine, the complaints procedure in Norgerhaven Prison was different to the procedure that applies for other inmates in the

⁶² The Parliamentary Ombudsman, Consultation – amendments to the Execution of Sentences Act for the execution of sentences in another state, 27 February 2015.

⁶³ The Parliamentary Ombudsman, Consultation Submission on amendments to the Execution of Sentences Act (Execution of sentences in another state etc.), 27 February 2015.

⁶⁴ Proposition No 92 to the Storting (Bill and Resolution) (2014-2015), page 18.

Netherlands. The ordinary complaints procedure for health care in Dutch prisons is not applicable in Norgerhaven Prison.⁶⁵ Inmates who want to submit a complaint about the health care provided are therefore referred to the general complaints procedures available to the general population in the Netherlands. During the visit, both the prison administration and the prison officers appeared to be uncertain about how such complaints were to be dealt with in practice.

According to the Dutch administration and personnel manager, the inmates had to submit a complaint to the Medical Supervisory Board, which is a national body. However, this complaints procedure was complicated and not adapted to the needs of people deprived of their liberty. The NPM was informed that the Dutch side had suggested to the Directorate of the Norwegian Correctional Service that a procedure should be established whereby a medical advisor from the Dutch Ministry of Justice could be appointed as mediator for the purpose of avoiding, as far as possible, that inmates are forced to use what was described as a very formal complaints procedure.

During private conversations with the inmates, it emerged that none of them knew how the Dutch health care complaints procedure worked. During the visit, no form of information material was available that described the complaints procedure for health care provided while serving a sentence at Norgerhaven Prison.

The inmates did not appear to have any real possibility of submitting a complaint on a par with other inmates in the Netherlands, nor the possibility of submitting a complaint that is equal to what the inmates would have had access to if serving their sentence in Norway. Overall, the lack of an efficient health care complaints procedure is a serious breach of the inmates' due process protection.

Finding

- Inmates in Norgerhaven Prison do not have any real access to an efficient health care complaints procedure.

8.5.5 Professional independence

Health personnel have a duty to safeguard the patient's health. It is stated in the UN Principles of Medical Ethics of 1982 that it is a contravention of medical ethics for health personnel to be involved in any professional relationship with prison inmates unless the purpose of such contact is solely to evaluate, protect or improve their physical and mental health.⁶⁶ The Mandela Rules, (rule 46 No 1) specifies that:

'Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.'

⁶⁵ See Article 10 No 2 of the Agreement which stipulates that 'The law of the Receiving State concerning treatment by medical professionals, with the exception of the Penitentiary Principles Act (*Penitentiare beginselenwet*) and the Penitentiary Regulation (*Penitentiare maatregel*), shall remain applicable to complaints or legal actions by prisoners in individual cases.'

⁶⁶ UN Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture, and other cruel, inhuman or degrading treatment or punishment, adopted on 18 December 1982 by the UN General Assembly, Res 37/194, Principle 3.

Unlike the health departments in Norwegian prisons, which are organised under the municipal health service, parts of the health service in Norgerhaven Prison are organised under the Dutch Prison Service. In Norgerhaven Prison, the psychologist and nurses are employed by the Dutch Prison Service, while the GPs and psychiatrist are hired from an external organisation. This kind of arrangement creates a risk of dual loyalty and role confusion. The CPT has pointed out that the health personnel in any prison are potentially at risk. Their duty to help the inmates as patients can often conflict with assessments related to prison operations and security. This can create difficult ethical dilemmas for the health personnel. In order to guarantee the health personnel's independence from the prison in health care matters, the CPT has recommended that 'such personnel should be aligned as closely as possible with the mainstream of health-care provision in the community at large.'⁶⁷

Even if the information available does not suggest that the prison health personnel generally lack an awareness of their roles, certain findings made during the visit nonetheless gave cause for concern.

In one of the decisions reviewed, the following grounds were given for placing an inmate in a security cell: 'Due to danger for your own health and in accordance with the doctor's recommendations, the prison saw it necessary to transfer you to the security cell.' Another similar finding was that, in practice, the prison's psychologist assisted the prison administration by providing expert assessments of whether inmates could be excluded from the company of others during recreational activities for up to 20 days as a sanction.⁶⁸ If this type of involvement involved the health personnel recommending such restrictive measures, this would entail a violation of their professional ethical duty under the Mandela Rules.

Generally speaking, the fact that the health personnel are not organised independently from the prison, as is the case in Norway, also appears to constitute an increased risk of role confusion. Reference is made to the fact that the CPT, in its report after visiting the Netherlands on 2–13 May 2016, urged the Dutch authorities to consider the possibility of transferring the responsibility for health services for prison inmates to the Ministry of Health.⁶⁹

Finding

- The way in which health care is organised in Norgerhaven Prison increases the risk of role confusion, particularly in relation to the health personnel's involvement in the prison's decision-making processes concerning restrictive measures.

8.5.6 Exchange of inmates' medical information

Pursuant to the Cooperation Agreement, health personnel at Ullersmo Prison shall send a summary of the inmates' patient records to the health department at Norgerhaven Prison. Pursuant to the Execution of Sentences Act, there is no legal authority for obtaining medical information against the will of the inmate for the purpose of assessing their suitability for serving a sentence in another state. In its proposal to the Storting on amendment of the Execution of Sentences Act Section 1 a, the Ministry of Justice and Public Security assumed that no legal authority for demanding such information should be established, but that it 'would probably not be a major problem in practice,

⁶⁷ The CPT Standards, page 46, paragraph 71. See also the Mandela Rules, Rule 32.

⁶⁸ Cf. the Execution of Sentences Act Section 40 second paragraph.

⁶⁹ The CPT's report after a visit to the Netherlands on 2–13 May 2016, CPT/Inf/(2016)1 paragraph 63.

since most people will want to elucidate their case'.⁷⁰ In its consultation statement, the Ombudsman stated that this view was problematic.

It emerged that some inmates who had been transferred against their will had not consented to medical information that was subject to a duty of confidentiality being disclosed to the Dutch health authorities. The NPM was informed that most of these inmates had consented to information of this kind being shared shortly after arriving at Norgerhaven Prison, in order to receive adequate and correct health care. Consent can hardly be described as being given freely in such cases.

It also appeared to be a challenge that patient information that was disclosed with the patient's consent was delayed or contained too little information. The Dutch health service often lacked information about previous illness and treatment measures. Patient information sent back to Norway with the inmates was often limited, since it was common practice to write a summary in English based on the Dutch information in the records.

8.6 Visits and the sending of post

It is stated in the Guidelines that when convicted persons receive visitors at Norgerhaven Prison, 'flexible solutions shall be arranged, for example by visits being possible on several consecutive days, as far as capacity permits'.⁷¹ Applications for permission to visit the prison must be addressed to Ullersmo Prison. The visitors must cover their travel expenses from home to the prison themselves. The journey from Oslo Airport Gardermoen to Norgerhaven Prison can take 6–8 hours, and the travel expenses will on average be about NOK 5,000 per person (including accommodation). Expenses relating to domestic travel in Norway would come in addition to this amount.

Very few of the inmates the visit team talked to stated that they had received visits from family or friends in Norgerhaven Prison. The reasons for this varied. Many stated that it was too far, too costly and took too long a time to visit. Several inmates pointed out that uncertainty as to when they would be returned to Norway made it difficult to plan a visit. Many stated that their possibility of receiving visits from family and friends was very limited or non-existent compared to the situation if they had served their sentence in Norway. Statistics obtained of the number of visits in 2016 showed that just 37 of the inmates had received visits from family or friends in Norgerhaven Prison in the period from 1 January to 10 October.

In the Parliamentary Ombudsman's opinion, the challenges in relation to receiving visits from family and friends are problematic in light of the objective of achieving an expedient release of individuals back into society.⁷² The long journey and financial burden also appears to disproportionately affect low-income families. Reference is also made to the Mandela Rules, Rule 59, which states that: 'Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.'

In general, the few inmates who stated that they had received visitors felt that the prison had made good arrangements for them. Some of them had received several visits that took place over several days. The statistics obtained document that the prison largely ensures that visits can be made

⁷⁰ Proposition No 92 to the Storting (Bill and Resolution) (2014-2015), page 27.

⁷¹The Directorate of the Norwegian Correctional Service's Guidelines for the execution of sentences in the Netherlands, section 3.7.

⁷² The Execution of Sentences Act Sections 2 and 3.

possible on several consecutive days, as stipulated in the Regulations Section 4 fifth paragraph. However, one inmate had felt that he had not been given sufficient information about the rules for receiving visits and that this had led to unnecessary misunderstandings. The NPM also noted that the visiting rooms were not suited to longer visits, particularly for visits by children.

The address of inmates in Norgerhaven Prison is Ullersmo Prison. All post to and from the inmates must therefore be sent via Ullersmo Prison, which is also responsible for controlling the post.⁷³ Several inmates expressed frustration about the fact that letters were often significantly delayed as a result of this arrangement. One inmate stated that he was on the verge of giving up sending letters to his next of kin in Norway. This is unfortunate in a rehabilitation perspective.

Finding

- The inmates' actual possibility of receiving visits is significantly limited.

8.7 Language challenges and knowledge about Norwegian regulations and practice

Norgerhaven Prison has a small team of Norwegian personnel comprising seven persons including the prison governor. Therefore, it is mostly the Dutch staff who are in regular contact with the inmates. The duties carried out by Dutch officers include responsibility for following up individual inmates (mentoring) and case manager and section manager duties. The prison's health personnel are also Dutch.

The establishment of an arrangement whereby nearly all the staff have a language other than Norwegian as their mother tongue and are tasked with enforcing the Norwegian Execution of Sentences Act in practice is a highly demanding situation. It follows from the Mandela Rules that the majority of prison staff shall be able to communicate in the language understood by the greatest number of the inmates, and that the staff shall, among other things, receive training in relevant national legislation and practice.⁷⁴ The Norwegian authorities have sought to resolve these challenges by implementing training schemes and by stipulating requirements for the number of employees who have English language skills.⁷⁵

The inmates reported that most of the officers had sufficient English language skills. Nonetheless, it must be noted that some prison employees had limited knowledge of English, including some of the health department personnel. There is good reason to emphasise that in order to be capable of providing satisfactory health care, good communication between the health personnel and the patient is essential.

However, many inmates also had difficulties communicating in English themselves, particularly when it came to communicating about reintegration work with the Dutch case managers and communicating with health personnel about health-related matters. Some of these inmates were Norwegian nationals. Several inmates stated, for example, that they found it difficult to give a detailed account of health issues in a language that was not their mother tongue.

⁷³ The Directorate of the Norwegian Correctional Service's Guidelines for the execution of sentences in the Netherlands, section 3.6.

⁷⁴ Rule 80.

⁷⁵ Articles 14, 15 and 18 of the Cooperation Agreement.

Language challenges make it difficult to keep up-to-date on important circumstances related to serving a sentence and can also result in inmates being poorly mapped on arrival and their needs not being identified.

The current language challenges are amplified by the fact that many inmates felt that they had a great unmet need for information about the division of responsibility between the Norwegian and Dutch staff, particularly in relation to the procedures for applications and complaints (see chapter 8.8 *Processing of applications for parole and transfer to a lower security level*).

It appears to be a challenge in this area that despite training schemes, the Dutch case managers still seemed to have limited knowledge about Norwegian legislation and practice.

In the view of the Ombudsman, it is a challenge that the prison staff of another state are given such extensive responsibility for case processing pursuant to Norwegian legislation.

Finding

- Language challenges and the staff's lack of knowledge of Norwegian regulations and practice have a negative effect on the serving of the inmates' sentences.

8.8 Processing of applications for parole and transfer to a lower security level

The Norwegian staff are responsible for processing all applications and complaints submitted by the inmates in Norgerhaven Prison pursuant to the Execution of Sentences Act. In general, case processing is carried out by the prison's two legal advisers and a reintegration coordinator. The processing of applications was to take place in close collaboration with the Dutch staff, usually the seven case managers and the inmate's mentor (corresponds to a contact officer in Norway). The reintegration coordinator received the inmates' applications and the case managers were responsible for obtaining information from the inmates, the inmates' mentors and from the Dutch case processing system TULP. The reintegration coordinator then made a recommendation based on the information obtained, which was stored in the Norwegian case processing system KOMPIS and discussed in a council meeting attended by the prison governor, the legal advisers and the inmate's mentor. The administrative decision is then written by the legal advisers and endorsed by the prison governor.

During the visit, it emerged that there were several challenges in relation to achieving satisfactory case-processing procedures. The two legal advisers had a number of other tasks, such as responsibility for the logistics of transferring inmates back to Norway, which increased the case-processing time. In practice, it has turned out to be necessary to provide extensive guidance about the Norwegian rules to the Dutch staff. The total workload had made strict prioritisation necessary, and applications for parole and transfers were considered first. Consistently, no provisional replies were given to applications or complaints, and cases related to sanction decisions were given lower priority.

The reintegration coordinator had been forced to spend a great deal of time on preparing procedure instructions to guide the Dutch staff through various case processing. This had affected the direct reintegration work with individual inmates. A lot of time had also been spent on information coordination, including translations, between the Dutch and Norwegian case processing systems. The

prison administration admitted that the case processing times was a challenge and referred to the fact that this was caused by a higher percentage of short sentences among the inmates than anticipated. The administration stated that they were continuously working to reduce the processing time, including by giving the case managers greater responsibility for providing guidance and information to the inmates about applications and complaints procedures. At the same time, several parties pointed out that, despite training schemes, the Dutch case managers found it challenging to obtain sufficient information about the Norwegian regulations and system.

The long case processing times for applications was a major source of frustration among the inmates the Ombudsman spoke to during the visit. Several stated that there was a general consensus among the inmates that it was more difficult to be granted parole from Norgerhaven Prison than from prisons in Norway. Several inmates also stated that the case processing caused a great deal of frustration and anger. A number of inmates stated that they had made repeated enquiries about their applications without being given a provisional reply. During its visit, the NPM also observed that the inmates were informed about decisions several weeks after they had been made.

Inmates also pointed out that there were far too few Norwegian case managers and that the Dutch case managers were often not sufficiently familiar with the Norwegian regulations. The inmates also expressed uncertainty as to whether it was the Dutch or Norwegian staff that were responsible for processing their cases, and several had found it a challenge to communicate with the Dutch case managers in English about the application process. Input from the inmates included a suggestion to design an organisation chart for the inmates that enabled them to understand who was responsible for what in the prison.

Based on the inmates' frustration over the case processing times, the Ombudsman obtained an overview of case processing times for 2016 for applications for parole after two-thirds of the sentence had been served, cf. the Execution of Sentences Act Section 42 first paragraph, and for applications for transfer to a lower security prison, cf. the Execution of Sentences Act Section 15 second paragraph.

Of a total of 153 applications for parole received, 56 had been answered within four weeks and 53 within eight weeks. Of the remaining 19 answered applications, however, the processing time was longer: eight applications took over eight weeks to answer, two over nine weeks, one over ten weeks, one over 11 weeks, two over 12 weeks, one over 13 weeks, two over 16 weeks and one over 18 weeks. As of 7 October 2016, there were still 23 applications that had not been completed: in five cases, the application had been received over seven weeks ago, in four cases over eight weeks ago and in one case over 14 weeks ago.⁷⁶ It must be noted that this type of case was given the highest priority.

The case processing time was often much longer for applications for transfer to less restrictive prisons.⁷⁷ Of a total of 44 completed applications, only two had been answered within four weeks, and only a further eight applications within eight weeks. Eleven applications had taken up to 12 weeks to answer, ten up to 16 weeks and eight up to 20 weeks. Five applications had been completed between 20 and 27 weeks after the inmate had submitted their application.

⁷⁶ Two applications had not been completed due to the transfer of sentenced persons and transfer to another high-security prison, respectively.

⁷⁷ Section 15 second paragraph of the Execution of Sentences Act.

It follows from the Public Administration Act Section 11 a first paragraph that a case shall be prepared and decided ‘without undue delay’. The content of Section 11 a first paragraph has been previously specified in the Ombudsman’s cases as follows:

‘The provision stipulates requirements to both the case processing time and to what constitutes reasonable causes of delay in case processing. The condition ‘without undue delay’ is subject to discretionary assessment, and the content will vary according to the type and area of the case. Based on the other case processing rules set out in the Public Administration Act, including the requirement for as thorough clarification of the case as possible in Section 17 first paragraph of the Act, longer case processing times can be justified in complicated cases and cases involving matters of principle than in simple cases’⁷⁸

What the requirement for a case to be processed without undue delay means will depend on the resource situation, among other things. Findings made during the visit imply that Norgerhaven Prison lacks sufficient capacity in terms of case managers with knowledge of Norwegian legislation and conditions in Norway to handle the quantity of cases.

The long processing times, particularly for applications for transfer to lower security prisons, gives cause for concern. There is reason to emphasise that parole and transfer to lower security prison are important measures for ensuring that inmates are gradually and successfully reintegrated into society. It is also an important principle that inmates shall not serve their sentences under stricter security regimes than indicated by their case.⁷⁹

Pursuant to the Public Administration Act Section 11 a second paragraph, if it is expected that it will take ‘a disproportionately long time’ before an application can be answered, the administrative agency shall as soon as possible give a provisional reply. In cases concerning individual decisions, a provisional reply shall be given if an application cannot be answered within one month of its being received.⁸⁰ In accordance with good administrative practice, a provisional reply must be followed up with new information if the case processing time continues to be long. Written enquiries made during the case processing shall be answered within a reasonable time.

On receiving an application, the prison should send a provisional reply that includes the estimated case processing time. If processing is delayed, a letter of delay should be sent that includes a new estimated case processing time and the cause of the delay. It may be difficult in certain cases to estimate an exact processing time. However, the prison should provide as concrete and realistic information as possible concerning the new expected processing time in each individual case.

The need to be kept continuously up-to-date about the progress in the case is particularly important in cases where the processing time is long. The type of case and the great significance the cases have for the inmates’ welfare indicate that the prison should provide up-to-date and correct information about the case’s progress.

Case processing in Norgerhaven Prison, which, based on the information obtained, does not send provisional replies or notifications of delay, is in breach of the Public Administration Act Section 11 a

⁷⁸ See the Parliamentary Ombudsman’s statement about the Directorate of Immigration’s case processing times in an expulsion case of 4 October 2016 (case 2016/1377).

⁷⁹ Report to the Storting No 37 (2007–2008) page 121.

⁸⁰ The Public Administration Act Section 11 a third paragraph.

and the generally accepted principles of good administrative practice. The fact that the prison fails to provide sufficient information during consideration of the cases seems to have further increased the inmates' frustration, in that they have not to any great extent been able to plan the serving of their sentence and release back into society.

Finding

- The inmates' personal progression has been complicated by the long case processing times for applications for parole and transfer to less restrictive prisons.

8.9 Practice for informing inmates about decisions

During the visit, the NPM found that the practice for informing inmates about decisions was problematic. Several inmates complained that they had been verbally informed of decisions in places where other inmates could overhear what was said. This was also observed during the visit. The Parliamentary Ombudsman underlines that the Norwegian staff are subject to a duty of confidentiality and are obliged to prevent others gaining knowledge of people's personal circumstances that they become aware of in connection with their work.⁸¹ The Dutch staff are subject to a duty of confidentiality pursuant to Dutch legislation through the agreements between Norway and the Netherlands.⁸² The scope of the duty of confidentiality is assumed to be equivalent to that which follows from the Norwegian legislation.⁸³

It also emerged that other inmates had helped to inform inmates of decisions. The prison administration admitted that there had been cases in which other inmates had been used as interpreters, and underlined that they had informed the Dutch staff that when informing inmates of decisions, an authorised interpreter must always be used in the event of language challenges (see chapter 9.4.1 *Information on arrival and during the serving of sentences*).

It follows from Section 27 first paragraph of the Public Administration Act that the administrative body that has decided a case must ensure that the parties are informed about the decision 'as soon as possible'. However, the NPM found that there were big delays in the written notification of certain types of decisions. An example was the written notification of a decision on the use of sanctions pursuant to the Execution of Sentences Act Section 40 given several months after the decision had been made. This meant that the inmate's possibility of submitting a complaint was illusory. The administration acknowledged the challenges related to delayed written notification and made reference to the fact that the cases that are most important for the inmates were prioritised. It emerged that the Dutch case managers had been given more responsibility for notifying inmates about written decisions in English and a greater role in advising inmates about applications and complaints. At the same time, language challenges between the inmates and staff and limited knowledge of Norwegian regulations and schemes among the Dutch case managers make it demanding to give the inmates sufficient guidance and information about decisions (see chapter 8.7 *Language challenges and knowledge about Norwegian regulations and practice*).

⁸¹ Section 7 of the Execution of Sentences Act, cf. the Public Administration Act Section 13 first paragraph.

⁸² Article 13 of the Cooperation Agreement.

⁸³ Proposition 92 to the Storting (Bill and Resolution), page 26.

8.10 Target group for transfer

As of 16 August 2016, 80 of 232 inmates in Norgerhaven Prison had been transferred against their will (34.4 per cent), and 17 of these inmates had Norwegian as their first language. The percentage of voluntary transfers to Norgerhaven Prison appears to have increased when compared to the situation at the start of the Netherlands project.

Findings made during the visit nevertheless confirm that transfer to another state for the execution of Norwegian sentences entails a major intervention in the inmate's life, which is in many ways fundamentally different to forced transfer to another prison in Norway. The Parliamentary Ombudsman has noted that in the preparatory works to the act, the Ministry asked the Correctional Services to arrange for voluntary transfer and the majority in the Storting particularly emphasised that '... the transfer of sentenced Norwegian nationals must involve as little use of force as possible.'⁸⁴

However, the importance of the inmates' own wishes is not made clear in the regulations relating to transfer to the Netherlands, in which more detailed conditions for transfer and factors to be taken into account in individual overall assessments are stipulated.⁸⁵ Based on the overall findings made during the visit, it is the view of the Ombudsman that inmates who are sentenced to a prison sentence in Norway should not be forced to serve their sentence in another state.⁸⁶

Findings made during the visit show that many inmates do not speak or have problems communicating in English (see chapter 8.7 *Language challenges and knowledge about Norwegian regulations and practice*). Some of these inmates were Norwegian nationals. Some of the prison staff also had quite limited English skills. The challenge was amplified by the fact that many of the inmates had a great unmet need of information. Several emphasised the fact that they were unsure about who was responsible for the processing of applications (see chapter 8.8 *Processing of applications for parole and transfer to a lower security level*), and others expressed uncertainty about how to go about submitting a complaint about the health services (see chapter 8.5.4 *Complaints procedures for health care*).

It also gave cause for concern that some inmates who had been transferred voluntarily had extensive and, in some cases, complex health problems (see chapter 8.5.1 *Safeguarding the inmates' rights pursuant to Norwegian health legislation*). It was assumed in the preparatory works to the Act that it would generally not be an option to transfer inmates to Norgerhaven who were undergoing treatment in the specialist health service and that it would most likely not be an option to transfer drug addicts undergoing opioid substitution treatment.⁸⁷

During the visit, the Ombudsman noticed that many of the inmates were quite young, some in their early twenties. Several were entitled to education in Norway and should have been offered suitable upper secondary or higher education. Findings made during the visit showed that the education offered in the prison was limited to training in basic English, maths and separate courses for illiterate

⁸⁴ See Prop. No 92 to the Storting (Bill and Resolution) (2014–2015), page 34 and Recommendation 305 to the Storting (2014–2015), page 29.

⁸⁵ The Regulations relating to the serving of sentences in the Netherlands Section 4, cf. the Execution of Sentences Act Section 14, cf. Section 1a.

⁸⁶ See also the CPT's report to the Netherlands and Belgium after its visit to Tilburg Prison during 17–19 October 2011, CPT/Inf/(2012)19, page 10, paragraph 8.

⁸⁷ Proposition No 92 to the Storting (Bill and Resolution) (2014–2015), page 33. See also Recommendation 305 S (2014–2015), page 29.

inmates (see chapter 9.2.3 *Employment and activities*). In the Ombudsman's opinion, young inmates under the age of 25 in particular should be encouraged to take an education in a prison that offers a broader range of education and courses. Despite the fact that this group of inmates can be transferred voluntarily to Norgerhaven Prison, it seems to be an unfortunate option, not least in a rehabilitation perspective.⁸⁸

The Mandela Rules set out rules for the education of inmates. The Ombudsman makes reference to rule 104, which stipulates that the education of young prisoners shall be compulsory and special attention shall be paid to it.

The Guidelines to the Execution of Sentences Act section 3.16 states that:

‘Particular efforts shall be made to motivate young inmates with inadequate education and stimulate them to participate in the education offered in the prison and receive guidance concerning further education.’⁸⁹

According to the preparatory works to the Act, the main target group for transfer to Norgerhaven was inmates who had been given long sentences and who were at the start of their prison terms. According to the prison administration, however, the inmates who have been transferred have had shorter sentences than anticipated. Since the inmates are, as a rule, to be transferred to Norway at least two months before their release, more shorter sentences have led to a higher turnover of inmates and therefore increased logistics.

Findings

- Transfer without consent to another state to serve a Norwegian sentence constitutes a major intervention in the inmates' lives.
- It gives cause for concern that inmates who have extensive health care needs, young inmates and inmates who are not proficient in English are transferred to serve their sentence in another state.

⁸⁸ The Regulations relating to the serving of sentences in the Netherlands Section 4 fifth paragraph.

⁸⁹ Guidelines to the Act relating to the Execution of Sentences etc. (the Execution of Sentences Act) and pertaining Regulations, adopted by the (former) Correctional Service's Central Administration on 16 May 2012.

9 Assessment of the conditions in Norgerhaven Prison

The following is an assessment of how the inmates' rights and welfare are safeguarded at Norgerhaven Prison in areas considered less directly affected by the fact that the sentence is being served in another state. This also includes certain circumstances that, in the view of the Ombudsman, seen in isolation safeguard the inmates' rights more expediently than if they had served their sentences in Norway (see chapter 9.2.1 *Minimum requirements for company and activities* and 9.6 *Telephone and video conferences*).

9.1 Invasive coercive measures

9.1.1 Human rights standards

During the visit, the NPM investigated the use of invasive coercive measures. The Execution of Sentences Act provides legal authority to exclude inmates from the company of other inmates pursuant to Section 37 and to place them in a security cell pursuant to Section 38. Both interventions may entail solitary confinement, depending on their duration and regime.

Rule 44 of the Mandela Rules defines solitary confinement as follows: 'solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact'.

In accordance with the Mandela Rules, solitary confinement shall be used only in exceptional cases as a last resort, and for as short a time as possible. The intervention must be subject to independent control and must only be implemented with the approval of a competent authority.⁹⁰ Solitary confinement can have a serious impact on inmates' mental health and may incite more aggressive behaviour and weaken their impulse control.⁹¹ It also increases the risk of suicide among inmates. What is generally known about solitary confinement and the risk of suicide, self-harm and the development of serious mental disorders indicates that solitary confinement should only be used as a last resort and for the shortest possible time.

9.1.2 Use of security cells

Pursuant to Section 38 of the Execution of Sentences Act, the Correctional Service may make use of security cells, among other things to prevent a serious attack on or injury to a person, and to prevent the implementation of serious threats or considerable damage to property. Placing an inmate in a security cell is a very invasive measure. It may therefore only be used when strictly necessary under the circumstances, and where less invasive measures have been tried to no avail or would obviously be inadequate. The need to uphold such a measure shall be continually assessed.

At the time of the visit, eleven administrative decisions to use the security cells had been made in 2016. Two of these stays lasted for over 48 hours (68.5 hours, and 49 hours and 50 minutes, respectively). These were related to the same incident. The other stays were under 24 hours.

⁹⁰ The Mandela Rules, Rule 45 No 1.

⁹¹ For a summary of research findings, see Sharon Shalev, *A Sourcebook on Solitary Confinement*, LSE/Mannheim Centre for Criminology 2008, page 15–17.

Administrative decisions made in Norgerhaven Prison are written in either Norwegian or English. A review of the prison's administrative decisions made pursuant to the Execution of Sentences Act Section 38 showed that they had generally been formulated in a satisfactory manner. The decisions included a short but sufficiently specific description of the grounds for placement in a security cell. However, it must be noted that the administrative decisions lacked a concrete description that documented which less intrusive measures had been attempted, or why such measures would obviously be inadequate.⁹²

The security section comprised seven security cells of approximately 11 square metres, including one cell containing a restraint bed. The bed had so far not been used. The security cells were furnished with a rip-resistant mattress and a 'chair' made of the same material as the mattress, a steel toilet and a sink. Rip-resistant cushions were also available. There was no clear colour contrast between the floor and walls. Night-time and daytime lighting was controlled by a light switch outside the cell. All of the cells had roof windows with direct daylight. It was not possible to cover the window if necessary. None of the cells had clocks or calendars.

All the security cells had functioning calling systems connected to the guardroom. During the inspection, it emerged that the food was not pushed in through a hatch by the floor, as it often the case in Norwegian prisons. Instead, the door was opened and the food given directly to the inmate. Another positive factor that the Ombudsman noted was that the security cells were furnished in a manner that enabled the inmates to sit upright off the floor, instead of having to use a mattress. Rip-resistant clothes and normal clothes were available. There were two types of rip-resistant clothing, both made in soft fabric and of sufficient length. The security section also had a bathroom with a shower and toilet that the inmates could use. This room was not sufficiently clean.

The security section had a 13.5 square-metre exercise yard. It looked dirty, with a chain-link ceiling, and there was no opportunity to take shelter against the weather or engage in physical exercise. Exercise yards of this kind are also found in several Norwegian prisons. It must be noted that exercise facilities of this nature can place an extra burden on those in solitary confinement. The CPT has recommended that inmates in solitary confinement are ensured outdoor areas of a size sufficient to move around in and that the areas provide shelter from rain and wind.⁹³

It is stated in the applicable supervision routines for Norgerhaven Prison that the inmates shall be checked on every 15 minutes in cases in which the inmate is deemed to be suicidal or at risk of carrying out extensive self-harm. The frequent supervision is stipulated by the Directorate of the Norwegian Correctional Service. Findings made during the visit suggested that the procedures were followed. Visual supervision at night was possible due to the night-lights being lit.

One particular challenge, however, was that the supervision logs for use of the security cells, which the Ombudsman reviews to control how the inmates' rights and welfare are safeguarded, were partly in Dutch (see also chapter 7 *About the Parliamentary Ombudsman's prevention mandate in another state*). This impaired the Ombudsman's possibility of exercising subsequent control.

⁹² The Execution of Sentences Act Section 38 second paragraph.

⁹³ The CPT Standards, page 35, paragraph 58.

9.1.3 Exclusion from company as a preventive measure

Pursuant to Section 37 of the Execution of Sentences Act, the prison may decide that a prisoner shall be wholly or partly excluded from the company of other prisoners if this is necessary in order to prevent the prisoner from continuing to influence the prison environment in a particularly negative manner, to prevent prisoners from injuring themselves or acting violently or threatening others, to prevent considerable material damage, to prevent criminal acts, or maintain peace, order and security, or if the prisoner himself or herself so wishes. Complete or partial exclusion pursuant to the first paragraph shall not be maintained longer than necessary, and the prison shall continually assess whether grounds for the exclusion continue to exist. An administrative decision shall always be made if an inmate is excluded from company.

At the time of the visit, 37 administrative decisions had been made in 2016 on complete exclusion from company. No administrative decisions on complete exclusion had had a duration of over 14 days. A review showed that decisions had been written in both Norwegian and Dutch. It emerged that some administrative decisions on exclusion pursuant to Section 37 had not been followed up by a formal decision containing the date of discontinuation of exclusion due to time pressure in case processing (see also chapter 8.8 *Processing of applications for parole and transfer to a lower security level*). On this point, reference is made to the Parliamentary Ombudsman's statement of 6 July 2012, in which the Correctional Service was asked to ensure that written information was provided about administrative decisions to discontinue exclusion from company.⁹⁴

Administrative decisions on exclusion from company were either implemented in the inmate's own cell or in what is known as a 'time-out cell'. Three cells of this type were located in a separate wing in section K, which was a section intended for use by vulnerable inmates with a low level of functionality. The time-out cells were approximately nine square metres and contained a bed, table, chair, steel toilet, sink and TV. The three cells had access to a shared shower. Section K also had its own garden, spanning 260 square metres, which was shielded from the rest of the prison. This was used for outdoor exercise by the inmates in section K, including those in time-out cells.

Based on the information provided, the time-out cells were used as a less restrictive alternative to security cells for particularly vulnerable inmates, either voluntarily or based on an administrative decision pursuant to Section 37. One inmate had voluntarily asked to be placed in a time-out cell at night. Another example is an inmate who had a stiff leg and found it difficult to walk up and down the stairs to the ordinary section. Based on the NPM's information, these inmates took part in communal routines in the normal manner during the day.

However, the available information indicated that there had been cases of the time-out cells being used for excluding an inmate from the company of others, without the Norwegian administration's approval in the form of an administrative decision as required pursuant to Section 37 of the Execution of Sentences Act. The explanation for this appears to be inadequate knowledge about Norwegian regulations on the part of some of the Dutch staff and that the use of these cells has long been an integrated practice in Norgerhaven Prison. The prison administration should ensure that this is followed up.

⁹⁴The Parliamentary Ombudsman case 2011/494, Partial exclusion and transfer of a convicted person to the remand section – requirements for written information and notification, statement of 6 July 2012.

9.2 Company and activities

9.2.1 Minimum requirements for company and activities

The agreements between Norway and the Netherlands stipulates that inmates in Norgerhaven Prison shall be allowed the company of others between 8.00 and 20.00 on weekdays and between 10.00 and 19.00 at weekends.⁹⁵ The Ombudsman has noted that Norwegian legislation does not quantify minimum requirements for the company of others. In light of the experience gained in Norgerhaven Prison, the Norwegian authorities should look into introducing clearer requirements for the company of others in Norwegian legislation.

It also follows from the agreements between Norway and the Netherlands that inmates must be offered at least four hours of paid work or other meaningful activity per day on weekdays, such as programmes, education, courses or therapy.⁹⁶ The inmates must also be guaranteed at least two hours outdoors per day, leisure activities 12 hours a week in suitable premises, the possibility of participating in physical activity three times a week, and at least one hours' access to the library per week.

9.2.2 Company and freedom of movement

Findings made during the visit implied that the requirements for the company of others were complied with in practice. It emerged in interviews with the inmates that they felt that they spent more time outside their cells and had greater freedom of movement during the day than they had had in Norwegian high-security prisons. The Ombudsman noted that the inmates at Norgerhaven Prison, unlike the ordinary routine in a Norwegian prison, were not locked in their cells when they did not want to take part in organised leisure activities. Instead, they were able to freely move around in and out of the cells during the day and could choose to use their free time on indoor and outdoor activities. The flexible scheme for the serving of sentences appeared to reduce the inmates' level of stress in connection with other frustrations (see in particular chapter 8.7 *Language challenges and knowledge about Norwegian regulations and practice*).

9.2.3 Employment and activities

At the time of the visit, nearly all the inmates were working and/or taking an education, with the exception of inmates who were sick or excluded from the company of other inmates.

The inmates worked four hours from Monday to Friday in two shifts, half before lunch and half after. The employment offered in the prison included work in the laundry or mechanical workshop, cleaning, gardening, catering operations, and work as a physical training instructor and library assistant. The prison's school section taught basic English and maths, and had adapted courses for illiterate inmates.

Aside from organised leisure activities arranged by the person responsible for sport in the prison, the inmates could also take part in art classes, painting, drawing and ceramics. In the prison library, to which inmates had access at least once a week, inmates could borrow books in a number of languages, musical instruments, CDs and DVDs. There were eight computers in the library which could be used with restricted internet access. In general, the inmates were very satisfied with the leisure activities they were offered.

⁹⁵ Article 20 of the Cooperation Agreement.

⁹⁶ Articles 21–22 of the Cooperation Agreement.

The inmates' feedback varied in relation to the work and education offered at Norgerhaven Prison. Most inmates felt that the work they were offered was fine and inmates who were not proficient in English found the language tuition given in the prison very useful.

However, several inmates described the education offered as poorly adapted for inmates who wanted to complete upper secondary school or take higher education. Inmates referred to the fact that the education they were offered did not give them a chance to prepare for their release. The prison administration admitted that the education provided was less structured and suited to achieving formal qualifications than in Norwegian prisons. Efforts were being made to put in place more targeted education, and to offer inmates the opportunity of acquiring a formal documentation of competence issued by the Norwegian educational system before returning to Norway. The Ombudsman underlines that providing good education is essential for facilitating successful reintegration of inmates in society. In this perspective, it is particularly problematic that young inmates who are entitled to take an education are transferred to Norgerhaven Prison (see chapter 8.10 *Target group for transfer*).

9.3 Physical conditions

The prison only has single cells. The cells were furnished with a bed, shelves, a wardrobe, desk, chair and partially screened area with a toilet and sink. Some of the cells in the north building contained bunk beds and a cubicle with sliding doors containing a toilet and sink. The bunk beds were only used by one person. The cells appeared worn, with the exception of the cells in the north building, which were somewhat more recent. The windows in the old cells could be opened and provided direct daylight. The windows in the newer cells could not be opened.

Measurements showed that most of the cells were about seven square metres in size, including a cubicle with a toilet and sink of about one square metre. The short distance between the side walls made the cells feel cramped, and with the bed and desk, there were limited possibilities for the inmates to move around. Concerning the size of the cells, reference is made to the CPT recommendation: '...a single-occupancy cell should measure 6m² plus the space required for a sanitary annexe (usually 1m² to 2m²).'⁹⁷

A large exercise yard was located in the middle of the prison area, surrounded on all sides by the prison's four main buildings. The outdoor area had a park layout with seats and clusters of tall trees. There was also outdoor fitness equipment and courts for sand volleyball, basketball and tennis. A paved running track was placed around the park area. The inmates had free access to this outdoor area during their communal leisure time. The inmates also had access to an area outside with football pitches and tennis courts, which they could be escorted to for organised leisure activities. The prison had good arrangements that allowed the inmates to engage in suitable exercise in the open air, as set out in the Mandela Rules.⁹⁸

There was a gym that provided opportunities for ball games and other activities. There was also a spinning room and a large, well-equipped gym with treadmills, rowing machines, cross-trainers, bikes, apparatus, weights and weightlifting belts. The prison also had a library with books, films and music in a number of languages and a kiosk that was open to the inmates a few times a week and was run by inmates. Everything was located near the large exercise yard.

⁹⁷ Living space per prisoner in prison establishments: CPT standards, CPT/Inf (2015) 44, page 3, paragraph 10.

⁹⁸ The Mandela Rules, Rule 23 No 2.

Overall, the physical conditions of the prison appeared to be good. The Ombudsman would like to emphasise that the large exercise yard, in combination with a flexible scheme for the serving of sentences, constitutes a good area for physical activity and recreation. The exception was the cells, which provided relatively limited opportunities for the inmates to move around in.

9.4 Protecting and safeguarding the inmates

9.4.1 Information on arrival and during the serving of sentences

Inmates have a right to be given written and oral information in a language they understand both on arrival and while they are serving their sentences, if necessary using an interpreter.⁹⁹ Pursuant to the agreements, the Dutch authorities are responsible for ensuring that documents intended for the inmates are written in or translated into a language the inmate understands, and that an interpreter is made available if necessary.¹⁰⁰

Written information given to the inmates on arrival was only available in a summarised version in English. Along with the oral information that was given, this appeared to be generally sufficient during the admission phase for inmates who were proficient in English. At the time of the visit, however, corresponding information was not available in Norwegian or other common languages in the prison, as set out in the Mandela Rules.¹⁰¹ The 'house rules', which contained more detailed information, was only available in Dutch. In light of findings relating to an unmet need of information among the inmates about procedures and the division of responsibility in relation to case processing in the prison (see chapter 8.8 *Processing of applications for parole and transfer to a lower security level*), the Ombudsman underlines the need to have the house rules translated into English, Norwegian and other common languages in the prison. According to the Dutch staff and facility manager, work on this was underway.

The available information shows that the prison has not established clear procedures for ensuring the use of an interpreter for inmates who do not speak Norwegian or English, either on arrival or during the serving of sentences. Practices varied between the different sections. Some employees stated that interpreters were not used on arrival, but that instead, the staff attempted to find another inmate who could be used as an interpreter.

The Parliamentary Ombudsman advises against the use of other inmates as interpreters during the admission phase. When being admitted to a prison, the inmates are in a vulnerable situation, particularly in a prison in another state that has different procedures. It is important to avoid unwanted power relationships being established between the inmates.¹⁰² Reference is also made to findings concerning the use of inmates as interpreters when giving notification of answers to applications (see chapter 8.9 *Practice for informing inmates about decisions*).

9.4.2 Safeguarding the security of inmates

No accusations emerged about the staff abusing or using physical force against the inmates. One inmate stated that he had been verbally harassed by a member of staff. The Ombudsman underlines

⁹⁹ The Mandela Rules, Rule 55 No 1 and Rule 80 No 2.

¹⁰⁰ Article 38 No 2 and 3 of the Cooperation Agreement.

¹⁰¹ Rule 55 No 1.

¹⁰² KRUS Håndbok om utenlandske innsatte (The Correctional Service of Norway Staff Academy's handbook on foreign inmates – in Norwegian only), page 72.

that all forms of harassment of inmates are unacceptable and expects the prison administration to provide clear guidelines about this matter.

The prison authorities also have a duty to prevent violence among the inmates.¹⁰³ According to the European Prison Rules, inmates ‘as soon as possible after admission, (...) shall be assessed to determine whether they pose a safety risk to other prisoners...’. Furthermore, ‘Procedures shall be in place to ensure the safety of prisoners, prison staff and all visitors and to reduce to a minimum the risk of violence and other events that might threaten safety.’¹⁰⁴

The majority of the inmates interviewed stated that they felt safe in Norgerhaven Prison. It was emphasised that, as a rule, the staff were quick to intervene if there was any sign of violence between the inmates. At the same time, many stated that they had witnessed violent incidents. A not insignificant proportion of the inmates also stated that they felt unsafe in the prison. These inmates were concerned about the fact that alcohol was produced in and smuggled into the prison, which created an aggressive atmosphere, that the staff were often not present during communal activities in the section, and that inmates who had been convicted in the same case could be placed in the same section. It emerged that some inmates felt threatened and were afraid of spending time in the communal areas with little supervision, for example when using shared shower facilities.

A review of the prison’s incident reports documented relatively serious episodes of violence. Findings suggested that it can be challenging for staff to keep an eye on the inmates’ activities in some parts of the prison, among other reasons, because the guardroom is located on a different floor to the communal areas where the inmates spend their time. Another area of risk is the shared shower facilities in the sections.

The prison’s procedures for protecting the inmates against violence and abuse should be reviewed to uncover any weaknesses and follow them up. A review should include risk assessments practices when admitting new inmates to a section, and an assessment of any special areas of the prison that should be more thoroughly monitored, preferably by increased staff presence. Reference is made to the European Prison Rules and recommendations from the CPT on preventing violence between inmates.¹⁰⁵

9.4.3 Relationship between staff and inmates

Relations between staff and inmates generally appeared to be good. A clear majority of the inmates described the Dutch staff in a positive light. The feedback from inmates and the visit team’s own observations indicate that the staff generally acted in a professional and respectful manner in relation to the inmates.

However, the Ombudsman noticed that, often, the staff in Norgerhaven Prison did not appear to be present in the communal areas where the inmates spent their time, particularly indoors. This can weaken the protection of particularly vulnerable inmates against violence and abuse (see chapter 9.4.2 *Safeguarding the security of inmates*). Regular contact with inmates can be important for both assessing and supporting inmates in their rehabilitation process and for safeguarding their security.

¹⁰³ See the UN Convention against Torture Article 2 No 1. See also ECtHR’s judgment, *Pantea v. Romania*, appeal No 33343/96.

¹⁰⁴ The European Prison Rules, Rule 52 Nos 1 and 2.

¹⁰⁵ The European Prison Rules, Rule 52 Nos.1 and 2; and CPT Standards, page 23, paragraph 27 ff., CPT/Inf/E (2002) 1 Rev. 2015.

9.5 Health services

9.5.1 In general

The agreements between Norway and the Netherlands stipulate minimum requirements for health services provided to the inmates in Norgerhaven.¹⁰⁶ A GP, a psychologist and nurses shall be available during the daytime (9.00–17.00) Monday to Friday. It shall be possible to summon a GP when necessary during the evenings and at night and weekends. It shall also be possible to summon a psychiatrist and dentist when necessary.

If the inmates require health care that cannot be offered in Norgerhaven Prison, they should, as a rule, be transferred to Norway for treatment.¹⁰⁷ If an inmate requires admission to a medical centre for not more than three nights, or, if for medical reasons the transfer to a medical centre in the Sending State is not possible, treatment may be given in a Dutch medical centre.

Findings made during the visit indicated that, in general, the health department in the prison works in a sound and systematic way. At the same time, several fundamental and practical challenges were identified caused by the fact that responsibility for health care is transferred to health personnel in another state, who are subject to this other state's health legislation and complaints procedures (see chapter 8.5 *Complaints procedures for health care*).

9.5.2 Access to health services in the prison

During the visit, the NPM met with the prison health service administration and the nurses, and conducted separate interviews with the doctor and psychologist.

During the meetings, it emerged that three or four of the nurses are on duty every weekday from 9.00 to 17.00. The psychologist works at the prison four days a week, which is one day less than stipulated in the agreements. Four GPs are affiliated to Norgerhaven Prison. Based on the information obtained, one doctor was present four days a week at the following times: Monday 8.30–12.00, Tuesday 8.30–17.00, Wednesday 14.30–17.00 and Friday 14.30–17.00. The GPs were thus also not available as often as stipulated in the agreements. In addition, a physiotherapist and dentist were at the prison every Monday, an optician every sixth week and psychiatrist one day a week. All of the doctors who worked in the prison were employed by the organisation Utrecht Forensic Medical Doctors. The nurses and psychologist were employed by the Dutch Prison Service.

Access to health personnel in the prison appeared to be good compared with many high-security Norwegian prisons. The information obtained indicates that the inmates were generally offered an appointment with a doctor or nurse within a short space of time. The health department carried out admission interviews with the inmates within 24 hours of their admission. The health assessments made seemed thorough.

¹⁰⁶ Article 32 of the Cooperation Agreement.

¹⁰⁷ Article 12 of the Agreement

9.5.3 Confidentiality

The CPT Standards for health services in prisons underline the importance of ensuring that inmates are able to communicate with health personnel in a way that safeguards confidentiality, for example by using a sealed envelope.¹⁰⁸

Inmates could request contact with the health department by filling in a request form. The request form contained a field in which they could indicate the reason for the request. In addition to a field for the inmate's own signature, there was a field for the signature of a member of staff. The health personnel underlined that they were not used to the inmates having to fill out a request form stating their reasons for the request and that they did not need a member of staff's signature in order to being given an appointment.

Some of the inmates reported having used a sealed envelope or that they knew that they could ask for one. However, not all of the inmates appeared to be aware of this possibility. The prison should, in consultation with the health department, ensure that inmates can easily contact the health service without having to disclose confidential health information. In connection with the use of request forms, envelopes should always be available in the same place as the forms, and the field for the staff's signature should be removed.

It also emerged that, as a rule, regular prescription medicines were distributed by Dutch prison officers. The Parliamentary Ombudsman has raised this issue following several visits to places in which people are deprived of their liberty.¹⁰⁹ The officers therefore have information about what type of medicine individual inmates are using. It is not desirable that anyone other than health personnel have access to information about what medication inmates use and their confidential medical information. The system constitutes a risk of health personnel's duty of confidentiality being breached. In connection with its visits, the CPT has criticised the fact that non-medical personnel are responsible for distributing prescription medicines.¹¹⁰ After a visit to Sweden in 2015, the CPT stated that:

'As regards medical confidentiality, the delegation was concerned to observe that in most of the establishments visited, the distribution of prescribed medicines to inmates was performed by medically untrained prison officers. As a usual practice, individual medication boxes with a prisoner's name, name of medication and the dosage written on them were held in each unit of the prison and distributed by the dedicated prison officer.

The CPT wishes to underline that the distribution of prescription medicines by medically untrained individuals may be harmful and, in any event, it is in principle incompatible with the requirements of medical confidentiality and does not contribute to the proper establishment of a doctor-patient relationship. The CPT recommends that the Swedish authorities take the

¹⁰⁸ The CPT Standards, page 39, paragraph 34. Reference is also made to the CPT's report after its visit to Denmark in 2014, [CPT/Inf (2014) 25], page 35, paragraph 53.

¹⁰⁹ See the Parliamentary Ombudsman's visit to Telemark Prison, Skien unit 2–4 June 2015, chapter 5.5.2, page 28–29; visit to Tromsø Prison 10–12 September 2014, chapter 5.3.3, page 14 and visit to Telemark Prison, Kragerø unit 1–2 November 2016, chapter 11.6, page 32.

¹¹⁰ See also the Parliamentary Ombudsman's NPM's report after a visit to Telemark Prison, Skien unit 2–4 June 2015, chapter 5.5.2, page 30–31.

necessary steps to ensure that the distribution of prescription medicines is carried out in a manner respectful of medical confidentiality and only by qualified staff.’¹¹¹

After its visit to the Netherlands on 2–14 May 2016, the CPT pointed out the same challenge in a Dutch Prison. The committee stated that ‘In the CPT’s view, medication should preferably be distributed by health-care staff.’

On this basis, the prison and the health department should cooperate to find alternative procedures for distributing medication so that confidentiality regarding health issues is maintained.

9.6 Telephone and video conferences

To compensate for practical difficulties in relation to receiving visitors, a system allowing access to phone calls or video conferences of up to 20 minutes at least three times a week has been introduced.¹¹² This entails a 40-minute extension of the normal weekly phone allowance, and access to use video conferences is currently unique to inmates serving a sentence in Norgerhaven Prison.

The inmates were largely happy with how the prison facilitated contact via phone and Skype, and in general used their time allowance either to make phone calls, or in combination with video conferencing via Skype. A number of them pointed out, nonetheless, that they do not regard it as adequate compensation for poor visit opportunities (see chapter 8.6 *Visits and the sending of post*). Those who had experience of using Skype gave positive feedback about this possibility, and several inmates who had been voluntarily transferred pointed out that this had been an important aspect for agreeing to be transferred to the Netherlands. At the time of the visit, the prison had experienced some technical problems with the internet connection, but, according to the prison administration, this would be rectified within a short space of time.

The opportunity to have contact with next of kin, lawyers and others via video conference programs appears to be a positive new scheme for the Norwegian Correctional Service. In the view of the Parliamentary Ombudsman, this scheme should be considered for general introduction in the Norwegian Correctional Service. The Ombudsman is also aware of the fact that video conferencing technology has been introduced as a more general scheme in several European countries, such as in the Polish and Dutch prison services. The opportunity has also been introduced in Trondheim Prison for foreign inmates who have family outside Norway.¹¹³ As pointed out earlier in the report, the use of video conferencing equipment also makes it possible to conduct admission interviews or conversations using video remote interpreting if the inmates are not proficient in Norwegian or English.¹¹⁴

¹¹¹ The CPT’s report after a visit to Sweden 18–28 May 2015, CPT/Inf/(2016)1 paragraph 83.

¹¹² The Regulations relating to the serving of sentences in the Netherlands Section 8.

¹¹³ See the follow-up letter from Trondheim Prison to the Parliamentary Ombudsman of 24 November 2015.

¹¹⁴ See the Parliamentary Ombudsman’s report after its visit to Kongsvinger Prison 25–27 August 2015.

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