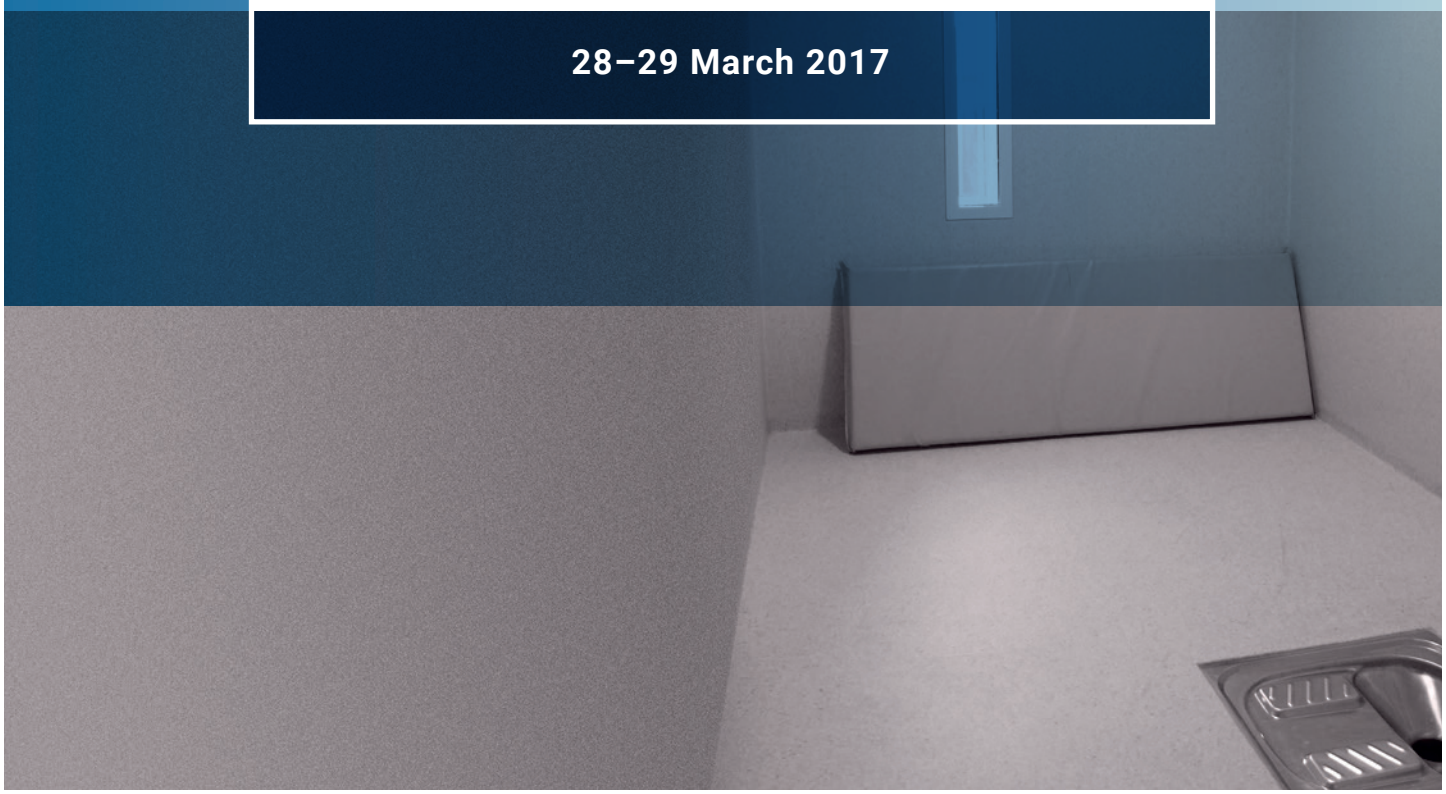
SIVILOMBUDSMANNEN
Norwegian Parliamentary Ombudsman

VISIT REPORT

The police immigration detention centre at Trandum, the security section

28–29 March 2017



National Preventive Mechanism against
Torture and Ill-Treatment

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1 The Parliamentary ombudsman's preventive 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 Ombudsman's NPM-unit 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 ombudsman issues recommendations with the aim of preventing torture and other cruel, inhuman or degrading treatment or punishment.

The Parliamentary Ombudsman 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 ombudsman 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] Section 3 a of the Parliamentary Ombudsman Act.

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 ratified all these conventions.

People who have been deprived of their liberty are more vulnerable to violations of the prohibition against torture and inhuman 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) made an unannounced visit to the police immigration detention centre at Trandum on 28–29 March 2017. During the visit, the Ombudsman examined the detention centre's practice concerning the use of the security section and the use of coercive measures, such as handcuffs and pepper spray.

The security section comprised three security cells and eight reinforced cells. The security cells had no furnishings apart from a mattress on the floor. Each cell had a squat toilet. A hatch for passing food through was placed at floor level, about a metre from the toilet. It was pointed out that serving food on the floor can be perceived by the detainees as undignified, and that it is important to serve food and drink in as humane a manner as possible. Objections were also made to the installation of video surveillance systems in the security cells, and it was pointed out that none of the cells in the security section had access to a clock and calendar, making time orientation difficult.

The detention centre had limited arrangements for activities for people detained in the security section. Findings also indicated that the detainees were not always given an opportunity to spend at least one hour outdoors every day, as prescribed. The security section's exercise yard consisted of closed-off areas separated by high walls and chain-link fences, and the area offered little sensory stimulation.

Figures from the detention centre showed that the security section had been used 368 times during the course of 2016. One statistic that gave cause for concern was that the security cells had been used more frequently at the beginning of 2017 than previously. It was also found that some detainees had been placed in the security section for long periods of time, and in some cases very long periods of time, which raises concerns about their well-being. The review indicated that the detention centre should increase its efforts to limit the time spent in the security section as much as possible. A review of the documents showed that, in general, the detention centre ensures that administrative decisions contain the information needed to assess the legality of the intervention, although some assessments were still not sufficiently documented.

Human rights standards stipulate that placing particularly vulnerable groups, such as persons with mental disabilities and children and young people in solitary confinement, should be prohibited. It is worrying that a large percentage of placements in the security section were based on the detainees' mental health, self-harming or risk of suicide. Placement in the security section normally means that the detainee is placed in isolation and a high risk of harm to health is associated with this. It was pointed out that placing vulnerable persons at risk of self-harm or suicide in the security section as a means of safeguarding them gives cause for concern. Several minors had also been placed in the security section, including in a security cell.

The use of handcuffs in connection with transportation appeared to be a routine procedure and many of those concerned were young people between the ages of 18 and 19. Body cuffs, a restraint used to immobilise arms and legs, were used in the security section on two occasions. Pepper spray was used on one occasion in a cell in the security section in order to complete a body search. The detainee's eyes were rubbed with the pepper spray from a glove that had been sprayed with the substance. Both the decision to use pepper spray and the way in which force was used appeared questionable in light of the requirements for necessity and proportionality.

Findings made during the visit showed that the detention centre has implemented measures to prevent the use of force and placements in the security section, such as training and practice in using preventive alternatives. In general, the detainees felt that they were treated in a professional manner. However, authoritarian attitudes among some of the staff appear to have added to the escalation of certain situations. Some incidents were also caused by disagreements about the procedures for body searches, and when outdoor periods and lock-ups were to take place. It was concluded that control and security considerations at Trandum are still a major focus, and that there is little leniency in the control regime.

The fact that the medical personnel at Trandum are not sufficiently independent of the Police immigration service remains a challenge, and findings made during the visit substantiated that this contributed to a number of problems. The healthcare service also appears to be of an inadequate scope to be able to safeguard the health of all detainees in a satisfactory manner. The detention centre does not have access to a psychologist.

Findings showed that the medical personnel had advised placing detainees in the security section, and that this advice had, in certain cases, led to the detainees staying there for long periods of time. The fact that medical personnel are directly involved in decisions on placing detainees in the security section is problematic in relation to medical ethics, since the measure can lead to isolation that can potentially harm health. Human rights standards stipulate that medical personnel must not play any role in decision-making processes pertaining to the use of restrictive measures such as isolation. At the same time, medical personnel must pay particular attention to the health of detainees who are subjected to isolation through daily supervision and follow up. Findings showed that daily healthcare supervision was not always provided.

Problematic findings were also made concerning the medical personnel's duty of confidentiality in relation to one of the doctors at the detention centre. The healthcare department still lacks clear reporting procedures for when physical injuries sustained by the detainees give rise to suspicion of disproportionate use of force.

Recommendations

Physical conditions and activities in the security section

- Detainees placed in the security section should have access to a clock and calendar.
- Measures should be implemented that make it possible to carry out direct visual supervision of the detainees' state of health in the security cells without the use of video surveillance equipment.
- Steps should be taken to ensure that persons placed in the security section are always given the opportunity to spend at least one hour outdoors every day in an exercise yard that offers options for physical activity and sensory stimulation. Any reasons why detainees are not given this offer must be recorded in the supervision log.
- Detainees in the security section should be offered reading matter in a language they understand and the possibility of listening to music or the radio during their time in the section.

Use of the security section

- Measures should be implemented to ensure that restrictive measures are used for as short a time as possible.
- The NPIS should continue its quality assurance efforts on administrative decisions concerning restrictive measures, in particular by ensuring that the grounds for the decision are worded in a manner that allows verification.
- The police should ensure that detainees are always informed about their right of appeal, and that this is documented in the decision along with information about how the detainee was informed about the decision.
- The police should develop alternatives to using restrictive measures on particularly vulnerable groups, such as children and those with serious mental disorders or trauma, including people who are suicidal or self-harming.

Use of coercive measures

- Coercive measures such as handcuffs and strips should only be used for transport of detainees when deemed strictly necessary following a concrete individual assessment.
- The police should ensure that pepper spray is only used when strictly necessary to bring a dangerous situation under control, and that it is not applied in a manner that increases its potential to harm health.

Preventive measures

- Further measures should be implemented to prevent the use of restrictive and coercive measures, including an increased focus on psychosocial support measures for the detainees.

The role of the healthcare service in invasive use of force

- Medical personnel should never give advice concerning placing a detainee in the security section, but solely state their opinion on measures relating to a patient's medical treatment.
- Steps should be taken to ensure that detainees placed in the security section are always supervised on a daily basis by the medical personnel who clearly identify themselves. Medical supervision should be carried out as face-to-face communication when the medical personnel deem this to be safe.
- The healthcare department and police should implement measures to ensure that sensitive patient information is handled in a manner that prevents people other than medical personnel having access to it.
- Clear procedures should be established for medical personnel to report injuries that give grounds for suspecting disproportionate use of force.

4 Background

The Parliamentary Ombudsman's National Preventive Mechanism (NPM) visited the police immigration detention centre at Trandum in the period 28 to 29 March 2017. The visit was unannounced.

The visit was part of the follow-up of the Parliamentary Ombudsman's report published on 8 December 2015 containing findings and recommendations from the visit to Trandum in the period 19 to 21 May 2015. The Ombudsman communicated in writing with the National Police Immigration Service (NPIS) on follow-up measures after its visit in May 2015. The NPIS informed the Ombudsman on 30 April 2016 about the follow-up of the recommendations in the visit report. In its response to the follow-up letter of 24 October 2016, the Parliamentary Ombudsman commented on some of the follow-up points and requested additional information. The NPIS responded to this letter on 31 January 2017. The communication about the visit report from 2015 was formally concluded in the Ombudsman's letter of 20 February 2017.[2]

In contrast to the visit in May 2015, the Ombudsman's visit in March 2017 was more focused on specific topics. The purpose was to examine the detention centre's practice in the use of restrictive measures, such as the security cells and isolation, and the use of coercive measures, such as body cuffs. Such measures are particularly invasive and constitute a high risk of inhuman and degrading treatment.

Limiting the visit to specific topics made it possible to look at how the Ombudsman's recommendations on the use of restrictive measures after its visit in May 2015 had been followed up in practice.[3] The visit provided an opportunity to thoroughly investigate how the detainees' due process protection and health is safeguarded during stays in the security section, and if they were subjected to any other use of force. It also provided an opportunity to observe the security section's new premises, which were opened in September 2016.

[2] The visit report and the letters are available at the Ombudsman's website under its preventive work: https://www.sivilombudsmannen.no/besoksrapporter/?type_institusjon=&period=2015

[3] The Parliamentary Ombudsman's National Preventive Mechanism, report after visit to the police immigration detention centre at Trandum 19–21 May 2015, pages 9–15, section 5.1.2.

5 General information about the security section at the police immigration detention centre at Trandum

The police immigration detention centre is situated approximately 13 km from Oslo Airport Gardermoen. The detainees[4] at Trandum are primarily there on grounds of suspicion that they have given a false identity or to prevent them from evading the enforcement of a final decision requiring them to leave Norway.[5] Deprivation of liberty pursuant to the Immigration Act is therefore not a punishment. The detention centre has been upgraded and extended several times over the past few years, most recently in 2016 with the building of a third module with 90 new places. A new security section has also been established in the new module. Most administrative decisions on complete or partial isolation and all decisions on the use of security cells are implemented in the security section.

The new security section at Trandum was opened on 6 September 2016. It comprises three security cells and eight reinforced cells, with a more basic interior than the ordinary cells. There is also a separate room for body searches, a duty room, a room for storing means of restraints, and an interview room with a TV. The security section has its own, separate exercise yard.

At the time of the visit, the security section was staffed by 12 permanent employees under the management of a team leader.

[4] In this report, foreign nationals who are detained under Section 106 first paragraph of the Immigration Act are referred to as 'detainees' or 'those deprived of their liberty', in order to emphasise that those detained at Trandum are not serving sentences.

[5] Act of 15 May no 35 concerning the entry of foreign nationals into the Kingdom and their presence in the realm (the Immigration Act), Section 106 first paragraph letters (a) and (b).

6 How the visit was conducted

The unannounced visit began with an inspection of the security section together with the section's team leader. The inspection also included the security section's exercise yard. After the inspection, a meeting was held with the administration at Trandum.

The remainder of the visit was spent on private interviews with the detainees, staff and medical personnel. Detainees who had been, or were currently, isolated in the security section, or who had experienced use of force during their stay, were prioritised. The visit team talked to most of the detainees who had received an administrative decision or had reports relating to such interventions. Interviews were also carried out with several employees ('transport escorts') who had permanent positions in the security section, as well as the team leader and chief duty officers. The visit team also conducted separate interviews with two nurses and one doctor.

After the visit, documentation was obtained in the form of internal guidelines, administrative decisions on restrictive measures, reports on the use of force, patient information and logs for placements in the security section. A concluding meeting with the administration at Trandum took place on 27 April 2017.

The visit was well organised by the detention centre's administration and the staff of the security section.

The following persons participated from the Parliamentary Ombudsman:

- Helga Fastrup Ervik (head of the NPM, legal adviser)
- Mette Jansen Wannerstedt (senior adviser, sociologist)
- Jonina Hermannsdottir (senior adviser, criminologist)
- Jannicke Thoverud Godø (senior adviser, psychologist)
- Johannes Flisnes Nilsen (senior adviser, legal adviser)
- Kjetil Fredvik (senior adviser, legal adviser at the Parliamentary Ombudsman's complaints department)

7 Human rights standards and national legislation

7.1 Human rights standards concerning invasive control measures

7.1.1 In general

The public authorities' intervention in relation to an individual must have a legal basis, and it must be necessary and proportionate in each case. Human rights standards allow for the use of invasive measures, such as isolation and the use of force, in exceptional cases, but set out strict requirements for their use and for safeguarding the due process protection and health of persons deprived of their liberty. Disproportionate use of force or long-term isolation can lead to violation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

Migrants who are subject to administrative detention as part of immigration control are protected by the same human rights conventions as other people. Human rights standards set out a number of requirements as to how the rights and welfare of detainees are to be safeguarded while they are deprived of their liberty.[6]

As regards the use of invasive control measures, such as isolation and physical use of force, it is natural to refer to the Mandela Rules, which set out detailed rules on such measures for inmates in prison.[7] The Mandela Rules do not apply directly to administrative detention of migrants. The main considerations behind the Mandela Rules' standards on solitary confinement and physical use of force is safeguarding the integrity, due process protection and health of the person deprived of their liberty, by limiting use of such control measures to the degree possible. These considerations also apply to persons subject to administrative detention as part of immigration control. The strict rules pertaining to the use of solitary confinement in the Mandela Rules are worded on the basis of more up-to-date knowledge about the harmful effects of isolation than previously adopted human rights instruments. This indicates that the Mandela Rules' standards pertaining to solitary confinement and the use of force should, as far as possible, be used as a minimum standard for treatment of people deprived of their liberty. It must at the same time be emphasised that administrative detention of migrants is not intended to be a punishment. On this basis, the European Committee for the Prevention of Torture (CPT), among others, has emphasised that: 'Conditions of detention for irregular migrants should reflect the nature of their deprivation of liberty, with limited restrictions in place and a varied regime of activities'.[8] The committee is of the view that 'immigration detainees are particularly vulnerable to various forms of ill-treatment'.[9]

[6] The Council of Europe is currently working on developing 'European rules on the administrative detention of migrants', which will replace existing standards. Information on the work is available at: http://www.coe.int/en/web/cdcj/activities/administrative-detention-migrants.

[7] The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the UN General Assembly on 17 December 2015.

[8] The CPT Factsheet on immigration detention, CPT/Inf(2017)3, page 5.

[9] The CPT, Safeguards for irregular migrants deprived of their liberty, extracts from the 19th General Report of the CPT, published in 2009 CPT/Inf(2009)27-part, page 1.

7.1.2 Use of isolation

Pursuant to the Mandela Rules, solitary confinement shall be used only in exceptional cases as a last resort, and for as short a time as possible.[10] The intervention must be subject to independent control and must only be implemented with the approval of a competent authority. The background for the strict conditions is that isolation is an invasive measure that may seriously harm the health of the person deprived of their liberty. According to the Mandela Rules, solitary confinement in excess of 15 consecutive days shall be prohibited.[11]

The Mandela Rules also stipulate that placing particularly vulnerable groups in solitary confinement should be prohibited:

> 'The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.' The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,[...] continues to apply.'[12]

The Mandela Rules also stipulate that the administration must implement necessary measures to ease the potentially harmful effects for everyone who is, or has been, placed in isolation.[13]

The CPT has set out recommendations that apply to administrative detention of migrants. The committee's recommendations include providing the following case processing guarantees when placing someone in isolation:

> 'If segregation is imposed (e.g. for security reasons), the foreign nationals concerned should be provided with a copy of the relevant decision and information on the possibilities to appeal the measure to an outside authority, segregation should be time-limited and a separate register should be established (setting out full information, such as date and time of entering and leaving, grounds for segregation, etc.).'[14]

The CPT has also recommended that:

> 'Detainees in segregation should have a means of rest at their disposal, ready access to toilet facilities, and regular access to a shower, as well as at least one hour of outdoor exercise every day and access to reading matter.'[15]

[10] The Mandela Rules, Rule 45 No 1. The Mandela Rules, Rule 44 defines solitary confinement as: 'solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact'.
[11] The Mandela Rules, Rule 44, cf. Rule 43 No (1) (b).
[12] The Mandela Rules, Rule 45 No 2.
[13] The Mandela Rules, Rule 38 No 2. This rule does not distinguish between solitary confinement, i.e. more than 22 hours without meaningful human contact, and varying degrees of isolation.
[14] The CPT Factsheet on immigration detention, page 6, CPT/Inf(2017)3.
[15] Ibid.

7.1.3 Use of physical force and coercive measures

There are several international standards that set out limitations for the use of physical force and coercive measures.[16] The case law of the European Court of Human Rights (ECtHR) is based on:

> 'In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.'[17]

The UN Code of Conduct for Law Enforcement Officials stipulates that: 'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.'[18]

The Mandela Rules stipulate, among other things, that:

> 'Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.'[19]

The Mandela Rules also set out rules for the use of different types of restraints in prison, which is also transferable to administrative detention of migrants. All use of restraints must be warranted by law and they must be used in accordance with the requirements for necessity and proportionality.[20]

7.1.4 The role of medical personnel in the use of restrictive measures

The Mandela Rules set out detailed standards about the role of medical personnel in relation to persons deprived of their liberty who are placed in solitary confinement, isolation or subject to other similar interventions.

Healthcare personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures.[21] 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.

Healthcare personnel shall report to the director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.[22] Healthcare personnel shall also have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the

[16] See, *inter alia*: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on Prevention of Crime and Treatment of Offenders, Cuba, 27 August – 7 September 1990, Article 4–5; the UN Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979, resolution 34/169.
[17] See ECtHR's ruling in Assenov and others v. Bulgaria, Application No 24760/94, paragraph 94, with further references.
[18] Article 3.
[19] Rule 82 No 1.
[20] The Mandela Rules, Rules 47 and 48.
[21] The Mandela Rules, Rule 46 No 1.
[22] The Mandela Rules, Rule 46 No 2.

prisoner.[23] In this context, reference is made to the UN Principles of Medical Ethics of 1982, which state *inter alia* the following:

> 'It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.'[24]

7.1.5 Preventing the use of force

The UN Convention against Torture obliges member states to prevent torture and other cruel, inhuman or degrading treatment or punishment.[25] Although the use of isolation and force may be necessary in exceptional cases, such control measures are invasive and are associated with a high risk of harm to health.

It is therefore of key importance that places of detention have effective methods in place to prevent disproportionate isolation and force being used in response to conflicts and other incidents. The Mandela Rules encourage prison administrations to use, to the extent possible, conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.[26] It is also recommended that staff receive training in areas including:

> 'Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and defusing techniques, such as negotiation and mediation.'[27]

7.2 Norwegian legislation on the use of restrictive measures and force

Under Section 107 fifth paragraph of the Immigration Act, the police are authorised to use force and approved forcible means, partly or totally exclude a person from the company of others at the detention centre, and to place detainees in a high-security section wing or security cell.[28]

The threshold for applying such measures shall be high; such measures must be 'strictly necessary' in order to maintain peace, order or security, or to ensure the implementation of administrative decisions pursuant to Section 90 of the Immigration Act.[29] The Act also states that the intervention must not be disproportionate and that the police shall continuously assess whether there is a basis for upholding the measure.

[23] The Mandela Rules, Rule 46 No 3.
[24] The 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 18 December 1982 by the UN General Assembly. Res 37/194, Principle 3.
[25] See the UN Convention against Torture Article 2 No 1 cf. Article 16 No 1. See the UN Committee against Torture, General Comment No 2, the implementation of Article 2 by States parties, 24 January 2008, CAT/C/GC/2 and the UN Subcommittee on the Prevention of Torture (SPT), the approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 30 December 2010, CAT/OP/12/6.
[26] The Mandela Rules, Rule 38 No 1.
[27] The Mandela Rules, Rule 76 c.
[28] Section 107 fifth paragraph letters (a), (b) and (c) of the Immigration Act.
[29] Section 90 of the Immigration Act sets out rules on the implementation of administrative decisions concerning the rejection or expulsion etc. of foreign nationals.

The conditions for when such use of force is permitted are specified in the Regulations of 23 December 2009 No 1890 relating to the police immigration detention centre. Pursuant to Section 9 of the Regulations, when the legal requirements are met, the police may use force and coercive measures to, among other things, prevent an attack on or harm to a person, prevent the implementation of threats, riots or unrest, prevent escape from the detention centre, prevent unauthorised entry to the centre and to obtain access to a locked or barricaded room. The conditions are not intended to be exhaustive, but must be interpreted in relation to statutory requirements, which specify that the use of force must be 'strictly necessary'.

According to Section 10 of the Regulations, a detainee may only be placed in a high-security section, a security cell or in isolation if the legal requirements are met and one of the following conditions is met: the person poses a risk to his/her own safety or the safety of others; there is a risk of the person escaping from the detention centre; there is a risk of damage to property; the foreign national is assumed to suffer from a contagious disease or has been diagnosed with an infectious disease; or the person has signed a written declaration expressing a wish to be detained for safety reasons that are deemed to be adequate. A decision can also be made to exclude the foreign national from the company of others to prevent him or her from having a particularly negative effect on the social environment at the detention centre. The provisions set out in Section 10 of the Regulations are exhaustive.

The provisions of the Immigration Act and the Regulations relating to the use of restrictions and force are supplemented by the General Instructions for the police immigration detention centre.[30] The General Instructions include more detailed provisions concerning the responsibility for decisions, reporting and logging of incidents, and supervision by the staff and medical personnel. The transit section at Trandum has also developed internal guidelines to establish good procedures for how the requirements stipulated in laws, regulations and the General Instructions are to be met.

[30] The General Instructions for the police immigration detention centre, chapters 17 and 18, in effect from 10 August 2016.

8 Harmful effects of isolation

It is recognised that isolation can have a serious impact on the mental and physical health of persons deprived of their liberty.[31] Complete isolation in the manner exercised at the detention centre will often constitute solitary confinement, since the detainees spend at least 22 hours alone in a cell without any form of meaningful human contact.[32] Meaningful contact with others in places of detention is characterised by the contact taking place without physical barriers, that it is empathetic and takes place face-to-face, and that communication is not of an abrupt or random nature or occurs as part of other tasks being carried out, such as delivering food or medical supervision.[33] The reinforced cells in the security section offer little sensory stimulation and limited possibility of human contact. Placement in a security cell is a particularly invasive form of isolation, because stimuli and furnishings are limited to a minimum.

What is generally known about isolation and the risk of suicide, self-harm and the development of serious mental disorders indicates that isolation and security cells in particular should only be used as a last resort and for the absolute shortest possible time.

In the Parliamentary Ombudsman's experience, the risk of serious self-harm and suicide is among the most commonly cited grounds for administrative decisions concerning placement in a security cell, including in the Correctional Service. Although the measure is used to prevent suicide, it cannot be excluded that it could have the opposite effect and instead increase the risk of suicide. This highlights the importance of exercising particular caution when placing detainees who are at risk of suicide or self-harm in a security cell.

[31] See, *inter alia*, Sharon Shalev, A Sourcebook on Solitary Confinement, Manheim Centre for Criminology/ London School of Economics and Political Science, 2008, research findings on harmful effects are given on pages 9–23.
[32] Cf. the definition of solitary confinement in the Mandela Rules, Rule 44.
[33] See the Essex Paper 3, Initial Guidance on the interpretation and implementation of the UN Nelson Mandela Rules, written by an expert group organised under Penal Reform International and Essex Human Rights Centre 7–8 April 2016, pages 88-89.

9 Physical conditions and activities in the security section

9.1 The premises in general

The new security section comprises three security cells and eight reinforced cells, which contain less furnishing and fittings than the ordinary cells. There was also a room for body searches with an adjoining shower room, a duty room, a room for storing means of restraint, and an interview room that was used for talks between the staff and detainees. There were no common rooms in the security section in which the detainees could meet. According to the police, detainees who were placed in partial isolation (known as step 1) were permitted to spend time with others during daytime in the adjacent section.

The standard of the newly established security section was generally better than that of the previous section, in that the new security cells were bigger and were decorated in lighter colours, and all the reinforced cells had a toilet and shower. The security section has its own, separate exercise yard. The centre's proximity to Oslo Airport Gardermoen meant that there was a great deal of noise from air traffic. This noise was also clearly audible in the security section.

9.2 The reinforced cells

The eight reinforced cells that were used for isolation had normal beds with rip-resistant mattresses, but otherwise no furnishings. The cells had a bathroom with a toilet, sink and shower made of stainless steel. There was no door to separate the bathroom from the rest of the cell. The cells were about 10 square metres in size, including the bathroom.

Two of the cells, which were defined as 'health cells', also had a TV, a bedside table and a desk, but no chair or stool. During the inspection, it emerged that these cells were used for various forms of less restrictive isolation, for example because of infectious diseases.

The walls were painted white and the floor was grey. The doors were fitted with inspection hatches and observation holes for supervision purposes. The detainees were able to call the staff for help using an intercom system. The detainees could turn the overhead lighting on and off themselves, but if it was necessary to supervise a detainee at night, it could also be turned on from outside by pressing a light switch. The light was turned off as soon as the switch was released. This system prevented the light from being left on at night after supervision.

The cells did not have access to a clock or calendar. It is important that detainees are able to keep track of time in order to maintain their sense of independence.

The cells had windows that provided a good amount of daylight, but lacked curtains or similar that provided shade from the light. Some detainees felt that the lack of sun shades made it hard to sleep. It was also possible for people outside to see in through the window. This matter was raised during the visit and the police stated that they were considering putting up blinds or film on the windows to enable the detainees to regulate the amount of light that came in. It is assumed that the police will find an expedient solution to this problem.

All of the cells lacked tables and chairs. When this issue was raised with the administration, the visit team was told that none of the cells at Trandum had tables or chairs, the reason for this being vandalism and incidents in which such furniture had been used as a weapon. The Ombudsman has noted this, but emphasises that it is unfortunate that detainees cannot sit upright anywhere other

than in bed. Reference is also made to a key finding made after the Ombudsman's visit in May 2015, which was that, in some areas, there appeared to be excessive focus on control and security in the daily operation of Trandum.

9.3 The security cells

The three security cells were of equal size (about 8 square metres) and contained no furnishings except a rip-resistant mattress on the floor. They had a squat toilet, and there was a tap for drinking water on the wall. Flushing the toilet and access to drinking water was controlled from outside the cell. All of the cells had an intercom system.

A hatch for pushing food through was placed at floor level, about a metre from the toilet. The hatch was placed on a small platform just above the floor. The security cells had been designed according to a standard model used in the Correctional Service. The Ombudsman has observed such 'food hatches' in most security cells in its previous visits to prisons. Serving food on the floor is undignified in most cultures, particularly when the hatch is placed so close to the toilet area. It also limits further contact between the staff and detainees. The police informed the visit team that the staff always assessed whether the detainees' behaviour was sufficiently satisfactory to allow food to be delivered through an open door. The Ombudsman underlines the importance of serving food and drink in as humane a manner as possible.

The walls of the security cells were decorated in a light colour. There was also a long, narrow window that ensured a sufficient amount of daylight. The overhead lighting could not be controlled from the cell, but had a mechanism that ensured that it was turned off at night except during supervision. The inspection found the floors to be adequately heated and the air quality was good. As with the reinforced cells, the security cells did not have access to a clock or calendar.

Detainees placed in the security cells were able to use a shower outside the cell.

Recommendation

- Detainees placed in the security section should have access to a clock and calendar.

9.4 Video surveillance of the security cells

During the inspection, the visit team observed that video surveillance equipment was installed in the three security cells. The reason given for this was that the security cells' inspection hatches were placed in a location that did not allow a view of the whole cell. The surveillance equipment was installed such that it was possible to monitor detainees in the security cells via a video monitor in the corridor outside. According to the administration, the equipment did not record or store the material or transfer it to other monitors. The visit team was not able to confirm this through its own investigations.

During its visit to Trandum in May 2015, the Ombudsman had observed that the security cells in the old building had video surveillance. The Ombudsman questioned in its visit report whether there was a legal basis for video surveillance of the security cells. In its follow-up letter of 30 March 2016, the NPIS stated that the new security cells would not have video surveillance.

When this matter was raised during the inspection, reference was made to the fact that the NPIS was of the view that the solution that had been chosen did not constitute video surveillance, since the material was not recorded or stored, or transferred to any monitor other than the one outside the security cells. Such a legal understanding is questionable on the basis of the definition set out in Section 36 of the Personal Data Act:

> 'The term "video surveillance" shall mean a regularly repeated surveillance of persons by means of a remote-controlled or automatically operated video camera, camera or similar device, which is permanently fixed. Video surveillance is considered to be surveillance undertaken both with and without the possibility of recording audio and image material. The same applies to equipment that is easily mistaken for a genuine camera solution.'

Whether or not the audio and image material is recorded or stored therefore appears to be of no relevance. In accordance with Section 36 of the Personal Data Act, video surveillance may only be undertaken when the conditions for so doing under Section 37 and Sections 38 to 40 have been met. On this basis, it may therefore still be questioned whether there is a legal basis for video surveillance of the security cells.

The cameras were clearly visible to the detainees who had been placed in the security cells. They therefore felt a clear sense of being monitored via a camera, including when using the toilet. An inspection hatch also provides an opportunity for staff to monitor the detainee while using the toilet, but the detainee will then know whether he or she is being monitored. Video surveillance means that the detainee will never be able to know whether he or she is being monitored and if so, by whom or how many people. It also emerged that the detainees were left naked in their cells for a short period of time while waiting to receive clothes after their body search. The findings also indicated that the body search itself had at times taken place in the security cell. It is particularly stressful for the detainees that the cells have video surveillance in such situations. There were no signs etc. that explained why or how the cameras were used.

Recommendation

- Measures should be implemented that make it possible to carry out direct visual supervision of the detainees' state of health in the security cells without the use of video surveillance equipment.

9.5 Activities and time outdoors

Detainees in the security section spent their outdoor time in two separate exercise yards, one for those who were subject to partial or complete isolation and one for those who had been placed in a security cell. Each of the exercise yards consisted of three separate lockable closed-off areas of around 15 square metres. The walls were covered with long grey-brown panels with a chain-link fence angled inward at the top. There was no view except the sky and no suitable place to take shelter from the rain.

The visit team was informed that the new lockable areas made it possible for many detainees from the security section to spend time outdoors at the same time, since they were also separate from others while outdoors. The administration pointed out that if only one detainee was outdoors at a

time, he or she could be outdoors while a member of staff stood at the entrance, or be in the area without the door being locked.

It emerged that the outdoor time was often limited to ten or fifteen minutes. Some of the detainees also stated that they had not spent time outdoors and nor had they been given an opportunity to do so. Others stated that they had been given an opportunity to spend time outdoors on some days, but not on others. A review of the supervision logs showed that it had not always been logged whether the detainees had been outdoors, or had been given an opportunity to spend at least one hour outdoors every day, as set out in the regulations.[34] It was not always clear why the detainees had not always been given this opportunity. It was stated in one supervision log that the detainees were not given an opportunity to spend time outdoors because of a hunger strike.

The high, single-colour metal walls and the asphalt surface offered little sensory stimulation and had a monotonous appearance. There was nothing to encourage physical activity, such as exercise equipment, no benches or seating areas and no grass or other vegetation. A number of the detainees did not feel that the exercise yard was adequate. One person described it as being in an outdoor cage, and that the only thing you could do there was to walk a few paces in each direction.

The detention centre had only made limited arrangements for other activities for detainees in the security cells. Those who were subject to partial isolation were an exception, since they were able to spend time with other detainees in an adjacent section. Those who had been placed in complete isolation or in a security cell had very little to do to pass the time, with the exception of the two cells that had TVs. A review of the supervision logs indicated that the detainees were rarely offered anything to read or given an opportunity to listen to music. A number of detainees requested something to do in the security section, such as being given reading matter.

After a visit to the Ukraine, the CPT stated the following as regards the conditions at a segregation unit at a police immigration detention centre:

> ‘As regards the regime in the segregation unit, apart from 45 minutes of daily outdoor exercise (which was taken in cages measuring some 20 square metres), detainees were locked up in their rooms, with nothing to occupy their time, (...)’.[35]

On this basis, the CPT recommended that the Ukrainian authorities:

> ‘[R]eview the regime of foreign nationals subject to a segregation measure. In particular, steps should be taken to ensure that they have access to an adequately equipped outdoor exercise yard for at least one hour a day, as well as to reading matter.’[36]

Recommendations

- Steps should be taken to ensure that persons placed in the security section are always given the opportunity to spend at least one hour outdoors every day in an exercise yard that offers options for physical activity and sensory stimulation. Any reasons why detainees are not given this offer must be recorded in the supervision log.

[34] Cf. the Detention Centre Regulations, Section 4 first paragraph letter (d), seen in conjunction with Section 7.
[35] The CPT’s visit to the Ukraine on 9-21 September 2009, CPT/Inf/(2011)29, paragraph 71.
[36] See above.

- Detainees in the security section should be offered reading matter in a language they understand and the possibility of listening to music or the radio during their time in the section.

10 Use of the security section

10.1 Scope of administrative decisions on restrictive measures

According to statistics obtained by the Ombudsman, 368 administrative decisions on placement in the security section were made in 2016, divided between 265 detainees. Of the 368 decisions, 24 decisions were made on partial isolation with transfer to the security section (step 1), 283 decisions on complete isolation (step 2), and 59 decisions on placement in a security cell (step 3). There were also two administrative decisions concerning voluntary transfer to the security section. Of the total number of persons detained at Trandum that year (4,206 detentions), one or more administrative decisions concerning restrictive measures were made for 6.3 per cent of the detainees. In 2015, one or more such decision was made for 7 per cent of the detainees and the percentage in 2014 was 6.4.

Statistics for January and February 2017 showed that a total of 76 administrative decisions were made concerning placement in the security section, divided between 54 detainees.[37] Five of these were decisions concerning partial isolation with transfer to the security section, 52 decisions concerned complete isolation, and 19 decisions concerned placement in a security cell. A comparison of monthly statistics showed an increase in use of the security section during the first two months of 2017, compared with the same period in both 2015 and 2016. In February 2017, 13 administrative decisions were made concerning placement in a security cell. This is the highest number of decisions concerning use of the security cells recorded in the period 2014–2017, with the exception of March 2015, when a rebellion occurred at the detention centre.[38] The number of administrative decisions on complete isolation is the highest since November 2015, although this number has been fairly stable at between 20 and 30 decisions during the whole of 2016.

Figures from the period 2014–2017 also show a general trend that administrative decisions concerning partial isolation with transfer to the security section, which is the least invasive of the three types of decision, are clearly used the least.

10.2 Duration of restrictive measures

After its visit, the Ombudsman also obtained information about the duration of each administrative decision on restrictive measures in the security section (steps 1 to 3) from September 2016 up to and including April 2017.

The review showed that for partial isolation (step 1), the duration of stays in the security section varied considerably, from just a few hours to over ten days. During this period, only ten administrative decisions on partial isolation had been made. As regards administrative decisions on complete isolation (step 2) the review showed that, in general, these lasted between one and three days. However, some of the stays lasted significantly longer: 40 stays lasted over three days and 23 of these lasted over four days. Five of the stays lasted over a week and the longest lasted 8 days and 18 hours. As regards stays in the security cells, the review showed that 36 of 70 stays in a security cell in the period September 2016 to April 2017 lasted for one day or more. Of these, 15 stays in a security cell lasted two days or more and five stays lasted over three days.

[37] The statistics comprise new administrative decisions and decisions concerning changes to restrictive measures. Administrative decisions on upholding restrictive measures are not included in the statistics.
[38] See the Parliamentary Ombudsman's report after its visit to the police immigration detention centre on 19-21 May 2015, page 13.

One case gave particular cause for concern. It emerged that one of the detainees had been placed in a security cell due to self-harm or attempts at self-harm, five times during the course of 2017. The detainee in question had been subject to consecutive restrictive measures in the security section for a period of over 21 days. This was primarily in the form of complete isolation (step 2), but the detainee had also been placed in a security cell several times during this period. It emerged that the background for this was repeated attempts at self-harm and concern about the detainee's low nutritional intake. Considering the potentially harmful effects of isolation, it is alarming that a detainee has been subject to such a long period in the security section (see chapter 8 *Harmful effects of isolation).* In the Ombudsman's opinion, a placement of this kind constitutes a risk of inhuman or degrading treatment. It does not appear to be in line with human rights standards, which stipulate that isolation must only be used in exceptional cases as a last resort and for as short a time as possible (see chapter 7.1 *Human rights standards concerning invasive control measures).*

Overall, the review indicates that the detention centre should increase its efforts to ensure placements in the security section are as short as possible. The Parliamentary Ombudsman emphasises the importance of continuously assessing whether administrative decisions concerning restrictive measures should be upheld, and whether less invasive measures may be implemented, including transfer to a mental health institution or release.

Recommendation

- Measures should be implemented to ensure that restrictive measures are used for as short a time as possible.

10.3 Legal protection in case processing

The team leaders for the modules and the chief duty officer have the authority to make administrative decisions concerning restrictive measures. Copies of the decisions are sent to the team leader for the security section, the case officer, doctor and the police prosecutor on duty in the NPIS. A copy must also be sent to the detainee's lawyer if the detainee so wishes.

After the visit, the Ombudsman obtained all administrative decisions concerning restrictive measures made between September 2016 and March 2017. The review indicates that the above-mentioned rules on administrative decisions being made by the right decision-making authority, and notification to the relevant parties, are complied with in practice.

The NPIS has prepared templates for administrative decisions to be filled in electronically by the person responsible for the decision. This is intended to ensure uniform administrative decisions and that all statutory conditions are considered. In the Ombudsman's report from 2015, it was found that many decisions lacked a concrete description of why less invasive measures could not be used in the specific case, and why restrictive measures were therefore strictly necessary.[39] On this basis, the Ombudsman recommended that all administrative decisions on the use of restrictive measures should contain a concrete description of the incident forming the basis for the decision, and why less invasive measures are not sufficient to maintain peace, order and security. It was also recommended that administrative decisions to uphold such decisions contained the specific grounds for why the

[39] The Parliamentary Ombudsman's visit to the police immigration detention centre on 19-21 May 2015, page 15.

decision remains absolutely necessary. As part of its follow-up efforts in response to this recommendation, the NPIS revised the administrative decision template to ensure that the requirements for specifying the actual circumstances that triggered the restrictive measure, as well as the grounds for the decision, were met.[40]

The review of the documents showed that, in general, the detention centre makes sure that administrative decisions contain a concrete description of the incidents that triggered restrictive measures, and why less invasive measures have been inadequate. It must nonetheless be noted that the administrative decisions in a number of cases give the impression that certain types of behaviour are not tolerated, and measures that are less invasive than restrictive measures have, therefore, not been attempted. Some decisions still made general reference to the detainee's 'threatening behaviour', 'unpleasant conduct' or similar wording. A few administrative decisions were worded in a manner that indicated that a sufficient concrete assessment had not been carried out. For example, one decision stated that: 'Given the foreign national's record, it is expedient to move him to the security section to ensure his deportation tomorrow [date omitted].'

The review of the documents also showed that a considerable number of decisions did not state whether the detainee had been informed of his or her right of appeal, or the reason this was not done, as intended by the template's design. To the Ombudsman's knowledge, only one appeal has been made by a detainee concerning the use of restrictive measures in the entire period from September 2016 to March 2017. In addition, several administrative decisions did not include information about how the detainee had been informed about the decision and its grounds, including whether an interpreter had been used.

Recommendations

- The NPIS should continue its quality assurance efforts on administrative decisions concerning restrictive measures, in particular by ensuring that the grounds for the decision are worded in a manner that allows verification.
- The police should ensure that detainees are always informed about their right of appeal, and that this is documented in the decision along with information about how the detainee was informed about the decision.

10.4 Groups in a particularly vulnerable situation

Placement in the security section will normally mean that the detainee is placed in solitary confinement. Human rights standards stipulate that placing particularly vulnerable groups in solitary confinement should be prohibited:

> 'The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.' The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice,[...] continues to apply.'[41]

[40] Letters from the NPIS to the Parliamentary Ombudsman of 30 April 2016.
[41] The Mandela Rules, Rule 45 No 2.

It is worrying that a large percentage of placements in the security section that were reviewed in connection with the visit were partially or entirely based on the detainees' mental health, self-harming or risk of suicide. It is a cause for concern that placing detainees in the security section appears to be the only measure the detention centre has to safeguard those who have mental health disorders and/or are severely traumatised, who are self-harming and are considered to be at risk of committing suicide. Some administrative decisions had also been made on the basis of assessments of the detainee's physical health, which were interpreted to mean that they required close follow-up and supervision in the security section.

It also emerged that a 16-year-old boy had been placed in a security cell in 2016. The boy had firstly been placed in isolation to prevent him from self-harming. He was assessed by the medical personnel and taken to an adolescent psychiatric inpatient ward, but was not admitted. After he had cut himself, the police considered that close follow-up in a security cell was strictly necessary and in the child's best interests. The stay in the security cell lasted 12 hours, after which a body cuff was used on the boy and he was deported. Another boy aged 17 was placed in isolation for 24 hours in autumn 2016. According to the administrative decision, the boy had arrived at Trandum wearing a body cuff, strips and a helmet.

The use of such invasive measures that can potentially harm the health of a child is questionable in relation to a number of human rights standards. The UN Convention on the Rights of the Child Article 37(a) provides special protection to children against torture or other cruel, inhuman or degrading treatment or punishment. Article 37(c) stipulates that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age'. The UN Special Rapporteur on Torture emphasised in his report from 2015 that children and young people are particularly vulnerable as regards violations of human rights, and he points out that children's vulnerability means that the threshold for when treatment or punishment becomes torture or other cruel, inhuman or degrading treatment is lower than for adults.[42] Several international bodies, including the Human Rights Committee and the European Court of Human Rights, have highlighted the need for all states to afford a special protection to children's personal liberty and rights.[43] As regards the use of isolation on children, the UN Special Rapporteur on Torture stated that:

> 'In many States, solitary confinement is still imposed on children as a disciplinary or "protective" measure. National legislation often contains provisions to permit children to be placed in solitary confinement. The permitted time frame and practices vary between days, weeks and even months. In accordance with views of the Committee against Torture, the Subcommittee on Prevention of Torture and the Committee on the Rights of the Child, the Special Rapporteur is of the view that the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture (...).'[44]

[42] The UN Special Rapporteur on Torture Juan Mendez (2015): A/HRC/28/68, paragraphs 32–33.
[43] The UN Human Rights Committee, General Comment No 17, first paragraph and General Comment No 35, paragraph 62; The European Court of Human Rights, Z and Others v. the United Kingdom, paragraphs 73–75.
[44] See above, paragraph 44. See also A/HRC/22/53/Add.1, paragraph 73; The UN Rules for the Protection of Juveniles Deprived of their Liberty paragraph 67; the Committee on the Rights of the Child, General Comment No 10 (CRC/C/GC/10), paragraph 89.

Recommendation

- The police should develop alternatives to using restrictive measures on particularly vulnerable groups, such as children and those with serious mental disorders or trauma, including people who are suicidal or self-harming.

11 Use of coercive measures

After the visit, the Ombudsman obtained documentation about the use of coercive measures at the detention centre and in connection with deportation, between September 2016 and April 2017.

11.1 Use of handcuffs

The documentation showed that, during this period, the police had used handcuffs in the detention centre in 11 cases in connection with transfer to the security section. However, handcuffs had been used in over 400 cases in connection with transporting detainees, for example when escorting them to court, or to the dentist or doctor outside the detention centre. Over 100 of the cases registered concerned young people between the age of 18 and 19. This high figure means it is important to emphasise that coercive measures, such as handcuffs, including during transport, must only be used when 'strictly necessary'.[45] In its standards for administrative detention of migrants, the CPT has recommended that:

> 'Applying handcuffs as a matter of routine to immigration detainees whenever they leave their detention facility, such as on hospital transfers, is disproportionate; the use of means of restraint should be considered on individual grounds and based on the principle of proportionality'.[46]

11.2 Use of body cuffs etc.

From September 2016 up to and including March 2017, body cuff restraints were used in two cases on persons detained at the detention centre.[47] Both cases concerned detainees who were placed in a security cell due to attempts at self-harm. In one of these cases, a protective helmet and both leg straps were used, meaning that the detainee was completely immobilised. The person in question was under continuous supervision by the staff and was transferred to a mental health care institution in a body cuff around two and a half hours later.

The second case concerned a detainee who had attempted to strangle themselves using their hands around their neck. The person in question was placed in a security cell for a total of 42 hours under constant supervision and was then released subject to a reporting obligation. According to the supervision log, the detainee wore a body cuff for about 11 hours. The documentation showed that the waist strap and hand cuffs were used on the person in question, but not the leg straps, and that the restraints were loosened during periods when the detainee was calm. It was stated that the detainee had been under constant supervision during the period in which the restraints were used, and supervision had been logged by the medical personnel. Apart from this, body cuffs were used in eight cases in connection with transport and nine cases in connection with deportation. Use of an anti-spit mask was registered on one occasion in connection with deportation.

11.3 Use of pepper spray

Pepper spray was used on one occasion in the same period. The incident was reportedly triggered by the detainee refusing to undergo a body search, and the staff's attempt to complete this voluntarily did not succeed. According to the police's documentation, four officers attempted to bring the

[45] Cf. Section 107 fifth paragraph letter (a) of the Immigration Act.
[46] The CPT Factsheet on immigration detention, page 6, CPT/Inf(2017)3.
[47] A body cuff consists of hand and foot cuffs connected to a hip belt by straps that enable the degree of freedom of movement to be adjusted.

person under control, who was spitting and flailing their arms and legs, in order to carry out the body search. The chief duty officer decided that it was necessary to use pepper spray in order to complete the body search. The detainee's eyes were rubbed with the pepper spray from a glove that had been sprayed with the substance. According to the documentation provided, this method was chosen because there would have been a high risk of the staff also being affected by the substance if it had been sprayed in the cell. After the substance was applied, the detainee's clothes were cut off. No findings were documented after the body search. According to the reports, the detainee was allowed to wash their face with water after the incident and was attended to by medical personnel shortly afterwards.

Pepper spray is an invasive coercive measure that is painful to those subjected to it. Rubbing pepper spray directly into someone's face, rather than spraying it from the recommended distance,[48] may further increase the pain. The substance can also cause harm to health and strict requirements must therefore be placed on its use.

In appeal cases concerning breaches of the European Convention on Human Rights Article 3, the European Court of Human Rights has raised the matter of disproportionate use of pepper spray.[49] The Court has stated that the use of pepper spray can lead to breathing problems, nausea, vomiting, respiratory irritation, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In high doses, pepper spray can cause necrosis of tissue in the respiratory system or digestive tract, lung oedema and internal bleeding.[50] The CPT has expressed a similar view:

> 'Pepper spray is a potentially dangerous substance and should not be used in confined spaces. Even when used in open spaces the CPT has serious reservations; if exceptionally it needs to be used, there should be clearly defined safeguards in place. For example, persons exposed to pepper spray should be granted immediate access to a medical doctor and be offered an antidote. Pepper spray should never be deployed against a prisoner who has already been brought under control.'[51]

The way in which the pepper spray was used in this case appears questionable. It was used in a confined space in breach of the CPT's recommendations for the use of pepper spray. The risk was further increased by the substance being rubbed directly into the person's face.

The documentation presented gives further grounds to question whether the use of pepper spray was justifiable. It seemed very unclear whether the measure was necessary, since there is no documentation of whether less invasive measures were considered. Among other things, it emerged that the staff had not considered temporarily leaving the cell in an attempt to alleviate the situation. Using pepper spray to carry out a body search of a person who was already detained at Trandum, and who was in a cell, also appears questionable in light of the proportionality requirement that

[48] According to the Norwegian Police University College's training programme, the substance should be sprayed from a distance of three metres and a minimum of one metre.
[49] See, *inter alia*, the ECtHR's judgments in Tali v. Estonia, Application No 66393/10, pronounced 13 February 2014; Ali Gunes v. Turkey, Application No 9829/07, pronounced 10 April 2012.
[50] See the ECtHR's judgment in Ali Gunes v. Turkey, Application No 9829/07, pronounced 10 April 2012, paragraph 37 (with further references).
[51] The CPT's report after a visit to Bosnia-Herzegovina 19-30 March 2007, CPT/Inf/(2009)25) paragraph 79. See similar comments in the committee's report after a visit to the Czech Republic from 25 March to 2 April 2008, (CPT/Inf/(2009)8) paragraph 46.

follows from, *inter alia,* Section 107 sixth paragraph of the Immigration Act. It must also be reiterated that a large percentage of those detained at Trandum come from war and conflict zones and are much more likely to already have been subject to violations and trauma. Being forced to undress completely in front of uniformed staff in a place of detention can be particularly frightening and retraumatising for people with this background. It is important that the administration and staff at Trandum are aware that this increases the risk of violation in several ways: both because a body search is experienced as degrading and creates anxiety, *and* because such an experience increases the risk of resistance, so that the body search ends up being carried out in a degrading manner.

Recommendations

- Coercive measures such as handcuffs and strips should only be used for transport of detainees when deemed strictly necessary following a concrete individual assessment.
- The police should ensure that pepper spray is only used when strictly necessary to bring a dangerous situation under control, and that it is not applied in a manner that increases its potential to harm health.

12 Preventive measures

During the visit, the Parliamentary Ombudsman also investigated how the detention centre endeavours to prevent the use of force and placement in the security section. Effective preventive methods require that employees receive good and regular training in methods of conflict prevention, and an institutional culture in which the rights and welfare of those deprived of their liberty are safeguarded. It is also important that the staff receive support and guidance from the administration, especially after serious incidents.

Employees who were new to Trandum in the period 2015-2016 were given a full-time course that ran over eight weeks. The course was a cooperation between the Correctional Service of Norway Staff Academy and the NPIS. The course included topics such as knowledge of the law and human rights, conflict management, intercultural competence, ethics and ethical challenges, mental health and mental disorders, harmful effects of institutional detention, migration and health, the use of interpreters, and suicide and self-harming. The participants were also trained in the use of coercive measures, such as batons and body cuffs, fire safety and different types of scenario-based training. Representatives from the NPM also gave a lecture as part of the course on its work in places where people are deprived of their liberty.

According to the detention centre's administration, the staff have one day of training every six weeks, in which they receive practical training on topics such as first aid, communication, the use of coercive measures and scenario-based training. The chief duty officers are responsible for carrying out the training days, and several of these have instructor qualifications in relevant topics. All employees must also have completed a full-day course in negotiation training. A responsible doctor at Trandum is also reported to have contributed to the training efforts with a course on mental disorders for the staff.

During interviews, the staff emphasised that presence and good communication were important preventive measures. Several pointed out that it was important to be physically present in the areas the detainees were in, in order to spot signs of unrest as early as possible. According to the staff, it is important that the detainees in each section fit well together, and that, at times, some detainees were moved to other sections to achieve a good balance. The administration also emphasised that the staff now mainly work in one specific section. This was also the case in the security section. This system made it easier to get to know the detainees.

In general, the staff were satisfied with the follow-up and support they received from the detention centre's administration and their immediate supervisor following serious incidents.

During the visit, findings were made concerning long, and in some cases very long, periods of stay in the security section (see chapter 10.2 *The duration of restrictive measures*). This gives cause for concern in relation to the detainees' health and welfare. The recent increase in the use of restrictive measures indicates that the detention centre's administration should closely monitor future developments (see chapter 10.1 *Scope of decisions on restrictive measures*).

The administration explained that the increased use of the security section was due to a raised threat level resulting from a higher number of detainees from more challenging backgrounds than before. This meant that more items that could be used as weapons had been found, and there had been an increase in the number of undesirable incidents. To reduce use of the security section, the

administration stated that it worked continuously to ensure an expedient composition of detainees in the different sections by moving those who caused unrest to other ordinary sections.

They also emphasised that more staff with foreign language backgrounds had been appointed, including a nurse. Having staff available who are proficient in languages is a particularly important resource at an immigration detention centre with people of many different nationalities, and can help to prevent communication problems leading to conflict and unnecessary use of force. At the same time, findings made during the visit indicated that a number of detainees had an unmet need for information about rules and procedures at the centre, and that the use of some restrictive measures appeared to have been caused by linguistic misunderstandings. The Ombudsman emphasises how important it is that everyone receives written and verbal information about the detention centre's rules and procedures in a language they understand. This establishes a more predictable routine for the detainees and can reduce the chance of conflict.

Findings also indicated that a number of incidents had arisen due to disagreements concerning what several detainees felt were unnecessarily strict control procedures. The review showed that several placements in the security section had been triggered, or had further escalated, when a detainee had refused to undergo a body search. Other aggravating factors were discussions about the number of persons permitted in the cells during daytime, and when smoking was permitted and lock-in times. The Ombudsman concludes that control and security considerations at Trandum remain a major focus, and that the control regime shows little leniency.

During the visit, the staff showed respect when talking about the detainees, and this was also reflected in entries in the supervision logs and other documentation. In general, the detainees felt that they were treated in a professional and proper manner. Nonetheless, reference was made to certain incidents in which an unnecessarily authoritarian approach appears to have contributed to the situation escalating.

It is also a cause for concern that such a large percentage of the detainees are placed in the security section because of health-related issues, attempted suicide, self-harming or hunger strikes (see chapter 10.4 *Groups in a particularly vulnerable situation*). Psychosocial follow-up stands out as an important focus area in preventing the use of force and restrictive measures to a greater extent. Despite the fact that there are more nurses on shift at the detention centre, the findings indicate that the healthcare service is still of an inadequate scope in relation to the detainee's healthcare needs. The centre still does not have a psychologist. As previously pointed out by the Ombudsman, the presence of a psychologist may help the detainees to deal with any mental health problems and increase the likelihood of a safe and dignified return to their country of origin.[52]

Recommendation

- Further measures should be implemented to prevent the use of restrictive and coercive measures, including an increased focus on psychosocial support measures for the detainees.

[52] See the Parliamentary Ombudsman's letter of 24 October 2016 to the NPIS, page 4.

13 The role of the healthcare service in invasive use of force

13.1 About the detention centre's healthcare service

Healthcare services at the immigration detention centre are provided by external doctors and by nurses employed by the NPIS.

The NPIS established two new nursing positions after the Ombudsman's visit to Trandum in 2015. This was due to an expected increase in healthcare needs in connection with the establishment of module building 3, with 90 new places. According to the NPIS, the new appointments had made it possible to improve the healthcare service at weekends, but, apart from this, they do not constitute any significant increase of the healthcare service's capacity. At the time of the visit, four nurses were employed at the detention centre in a two-shift rota scheme. This meant that one or two nurses were on shift during daytime and evenings, both on weekdays and at weekends.

The private company Legetjenester AS has provided medical services to detainees at Trandum since 2004, pursuant to an agreement with the NPIS. At the time of the visit, the company had three general practitioners working in a rota system at Trandum, two in a full-time position and one part-time. The agreement between the NPIS and Legetjenester AS was extended in 2015 and runs until 2019.

The police immigration detention centre is the only one of its kind in Norway and has a considerable capacity and high turnover. The detainees are going through a challenging situation in their lives and are often troubled by both physical and mental health problems. Trandum's healthcare service also appears to be of an inadequate scope to be able to safeguard the health of all detainees in a satisfactory manner. Reference is made to the Parliamentary Ombudsman's visit report from 2015, where it recommended that several aspects of the healthcare service should be improved, including that the police ensure a routine health assessment on admission and the systematic follow-up of long-term detainees. In a letter to the Parliamentary Ombudsman in April 2016, the NPIS stated that:

> 'Due to limited staffing, the groups with the greatest need for medical attention must be weighed up and prioritised – whether that be the person who has been detained for planned deportation the next day, or a person who is to be detained for four weeks, and where the effects of medical treatment will be greatest. If health screening is prioritised, this will, for example, be at the expense of the treatment of those on long-term placements.'

The matter of how Trandum's healthcare service is organised is partly a matter of resources. As pointed out in the visit report from 2015, major challenges are also created in relation to roles when nurses are employed by the police and doctors are employed through a private medical company whose sole client is the NPIS. On this basis, the Ombudsman recommended that an arrangement should be established that ensures that healthcare services are provided by professionally independent medical personnel. During the concluding meeting with the administration in April 2017, it emerged that the detention centre was in dialogue with key health and justice authorities on the possibility of introducing what is known as an import model for healthcare services at Trandum, by transferring the responsibility for the provision of healthcare to the municipality. Such a solution would ensure the professional independence of the personnel who are to provide healthcare to detainees at Trandum. At the same time, it is important that, in the event of a restructuring, sufficient resources are secured to safeguard the detainees' diverse healthcare needs in all phases of

the time they spend at Trandum, including the admission phase, the stay itself and in connection with deportation.

During the visit in March 2017, the Parliamentary Ombudsman examined the role of medical personnel in the transfer of detainees to the security section. The findings made supported the argument for the detainees' healthcare service to be organised in a different manner.

13.2 The involvement of medical personnel in decisions on use of the security section

Findings made during the visit showed that the medical personnel at Trandum were involved in administrative decisions on the use of the security section in a way that is considered problematic.

It emerged that both the doctors and nurses had, at times, advised that detainees should be placed in the security section for health-related reasons. One doctor in particular at the detention centre had a clear sense of exercising an advisory function relating to placement in the security section, the choice of security level in the section (e.g. the choice between a security cell and isolation in a reinforced cell) and in consequent assessments of leniency or upholding of the decision. It emerged that the doctor's advice had, in some cases, led to detainees spending long periods in the security section. At times, the nurses had also recommended that detainees should be placed in the security section for health reasons, such as risk of suicide. The grounds for such recommendations were that these detainees needed frequent supervision and extra attention. A review of medical records also showed examples of the doctors providing a statement, at the request of a case officer in the police, stating that it was warranted, based on a detainee's mental health, that they remained at Trandum. In the view of the Ombudsman, this kind of reasoning highlights the need to prioritise psychosocial measures such as a psychologist (see chapter 12 *Preventive measures*).

In line with human rights standards, detainees who are suspected of suffering from serious mental disorders must not be placed in isolation, but should instead be referred to a mental healthcare institution for an assessment. It emerged that this had been done on two occasions since the new security section was established in September 2016. According to a doctor at the detention centre, it was difficult to transfer detainees to a mental health institution unless they were suffering from psychotic disorders.

The direct involvement of medical personnel in an administrative decision to place someone in the security section is problematic in relation to medical ethics. Placement in the security section will normally mean that the detainee is placed in solitary confinement. Human rights standards stipulate that medical personnel must not play any role in decision-making processes pertaining to the use of restrictive measures such as solitary confinement.[53] Reference is also made to the UN Principles of Medical Ethics of 1982.

In relation to use of the security section, Section 107 fifth paragraph of the Immigration Act states that: 'A statement shall if possible be obtained from a doctor and be taken into consideration in the assessment of whether measures shall be implemented or upheld'. In the preparatory works to the Act, questions were raised in the consultation round before this provision was adopted as to whether the proposition was in accordance with medical ethics guidelines.[54] According to the Ministry, the

[53] The Mandela Rules, Rule 46 No 1.
[54] Proposition No 28 (2006-2007) page 25.

purpose of the proposition was that a statement should be obtained from a doctor 'to ensure the best possible basis for considering whether there are grounds for the measure, and whether it would constitute a disproportionate measure'. The Ministry commented that the authority for the actual decision to implement a measure rested with the police, but that medical expertise had 'as a function, to safeguard medical ethics guidelines'. In practice, it appears that the wording of the provision has contributed to the detention centre's medical personnel becoming involved in the decision itself to place someone in the security section.

The task of medical personnel is to assess a patient's state of health and provide recommendations on treatment. If a patient's health is such that his or her state of health will deteriorate significantly as a result of deprivation of liberty, medical personnel have a responsibility to protect the patient's welfare. However, medical personnel should never engage in activities that entail taking part in a decision on the use of invasive measures, such as placing a patient in isolation. This can destroy the trust between medical personnel and patient.

Recommendation

- Medical personnel should never give advice concerning placing a detainee in the security section, but solely state their opinion on measures relating to a patient's medical treatment.

13.3 Health-related follow-up in the security section

Although medical personnel should not play any role in the decision-making process concerning the use of restrictive measures, human rights standards stipulate that they should pay particular attention to the health of inmates who are placed under any form of involuntary segregation.[55] This responsibility includes visiting such inmates on a daily basis and providing prompt medical assistance and treatment when requested by the inmate or a member of staff.

However, findings indicate that the medical supervision of those placed in the security section is not always carried out in accordance with human rights standards. According to the General Instructions for the police immigration detention centre, inmates placed in a security cell must be supervised by medical personnel at least once a day.[56] Although this was generally done, it emerged that such supervision was at times carried out without the medical personnel actually communicating with the detainees themselves, but by consulting the staff about the patient's condition. It must be underlined that the medical personnel should always attempt to talk face-to-face with the detainee about their state of health in order to make an independent and professional assessment of whether they require medical follow-up.

As regards detainees who are subject to partial or complete isolation, there is no equivalent rule on daily supervision by the medical personnel. There does not appear to be a clear procedure ensuring the systematic follow-up of all detainees who are placed in isolation. According to one of the nurses, the procedure was that they stopped by the security section once or twice during their shift. The nurse stated that she nearly always entered the cell alone to talk to the detainee. Another nurse felt that everyone who was placed in the security section should be supervised by a doctor or nurse

[55] The Mandela Rules, Rule 46 No 1.
[56] See chapter 17 Association with others and use of a high-security section, page 21.

every day, but that they did not always, in practice, speak directly to everyone. A considerable percentage of the detainees stated that they had never seen a doctor or nurse during their time in the security section. Some of these claims of inadequate supervision are supported by other documentation, such as the lack of entries in the supervision log and patient records. In one example, the information suggests that an 18-year-old who had been placed in complete isolation in the security section was not seen by the medical personnel for over two days. Another problem appears to be that the medical personnel are not always recognised as being medical personnel. One of the detainees who had been placed in the security section did not realise that he had been visited by a doctor, but described a person wearing jeans who had given him a plaster following an incident. It is important that the medical personnel clearly identify themselves to their patients (for example by wearing medical personnel clothing) and, if necessary, using an interpreter.

Recommendation

- Steps should be taken to ensure that detainees placed in the security section are always supervised on a daily basis by the medical personnel who clearly identify themselves. Medical supervision should be carried out as face-to-face communication when the medical personnel deem this to be safe.

13.4 Confidentiality

During the visit, the team made some problematic findings concerning the medical personnel's duty of confidentiality. This concerned in particular statements from one of the detention centre's doctors that gives cause for concern in relation to how the detainees' medical information is handled. Among other things, it was stated that upholding the duty of confidentiality was being taken too far, and that the detainees were, in any case, to be sent out of the country.

A lack of respect for the importance of protecting confidential medical information damages the important relationship of trust between patient and medical personnel, and constitutes a high risk of future breaches of the duty of confidentiality.

The NPM also found that employees at Trandum were sometimes used as interpreters during the medical personnel's conversations with detainees. Using employees as interpreters is problematic, since the patient should be able to communicate freely with the medical personnel, without fearing that the information could subsequently be used for other purposes. The role of interpreter also requires thorough training.[57] In its visits to immigration detention centres, the CPT has recommended that 'all medical examinations should be conducted out of hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial staff'.[58] The CPT has also recommended that:

[57] Such considerations can hardly be safeguarded if a detainee consents to using an employee as an interpreter during a conversation with medical personnel. It is also problematic to deem the detainee's consent as freely given in such a situation.

[58] The CPT Factsheet on immigration detention, March 2017, CPT/Inf(2017)3, page 8.

> 'Whenever members of the medical and/or nursing staff are unable to make a proper diagnostic evaluation due to language problems, they should be able to benefit without delay from the services of a qualified interpreter.'[59]

It also emerged that medicine can be handed out by Trandum's transport escorts from dispensers that are marked with both the detainee's name and which medicine it contains. Non-medical personnel therefore gain access to information about what type of medicine individual detainees are using. The Parliamentary Ombudsman has raised this issue following several visits to places in which people are deprived of their liberty.[60] It is not desirable that anyone other than medical personnel have access to information about what medication detainees are using, even if the employees take courses on how to handle medication. In connection with its visits, the CPT has criticised the fact that non-medical personnel are responsible for distributing prescription medicines. 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 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.'[61]

Recommendation

- The healthcare department and police should implement measures to ensure that sensitive patient information is handled in a manner that prevents people other than medical personnel having access to it.

13.5 Documentation and reporting of physical injuries

The Ombudsman found during its visit in 2015 that the healthcare department lacked clear procedures for documenting and reporting physical injuries sustained by the detainees.

After its visit in March 2017, information was therefore obtained about how physical injuries sustained by the detainees were documented and followed up. In the period from September 2016 to March 2017, injuries or alleged injuries were documented by camera in two cases. One of the

[59] See above.
[60] See the Parliamentary Ombudsman's visit to Telemark Prison, Skien branch on 2– 4 June 2015, chapter 5.5.2, pages 28–29; visit to Tromsø Prison 10-12 September 2014, chapter 5.3.3, page 14; visit to Telemark Prison, Kragerø unit 1-2 November 2016, chapter 11.6, page 32; and visit to Norgerhaven Prison 19-22 September 2016, chapter 9.5.3, page 48.
[61] The CPT's report after a visit to Sweden 18-28 May 2015, CPT/Inf/(2016)1 paragraph 83.

cases was reported to the Norwegian Bureau for the Investigation of Police Affairs by the detainee's lawyer.

It emerged that the healthcare department had procured a camera to document injuries following the Ombudsman's recommendations in 2015. Due to challenges relating to saving the photos electronically, however, it emerged that photos were still being taken using the doctor's mobile phone. As previously emphasised, this is unfortunate in light of protection of privacy considerations. The Ombudsman assumes that any technical problems relating to scanning and saving photos from the procured camera will be dealt with.

Neither the detention centre's doctor nor nurses were aware of any system for notifying an external body in the event of the healthcare department suspecting that injuries had been caused by disproportionate use of force. The doctor's understanding was that such an initiative would in such case have to come from the detainee's lawyer, with the healthcare service being asked to make a statement and provide documentation of any injuries. The centre, therefore, still appears to lack clear procedures and reporting systems in the event of suspected disproportionate use of force. Reference is once again made to the CPT's recommendation in 2011 that the Norwegian authorities should ensure that:

> 'Existing procedures to be reviewed at the Trandum Aliens' Holding Centre in order to ensure that, whenever injuries are recorded by a doctor, which are consistent with allegations of ill-treatment made by a foreign national (or which, even in the absence of allegations, are indicative of ill-treatment), the report is systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned.'[62]

The CPT has, as such, recommended that the police establish a procedure that ensures that all injuries that may indicate disproportionate use of force are systematically reported by the medical personnel, regardless of whether the matter has been reported by the detainee's lawyer. Findings made during the review of the documentation appear to confirm a low awareness of the role of medical personnel in exposing and reporting possible cases of disproportionate use of force. In one patient record, there was information about a patient who was injured during deportation: 'Patient appears bruised, blue and swollen nose bridge, 3 cm cut in the forehead (superficial), when asked if painful, the patient points to the right side of the thorax...'. However, the patient record did not contain documentation of any attempts to obtain the patient's version of how the injuries were sustained, or any sign that the medical personnel had taken steps to examine how the injuries had been sustained.[63]

The NPIS has previously stated that it would prepare guidelines on this matter in consultation with the healthcare service.[64] Good documentation and reporting of detainees' injuries is an important guarantee of their legal protection and helps to reduce the risk of torture and inhuman treatment. The importance of this has been pointed out by both the CPT and the UN Subcommittee on the

[62] See the visit report 2015, page 28.
[63] The Istanbul-protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 August 1999, paragraphs 161–233, page 33 ff.
[64] Letter from the NPIS to the Parliamentary Ombudsman of 30 April 2016, page 18.

Prevention of Torture.[65] Medical personnel play a particularly important role in documenting and reporting such findings, and the Ombudsman emphasises the importance of following this up.

Recommendation

- Clear procedures should be established for medical personnel to report injuries that give grounds for suspecting disproportionate use of force.

[65] The CPT, Documenting and reporting medical evidence of ill-treatment, extract from the 23rd General Report of the CPT, published in 2013 CPT/Inf (2013)29-part; The UN Subcommittee on the Prevention of Torture (SPT), Report on the visit to the Maldives, (2009) CAT/OP/MDV/1, page 6, paragraph 112.

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