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## **The Norwegian NPM's submission to the UN Committee Against Torture's 63rd session – Information regarding the Norwegian Government's implementation of the Convention**

### **Introduction**

Reference is made to the letter of 17 May 2017 on behalf of the UN Committee Against Torture. The Parliamentary Ombudsman of Norway would like to thank the UN Committee Against Torture for the opportunity to provide information regarding the Norwegian government's implementation of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

The issues that are highlighted in this report are based on the Norwegian NPM's visits to places of detention during the period 2014–2018. The report summarises the NPM's main findings and concerns, but is not intended to be an exhaustive account. A full account of the NPM's findings<sup>1</sup> after each visit can be found here:  
<https://www.sivilombudsmannen.no/en/visit-reports/>

The report is structured according to the places of detention in question, with references to relevant articles of the Convention. Where relevant, references are also made to the relevant paragraph in the List of Issues Prior to Reporting (LOIPR) adopted by the Committee and/or the relevant paragraph in the State party's eighth periodic report submitted in accordance with CAT Article 19.

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<sup>1</sup> All summaries of findings from each NPM visit are available in English. A limited number of reports are translated in full.

The Norwegian NPM remains at the Committee's disposal for future cooperation and assistance.

On behalf of the Parliamentary Ombudsman of Norway

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*This letter has been electronically approved and has no handwritten signature.*

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## **1. The Ombudsman's task as the National Preventive Mechanism in Norway**

### **1.1. Establishment**

On 21 June 2013, the Norwegian Parliament (Stortinget) decided that Norway would ratify the Optional Protocol to the Convention against Torture (OPCAT). The Parliamentary Ombudsman was assigned the task of exercising the mandate set out in the OPCAT. The Ombudsman's Act was amended by Parliament to ensure that the Ombudsman could discharge its mandate as NPM in accordance with the requirements of the OPCAT.

Based on this mandate, the Parliamentary Ombudsman established a dedicated national preventive mechanism at its office in 2014. The NPM is organised as a separate department and it does not consider individual complaints.

Under its prevention mandate, the NPM has a right to visit all places where anyone is, or could be, deprived of their liberty. This includes public and private institutions and all other places of detention in Norway, including places abroad where the Norwegian government exercises jurisdiction. Based on these visits, the NPM issues recommendations for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment.

### **1.2. Staff and working methods**

The NPM has an interdisciplinary composition, and its employees have degrees in the fields of law, criminology, sociology, psychology, social science and human rights. The NPM also has the possibility to call in external expertise for individual visits, such as medical expertise. At the time of reporting, the NPM consists of seven staff members, including the head of department.<sup>2</sup>

At the time of reporting, the NPM has undertaken 47 visits to 45 places of detention, including prisons, police establishments, mental health care institutions, immigration detention and child care institutions. The visits normally last 2–4 days, depending on the size

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<sup>2</sup> From its establishment in 2014 to early 2016, the unit's staff comprised 4.5 full-time equivalents, including the head of department.

of the institution. The exact time of the visits are not announced. However, to extract necessary information, the institutions are informed that a visit will take place during a given timeframe, usually 3–5 months. Visits to police establishments are usually undertaken without any prior notice.

Based on the visits, a report containing the NPM's findings and recommendations is written and made available to the responsible authorities and the public. Further details about the organisation of the visits can be found here:

<https://www.sivilombudsmannen.no/en/torturforebygging/method/besok-til-steder-frihetsberovelse/>

Many different factors can have a bearing on the risk of torture and ill-treatment. Effective preventive work therefore requires a broad approach. In addition to visiting places where people have been deprived of their liberty, the NPM's working methods also include thematic examination of systemic challenges, meetings with responsible ministries, directorates, other control bodies and civil society organisations, public outreach and teaching on torture prevention, written submissions regarding the legislative framework and dialogue with international human rights bodies. The NPM also receives regular input to its work from an advisory committee composed of representatives of the National Human Rights Institution of Norway, the Equality and Anti-Discrimination Ombud, the Ombudsman for Children, trade unions and civil society organisations.

## **2. Norway's treaty obligations under CAT when leasing a prison abroad**

*Reference is made to CAT Articles 2, 12 and 13 and the State party's report para. 21.*

### **2.1. Background**

On 2 March 2015, the Norwegian government entered into an agreement with the Government of the Netherlands to lease a prison on Dutch territory for a three-year period, starting on 1 September 2015. The terms of the agreement specify that the lease may be further extended by at least one year at a time, until 1 September 2020. According to the Ministry of Justice and Public Security, the scheme was established to increase prison capacity for the execution of sentences and to ensure swift transfer of pre-trial detainees from police custody to prisons. During the public consultation, the Ministry's proposal to allow for the execution of sentences in another State was criticised by many stakeholders, including the Norwegian Bar Association, regional departments of the Correctional Service and trade unions for prison staff.

On 19 June 2015, the Storting (Norway's parliament) adopted a new section 1a in the Execution of Sentences Act, which provided legal authority for transferring inmates to serve their sentences in another state with which Norway has entered into an agreement. The legal authority is temporary and will be repealed on 1 September 2020. On the same date,

the Storting endorsed the agreement entered into on 2 March 2015 between the governments of Norway and the Netherlands.<sup>3</sup>

As of 1 September 2015, inmates convicted of criminal offences in Norway have been transferred to Norgerhaven prison in the Netherlands. The prison is situated in the town of Veenhuizen in the northern Netherlands, and has a capacity of 242 inmates.

Male inmates over the age of 18 who are sentenced to an unconditional prison sentence may be transferred. The inmates include both Norwegian citizens and foreign nationals; and the inmates may be transferred against their will. The decision to transfer is made by the Correctional Service. The government has designated certain groups of convicted inmates as unsuitable for transfer, such as convicted persons who require specialist health services, persons who receive regular visits from their children or are entitled to education pursuant to the Norwegian Education Act.<sup>4</sup> The prison is led by a Norwegian prison governor supported by a small group of Norwegian staff members. Most of the staff are employed by the Dutch prison service. As of September 2016, the Dutch staff comprised 239 full-time equivalents in charge of the day-to-day operation of the prison, security, health services, employment of the inmates and leisure activities.

On several occasions during the legislative process preceding the adoption, on 19 June 2015, of the agreement to lease a prison in the Netherlands, the NPM questioned aspects of the scheme.<sup>5</sup> The NPM pointed to, inter alia, the need to clarify jurisdictional issues, such as the scope of each state's responsibility and how the Norwegian NPM could function effectively as required by OPCAT when monitoring places of detention in another state. The NPM also expressed its concern that the scheme would have a detrimental impact on the human rights of inmates, including the inmates' right to family life and access to necessary specialist health services.

## **2.2. Risk areas related to the execution of sentences in another state**

From the NPM's perspective, the establishment of a scheme for convicted persons to serve their sentences under Norwegian law in another state creates new kinds of challenges related to safeguarding inmates' rights. The agreement between Norway and the Netherlands raises questions about how the Norwegian authorities' obligation to protect the inmates can be maintained in accordance with the Convention against Torture.

The UN Committee against Torture underlined in General Comment No 2 that the member states' responsibility under the Convention to prevent torture and other cruel, inhuman or

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<sup>3</sup> Agreement between the Kingdom of Norway and the Kingdom of the Netherlands on the use of a prison in the Netherlands for the purpose of the execution of Norwegian sentences of imprisonment, signed in Veenhuizen in the Netherlands on 2 March 2015. The treaty is supplemented by a Cooperation Agreement entered into on the same date between the Directorate of the Norwegian Correctional Service and the corresponding public body in the Netherlands, 'Dienst Justitiële Inrichtingen' (DJI).

<sup>4</sup> Regulations of 18 December 2015 No 1579 on the execution of sentences in the Netherlands, adopted by Royal Decree pursuant to the Execution of Sentences Act Section 1a.

<sup>5</sup> See Consultative statement dated 27 February 2015 from the Parliamentary Ombudsman relating to changes in the Execution of Sentences Act (execution of sentences in another state etc.); and Comment dated 6 May 2015 from the Parliamentary Ombudsman after the hearing of the Parliamentary Standing Committee on Justice on 28 April 2015.

degrading treatment ‘in any territory under its jurisdiction’ covers ‘... all areas where the State Party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control’.<sup>6</sup>

The former UN Special Rapporteur on Torture Juan Mendez has raised the issue of states’ extraterritorial responsibility for violations of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment in a report to the UN General Assembly.<sup>7</sup> The Special Rapporteur pointed out that ‘the practice of detaining persons abroad’, among other extraterritorial state acts, is a practice that raises important questions about states’ extraterritorial responsibility to prevent human rights violations. The Special Rapporteur underlined that such state actions:

‘... can involve the commission or risk of torture or other ill-treatment as defined by the Convention, international humanitarian law, international criminal law or customary international law. Of particular concern are States’ attempts to undermine the absolute legal prohibition of torture and other ill-treatment by evading or limiting responsibility for extraterritorial acts or effects by their agents that contravene their fundamental legal obligations; to narrowly interpret treaty jurisdictional provisions; and to dilute well-established obligations to ensure and fulfil positive human rights obligations whenever they exercise control or authority over an area, place, individual(s) or transaction.’<sup>8</sup>

According to the Special Rapporteur, it is essential in such situations to ensure that ‘...there is no vacuum of human rights protection that is due to inappropriate and artificial limits on territorial jurisdiction’.<sup>9</sup> As the NPM interprets the UN Convention against Torture and statements from the UN Committee against Torture, the UN Special Rapporteur on Torture and the SPT, states cannot use an inter-state agreement to limit their responsibility under international law to prevent torture and ill-treatment.<sup>10</sup>

The lease agreement between Norway and the Netherlands sets out the respective states’ responsibilities regarding matters that affect inmates in Norgerhaven Prison.<sup>11</sup> The Norwegian Execution of Sentences Act applies to the treatment of inmates, while deaths and criminal offences that take place in the prison are governed by Dutch criminal law. The

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<sup>6</sup> The UN Committee against Torture General Comment No 2, 24 January 2008, CAT/C/GC/2, paragraph 16. See also the UN Special Rapporteur on Torture, the report to the UN General Assembly (‘Prohibition of torture and other ill-treatment from an extraterritorial perspective’), 7 August 2015, A/70/303, paragraph 11 ff.

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

<sup>8</sup> See note above.

<sup>9</sup> Ibid.

<sup>10</sup> The UN Committee against Torture General Comment No 2, 24 January 2008, CAT/C/GC/2; the UN Special Rapporteur against torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez, report to the UN General Assembly, 7 August 2015 A/70/303A/70/303, and the UN Subcommittee on the Prevention of Torture, Compilation of SPT Advice in response to NPM requests, chapter V, NPMs and cross-border monitoring of persons in detention, February 2015.

<sup>11</sup> See the Agreement between the Kingdom of Norway and the Kingdom of the Netherlands on the use of a prison in the Netherlands for the purpose of the execution of Norwegian sentences of imprisonment, and the Cooperation Agreement entered into between the Directorate of the Norwegian Correctional Service and the Dutch Custodial Institutions Agency (DJI), respectively.

Dutch prison service is responsible for providing health care in the prison. Complaints and lawsuits that concern health care is subject to Dutch legislation. Transport on Dutch territory to and from Norgerhaven prison is decided by the Norwegian prison governor, but carried out by a Dutch public agency. The Dutch instructions on the use of force in prison apply to transport and during emergency admission to a hospital in the Netherlands, and must be complied with in emergency situations inside the prison walls.<sup>12</sup>

A review of the lease agreement and findings made during the visit clearly showed that Norway, through its effective control, exercises jurisdiction in Norgerhaven prison. Therefore, the State party has an extraterritorial responsibility to prevent human rights violations. This has been acknowledged by the State party from the outset, albeit with a differing view on the scope of its responsibilities (see below). The legal situation may be described as a system of shared jurisdiction, as the Netherlands may also be responsible according to the same basic tenets of international law.<sup>13</sup>

### **2.3. Key findings from the NPM's visit to Norgerhaven prison**

The NPM visited Norgerhaven Prison in the Netherlands on 19–22 September 2016. At the time of the visit, there were 230 inmates in Norgerhaven prison, of which 80 inmates had been transferred against their will.

A key finding from the visit was that the Norwegian authorities do not afford inmates transferred to Norgerhaven Prison adequate protection against torture and inhuman or degrading treatment. In the lease agreement between Norway and the Netherlands, it is stipulated that Dutch criminal law and criminal procedure legislation shall exclusively apply if an inmate dies or criminal acts are committed in Norgerhaven prison.<sup>14</sup> Thus, the Norwegian authorities have in effect waived the opportunity to take steps to investigate or prosecute matters if inmates were to be subjected to torture or other ill-treatment.

According to Article 12 of the UN Convention against Torture, cf. Article 16, each 'State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture [or other cruel, inhuman or degrading treatment or punishment] has been committed in any territory under its jurisdiction'.<sup>15</sup> The duties to investigate, prosecute and punish violations of the Convention constitute core provisions of the Convention.<sup>16</sup> The UN Special Rapporteur on Torture has concluded that these obligations also follow from customary international law.<sup>17</sup>

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<sup>12</sup> In addition, the cooperation agreement further delineates the responsibility of Norway and the Netherlands as regards the day-to-day operation of the prison. See the full report for further details.

<sup>13</sup> This report should not in any way be read as diminishing the treaty obligations of the Dutch government.

<sup>14</sup> See Article 14 No 3 ('The law of the Receiving State is exclusively applicable to the launch of a follow-up investigation of any kind') and Article 17 no 6, ('The authorities of the Sending State are not permitted to launch investigations in the prison into criminal offences committed there').

<sup>15</sup> This duty of *ex officio* investigation is supplemented by the UN Convention against Torture Article 13, which states that: '...any individual who alleges he has been subjected to torture in any territory under [a State Party's] jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.'

<sup>16</sup> Nowak M. and McArthur E., *The United Nations Convention against Torture – A Commentary*, Oxford University Press, 2008, page 413 ff.



In light of the clear requirement under the UN Convention against Torture that investigations must be initiated if a violation of the prohibition against torture and ill-treatment is suspected, the NPM was concerned that Articles 14 and 17 of the Agreement are not in accordance with Norway's commitments under international law. From the NPM's perspective, the establishment of a scheme to lease a prison abroad does not relieve Norway of its fundamental duty to prevent, investigate and prosecute acts of torture and other ill-treatment in an area under its jurisdiction.

In the report, it was also pointed out as problematic that, in certain situations, the authorities of another state will be authorised to use weapons and restraints (including lethal and non-lethal weapons other than those permitted in Norway) against inmates who have been transferred to the Netherlands to serve their sentences. A solution in which the Norwegian authorities are prevented from fulfilling their responsibility to protect inmates, entails a risk of torture and ill-treatment.

The scheme of leasing a prison in another state also makes it difficult for the NPM to exercise its mandate in accordance with OPCAT. The Agreement between Norway and the Netherlands provides grounds for limiting the NPM's mandate. By the terms of the agreement the NPM does not have the right to access transport vehicles and hospitals on Dutch territory, to which inmates from Norgerhaven may be transported. If the execution of sentences took place in Norway, the NPM would have the legal right to visit such places.

During the visit, several findings further indicated that the execution of sentences in Norgerhaven Prison did not adequately facilitate the reintegration of inmates into society. The education offered in the prison was not adapted for all inmates and the possibility of receiving visits from family and friends was severely limited due to the long travel distance and cost of travel arrangements. It was also found that language challenges and the staff's lack of knowledge of the Norwegian regulatory framework and practice have a negative effect on the serving of sentences. The report also emphasises that it gives cause for concern that inmates who have extensive health care needs, young inmates and inmates who are not proficient in English are transferred to the prison, even if they do so voluntarily.

The full report containing all the findings is available in English:

<https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/2016-Norgerhaven-prison-Visit-report-EN.pdf>

#### **2.4. State party follow-up of the visit report**

Given the nature of the key findings regarding the State party's responsibilities under the UN Convention against Torture, the visit report was addressed directly to the Ministry of Justice and Public Security.<sup>18</sup> The visit report was published on 13 March 2017. Since the publication

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<sup>17</sup> The UN Special Rapporteur on Torture, the report to the UN General Assembly ('Prohibition of torture and other ill-treatment from an extraterritorial perspective'), 7 August 2015, A/70/303, paragraph 44.

<sup>18</sup> The Norwegian NPM normally addresses visit reports to the head of the place of detention, with copies to the responsible regional and central authorities.

of the visit report in March 2017, a dialogue has taken place between the Ministry and the NPM.<sup>19</sup>

Most of the findings regarding the day-to-day operation of the prison have reportedly been addressed by the authorities. However, several of the findings highlighted in the report were matters that can only be followed up by the Dutch authorities, such as the lack of organisational independence for prison health services in the Netherlands and transport safety. The NPM was therefore effectively prevented from engaging in dialogue with the responsible authorities on follow-up measures on these issues in accordance with OPCAT Article 22.

The Ministry has submitted that it does not share the NPM's concerns about the main challenges of executing sentences in accordance with Norwegian penal legislation in another state. The Ministry's view is that the Agreement, which stipulates that Dutch criminal and procedural law exclusively applies if someone dies or a criminal act is committed in prison, does not violate Norway's international obligations. As stated by the Ministry, the responsibility for investigation, prosecution and punishment must 'follow the jurisdiction' that has been established by the Agreement. The Ministry also pointed out that the Netherlands is bound by the same human rights obligations as Norway.

In its response, the NPM expressed agreement that the Dutch authorities have a similar legal duty as the Norwegian authorities to address risks or violations of the prohibition against torture and ill-treatment. However, it emphasised that, according to public international law, the State party's full responsibility for the inmates in Norgerhaven prison applies irrespective of the corresponding duty of the Dutch authorities.<sup>20</sup>

While no findings indicating ill-treatment were identified during the visit, the NPM maintains that waiving the obligation to investigate, prosecute and punish constitutes a risk of torture and ill-treatment. The NPM is concerned that this issue appears to be generally regarded as an issue of hypothetical interest, despite experience that torture and ill-treatment may occur in any state governed by the rule of law. The waiving of duties appears to be a violation of Norway's obligations under public international law, as set out in the Convention Against Torture.

On 21 February 2018, the Minister of Justice and Public Security announced its decision not to prolong the lease agreement with the Netherlands beyond 1 September 2018. The NPM nevertheless has found it important to inform the Committee of the agreement as it appears to have been concluded in contravention of public international law. The NPM is concerned about the potential detrimental effects of schemes to lease prisons abroad on the work to prevent torture and ill-treatment.

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<sup>19</sup> The Ministry of Justice and Public Security sent a letter on 1 June 2017 informing the NPM about the steps taken to follow up the findings. The NPM sent its response to the follow-up letter on 28 September 2017.

<sup>20</sup> See e.g. the former UN Special Rapporteur on Torture, who expressed the same view on the extent of states' extraterritorial responsibilities in such situations in his report to the UN General Assembly ('Prohibition of torture and other ill-treatment from an extraterritorial perspective'), 7 August 2015, A/70/303, paragraph 45.

**Based on its findings, the NPM proposes the following recommendation to the State party:**

- **Ensure that its competent authorities uphold its obligations, at all times, to proceed to a prompt and impartial investigation, wherever there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed in any territory under its jurisdiction.<sup>21</sup>**

### **3. Prisons**

*Reference is made to CAT Articles 2 and 16; the Committee's list of issues para. 7 a) – d); para. 11 and para. 25 and to the State party's report paras 26-35, paras 78–80 and paras 154–157.*

#### **3.1. Overview**

During 2014–2018, the NPM has undertaken 19 visits to 18 high-security prisons. Most of these visits have been to prisons for adult men. Visits have been made to all high-security prisons that may incarcerate women, and to both prisons for juvenile offenders, one of them twice. The NPM has also visited the prisons with departments for inmates sentenced to preventive detention. One of the visits included a visit to a special high-security wing within a prison.

#### **3.2. Restricted time to associate with others**

One of the main findings from the visits to prisons is that many inmates do not have the opportunity to associate with others for at least eight hours a day, in contravention of minimum standards recommended by the European Committee for the Prevention of Torture (CPT).<sup>22</sup> Instead, many remain locked up in their cells for shorter or longer periods of the day. This problem is particularly evident during weekends, when a lack of staff results in even more restricted time for out-of-cell activities.

Existing prisons often have one department without suitable premises for inmates to associate with others. In addition to accommodating inmates who are, for various reasons, excluded from the company of others, such departments are generally used for inmates during the induction process and for detainees on remand. As a result, many inmates experience a severely limited opportunity to associate with others, solely due to the lack of areas for association in the section and/or the lack of available staff. In some prisons, there are formalised waiting systems for transfer to a regular prison department where there are opportunities to associate with others.

This situation also appears to be partly a consequence of the Correctional Service's constrained resource situation, with a prison estate that requires a lot of maintenance, staff shortages and budget cuts in daily activities and programmes necessary to facilitate the inmates' reintegration into society.

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<sup>21</sup> In accordance with CAT Article 12, read in conjunction with Article 16 No. 1.

<sup>22</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT); Extract from the 2nd General Report of the CPT, published in 1992; CPT/Inf (92)3-part 2, para. 47.

While the Execution of Sentences Act Section 17 stipulates a right of association with other inmates, it is qualified by the phrase ‘as far as is practicable’.<sup>23</sup> In practice, the opportunities to associate with others may be left to the discretion of local prison authorities. The legal framework does not stipulate a national minimum norm for the daily duration of the right to associate with others.<sup>24</sup> In 2017, the Directorate of the Correctional Services issued revised guidelines on the inmates’ right of association with others. It stipulated that each department in the prisons may determine when the inmates may be locked out of their cells in the morning, and when they are locked up in the afternoon.

The NPM has expressed its misgivings about the daily duration of association being left to the discretion of local prisons and even local departments within prisons. During its visits, the NPM has found major differences in the daily duration of association, even between departments within prisons. In one prison visited by the NPM, staffing issues meant that the daily time out of cell during weekends amounted to 5 hours and 15 minutes in two of the departments, while the remaining departments had daily schedules exceeding that time by several hours. However, because these restrictions were a result of a locally authorised daily schedule, (i.e. cells in some departments were opened later in the morning and locked earlier in the evening), the inmates were locked up in their cells without an individual administrative decision that could be appealed. In some cases, this may result in inmates being locked in their cells under conditions similar to solitary confinement. In a prison recently visited by the NPM, the daily time out of cell during weekends amounted to approximately two hours including in the regular department for inmates not subject to restrictions.

Even minor limitations in the opportunity to associate with others has been considered by the ECtHR as an interference in the right to privacy under Article 8 of the ECHR which require justification.<sup>25</sup> In the NPM’s view, interferences in the right to association require sufficient legal basis and must satisfy requirements of necessity and proportionality. In this context, the NPM reiterates that association with others is widely considered necessary to promote reintegration into society and mitigate the harmful effects of detention.

The NPM has recommended the establishment of a national minimum norm for the daily duration of the right to association between inmates, preferably by revising the Execution of Sentences Act or by amending the Regulations to the Execution of Sentences Act.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

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<sup>23</sup> Act of 18 May 2001 No. 21 relating to the Execution of Sentences etc. (The Execution of Sentences Act).

<sup>24</sup> As opposed to, e.g. Denmark, where regulations stipulating the ordinary daily duration of association have been adopted, Executive Order No. 281 of 26 March 2012 on prisoners’ right to the company, etc. of other prisoners in institutions of the Danish Prison and Probation Service.

<sup>25</sup> See e.g. *McFeeley and Others v. UK* (1980), Complaint No. 8317/78 [Commission], para. 82 and *Munjaz v. UK* ECtHR (2012), Complaint No. 2913/06, para. 80: ‘...the Court agrees that the compulsory seclusion of the applicant interfered with his physical and psychological integrity and even a minor such interference must be regarded as an interference with the right to respect for private life under Article 8 if it is carried out against the individual’s will [...] Moreover [...] when a person’s personal autonomy is already restricted, greater scrutiny be given to measures which remove the little personal autonomy that is left.’

- **Take steps to ensure that all inmates can associate with others eight hours or more, every day including weekends.**
- **Consider adopting a national norm which stipulates the minimum daily duration of the right to association between inmates, while ensuring that any de facto deviation from the norm satisfies legal requirements and is reflected in the statistics.**

### **3.3. Isolation of inmates**

During its visits, the NPM monitors the use of isolation administered by the prison authorities, which is mainly based on the Execution of Sentences Act Section 37 ('complete or partial exclusion from company'). The NPM also examines the prison's use of security cells, a particularly invasive form of isolation, in accordance with Section 38 of the same Act. It also focuses on how local prisons mitigate the harmful effects of isolation, including court-ordered isolation according to the Criminal Procedures Act Section 186a ('full isolation'). All these forms of isolation will normally constitute solitary confinement as defined in the revised UN Standard Minimum Rules on Prisoners (hereinafter the SMR or Mandela Rules) rule 44.<sup>26</sup>

#### **3.3.1. Court-ordered isolation ('full isolation')**

In recent years, the use of court-ordered isolation has been reduced. However, approximately 12 per cent of the total annual number of inmates remanded in custody are still subject to isolation ordered by a court.<sup>27</sup> During its visits, the NPM regularly talks to inmates who experience severe distress due to this measure. In several reports, it has underlined the need to improve local strategies to mitigate the harmful effects of isolation.

The current legal framework does not impose an absolute limit on the duration of this form of isolation. During a public consultation on a revised proposal to the Criminal Procedure Act, the NPM pointed out the lack of a strict time limit for its duration with a reference to the fact that the Mandela Rules prohibit the use of solitary confinement in excess of 15 consecutive days.<sup>28</sup> CPT has also recommended that 'the Criminal Procedure Act should stipulate an absolute upper limit on the duration of solitary confinement of remand prisoners by court order'.<sup>29</sup>

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<sup>26</sup> The exception is partial exclusion from company ordered under Section 37 of the Execution of Sentences Act, which is defined as any exclusion or limitation from the ordinary daily schedule in the prison. It is notable however, that partial exclusion may last almost a full day, as long as the inmate can have some association with others, while complete exclusion means that the inmates has no association at all with other inmates (i.e. inmates stay 23 hours in their cell, with one hour of open air exercise).

<sup>27</sup> See NOU 2016: 24 New Criminal Procedure Act ('Ny straffeprosesslov').

<sup>28</sup> NPM Consultative Statement 31 May 2017 to a proposal on a new Criminal Procedures Act by a government-appointed committee (NOU 2016:24)

<sup>29</sup> CPT's report after the visit to Norway in 2005, [CPT/Inf (2006) 14], para. 52.

### **3.3.2. Isolation by decision of the prison authorities ('complete or partial exclusion from company')**

While noting the steps described in the State report, the NPM is concerned that the use of isolation decided by the prison authorities remains widespread and is indeed increasing.

According to statistics from the Directorate of the Correctional Services, 3,697 full exclusions and 2,420 partial exclusions were registered in 2016. In 2017, 4,550 full exclusions and 1,833 partial exclusions were registered.

During its visits, the NPM has frequently found instances where the legal grounds for the imposition of isolation are questionable. Specifically, the NPM has noted that decision-makers frequently isolate inmates because it is deemed necessary in order to 'maintain peace, order and security', without giving sufficient details about the event that led to this outcome or why it was considered necessary. In 2017, 2,550 of the total 4,550 decisions were made due to 'peace, order and security'. In 2017, the Directorate of the Correctional Services also revised its guidelines on the use of complete or partial exclusion from company. In a consultative statement to the draft guideline, the NPM stressed that the vague wording of 'peace, order and security' was problematic, making reference to CPT and CAT recommendations to ensure sufficient clarity of the legal basis for solitary confinement.<sup>30</sup>

Furthermore, the NPM is concerned that many decisions on partial and complete exclusion are being made due to building or staffing conditions. In 2017, 377 decisions were made due to building or staffing conditions (in total more than 14,000 hours of isolation). Isolation based on resource considerations is highly problematic in light of human rights standards, because such measures are wholly unrelated to inmates' conduct.<sup>31</sup>

Moreover, the Execution of Sentences Act permits complete exclusion from company for up to one year at the time. If an inmate is isolated for a full year, attempts must be made to facilitate association with other inmates. However, if such attempts are unsuccessful, a new decision can be made prolonging the potential duration of the measure by one additional year. Moreover, in departments for inmates at the special high-security level or preventive detention, no maximum time limit applies, apart from the requirement that the interference may not be 'disproportionate'. Recent statistics provided by the Directorate of the Correctional Services shows that, in 2017, inmates in nine different prisons had been isolated for a consecutive period exceeding 42 days in 31 instances, the three longest periods initiated that year lasted 289 days, 277 days and 271 days.<sup>32</sup> Moreover, in a few cases, exclusion from company lasted for consecutive periods of more than a year, only

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<sup>30</sup> The NPM's consultative statement of 1 November 2016 on guidelines on the use of exclusion from company in accordance with the Execution of Sentences Act Section 37. See also CPT, Solitary confinement of prisoners, Extract from the 21st General Report of the CPT, published in 2011 CPT/Inf (2011)28-part2, para. 55; and UN Committee against Torture, Concluding observations to Norway, 13 December 2012, CAT/C/NOR/CO/6-7, para. 11.

<sup>31</sup> See e.g. Council of Europe, Committee of Ministers Recommendation, Rec(2006)2 on the European Prison Rules, Principle 4: 'Prison conditions that infringe prisoners' human rights are not justified by lack of resources.'

<sup>32</sup> According to the Directorate, the statistics are a result of manual registration and calculation. Thus, sources of error cannot be ruled out.

interrupted by brief attempts to facilitate association with other inmates. One inmate was completely excluded from company for a consecutive period of 760 days, the measure was imposed in 2015 and ended in 2017. Another inmate was isolated for a period of 509 days, starting in 2016.

The revised SMR Rule 45 stipulates that solitary confinement shall only be used in exceptional cases as a last resort, for as short a time as possible. The NPM's findings suggest that Norwegian law and practice is not in compliance with international human rights standards.<sup>33</sup>

Based on human rights standards (notably the revised SMR), international criticism of the Norwegian practice and the problematic aspects of the legal provisions on exclusion from company, the NPM has recommended that the government undertake a review of Section 37 of the Execution of Sentences Act.

**Based on its findings, the NPM proposes the following recommendation to the State party:**

- **Undertake a legal review of Section 37 of the Execution of Sentences Act, with a view to ensuring that its law and practice fully respect international human rights standards. In particular, it should consider establishing a prohibition of all forms of solitary confinement in excess of 15 days.**

#### **3.4. The isolation of inmates with mental health problems**

During its visits to prisons in 2017, the NPM has particularly focused on inmates with mental health problems who are completely excluded from company in restricted sections of the prisons. These inmates are in a particularly vulnerable situation and findings suggest an elevated risk of violation of the prohibition against torture and ill-treatment.

A significant percentage of inmates in Norwegian prisons have mental disorders. A comprehensive study from 2014 (hereinafter 'the Cramer study') concluded that 92 per cent of the participants in the survey showed signs of mental disorders.<sup>34</sup> According to the study, 42 per cent of the participants suffered from some form of anxiety disorder, 12 per cent had one of more risk factors for suicidal thoughts and behaviours, and 4.1 per cent had a current psychotic disorder.

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<sup>33</sup> See e.g. UN SMR article 44-45; CPT, Solitary confinement of prisoners, Extract from the 21st General Report of the CPT, published in 2011 CPT/Inf (2011)28-part2; ECtHR's judgment in Babar Ahmad and Others v. the United Kingdom, 10 April 2012, Application Nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, para. 212.

<sup>34</sup> Cramer, V. (2014). Forekomst av psykiske lidelser hos domfelte i norske fengsler. The Regional Centre for Research and Education in Forensic Psychiatry and Psychology, South-Eastern Norway Regional Health Authority, Oslo University Hospital. The findings in the study led, among other things, to a joint report from the Directorate of the Norwegian Correctional Service and the Norwegian Directorate of Health entitled 'Oppfølging av innsatte med psykiske lidelser og/eller rusmiddelproblemer' (*Follow-up of inmates with mental disorders and/or substance abuse problems*) (2016).

The use of isolation is an invasive and potentially harmful measure, and people with mental health problems will be particularly vulnerable to inhuman or degrading treatment when they are completely excluded from company. The Mandela Rules state that:

‘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.’<sup>35</sup>

During its visits, the NPM often encounters inmates who show serious signs of mental health problems in the prisons’ restricted sections. This includes people whom the prison authorities themselves deem to have serious mental health problems and inmates who have been placed in isolation because of acute suicide risk.

#### **3.4.1. Inmates with serious mental health problems**

Some inmates in Norwegian prisons have such serious mental health problems that they are unable to function together with other inmates. During its visits, the NPM has found that some inmates have, in practice, been in isolation for months and, in some cases, even years. A common factor is that the security risk means that a high number of staff are required to provide activities for them. They therefore rarely leave their cells and have limited contact with other people. For many of them, a valid question is whether the real reason behind their extended exclusion from company is the deterioration of their mental state resulting from the isolation.

A number of these inmates refuse to have contact with the prison health service. Health personnel report finding it difficult to offer health care, despite repeated attempts. The only possibility available to them in such cases is to arrange for observation by or admission to the specialist health service. The NPM’s findings have shown that many of these inmates are transferred back and forth between prison and mental health care institutions. After a short stay in a mental health care institution, they often return to isolation in prison without treatment.

The prison authorities and staff often report that this group of inmates live under what can be described as inhuman conditions, and the NPM has stated that the responsible authorities must implement measures for these inmates to ensure that they receive treatment and are not confined to isolation.

#### **3.4.2. The use of restricted sections or security cells in the event of acute suicide risk**

Recent research shows that Norwegian prisons have had a high number of suicides in prison relative to the population.<sup>36</sup> It also shows that the most effective means of preventing suicide is assessment procedures and human contact through talking to staff and the health

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<sup>35</sup> The Mandela Rules, Rule 45.

<sup>36</sup> Suicide in prisons: an international study of prevalence and contributory factors

Fazel S., Ramesh T., Hawton K. (2017) *The Lancet Psychiatry*, 4 (12), pp. 946–952. In the article, Norway tops the list for the number of suicides among the countries studied. The source data include the year 2013, when there was an unusually high number of suicides in Norwegian prisons. Norway would still feature high up the list, even if this was adjusted for.



service.<sup>37</sup> Despite this, findings from the NPM's visits indicate that placing people in restricted sections or security cells is a frequent practice when suicide risk is identified. The reason given by the prison authorities is that they do not have enough staff to be able to monitor the inmates over time in the ordinary prison sections. The staffing level is further reduced at night time and at weekends, which, in some prisons, also means that health personnel are not available to talk to inmates identified as suicidal. If the risk of suicide is deemed acute, the inmates may often be placed in a security cell. According to the Execution of Sentences Act Section 38, an inmate may be placed in such a cell if the prison administration considers it 'strictly necessary' e.g. to prevent serious injury. Placement in a security cell is the strictest form of isolation in prison, as these cells contain no furniture apart from a rip-proof mattress and a toilet in the floor.

The NPM has particularly focused on analysing logs from security cells in instances where inmates have been placed there due to suicide risk. The log entries show that, in most cases, the monitoring consists of a prison officer observing the inmate at regular intervals, generally once per hour, through a hatch or window to check that the inmate is showing signs of life. Even in cases where an inmate is deemed to be at acute risk of committing suicide, the logs indicate that monitoring for the most part entails limited human contact and that conversations of any length are rare.

In most cases, the use of a security cell will mean that it is not possible for the inmate to commit suicide during the acute phase, as the cell does not contain any objects that can be used for this purpose. However, the NPM has pointed out that the use of security cells can traumatise the inmate. Based on what is known about the effects of isolation, it cannot be ruled out that the use of a security cell as a suicide prevention measure may have the opposite effect, in that the risk of suicide increases in both the short and long term. This highlights the importance of exercising particular caution as regards placement in a security cell where there is a risk of suicide or self-harm.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Take steps to ensure that solitary confinement is not imposed on prisoners with serious mental health problems. Moreover, it should develop practical alternatives to the use of solitary confinement if a suicide risk is identified.**
- **Take steps to ensure that prisoners with serious mental health problems have access to adequate mental health services.**

### **3.5. Female inmates**

In December 2016, the NPM published a thematic report entitled 'Women in prison'. The report is a summary of the NPM's findings concerning female inmates from visits to high - security prisons in the period 2014–2016.

The NPM's thematic report addresses key issues relating to the conditions for women in prison, including the physical conditions, security and safety, activities, health services and

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<sup>37</sup> Marzano L, Hawton K, Rivlin A, et al. Prevention of suicidal behavior in prisons. *Crisis* 2016; 37: pp. 323–34.

contact with family. The report found that women in prison are in a particularly vulnerable situation. In many cases, they risk serving under inferior conditions to men.

It is well-documented that aging buildings pose a challenge to Norwegian prisons, and the maintenance backlog is vast. The poor state of prison buildings directly impacts the conditions for women in prison. For example, women have special sanitary needs that require respect for their privacy and access to satisfactory sanitary facilities. The NPM's visits showed that the cells in several prisons did not have toilets, and, in some of these prisons, it was not possible to be let out of the cell to go to the toilet at night.

In 2016, Kragerø Prison was converted into a women's prison and it was decided that the old section of Kongsvinger Prison, Section G, would be converted into a women's section. It is positive that new prisons are being established for women. The NPM nevertheless expressed concern that the women's prison in Kragerø and the planned new section for women at Kongsvinger Prison are located in old buildings that do not adequately address the needs of female inmates.

In both women's prisons visited by the NPM, the possibility for physical activity outdoors was limited by the design and size of the exercise yard. This was particularly the case at Kragerø Prison, where the exercise yard was a 70-square-metre tarmacked area with little direct sunlight much of the year. Some of the prisons where men and women serve together have separate exercise yards for female inmates, but they are consistently smaller and more poorly equipped than the men's yards. The NPM has also found that work activities for female inmates are often inadequate or given low priority due to resource or security considerations. Moreover, women have in most cases poorer access to vocational rehabilitation than men.

Mixed-sex prisons give rise to particular challenges regarding security. Despite most mixed prisons having separate women's sections, inmates spend a lot of time together during work, school and leisure activities. Several women reported unwanted attention from male inmates, and there is a real risk of sexual harassment and abuse in such situations. Few prisons have special procedures and training in place to detect or deal with such abuse. The NPM has recommended that written procedures be developed for such situations.

During the NPM's visits, inmates with mental health problems were often highlighted as a particularly vulnerable group. The NPM found that many women have an unmet need for mental health support services. A high proportion of female inmates have also been the victims of sexual abuse. This could make it difficult for women to seek help from male health personnel. The NPM has recommended that steps be taken to ensure that women who, for whatever reason, want to see a female doctor have access to one.

The NPM's visits also show that access to substance abuse rehabilitation varies greatly between women and men, despite knowledge of widespread substance abuse among female inmates. Where such findings were made, the NPM recommended that women be offered substance abuse treatment equivalent to that offered to male inmates.

Since few prisons in Norway take female inmates, women risk being detained in prisons far away from their home. This makes it difficult for some inmates to receive visits from family.

Very few of the prisons that the NPM has visited provide inmates with the possibility of communicating with family via Skype or similar modern means of communication. The NPM has recommended in several visit reports that the Correctional Service introduces such technology, also in high-security prisons.

Some women risk having to serve their sentence in prisons with a higher security level than that suggested by their risk assessment due to limited capacity in low-security prisons for women. Women who are serving in predominantly male high-security prisons, also face a higher risk of isolation.

The full report is available in English here: [https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM\\_temaraapport\\_ENG\\_WEB\\_FINAL.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2017/05/SIVOM_temaraapport_ENG_WEB_FINAL.pdf)

In June 2017, the Directorate of the Correctional Services launched a strategy for women in remand or serving a prison sentence for a period from 2017–2020.<sup>38</sup> Its purpose is to ensure conditions for female inmates on an equal basis with men. The strategy consists of 21 measures. Planned steps include ensuring that female prisoners are separated from men, either in separate prisons or separate prison wings under conditions tailored to women; increased awareness of female inmates in future policy and research; strengthened substance-abuse programmes for women and a revision of rules for body searches and the taking of urine samples to ensure adequate safeguarding of female inmates.

While noting the positive steps envisaged by the State party, the establishment of a prison section for women in the old buildings at Kongsvinger Prison illustrates the importance of ensuring that the needs of female inmates are reflected when adopting new correctional plans and policies.

**Based on its findings, the NPM proposes the following recommendation to the State party:**

- **Step up its efforts to improve prison conditions for female inmates on an equal basis with men in prison, in compliance with international human rights law and standards.**<sup>39</sup>

#### **4. Police establishments**

##### **4.1. Immigration detention**

*Reference is made to CAT Article 11; the Committee's list of issues para. 17 and the State party's report paras 121–132.*

##### **4.1.1. Overview**

The police immigration detention centre at Trandum is situated close to Oslo Airport Gardermoen. It is run by the National Police Immigration Service (NPIS). The detainees at

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<sup>38</sup> See 'Correctional Services, Strategy for women in remand or serving a prison sentence, 2017–2020' ('Strategi for kvinner i varetekt og straffegjennomføring'), adopted on 6 June 2017.

<sup>39</sup> See, e.g. the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). See also UN Committee on the Elimination of Discrimination against Women, Concluding observations on the ninth periodic report of Norway, 22 November 2017, paras 46–47.

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. The NPM has visited the centre twice.<sup>40</sup> At the time of reporting, the official capacity of the centre was 220 beds.

#### **4.1.2. Concerns over excessive attention to control and security and independence of health services**

The first visit took place on 19–21 May 2015. One of the main findings was excessive attention to control and security at the expense of the individual detainee's integrity. Several detainees described routine body searches on arrival and after all visits as humiliating. The body search entailed the removal of all clothing and the detainee had to squat over a mirror on the floor so that the staff could check whether they had concealed items in their rectum or genital area. All detainees were denied access to their mobile phones and they were locked in their rooms during evenings, at night and for shorter periods during the day.

The physical design of the centre has a clear prison-like appearance. The staff wear uniforms, carry alarms and keep the detainees behind lock and key in cells with reinforced doors. There is a secure barbed-wire perimeter fence around the centre area. Low-flying aircraft regularly fly over the detention centre, which generates a lot of noise. The centre uses largely the same security procedures as the correctional services, including procedures for locking detainees in and out of their rooms, the use of security cells and solitary confinement, and cell searches. In some respects, the procedures appeared to be more intrusive than in many prisons. The NPM expressed concern that all of these control measures can result in more unrest and undesirable incidents rather than a sense of security.

The NPM also pointed out that the immigration detention centre did not appear to be a suitable place for children. The atmosphere at the detention centre appeared to be characterised by stress and unrest. Several incidents had taken place at the detention centre in 2014 and 2015, including major rebellions. The incidents included breaking of furniture and fixtures, self-harm, suicide attempts and use of force. This was not deemed to be a satisfactory psychosocial environment for children. In two instances, children had also witnessed parental self-harm.

The immigration detention centre purchases health services from a private health enterprise based on a contract between the enterprise and the NPIS. The contractual relationship between the health enterprise's doctors and the NPIS raises questions about the health service's independence. This could undermine both the relationship of trust between patients and health personnel and the health service's assessments. The health service also included two nurses who were employed by the police. This arrangement may also give rise to questions about independence.

Health interviews with newly arrived detainees were not conducted as a matter of routine, despite clear recommendations from the CPT. The detainees did not have access to mental

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<sup>40</sup> Note that the Parliamentary Ombudsman had visited the immigration centre on several occasions before it was designated NPM.

health care over and above emergency assistance, among other things because they lacked the right to access necessary health care due to their irregular status. It was pointed out that this appeared questionable according to international human rights law.<sup>41</sup> In addition, the health department lacked procedures for systematic follow-up of persons who were particularly vulnerable due to long-term detention.

The full report containing all the findings and recommendations is available in English: [https://www.sivilombudsmannen.no/wp-content/uploads/2017/03/Rapport-Trandum\\_en-nettversjon.pdf](https://www.sivilombudsmannen.no/wp-content/uploads/2017/03/Rapport-Trandum_en-nettversjon.pdf)

The NPIS has subsequently implemented measures that address some of the shortcomings pointed out in the NPM's report. This includes improving the quality of the decision-making process to place detainees in a security section and an improved programme of activities. Minor adjustments were made to the routines for body searches, although the NPM still questions whether the more or less routine use of body searches where the detainees have to adopt humiliating positions is in line with human rights law and standards.<sup>42</sup> Overall, the NPM is concerned that the centre's institutional culture of excessive attention to control and security is not adequately addressed in the authorities' follow-up.

#### **4.1.3. Isolation of detainees with mental health problems and the role of the health services**

Another visit to the centre took place on 28–29 March 2017. The report was published in September 2017. During the visit, the NPM examined the detention centre's practice concerning the use of the security section and of coercive measures, such as handcuffs and pepper spray.

A main concern was that a large percentage of placements in the security section were based on the detainees' mental health, self-harming or risk of suicide. Some minors had also been placed in the security section, including in a security cell. Human rights standards stipulate that placing particularly vulnerable groups, such as persons with mental disabilities and minors in solitary confinement, should be prohibited.<sup>43</sup> Placement in the security section normally meant that the detainees were placed in isolation, which is associated with an elevated risk of harm to health. Placing vulnerable persons at risk of self-harm or suicide in

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<sup>41</sup> See the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12 on the Right to Health. After reviewing Norway's report on the implementation of the ICESCR in 2013, the committee recommended that 'the State party take steps to ensure that irregular migrants have access to all the necessary health-services, and reminds the State party that health facilities, goods and services should be accessible to everyone without discrimination, in line with Article 12 of the Covenant'. See CESCR Concluding observations to Norway 12 December 2013, E/C.12/NOR/CO/5, para. 21.

<sup>42</sup> *E.g.* ECtHR's judgement *Frerot v. France*, Complaint No. 70204/01, paras 41-49 and the UN SMR Rule 52 No 1 which stipulates that: 'Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches.'

<sup>43</sup> The Mandela Rules, Rule 45 No 2, which stipulates that: '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.'

the security section as a means of safeguarding them gives cause for concern. The NPM recommended that the NPIS developed alternatives to using isolation on particularly vulnerable groups, such as minors and those with serious mental health problems or trauma, including people who are suicidal or self-harming.

It was also found that pepper spray had been used on one occasion in a cell in the security section to carry out 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 considering the requirements for necessity and proportionality. Pepper spray is a painful and invasive measure. Rubbing pepper spray directly into someone's face may further increase the pain. It is also a potentially dangerous substance, and, according to international human rights standards, should not be used in confined spaces.<sup>44</sup> However, to the NPM's knowledge, the incident had not been subject to any form of investigation.

The lack of independence of health personnel at the centre remained a challenge. Findings made during the visit substantiated that this contributed to several problems, including that the health personnel had advised placing detainees in the security section, and that this advice had, in certain cases, led to the detainees staying there for a longer period. The direct involvement of health personnel in decisions to place detainees in the security section is problematic in relation to medical ethics, since isolation can potentially harm health.<sup>45</sup> Human rights standards stipulate that health personnel must not play any role in decision-making processes pertaining to the use of restrictive measures such as isolation.<sup>46</sup> At the same time, health personnel must pay particular attention to the health of detainees who are subject to isolation through daily supervision and follow up. Findings showed that daily healthcare supervision was not always provided. More generally, the health service appeared to be of an inadequate scope to be able to safeguard the health of all detainees in a satisfactory manner. The detention centre still does not have access to a psychologist, despite recommendations to that effect by both the CPT and the NPM.

The NPIS informed the NPM of its follow-up measures in December 2017. While noting that many of the report recommendations have been addressed, challenges remain that pose a risk of ill-treatment. The NPM is particularly concerned about the lack of steps taken to avoid the use of isolation in relation to particularly vulnerable groups. It also notes that adequate follow-up of other key findings, such as challenges regarding the lack of an independent health service, requires external involvement from central authorities. At the same time, the NPM commended the decision made by the State party to end the incarceration of families with children and minors at Trandum by establishing a centre at another location away from the airport and in a less prison-like environment.

The full report containing all findings and recommendations is available in English:

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<sup>44</sup> See e.g. the CPT's report after a visit to Bosnia-Herzegovina 19–30 March 2007, CPT/Inf (2009)25) para. 79. See also the ECtHR's judgements in *Tali v. Estonia*, Application No 66393/10, 13 February 2014; *Ali Gunes v. Turkey*, Application No 9829/07, 10 April 2012.

<sup>45</sup> See e.g. UN Principles of Medical Ethics, adopted 18 December 1982 by the UN General Assembly, Res 37/194, Principle 3.

<sup>46</sup> The Mandela Rules, Rule 46 No 1.

Based on its findings, the NPM proposes the following recommendations to the State party:

- Take steps to address excessive attention to control and security at the immigration detention centre. In particular, the practices of routinely performing body searches in which the detainees must adopt humiliating positions, should be changed in accordance with human rights standards.
- Ensure that the detainees receive all necessary health services from personnel that are independent of the NPIS, including by considering the reorganisation of health services at Trandum.
- Take steps to ensure that isolation is not used against detainees with serious mental health problems. Moreover, it should develop practical alternatives to the use of solitary confinement in the event of a suicide risk.

#### **4.2. Police custody**

*Reference is made to CAT Article 2; the Committee's list of issues para. 4 and the State party's report paras 121–132.*

##### **4.2.1. Overview**

During 2014–2018, the NPM has undertaken visits to six different police stations, one of which was visited twice. One of the visits included visits to all places of detention at Oslo International Airport.

##### **4.2.2. Unsuitable physical conditions and de facto isolation**

The police holding cells in all the visited police stations had physical conditions that do not meet the basic needs of detainees in a manner that respects their inherent dignity. The design of existing custody cells makes no distinction between detainees that are brought in for disorderly conduct or on reasonable suspicion of a crime. Ordinary police holding cells in Norway lack any furniture except for a mattress on the floor and a toilet built into the concrete. Access to daylight is often limited or non-existent. In several places, the NPM found cells with lights in the ceiling that could not be adjusted during night time and where lights were on at night. Many of the cells were painted in only one colour, which can give rise to disorientation. Most of the visited police stations had not installed clocks inside the cells, reducing the detainee's ability to keep track of time.

Moreover, all custody facilities were generally designed without premises that make it possible to have social contact with others or to receive visits. As a result, all detainees are placed in isolation without this being deemed necessary for reasons relating to the investigation. In July 2014, Oslo District Court ruled that the Norwegian state had violated ECHR Article 8 on the right to privacy in a case where *de facto* isolation was imposed without a needs-assessment of whether this was warranted by the investigation. The judgment is

legally enforceable, and, as a result, the imposition of isolation in police custody is illegal in Norway unless it is considered necessary to prevent the destruction of evidence. However, the NPM's visit has subsequently shown a lack of documentation in the custody records justifying the need for isolation in each case. The lack of suitable premises where association with others can take place makes it challenging for local police to avoid the use of illegal isolation.

Overall, the design of the ordinary police custody facilities that are currently in use severely exacerbates the pre-existing mental strain on persons in the vulnerable early phase of deprivation of liberty. As a result, a police custody cell is not suitable for longer stays.

Detention for periods longer than the 48-hour limit prescribed by law has been a challenge for many years, resulting in criticism from international and national human rights bodies, including the NPM.<sup>47</sup> Findings from the NPM's visits indicate that local police measures to ensure timely transfers to prison are often poorly documented in the custody records.

#### **4.2.3. State party follow-up**

In recent years, the State party has implemented measures that have resulted in a significant reduction in detention in police custody beyond the 48-hour limit. In 2016, there were 945 cases in which individuals were held in police custody for more than 48 hours, compared to 2,160 instances in 2015. According to the most recent available statistics, there were 446 cases in the first eight months of 2017, compared to 582 cases in the same period of 2016. While noting these positive developments, there is still concern that, in practice, the current level still appears excessive. The NPM has suggested that the responsible authorities consider the introduction of an absolute time-limit of 48 hours.

The Ministry of Justice and Public Security has announced that proposals for legislative amendments reducing time in police custody and preventing the effects of solitary confinement would be distributed for comment.<sup>48</sup> At the time of reporting, the consultation paper was not yet ready.

In 2017, the National Police Directorate introduced revised standards for the design of new police custody facilities. Notably, the revised standards establish requirements for custody cells for detainees on remand to be furnished and that new custody facilities shall include areas where detainees can associate with others and receive visits. While noting these positive steps, the NPM is nevertheless concerned about how the State party will ensure that shortcomings are addressed at existing police custody facilities. The Directorate has also proposed new national guidelines for the use of police custody. At the time of reporting, the guidelines were not yet finalised.

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<sup>47</sup> See e.g. CPT visits to Norway in 2011 (CPT/Inf (2011) 33), para. 8; 2005 (CPT/Inf (2006) 14), para. 10 and 1999 (CPT/Inf (2000) 15), para. 16; UN CAT, Concluding observations to Norway, 13 December 2012, CAT/C/NOR/CO/6-7, para. 10.

<sup>48</sup> See Norway's seventh report to the UN Human Rights Committee, 28 September 2017, CCPR/C/NOR/7, Para. 123.



**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Consider introducing an absolute time-limit for detention in police custody of 48 hours.**
- **Strengthen its efforts to avoid de facto isolation in police custody, including by ensuring that both new and existing custody facilities have areas where detainees can associate with others and receive visits.**

## **5. Mental health care hospitals**

*Reference is made to CAT Article 2; the Committee's list of issues para. 12 and the State party's report paras 81-92.*

### **5.1. Overview**

During 2014–2018, the NPM has undertaken visits to ten mental health care hospitals. While most of the visits focused on conditions in hospital emergency wards for adults, many of the visits also included wards for treatment of the elderly and for long-term treatment, such as local security wards. One visit has also been made to a mental health care hospital for minors.

### **5.2. Use of restraint beds**

The use of restraint beds is regulated in the 1999 Mental Health Care Act (MHA) Section 4-8. Restraint beds and other permitted coercive means, shall only be used when this is 'absolutely necessary' to prevent someone from injuring themselves or others, or to avert significant damage to buildings, clothing, furniture or other things. In legal terms, the threshold is very high; it requires the existence of an acute situation. Moreover, coercive means shall only be used when less intrusive means have proved to be obviously futile or inadequate.

However, the NPM has found that the use of restraint beds is widespread across mental health care institutions in Norway. The NPM has found wide disparities in the use of restraint beds, including between local wards with identical medical admission criteria. Findings suggest that external factors such as local leadership, institutional culture and the availability of activities greatly influence outcomes. The NPM's findings include that due process rights concerning the use of restraint beds are not always respected; the application of restraints in situations where the written records do not indicate that an emergency exists, such as decisions to restrain a patient for the duration of a weekend; as well as problematic involvement of police when strapping patients to a restraint bed.

Prolonged use of restraint beds is of particular concern to the NPM. In most of the institutions visited, the NPM has examined cases where patients had been restrained more or less continuously for days. In many such cases, the medical records rarely indicated concrete efforts to discontinue the restraints. These interventions carry a considerable risk of ill-treatment. Bodies including the CPT have stated that applying instruments of physical restraints to psychiatric patients for days on end cannot have any medical justification and amounts to ill-treatment. However, the Norwegian legal framework does not establish any

time limit for the use of restraint beds, or any reporting obligation to a higher authority in cases of prolonged use.<sup>49</sup> The legislation does not require any form of external scrutiny in such cases, such as the use of second-opinion or involvement of experts external to the hospital with a view to addressing the situation causing the prolonged use of restraints.

In addition, there is a lack of publicly available national statistics concerning the duration of the use of restraint beds and other coercive means.

In several reports, the NPM has questioned whether the current Section 4-8 of the MHA, which permits the use of restraint beds to avert ‘significant damage to buildings, clothing, furniture or other things’, is in line with human rights standards.<sup>50</sup> Another problematic aspect of Section 4-8 is that the legal threshold for applying mechanical restraints is identical to the use of manual control. In the NPM’s view, manual control must normally be considered a less intrusive measure than a restraint bed. Stays in restraint beds statistically have longer duration and carry additional health risks such as thrombosis. In its visits, the NPM has therefore pointed out that an attempt should normally be made to manually control the patients prior to resorting to the use of mechanical restraints. In accordance with the principles of necessity and proportionality, the legal framework should reflect this difference.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Undertake a revision of MHA Section 4-8 to ensure compliance with human rights law and standards.**
- **Improve statistics documenting the use of restraints, including their duration. Based on this, undertake a review with a view to curbing the prolonged use of restraint beds.**

### **5.3. Isolation-like segregation**

A key finding from the visits carried out in 2017 was that many mental health care hospitals practised extensive segregation of patients. Patients were often segregated in unsuitable premises, with very limited opportunity for human contact and activity. The NPM expressed concern on several occasions that this measure, in practice, resembled isolation.

Segregation is regulated in Section 4-3 of the Mental Health Care Act, and means that the patient is kept completely or partly segregated from other patients and from personnel who

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<sup>49</sup> It should be noted that, according to the Regulations to the Mental Health Care Act Section 26, if the measure is extended beyond eight hours, it shall as far as practicable be considered whether the restraints may be eased for a shorter or longer period of time.

<sup>50</sup> The ECtHR has in its case law on the use of mechanical restraints stated that: ‘...such measures be employed as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others.’ (M.S. v. Croatia, Complaint No. 75450/12, 19 February 2015, para. 104. Similarly, it follows from the Committee of Ministers in the Council of Europe, Rec (2004) 10 Article 27 No 1 that: ‘Seclusion or restraints should only be used (...) to prevent imminent harm to the person concerned or others, in proportion to the risks entailed’. According to Article 27 No. 4 this shall not apply to ‘momentary restraint’.

do not take part in the examination, treatment and care of the patient.<sup>51</sup> Segregation can take place in the patient's own room or in a special segregation unit. The responsible mental health professional can decide to segregate a patient for treatment purposes or out of consideration for other patients.

Norway is one of the few countries that uses segregation as a form of treatment, distinct from isolation.<sup>52</sup> Isolation is defined in the Mental Health Care Act Section 4-8 as a coercive measure where the patient is detained behind a locked or closed door without a staff member present for up to two hours, while segregation requires close follow-up by the health personnel present. The latter measure could be imposed for up to 14 days at a time.

A systematic review of literature in 2015 concluded that there was little knowledge of the effect of segregation in Norway.<sup>53</sup> Patient studies indicate that the coercive elements of segregation are stronger than and are perceived as being more isolation-like than treatment purposes would indicate.<sup>54</sup> The implementation of segregation measures that provide so little opportunity for human contact that they, in practice, constitute isolation pose a high risk of inhuman and degrading treatment. Human rights standards in mental health care stipulate that isolation cannot be regarded as a therapeutic measure, but only a coercive measure.<sup>55</sup> Coercive measures must only be used as a last resort and if they are the only way of preventing patients from harming themselves or others.

Segregation appeared to be an integral part of the treatment regime at some of the hospital departments visited, in that a substantial proportion of the available beds were in segregation units. At one hospital, almost 30 per cent of all beds in the departments visited were placed in segregation units. Such a high proportion of segregation beds entails a risk that the threshold may be low for using segregation.

It was consistently found that the grounds for administrative decisions on segregation were inadequately documented, making it difficult for patients to have the administrative decisions reviewed in a complaint. Administrative decisions often referred to general terms such as agitated behaviour, treatment purposes etc., without this being linked to concrete incidents or circumstances. Many patients were subject to segregation to prevent them from embarrassing themselves in relation to the other patients. Considering that the patients were involuntarily committed, there often appeared to be a low threshold for acceptable behaviour. Clearly unlawful measures were also identified, such as the routine segregation of substance abuse patients without individual assessments. Other measures, such as the

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<sup>51</sup> In the State part's report (para. 91) this measure is referred to a 'shielding'.

<sup>52</sup> In Denmark, Section 18 d-f of the Psychiatry Act gives institutions the right to practise individual segregation and lock doors in the unit. Announcement No 1160 of 29 September 2015 regarding the act on use of force in psychiatric care (the Psychiatry Act).

<sup>53</sup> Norvoll, R., Ruud, T., Hynnekleiv, T. (2015). Skjerming i akuttpsykiatrien ('Segregation in emergency psychiatry'). The Journal of the Norwegian Medical Association, 135, pp. 35–39.

<sup>54</sup> See note above.

<sup>55</sup> CPT, 'Means of restraint in psychiatric establishments for adults (Revised CPT Standards)' 21 March 2017, page 2. Also see the recommendation of the Council of Europe's Committee of Ministers, Rec (2004) 10, Article 27 no 1: 'Seclusion and restraints should only be used (...) to prevent imminent harm to the person concerned or others, and in proportion to the risk entailed.' In an international context, 'seclusion' mainly appears to mean that the patient is locked in a room alone.

segregation of voluntarily admitted patients in cases where it was not documented that the patient had been informed about their right to discharge themselves, were also problematic. In many decisions, no reference was made to whether segregation was implemented as a treatment measure in the interest of the patient or out of consideration for other patients. The findings make it clear that segregation is a difficult mix of use of force and treatment. The fact that there were restraint beds in several of the segregation units visited reinforced the impression of segregation being a coercive measure.

The segregation units consistently had a sterile or even prison-like appearance. The patient rooms were generally painted white with no decoration or pictures on the walls. The rooms had no furnishing apart from a bed and sometimes a table and a chair. Research does not support an assumption that segregation rooms with a minimum of furnishing reduces mental symptoms or violent behaviour.<sup>56</sup>

In many of the units visited, the conditions in the segregation unit made it difficult to attend to all the patients' needs, particularly when it was fully occupied. Some of the premises were cramped and inflexible, which made it difficult to be near the patients without appearing invasive. At one hospital, beds had been placed in the common rooms in the segregation unit to increase capacity. Noise and commotion could lead to increasing unrest and insecurity among patients. Restraint beds in the segregation units increased the risk of patients perceiving segregation as unsafe.

Many of the segregation premises visited did not have direct access to outdoor areas. The patients therefore had to be accompanied out of the segregation units by staff, but this was contingent on staff being available. In practice, many patients were not able to spend time outdoors every day.<sup>57</sup>

Patients in segregation units spent a lot of time alone in their room with little contact with the staff. Segregation was often practised by patients being told to stay in their rooms, but without the door being closed. Many patients found such verbal messages humiliating, and said that they felt lonely and needed someone to talk to. In some places, segregation was practised by the patient being left alone in the unit with the door to the communal area left open. The patients were then asked to stay in their own rooms as much as possible, while the staff sat in a spot in the communal area, although the legislation on segregation requires close follow-up and contact with health personnel.

With few exceptions, segregated patients had little opportunity to engage in activities adapted to their interests and level of functioning. They also had limited access to entertainment such as radio, music and reading materials. The lack of such entertainment was said to be based on the need to limit sensory impressions for some patients, but nor were they made available to other segregated patients. The NPM has pointed out that it is

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<sup>56</sup> Arne E. Vaaler, Gunnar Morken & Olav M. Linaker (2005) Effects of different interior decorations in the seclusion area of a psychiatric acute ward, *Nordic Journal of Psychiatry*, 59:1, 19-24, DOI: 10.1080/08039480510018887

<sup>57</sup> By comparison, according to the Mandela Rules, Rule 23 No 1, prisoners shall have at least one hour of exercise in the open air daily. In a number of its reports, the NPM has pointed out that patients in mental health care should also have the opportunity to spend time outdoors every day.

the responsible mental health professional's duty to ensure that segregation measures are not more invasive than strictly necessary.

Findings indicate that many segregation measures remain in effect for prolonged periods. Pursuant to current legislation, segregation can be maintained for up to two weeks at a time, and for some patients, segregation is extended several times. Some patients were subject to segregation over many months. If segregation is maintained over prolonged periods without any change in the circumstances that led to segregation being considered necessary, this may indicate that the patient requires a different form of treatment. Moreover, there are no publicly available statistics that show the duration of segregation.

Research on isolation in prison has shown that limiting human contact, sensory impressions and self-determination can be harmful to health.<sup>58</sup> Segregation, particularly if it takes place over prolonged periods, poses a risk of inhuman or degrading treatment. The NPM has therefore recommended that mental health care institutions should give particular consideration to the risk of harmful effects of isolation in their practice.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Take steps to ensure that the use of segregation is not administered in a way resembling or constituting isolation.**
- **Collect and publish statistics on the occurrence and duration of segregation.**

#### **5.4. Involuntary medication**

According to the Mental Health Care Act Section 4-4, patients who are admitted under compulsory mental health care may, if all requirements are met, be subject to involuntary treatment. Involuntary treatment often involves the prescription of neuroleptic drugs, which are ingested as pills or administered by injection and may involve the use of force to implement the decision.<sup>59</sup> The law requires that treatment without the consent of the patient may only take place when an attempt has been made to obtain consent to the treatment, or it is obvious that consent cannot or will not be given.

The Mental Health Care Act Section 4-4 establishes strict legal requirements regarding the probability that the medicine administered without consent will result in a positive treatment outcome: 'Such treatment measures may only be initiated and implemented when there is a great likelihood of their leading to the cure or significant improvement of the patient's condition, or of the patient avoiding a significant deterioration of the illness.'<sup>60</sup> When the current MHA was enacted in 1999, the Ministry of Health stated that this requirement would serve as a safeguard against violations of the prohibition against torture

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<sup>58</sup> For a summary of research findings, see Sharon Shalev, A Sourcebook on Solitary Confinement, LSE/Mannheim Centre for Criminology 2008.

<sup>59</sup> Note that Section 4-4 also permits that nutrition be given without the consent of the patient, as part of the treatment of a patient with a serious eating disorder, provided that this is considered to be an absolutely necessary choice of treatment.

<sup>60</sup> See <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19990702-062-eng.pdf> [Unofficial translation].

and other ill-treatment.<sup>61</sup> In September 2017, the State party introduced stricter due process requirements for decisions relating to involuntary treatment. The amendments include a requirement that patients who are treated involuntarily must lack decision-making capacity and the introduction of specific requirements for the responsible psychiatrist to give written reasons for the decision.

Involuntary medication represents a serious interference in the patients' integrity and self-determination over their body, thoughts and emotions. The current knowledge base regarding treatment outcomes for involuntary treatment with neuroleptic drugs is unclear and increasingly contentious, particularly regarding their long-term effects.<sup>62</sup> At the same time, it is well-documented that neuroleptic drugs may have harmful side-effects, in some cases serious and irreversible. Involuntary medication constitutes an exception to the fundamental principle of consent to health care. Based on its potentially serious harmful side-effects, the NPM has voiced concern that mental health care patients are exposed to a risk of inhuman or degrading treatment.

During its visits, many patients report experiences of humiliation and distress as well as unwanted or painful side-effects from being coerced to take medicines against their will, perhaps over lengthy periods. Many employees voice their concern that the treatment plans for patients, especially in emergency hospital wards, increasingly consist only of prescription drugs. Such a practice is not in line with human rights standards.<sup>63</sup>

The NPM is aware of the ongoing discussions among human rights bodies regarding non-consensual treatment of persons with mental or psychosocial disabilities.<sup>64</sup> While noting the differences of opinion, the NPM's approach has been to examine the extent to which the patients' autonomy and participation are respected or optimised in practice as well as examining whether the national legislation is complied with.

A consistent finding is that the written records of administrative decisions on involuntary treatment often do not contain sufficient information to ascertain whether the intervention was in accordance with national law, including to justify a 'great likelihood' that the planned treatment would lead to a favourable treatment outcome. Moreover, the written records often did not show that the responsible doctor had engaged in genuine efforts to enable the patient to be able to influence the treatment. Another finding is that many patients do not receive sufficient information about the expected effects and potential side-effects of involuntary medical treatment. Based on its findings, the NPM is concerned that

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<sup>61</sup> See preparatory works to the MHA of 1999, Proposition No 11 (1998-1999) to the Odelsting chapter 8.4.6.

<sup>62</sup> In Norway, a treatment decision without the patient's consent may have a duration of three months at a time.

<sup>63</sup> CPT, Involuntary placement in psychiatric establishments, Extract from the 8th General Report of the CPT, published in 1998, CPT/Inf (98)12-part, para. 37.

<sup>64</sup> See e.g. UN CRPD, Concluding observations to Denmark, 29 October 2014, CRPD/C/DNK/CO/1, para. 39; UN Human Rights Committee, General Comment No 35, 16 December 2014, CCPR/C/GC/35, para. 19; UN Subcommittee on the Prevention of Torture, Approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment regarding the rights of persons institutionalized and treated medically without informed consent, 26 January 2016, CAT/OP/27/2.

fundamental principles of legality, necessity and proportionality are not respected in practice.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Take steps to ensure that genuine alternatives to involuntary medication, including a varied program of activities and forms of therapy, are available to all patients in mental health care institutions.**
- **Take further steps to ensure that fundamental principles of legality, necessity and proportionality are respected when considering intrusive treatments against a person's will.**

#### **5.5. ECT administered on grounds of necessity**

In 2017, the NPM has examined the practice at mental health care hospitals where ECT is administered without the patient's consent. Administering ECT without consent is prohibited in Norway, but in some cases, the treatment is given on 'grounds of necessity'. Findings made during a number of visits in 2017 highlight that patients are subject to a high risk of inhuman or degrading treatment.

Electroconvulsive therapy (ECT, also known as electroshock therapy) is a form of treatment whereby short, low-voltage electric shocks are administered to the patient's brain. Although the treatment is permitted in Norway, experts in the field disagree about the use of ECT and whether it can lead to permanent brain damage.<sup>65</sup> Some patients have experienced serious side-effects after ECT (such as memory loss).

As ECT therapy is a serious intervention, Norwegian law does not allow it to be administered without the patient's consent.<sup>66</sup> The Norwegian authorities nonetheless allow ECT to be administered without consent on 'grounds of necessity' in special situations. In the preparatory works to the Mental Health Care Act of 1999, the Ministry stated that the principle of necessity can constitute grounds for administering ECT without the patient's consent, if the patient's life is at risk, or if there is a risk of serious harm to the patient's health.<sup>67</sup> The Ministry made reference to the provision on the principle of necessity in the General Civil Penal Code (Section 47 of the General Civil Penal Code of 1902). Pursuant to Section 17 of the current General Civil Penal Code, an act that would otherwise constitute a criminal offence is lawful when it is done to save life, health, property or another interest from a danger that cannot be averted in any other reasonable manner, and the danger far exceeds the risk of harm from the action.

ECT therapy administered based on the principle of necessity provision in the General Civil Penal Code has led to criticism from international human rights bodies. In its Concluding Observations to Norway in 2013, the UN Committee on Economic, Social and Cultural Rights

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<sup>65</sup> Aslak Syse, Gyldendal Rettsdata annotated version of the Mental Health Care Act, Section 4-4, last revised on 5 November 2016.

<sup>66</sup> The Patient and User Rights Act Section 4-1 and the Mental Health Care Act Section 4-4 second paragraph.

<sup>67</sup> Proposition No 11 (1998–1999) to the Odelsting pp. 108–109.

recommended that Norway abolished its practice of administering ECT without consent.<sup>68</sup> Following a country visit to Norway in 2015, the Council of Europe Commissioner for Human Rights questioned whether administering ECT on the basis of the legal principle of necessity was in keeping with human rights standards.<sup>69</sup> The Commissioner also highlighted the importance of obtaining an accurate overview of the scope of ECT therapy, and making it publicly available.

In a letter to the Ministry of Health and Care Services of June 2016, the Directorate of Health questioned whether the principle of necessity is a sufficient legal basis, pointing out that repeated treatments are required for ECT to be effective.<sup>70</sup> The Directorate recommended that the use of ECT on grounds of necessity be considered further by the committee appointed by the government to conduct an overview of the regulation of coercion in Norwegian legislation (Tvangslovutvalget). The committee will submit its recommendations in September 2018.<sup>71</sup>

The Norwegian Directorate of Health published national guidelines on the use of ECT in June 2017. It was emphasised that it is only relevant to consider administering ECT on grounds of necessity in situations where a patient with a serious mental disorder is in an acute situation, and there is an immediate and serious risk to the patient's life, or a serious risk of harm to their health if they do not receive adequate health care.<sup>72</sup>

In the NPM's opinion, the current application of the principle of necessity as an independent legal basis for administering ECT without the consent of the patient is problematic in relation to the Norwegian Constitution's requirement that infringement of the authorities against the individual must be founded on law.<sup>73</sup> The legal authority requirement is stricter for very invasive measures.<sup>74</sup>

During the NPM's visits in 2017, it has identified cases where mental health professionals have found that patients have suffered serious cognitive side effects following ECT therapy, including where the patients cannot remember having had the treatment. Patients who had undergone ECT on grounds of necessity were also subject to other invasive coercive measures during their treatment, such as the use of a restraint bed for the administration of ECT therapy. The NPM also found cases where the use of force had escalated following a course of ECT therapy on grounds of necessity.

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<sup>68</sup> UN Committee on Economic, Social and Cultural Rights, Concluding Observations – Norway, 13 December 2013, E/C.12/NOR/CO/5.

<sup>69</sup> Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to Norway, 19 to 23 January 2015, CommDH (2015) 9.

<sup>70</sup> The Directorate of Health, Concerning use of ECT on grounds of necessity, letter of 4 July 2017 to the Ministry of Health and Care Services.

<sup>71</sup> On 17 June 2016, the Government appointed a legislative committee to conduct an overall review of the regulation of coercion in the health and care services sector. The committee is chaired by professor Bjørn Henning Østenstad.

<sup>72</sup> The Directorate of Health (June 2017): National guidelines for the use of electroconvulsive therapy (ECT), pp. 26–28.

<sup>73</sup> Article 113 of the Norwegian Constitution.

<sup>74</sup> See, *inter alia*, Norwegian Supreme Court Reports Rt. 1995 p. 530 and Rt. 2001 p. 382.



Problematic findings were made at several of the hospitals visited by the NPM. In several cases, ECT had been administered on grounds of necessity although it was unclear whether and why the strict conditions that apply were met. In several cases it was not made clear that there was an acute risk to the patient's health that could not be averted by other means. In some cases, it was not shown whether lawful treatment measures had been attempted or considered first. Where ECT had been administered on grounds of necessity because of *e.g.* the serious side effects of medication or low nutritional intake, there was no explanation of why intravenous fluid and nutrition administration had not been considered sufficient to avert the risk to the patient's life and health. In one case, an ECT treatment based on grounds of necessity was postponed because the patient had eaten and ECT must be administered on an empty stomach. In another case, the documentation stated that there was a high risk of the patient developing pneumonia, without any explanation of why ECT was considered a suitable measure for averting this risk.

In most cases, ECT administered on grounds of necessity was repeated over several days or weeks. One patient underwent 12 ECT treatments over a period of a month. The apparent grounds for this was that there was an ongoing acute risk throughout the period the treatment was administered. The information in the patient record indicated, however, that the patient's condition was not acute during the whole period. In another case, a decision was made to administer a full course of ECT therapy on grounds of necessity because the patient had recently interrupted ECT therapy on grounds of necessity after four treatments, which resulted in a deterioration in the patient's health.

The way in which the practice of administering ECT on grounds of necessity has developed can be seen as a circumvention of the legislators' decision not to allow ECT therapy without the patient's consent.

Poor documentation of the decision to initiate ECT therapy on grounds of necessity makes it difficult for patients to exercise their right to complain. This is particularly problematic in the case of ECT therapy, because some patients have difficulty remembering the circumstances surrounding the treatment or even that they have undergone the treatment. The hospitals are not obliged to notify national health authorities if ECT is administered on grounds of necessity. There is therefore no national overview of the numbers, patients and the grounds given. The NPM has pointed out that it is a cause for concern that the national health authorities are not informed when ECT is administered on grounds of necessity. This means that the health authorities are denied access to essential information about a practice with far-reaching effects for the patients who undergo such treatment. An overview of the scope of this practice is a precondition for any critical review thereof. The NPM has raised this issue in its dialogue with the national health authorities, most recently at a meeting with the Ministry of Health and Care Services in October 2017.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Introduce a duty of reporting to a higher authority whenever ECT is administered based on grounds of necessity. All incidences should be examined by an external body independent of the hospital to consider the legality of the measure.**

- **Compile statistics on all incidences of ECT administered on grounds of necessity and make the information publicly available.**
- **Based on collected information, conduct a review aimed at considering the legality of the practice of administering ECT on grounds of necessity.**

## **6. Child welfare institutions**

### **6.1. Overview**

During 2016–2018, the NPM has undertaken visits to eight child welfare institutions, six of them designated as emergency institutions.

### **6.2. Routine use of segregation and problematic therapeutic methods**

While most of the places visited offered satisfactory physical conditions for children's care, a few places had sterile and undignified units for reception with next to no furniture apart from a mattress on the floor. One institution had internal procedures to keep children routinely segregated from other children throughout the arrival phase, normally lasting 2-3 days.<sup>75</sup> In Norway, segregation cannot legally be imposed as a standard procedure. The legal requirements are strict, as segregation may only be used in response to situations of acute danger.<sup>76</sup> The reception unit had prison-like features with limited furniture and no decorations on the walls. Basic features such as temperature, water supply, in-door lighting and venetian blinds, were controlled by staff in an adjacent room. While staff had to be present in the same unit as the children, the measure created an atmosphere where the children had very limited opportunities to maintain their autonomy and to feel secure. In the NPM's view, it constituted an unsuitable place for the reception of children in a vulnerable situation. Findings also indicated that the segregation unit was used as a disciplinary measure against minor violations of internal rules that did not satisfy the strict legal requirements set out in the legal framework.<sup>77</sup> In another institution, it was found that the children risked 'house-arrest' (*i.e.* having to stay alone in their room) for the whole day, if they overslept. The NPM pointed out that this practice was against the law and entailed a risk of isolation. Current knowledge suggests that routine segregation during the reception phase might be a problem in other institutions not yet visited by the NPM.

In one long-term institution for minors with substance abuse and behavioural problems, the NPM criticised its therapeutic methods, particularly its use of involuntary 'motivational trips', that were not in accordance with human rights standards.<sup>78</sup> During these trips, one

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<sup>75</sup> According to the Regulations of 9 February 1993 concerning rights during a stay in a child welfare institution section 10 third paragraph, this practice is described as isolation. If the situation makes it necessary to isolate the child, 'at least one staff member shall always be present in the room or in an adjacent room with an unlocked door to the solitary confinement cell.' (official translation).

<sup>76</sup> According to the regulations section 10 first paragraph 'necessary coercion may be used in accordance with general principles of necessity and self-defence, cf. sections 47 and 48 of the General Civil Penal Code' if it is 'absolutely necessary in order to avert a risk of personal injury or significant damage to property. However, it is a precondition that more lenient measures are considered to be of no avail or have proved to be obviously futile or inadequate.' (Official translation.)

<sup>77</sup> See note above.

<sup>78</sup> See summary of the report here: <https://www.sivilombudsmannen.no/en/news/klokkergarden-collective/>

minor and two adults went to one of the institutions' houses in the woods for up to 14 days at a time. 'Motivational trips' were used for therapeutic purposes and were seen as an integral part of the treatment. The trips were usually undertaken due to various violations of internal rules, such as suspicion that the minor was keeping secrets from the staff, using drugs or had run away from the institution; or the perceived need for extra care or adult attention. The NPM criticised many aspects of these trips. The trips could be initiated without any prior warning, including against the minor's will. If deemed necessary, the staff applied pressure, coercion and in one case even resorted to physical force to implement the decision. It also emerged that the minors were not always informed about the reason for the motivational trip or for how long such trips would last.

For the duration of the trips, the minors were not allowed to have access to their mobile phones, which added to their sense of isolation and insecurity in a vulnerable situation alone with two adult staff members. After returning from the 'motivational trip' to a cabin in the woods, a period might follow where the minor was designated as 'phaseless', indicating that they had to work to regain the trust of the staff. During this phase, which could last for several days, the minor was constantly followed by adults, even indoors. Another element of returning to the institution was the requirement to participate in a plenary assembly with the staff and the other residents to answer questions about why they had been sent away on the trip. The NPM concluded that the use of involuntary trips constituted a risk of inhuman and degrading treatment. Current knowledge suggests that the use of questionable therapeutic methods might be a more systemic challenge, and the NPM is concerned that the existing legal framework does not adequately address the inherent challenges of such practices.

The NPM has also found institutions that routinely impose restrictions on minors' access to mobile phones and on their freedom of movement in and around the institution. The NPM has pointed out that such restrictions must only be imposed in accordance with the law and following an individual needs-assessment. In these institutions, the leadership and staff did not appear to have sufficient knowledge about the legal rights of the minors in their care.

Furthermore, the NPM has examined the role of the police in assisting institutions with the transport of minors or when the use of police force is deemed necessary. In the NPM's experience, minors who encounter the police in such cases may be subject to use of force and coercive measures such as handcuffs and spit-masks. However, there is a lack of national guidelines setting out how the police should deal with these situations in a way that takes the particular vulnerabilities of minors into account. Moreover, there are no available statistics that can document the use of coercive measures by the police when dealing with minors during transport and in institutional settings.

**Based on its findings, the NPM proposes the following recommendations to the State party:**

- **Take steps to ensure that children are not routinely subject to coercion, such as restrictions on movement, contact with the outside world and segregation during the arrival phase or at any other stage of their stay in child welfare institutions.**
- **Take steps to ensure that compulsory 'motivational trips' do not occur.**

- **Adopt national guidelines on police assistance involving children in institutional settings, including on the use of force and coercive measures. Moreover, take steps to compile and publish national statistics regarding the use of force and coercive measures in these situations.**