



SIVILOMBUDSMANNEN
Norwegian Parliamentary Ombudsman

SPECIAL REPORT TO THE STORTING ON SOLITARY CONFINEMENT AND LACK OF HUMAN CONTACT IN NORWEGIAN PRISONS

Document 4:3 (2018–2019)



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To the Norwegian Storting,



There is broad consensus that solitary confinement and lack of human contact can cause serious harm and must be limited. At least one in four inmates in Norwegian prisons are nonetheless locked up in their cells for 16 hours or more on weekdays, and for even longer at weekends.

For several years, Norwegian authorities have been criticised internationally for their use of solitary confinement. As recently as in June 2018, the UN Committee against Torture expressed great concern about the extent of prolonged isolation, and that the conditions for use of solitary confinement were not sufficiently

clear. In the same year, the European Committee for the Prevention of Torture (CPT) visited Norway and recommended in its report that inmates held in isolation should be offered structured activities and have meaningful human contact on a daily basis, which they currently only have to a varying degree. The committee was particularly concerned about the solitary confinement of inmates with mental health problems.

During the period 2014–2018, the Parliamentary Ombudsman's National Preventive Mechanism (NPM) has carried out 20 visits to 19 high-security prisons. The purpose of these visits was to prevent inhuman or degrading treatment of inmates in accordance with the NPM's mandate under the Optional Protocol to the Convention against Torture (OPCAT).

A consistent finding was that solitary confinement is extensively used and that inmates appear to be increasingly locked up in their cells. The nature of these findings is so grave that we have chosen to compile them in this separate special report to the Storting. The purpose is to draw the Storting's attention to the risk of violation of the prohibition against torture and inhuman treatment that solitary confinement in prison entails. The findings and recommendations in this report concern several parts of the public administration. In order for Norwegian authorities to fulfil their state responsibility, it is essential to coordinate measures to reduce the use of solitary confinement. In the present situation, Norwegian authorities do not comply with international human rights standards, and individuals are suffering under the detrimental effects of isolation.

This report consists of three parts. Part 1 contains an overview of methods used, definitions and a summary of what is currently known about the detrimental effects of isolation. Part 2, the main part of the report, summarises and explores in greater depth our findings under the prevention mandate relating to solitary confinement and restrictions on association with other inmates. Part 3 consists of recommendations on measures to reduce the use of solitary confinement.

Oslo, 18 June 2019

Aage Thor Falkanger
Parliamentary Ombudsman

I

The Parliamentary Ombudsman's prevention mandate

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

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

Individuals deprived of their liberty are sensitive to violations of the prohibition against torture and inhuman treatment, which is why the UN adopted an Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2002.

Norway ratified the Optional Protocol in 2013. It obliges the State parties to set up bodies to protect persons deprived of their liberty from torture and other cruel, inhuman or degrading treatment or punishment.¹

The Parliamentary Ombudsman was given this task, and a separate National Preventive Mechanism (NPM) was set up as part of the Parliamentary Ombudsman's office in 2014.

Under the OPCAT mandate, the Parliamentary Ombudsman has access to all places where people are deprived of their liberty and access to all necessary information with a bearing on the conditions of detention. The National Preventive Mechanism visits places where people are deprived of their liberty, such as prisons, police custody facilities, mental health care institutions and child welfare institutions. The visits can be both announced and unannounced.

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

II

Summary

It is well-documented in both old and more recent research literature that isolation can be detrimental to health. A large proportion of individuals who are isolated experience some form of physical or mental problems. The harmful effects of isolation can be immediate, and the risk increases with the length of isolation.

For several years, Norwegian public authorities have been criticised internationally for the use of solitary confinement in Norwegian prisons. As recently as in June 2018, the UN Committee against Torture expressed great concern about the extent of prolonged isolation, and that the conditions for use of solitary confinement were not sufficiently clear. In the same year, the European Committee for the Prevention of Torture (CPT) visited Norway and recommended in its report that inmates held in isolation should be offered structured activities and have meaningful human contact on a daily basis. The committee was particularly concerned about the isolation of inmates with mental health problems.

Since 2014, the Parliamentary Ombudsman has visited 19 high-security prisons in Norway. This special report is a compilation of our findings relating to solitary confinement. The purpose of the report is to draw the Storting's attention to the risk of violation of the prohibition against torture and inhuman treatment that isolation in prison entails.

There are major weaknesses in the authorities' control of the use of solitary confinement in prisons. This report documents grave failings in the quality of statistical information on use of isolation. For many years, reliable and relevant figures have not been available to describe the total extent of solitary confinement. At the same time, our findings show that isolation is used extensively in Norwegian prisons. This is particularly the case of isolation that cannot be ascribed to the individual inmate's behaviour.

Norwegian legislation does not reflect that solitary confinement should only be used in exceptional cases and for as short a time as possible. In some cases, inmates are held in solitary confinement for a very long time, contrary to human rights standards.

Inadequate follow-up of inmates in solitary confinement is also documented in this report. It is necessary to follow up everybody who is held in solitary confinement, although some are more vulnerable than others. Particularly young people, minors, people who have been traumatised or have language problems, and inmates with mental health issues belong to this latter group. It is documented in the report that inmates with serious mental health challenges are held in solitary confinement under censurable conditions for months, sometimes years.

There is an absence of legislation and central guidance for staff follow-up and supervision of inmates in solitary confinement. There is also an absence of statutes and central professional guidelines to ensure proper follow-up of inmates in solitary confinement by medical personnel. Furthermore, there is limited competence among medical personnel about the harmful effects of lack of human contact, and about how to prevent or remedy such harmful effects.

The existing scheme for control by the state authorities of the use of solitary confinement has major weaknesses. The supervisory councils do not have a sufficiently clear mandate or the resources and expertise needed for systematic and regular supervision to ensure that inmates have legal safeguards.

The lack of human contact in Norwegian prisons is partly a result of factors controlled by public authorities and partly factors controlled by the prisons themselves. Our findings indicate that there is a need to strengthen the work of the Correctional Service in order to prevent situations and incidents that trigger solitary confinement.



Part I

Method and
knowledge base

1 Method

This report is based on the findings and recommendations made during the Parliamentary Ombudsman's visits to prisons under the OPCAT mandate. During the period 2014–2018, the Parliamentary Ombudsman's National Preventive Mechanism carried out 20 visits to 19 high-security prisons:

- › Tromsø Prison
- › Bergen Prison – two visits
- › Ringerike Prison
- › Bjørgvin Prison, Juvenile Unit
- › Trondheim Prison
- › Telemark Prison, Skien Branch
- › Kongsvinger Prison
- › Bredtveit Women's Prison
- › Vadsø Prison
- › Drammen Prison
- › Stavanger Prison
- › Norgerhaven Prison
- › Telemark Prison, Kragerø Branch
- › Ullersmo Prison – Juvenile Unit East
- › Ila Detention and Security Prison
- › Ullersmo Prison
- › Åna Prison
- › Arendal Prison
- › Oslo Prison

The Parliamentary Ombudsman has right of access to all necessary information of relevance to the conditions of detention for people deprived of their liberty.²

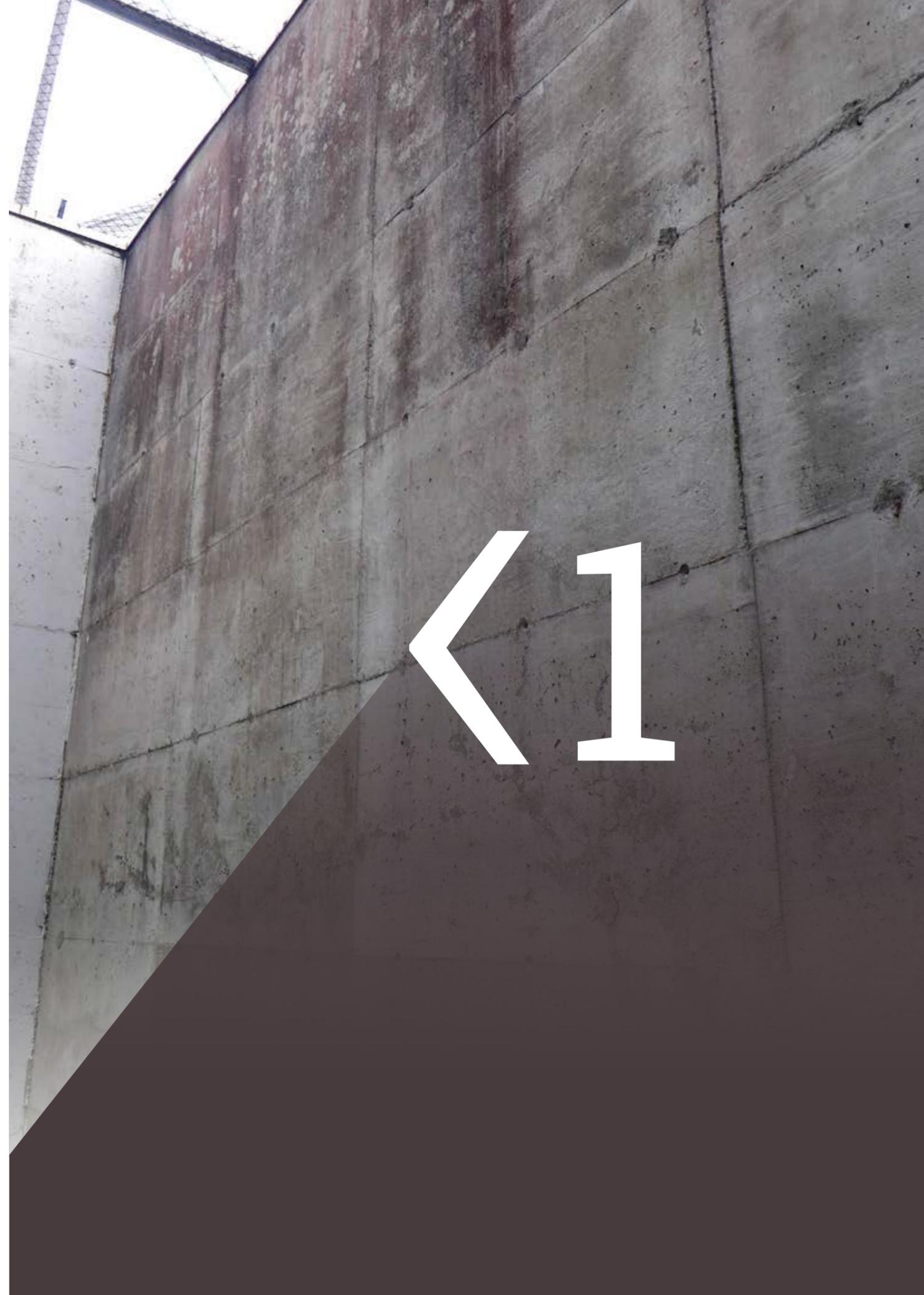
1.1 Preparations for visits

Before every visit, documentation is obtained from the prison administration and other relevant sources. This includes routines and procedures, local guidelines, administrative decisions on coercive measures, records, plans and medical documentation. The documentation is analysed and used as basis for preparing notes for the visit and interview guides.

1.2 Execution of visits

The visits are conducted by a team of six to eight people, depending on the size of the prison. The team is interdisciplinary and always includes staff with backgrounds from the law, social science and health-care professions. The Parliamentary Ombudsman may also use external experts if there is a need for additional expertise relating to the place of the visit.

The visits are of two to four days' duration and consist of inspection rounds, interviews with inmates and employees, and documentary reviews. The interviews with inmates are conducted in suitable premises, and correctional service staff shall not be able to listen in on what is being said.



1.3 Analysis and follow-up

On the basis of analyses and findings, the Parliamentary Ombudsman issues a report and recommendations to the place that was visited concerning changes that should be implemented to reduce the risk of torture or other cruel, inhuman or degrading treatment or punishment for those deprived of their liberty. Prisons that have been visited are given a deadline for reporting to the Parliamentary Ombudsman on how the recommendations have been followed up.

The risk of torture or inhuman treatment is influenced by factors such as legal and institutional frameworks, physical conditions, training, resources, management and institutional culture.³ Effective prevention work therefore requires a broad approach that does not exclusively focus on whether the situation is in compliance with Norwegian law.

1.4 Collection of information for this special report

In connection with the preparation of this report, information has been collected in the form of figures and other written information from the Directorate of the Norwegian Correctional Service, the Directorate of Health and the supervisory councils for the prisons.

Information obtained from the Directorate of the Norwegian Correctional Service includes an overview of administrative decisions on exclusions and the use of security cells, isolation by court order and day surveys on the number of hours spent in the company of other inmates:

- › Number of administrative decisions and duration of complete exclusion pursuant to Section 37 of the Execution of Sentences Act during the period September–December 2018.
- › Number of administrative decisions on prolonged exclusions during the period 2015–2018.
- › Day survey records of less than two hours spent outside the cell per day during the period 2012–2018,

and day survey records of less than eight hours spent outside the cell per day during the period 2015–2018.

- › Number of administrative decisions on the use of security cells and restraint beds during the period 2008–2018, and information about the duration of such decisions during the period 2013–2018.
- › Number of administrative decisions and duration of isolation pursuant to Section 186a of the Criminal Procedure Act during the period 2001–2018.
- › Exclusion of minors for more than three and five days, respectively during the period 2014–2018.
- › Number of transfers for observation/overnight stays in mental health care institutions pursuant to Section 13 of the Execution of Sentences Act during the period 2014–2018.

Total figures were also requested on complete or partial exclusion from the company of other inmates for the period 2014–2018, but reliable figures are not available.

The Directorate of the Norwegian Correctional Service has described known and potential sources of error associated with the figures.⁴ The Parliamentary Ombudsman also detected a number of weaknesses related to the figures, and supplementary data were obtained. It has also emerged that some types of isolation are not based on administrative decisions or documented in a way that makes it possible to get an overview of the actual situation. The figures used in this report must therefore be understood to be minimum estimates.

We also requested figures from the Directorate of Health on the number of transfers from the Correctional Service to the healthcare services, and on the duration of inmates' stays in psychiatric inpatient wards. The Directorate stated that it had no available statistics to show this, and that it did not know whether such statistics were available at the municipal level or from the regional health trusts.⁵

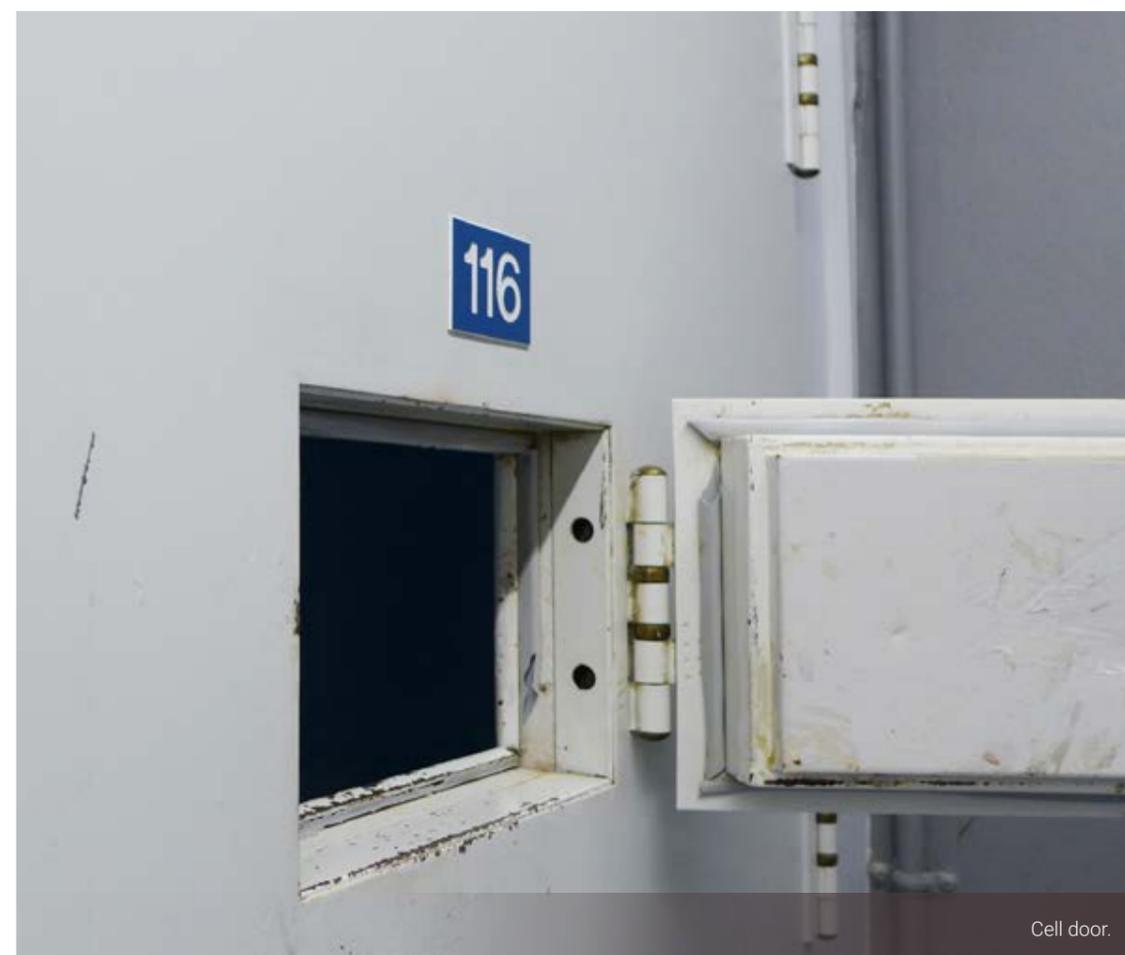
³ The UN Subcommittee on Prevention of Torture (SPT): The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 30 December 2010 CAT/OP/12/6.

⁴ Directorate of the Norwegian Correctional Service, Reply to query from the Parliamentary Ombudsman concerning the need for information for the special report to the Storting, letter of 20 February 2019 to the Parliamentary Ombudsman.

⁵ Directorate of Health, Reply to query from the Parliamentary Ombudsman concerning isolation and lack of association with other inmates in prisons, letter of 11 February 2019 to the Parliamentary Ombudsman.



NPM conducting a visit.



Cell door.

2 Definition of solitary confinement

It is a fundamental principle that, except for the consequences of being deprived of their liberty, prison inmates have the same human rights as everybody else. Inmates shall be offered activities and opportunities that facilitate a life as law-abiding citizens when they are released. This includes the opportunity to spend time in the company of other inmates every day. The Execution of Sentences Act states that, as a rule, inmates shall be allowed company during work, training, programmes or other measures, and in their leisure time.⁶ Access to associate with other inmates may only be limited in accordance with the principles of legality, necessity and proportionality. The principle of legality as laid down in Article 113 of the Norwegian Constitution, entails that infringement of the authorities against the individual must be founded on the law. Solitary confinement is a highly intrusive measure for the individual concerned. This makes the requirement for clear and accurate legal authority more pertinent.⁷

Internationally, there are several different definitions of the term 'solitary confinement'. In each case, the point of departure is that solitary confinement is a measure that is serious, intrusive and detrimental to health. The CPT describes solitary confinement in the following way:

'The CPT understands the term solitary confinement as meaning whenever a prisoner is ordered to be held separately from other prisoners...A prisoner subject to such a measure will usually be held on his/her own; however, in some States he/she may be accommodated together with one or two other prisoners, and this section applies equally to such situations'.⁸

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) establishes

specific time limits with a view to limiting the most harmful forms of solitary confinement. The Nelson Mandela Rules state that:

'For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact'.⁹

Under the Nelson Mandela Rules, it is prohibited to use this form of isolation for more than 15 consecutive days.¹⁰

The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted by a group of experts in 2007, describes what is typical of solitary confinement:

'Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic'.¹¹

In other words, solitary confinement essentially means that the inmate is kept separate from other inmates and that meaningful human contact is reduced to a minimum. For such contact to be meaningful, it should be empathetic and face to face. The communication should not be fleeting or incidental to the performance of other tasks, such as delivering food trays or medication.¹²

In this report, we use the term solitary confinement to cover situations in which an inmate is locked up in a cell for much of the day, for reasons of security or control, on the inmate's own request, or on account of building or staffing conditions or other circumstances in the prison.

⁶ The Execution of Sentences Act Section 17 first paragraph.

⁷ See, inter alia, Rt. 1995 p. 530 (the Fjord Salmon Judgment).

⁸ Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28.

⁹ The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN General Assembly on 17 December 2015, Rule 45(1).

¹⁰ The Nelson Mandela Rules, Rule 44, cf. Rule 43(1)(b).

¹¹ The Istanbul Statement on the Use and Effects of Solitary Confinement, adopted 9 December 2007 at the International Psychological Trauma Symposium in Istanbul in Turkey.

¹² See Essex Paper 3, Initial Guidance on the interpretation and implementation of the UN Nelson Mandela Rules, written by an expert group organised under Penal Reform International and Essex Human Rights Centre, 7–8 April 2016, pp. 88–89.



Legal authority for use of solitary confinement in Norwegian legislation

Norwegian legislation has a number of provisions that permit the use of solitary confinement and restrictions on association with other inmates.¹³ Solitary confinement may be decided through an administrative decision by the Correctional Service or by the courts.¹⁴ This report concentrates on the use of solitary confinement as a consequence of decisions made by the Correctional Service or of actual circumstances in the prison. The courts' authority to impose 'complete isolation' on remand inmates as provided for in Section 186 a of the Criminal Procedure Act will not be considered in any depth.

1) Solitary confinement as a control measure

Under Section 37 first paragraph of the Execution of Sentences Act, prisons may decide that an inmate shall be wholly or partly 'excluded from the company of other prisoners'. This may be done when necessary to prevent inmates from having a particularly negative effect on the prison environment, to prevent inmates from injuring themselves or acting violently or threatening others, to prevent considerable material damage, to prevent criminal acts or to maintain peace, order and security in the prison.¹⁵ Under Section 17 second paragraph of the Execution of Sentences Act, inmates in sections adapted for those with special needs etc. may be completely or partially excluded from the company of others in the interest of peace, order and security, or if it is in the interest of the inmates themselves or other inmates.

According to the Directorate of the Norwegian Correctional Service's guidelines, 'complete exclusion' means that inmates are not allowed any form of association with other inmates.¹⁶ Hence complete exclusion will in all normal cases amount to solitary confinement as defined in the Nelson Mandela Rules.¹⁷ According to the Directorate, partial exclusion means restrictions on the inmate's access to the company of others, for example that they are denied the possibility of attending work or school when this is considered necessary, but that they are allowed to socialise with other inmates later in the day.

As defined by the Directorate, partial exclusion can cover everything from a few minutes' daily association with other inmates to a few minutes' removal from normal association with other inmates. In practice, this means that partial exclusion can also amount to solitary confinement as defined in the Nelson Mandela Rules.

2) Solitary confinement for reasons related to building or staffing conditions

Strictly by way of exception, restrictions on association with other inmates may be decided for reasons that are beyond the control of the individual inmate. This is subject to stringent requirements. Under Section 37 ninth paragraph of the Execution of Sentences Act, an inmate may be wholly or partially excluded from the company of other inmates if necessitated by urgent building or staffing conditions.¹⁸ In extraordinary situations, such exclusion may apply to all inmates.¹⁹ This may be relevant where fire or water damage has made it unsafe to use common areas. That the conditions must be 'urgent' means that the inmates may not be excluded from the company of others on account of a generally difficult staff situation and that the exclusion must be of short duration.

3) Solitary confinement based on the inmate's own request

A decision to exclude an inmate from the company of other inmates may also be made on the inmate's own request.²⁰ Inmates may request solitary confinement for several reasons and not necessarily because they do not want social contact with other inmates. An inmate may, for example, request solitary confinement because of poor health, feelings of insecurity or fear of other inmates.

4) Solitary confinement in a security cell or restraint bed

Solitary confinement may also be a result of the inmate being placed in a security cell. This may be done if strictly necessary to prevent serious attack on or injury to a person, to prevent the implementation of serious threats or considerable damage to property, or to prevent escape from prison and during transportation to or from a destination.²¹ Detainment in a security cell is a particularly intrusive form of solitary confinement, because the inmates is placed in a bare cell that is unfurnished except for a plastic mattress and a squat toilet. Security cells are often placed some way away from other cells.

Where strictly necessary in order to prevent self-inflicted injuries, the inmate may be strapped to a restraint bed.²² Being held in a restraint bed can amount to a form of solitary confinement because of lack of human contact. Furthermore, the measure is a severe restriction of the freedom of movement and access to sensory impressions.²³



Door to security cell with damages from inmates.

- 13 Pursuant to Section 17 first paragraph of the Execution of Sentences Act, the Correctional Service may 'decide on complete or partial exclusion from company pursuant to the provisions of Section 29 second paragraph, Sections 37, 38, 39 and Section 40 second paragraph (d)'. Pursuant to Section 17 second paragraph, partial or complete exclusion may also be used in sections adapted for inmates with special needs, including those that have been sentenced to special criminal sanctions or preventive detention, or who are kept in the highest security sections. Section 186a of the Criminal Procedure Act also permits complete exclusion from the company of other inmates.
- 14 In addition, use of isolation as a disciplinary sanction is permitted under the Execution of Sentences Act Section 39, Section 40 second paragraph (d) permits use of partial isolation, and Section 29 second paragraph permits use of isolation by confinement to a single room with a special toilet. These forms of isolation are used less extensively and for shorter periods, and they are only mentioned where pertinent.
- 15 Section 37 first paragraph (a)–(e) of the Execution of Sentences Act.
- 16 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.4. Revised version of 2 April 2019.
- 17 In quite exceptional cases, it is conceivable that employees or other independent parties can provide inmates with meaningful human contact within the meaning of the Nelson Mandela Rules. This is challenging, however, since the balance of power between staff and inmates makes such relations difficult, and because it is made difficult by other tasks that staff are required to perform. Exceptions are conceivable under special regimes where considerable staff and dedicated resources are allocated.
- 18 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.17. Revised version of 2 April 2019.
- 19 The Execution of Sentences Act Section 37 eighth paragraph.
- 20 The Execution of Sentences Act Section 37 ninth paragraph.
- 21 The Execution of Sentences Act Section 38 and the Directorate of the Norwegian Correctional Service's guidelines, which limit the use of security cells to the cases mentioned in the Execution of Sentences Act Section 38 first paragraph (a), (b) and (d).
- 22 The Execution of Sentences Act Section 38 and the Directorate of the Norwegian Correctional Service's guidelines section 38.7. The guidelines limit the use of restraint beds to cases where the purpose is to prevent self-inflicted injuries.
- 23 There is no legal or regulatory requirement for follow-up by staff or access to human contact. According to section 38.7 of the Directorate's guidelines, an inmate held in a restraint bed shall be continuously monitored.

3

Human rights standards

3.1 What are human rights standards?

Norway has ratified and has commitments under a number of international human rights conventions. Many of these rights have been incorporated in Norway's Constitution, the Human Rights Act and other legislation.

Furthermore, the Council of Europe and the UN have adopted human rights standards that limit the use of solitary confinement and similar measures. The UN Special Rapporteur on Torture has also issued relevant recommendations.²⁴ Based on many years of visiting prisons in the Council of Europe's member states, the CPT has developed standards for treatment of prisoners.²⁵ The European Prison Rules, setting out standards for treatment of prisoners in Europe, are also important.²⁶

These standards are not legally binding per se, but have been developed through collaboration across states on the basis of international case law. In several instances, the European Court of Human Rights has supported human rights standards relating to solitary confinement and used them as a source of law.²⁷ The rules are seen as internationally accepted minimum standards for the treatment of prisoners, and they are important in order to ensure that prisoners are not treated in contravention of the prohibition against torture.

3.2 The prohibition against torture and other cruel, inhuman or degrading treatment or punishment

The right to freedom from torture and inhuman or degrading treatment or punishment is among the most essential human rights.

The prohibition against use of torture is laid down in Article 93 second paragraph of the Norwegian Constitution and in a number of conventions to which Norway has acceded. The prohibition is absolute and allows for no exceptions.²⁸

Several UN conventions on human rights contain a prohibition against torture and inhuman treatment, including the UN International Covenant on Civil and Political Rights (1966).²⁹ The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the 'UN Convention against Torture'), ratified by Norway in 1986, was adopted because the world saw such infringements as particularly harmful and there was a wish to strengthen the effort to prevent such infringements and punish the perpetrators.

In accordance with Article 1 of the UN Convention against Torture, '**torture**' is defined as any act by a public official (or other person acting in an official capacity) by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishment, or intimidating or coercing, or for any reason based on discrimination of any kind.³⁰ The prohibition applies to both acts and omissions.

The prohibition against other **cruel, inhuman or degrading treatment or punishment** is likewise absolute and covers grave violations of personal integrity, often in situations where state authorities have direct control of individuals, such as in a prison.³¹ The prohibition against inhuman treatment may well have been violated, even if the abuse does not take place to achieve a prohibited purpose (e.g. to punish or threaten) and even if it is not carried out with intent.³²

²⁴ See in particular the UN Special Rapporteur on Torture's report to the UN General Assembly 2011, A/66/268.

²⁵ Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28.

²⁶ Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 (in the following referred to as the European Prison Rules).

²⁷ See inter alia ECtHR 20 October 2016 *Muršić v. Croatia* paragraph 133, and the dissenting opinion of Judge De Gaetano.

²⁸ See the UN Convention against Torture Article 2(2) and the European Convention on Human Rights (ECHR) Article 15(2).

²⁹ The UN International Covenant on Civil and Political Rights Article 7. See also the UN Convention on the Rights of the Child Article 37(a) and the UN Convention on the Rights of Persons with Disabilities Article 15.

³⁰ Nowak, M & McArthur, E (2008). *The United Nations Convention Against Torture – A Commentary*. Oxford: Oxford University Press.

³¹ The UN Convention against Torture Article 16.

³² The requirement that the infringement must be 'intentionally inflicted' applies to the prohibition on torture only; see the UN Convention against Torture Article 1. The prohibition against cruel, inhuman or degrading treatment also covers negligence and failure to act on several administrative and government levels.



The prohibition can thus apply to disproportionate use of force or coercive measures. Any act intended to intimidate the victim can constitute degrading treatment, though the pain or suffering may be less severe than in the case of torture. The threshold for acts and omissions covered by the prohibition is lower when dealing with individuals deprived of their liberty.³³ This is because those who have been deprived of their liberty are completely dependent on the state's protection in order to safeguard their rights.

The UN Convention against Torture obliges member states to put effective measures in place to **prevent** torture and other cruel, inhuman or degrading treatment.³⁴ This includes an obligation to enact effective legislative measures.³⁵ People who are deprived of their liberty are particularly vulnerable to violations of personal integrity. The state parties are therefore obliged to ensure that national prison rules meet the minimum standards for the treatment of prisoners.³⁶ The state parties are also obliged to ensure that everybody who is involved in the treatment of people who have been deprived of their liberty receive training about the prohibition against torture and inhuman treatment.³⁷

The prohibition against torture and inhuman or degrading treatment or punishment is also enshrined in Article 3 of the European Convention on Human Rights (ECHR). The European Court of Human Rights (ECtHR) has stated, among other things, that for an interference to constitute a violation of Article 3, it must attain a minimum level of severity. Other factors of importance are the duration of the measure, its physical and mental effects and sometimes the victim's state of health.³⁸ In cases involving deprivation of liberty, account shall be taken of the overall impact of the conditions under which the sentence is served.³⁹

3.3 Solitary confinement and association with other inmates

Based on practice, international human rights bodies have developed standards for the use of solitary confinement and restrictions on association with other inmates.

Solitary confinement can entail violation of the prohibition against **torture**, for example if it is used as a means of exerting pressure to obtain a confession.⁴⁰ When visiting Norway in the 1990s, the CPT found information indicating that solitary confinement and threats were used to obtain a confession from detainees.^{41, 42} Since then, systematic changes have been made to the police's interview techniques to reduce the risk of solitary confinement being used as a means of exerting pressure to obtain a confession.

The use of solitary confinement can also constitute a violation of the prohibition against **cruel, inhuman or degrading treatment or punishment**. International human rights bodies have in several cases concluded that this part of the prohibition has been violated.⁴³ The European Court of Human Rights has stated the following about solitary confinement:

*«Solitary confinement is one of the most serious measures which can be imposed within a prison (...) and, as the Committee for the Prevention of Torture has stated, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities. (...) Indeed, as the Committee's most recent report makes clear, the damaging effect of solitary confinement can be immediate and increases the longer the measure lasts and the more indeterminate it is.»*⁴⁴

- 33 The Special Rapporteur's report to the UN Commission on Human Rights on the question of torture, 2006, E/CN.4/2006/6, paragraphs 34–41 and ECtHR 28 September 2015 Bouyid v. Belgium.
- 34 The UN Convention against Torture Article 2 cf. Article 16; the UN Committee against Torture, General Comment No 2, Implementation of Article 2 by State Parties, 24 January 2008, CAT/C/GC/2; UN Subcommittee on Prevention of Torture (SPT), The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 30 December 2010, CAT/OP/12/6.
- 35 The UN Convention against Torture imposes a number of other obligations on the state parties, including that they are required to use national criminal law to punish the use of torture (in accordance with Articles 4 to 9), grant redress and rehabilitation to victims of torture (Article 14), and to investigate torture and other cruel, inhuman or degrading treatment or punishment (Articles 12 and 13).
- 36 The UN Convention against Torture Article 11, cf. Article 16. On several occasions, the UN Committee against Torture has referred to the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) in its interpretation of Article 11.
- 37 The UN Convention against Torture Article 10, cf. Article 16.
- 38 ECtHR 18 January 1978 Ireland v. the United Kingdom paragraph 162, and 1 June 2010 Gäfgen v. Germany (Grand Chamber judgment) paragraph 88.
- 39 ECtHR 6 March 2001 Dougoz v. Greece paragraph 46.
- 40 The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/ 268, paragraph 73.
- 41 Council of Europe: Committee for the Prevention of Torture (CPT). Report to the Norwegian government on the visit to Norway 1993, CPT/Inf (94) 11, paragraphs 13 and 60.
- 42 Council of Europe: Committee for the Prevention of Torture (CPT). Report to the Norwegian Government on the visit to Norway 1999, CPT/Inf (2000) 15, paragraph 41.
- 43 ECtHR 17 April 2012 Piechowicz v. Poland; 9 October 2012 X v. Turkey; 17 April 2010 Onoufriou v. Cyprus. See also the UN Human Rights Committee, 6 November 1997 in Polay Campos v. Peru.
- 44 ECtHR 10 April 2012 Babar Ahmad v. the United Kingdom, paragraphs 206–207.

Whether solitary confinement constitutes inhuman or degrading treatment depends on its duration, the stringency of the measure, its purpose and how it affects the detainee.⁴⁵ Because an overall assessment is required, the ECtHR has not defined any precise limits for the length of isolation that would constitute violation of Article 3.⁴⁶ It has pointed out that it can cause immediate harm, stressed that solitary confinement cannot be continued indefinitely,⁴⁷ and been particularly critical of the imposition of restrictive measures on detainees who are neither dangerous nor disruptive to other inmates.⁴⁸ The ECtHR has also ruled against solitary confinement that does not appear to be reasonable in light of its purpose,⁴⁹ and against continued confinement when an inmate is no longer considered to be a security risk.⁵⁰ Increasingly, the ECtHR has also emphasised whether legal safeguards are in place to protect the welfare of inmates and ensure that the measure is proportionate.⁵¹

In cases where the threshold for violation of Article 3 has not been met, solitary confinement or restrictions on association with other inmates, or lack of medical follow-up, can constitute violation of the right to respect for the inmate's private life within the meaning of Article 8 of the European Convention on Human Rights.⁵²

The UN and the Council of Europe have also adopted a number of human rights standards that address the use of solitary confinement and restrictions on association with other inmates,⁵³ including the Nelson Mandela Rules and the European Prison Rules.⁵⁴ Based on many years of visiting prisons in the Council of Europe's member states, the CPT has developed standards for hours of activity and hours to be spent outside the cell and to limit the amount of solitary confinement.⁵⁵ The UN Special Rapporteur on Torture has also issued clear recommendations.⁵⁶

- 45 ECtHR 21 July 2005 Rohde v. Denmark paragraph 93.
- 46 ECtHR 4 July 2006 Ramirez Sanchez v. France paragraph 138; 12 May 2005 (Grand Chamber judgment) Öcalan v Turkey, paragraph 191.
- 47 ECtHR 4 July 2006 Ramirez Sanchez v France paragraphs 136 and 145.
- 48 ECtHR 14 October 2010 A.B. v Russia paragraph 105; and 7 June 2011 Csüllög v. Hungary, paragraph 36.
- 49 ECtHR 7 June 2011 Csüllög v. Hungary, paragraph 34.
- 50 ECtHR 9 July 2009 Khider v. France, paragraphs 118 and 119.
- 51 ECtHR 10 April 2012 Babar Ahmad v. the United Kingdom, paragraph 212; 17 April 2010 Onoufriou v. Cyprus.
- 52 ECtHR 26 November 2009 Dolenc v Croatia paragraphs 128 and 165; and 17 July 2012 Munjaz v. the United Kingdom, paragraphs 78–82; inadmissibility judgment of 31 March 2005Schneiter v. Switzerland, p. 14. See also the Commission Decision of 15 May 1980 in McFeeley and others v. the United Kingdom, paragraph 82.
- 53 The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/268, which focuses on the use of solitary confinement.
- 54 The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the UN General Assembly on 17 December 2015.
- 55 Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28.
- 56 The UN Special Rapporteur on Torture's report to the UN General Assembly 2011, A/66/268, which focuses on the use of solitary confinement.

The human rights standards that apply to the use of solitary confinement and restrictions on association with other inmates are described in the introduction to each section in Part 2 of this report.

The Nelson Mandela Rules – the UN Standard Minimum Rules for the Treatment of Prisoners

The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) were revised in 2015 and contain the most recent rules on the use of solitary confinement. The Nelson Mandela Rules state that solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority (Rule 45 (1)). Confinement of prisoners for 22 hours or more a day without meaningful human contact for a period of 15 consecutive days is prohibited under the rules (Rule 44).

The Nelson Mandela Rules were developed through cooperation across states and on the basis of international case law. They are not legally binding per se, but a manifestation of consensus on minimum standards for the treatment of prisoners. Furthermore, in several instances, international courts like the European Court of Human Rights have used these human rights standards as sources of law in their judgments relating to solitary confinement.

Compliance with the Nelson Mandela Rules is therefore important to ensure that prisoners are treated in accordance with human rights, particularly to prevent violation of the absolute prohibition against torture and inhuman treatment.

4

Solitary confinement is an intrusive measure and detrimental to health

Restricting an individual's access to social contact with other people is an extensive infringement upon that person's integrity and autonomy.

It limits the possibility of making one's own decisions about fundamental matters such as meals, hygiene, social contact, movement and medical care.

The inmates become more dependent on staff and lose the possibility of looking out for themselves. Solitary confinement also reduces inmates' possibility of protecting themselves against abuse, since their fate is put in the hands of people who can both make decisions and commit acts against their person. The risk of integrity violations, degrading treatment and abuse, whether intentionally or not, increases.

Sometimes the conduct of inmates who are placed in isolation is already challenging for the staff's ability to perform their duties in an ethical manner. Solitary confinement can also trigger aggression and violent behaviour, however, which in turn trigger further isolation and less human contact. Combined with the limited possibility of being observed by others, such situations entail a risk of staff violations.⁵⁷

In addition to constituting an extensive infringement on the individual's autonomy, restrictions on human contact can harm a person's physical and mental health.

4.1 Harmful elements of solitary confinement

Contact with other human beings is one of the most fundamental of human needs and a precondition for good mental health.^{58, 59} Loneliness and social isolation have been described as major health challenges of our times. Research has demonstrated that it can increase the risk of premature death more than, for example, obesity.⁶⁰

Both the scope and quality of human contact are important. In a prison context, the extent of social contact is very much reduced at the outset. At the same time, the quality of social contact will be affected by the balance of power between inmates and staff. The human contact is often monotonous and superficial, and thus lacks elements of importance to human health.

⁵⁷ The Istanbul Statement (2007). Retrieved from: <http://solitaryconfinement.org/istanbul>, p. 2.

⁵⁸ The World Health Organization (WHO) defines health as follows: 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'. WHO (1948), Official Records of WHO, no 2, p. 100.

⁵⁹ For example: Maslow, A H (1943). A theory of Human Motivation. Psychological Review, 50, 370-396.

⁶⁰ Holt-Lundstad, J et al. (2015). Loneliness and Social Isolation as Risk Factors for Mortality: A Meta-analytic Review. Perspectives on Psychological Science, 10, 227-237.



Social isolation tends to reinforce itself. Inmates have been found to withdraw from social contact as a consequence of solitary confinement, both while they are confined and afterwards.⁶¹ Imposed isolation can thus result in self-isolation. This places stringent demands on a prison's capacity to prevent solitary confinement, and to compensate for the harmful effects of solitary confinement when its use is strictly necessary. This does not only concern the amount of time that is devoted to the task, but also the competence of staff to look after inmates who are excluded from the company of others.⁶²

Solitary confinement offers very limited possibilities of engaging in activities and few sensory inputs from the outside world. Research has demonstrated that prolonged periods of inactivity and without sensory input lead to passivity, fatigue and apathy. The capacity for attention, concentration, planning and motivation is reduced, and people tend to move and talk less. In step with this, their brain activity is significantly reduced.⁶³ An explanation of these effects of lack of stimulation and activity can be found in studies of sensory deprivation, where lack of external stimulation causes lethargy and passivity.^{64,65} Passivity and withdrawal make it difficult for individuals to attend to their own health and welfare, and can lead to further negative development with withdrawal and depression.

Loss of predictability and lack of control cause stress, even in individuals who are not deprived of their liberty or placed in solitary confinement.⁶⁶ Isolated individuals have much less control of their own situation and daily life. A known consequence of this is that they no longer believe it possible to influence the situation.⁶⁷ This has been demonstrated to result in withdrawal, a feeling of helplessness and depression. Not knowing for how long one is being held in isolation has also proved to be a risk factor.⁶⁸ This can be explained, among other things, by the loss of control of the situation.

Inmates held in isolation may have a poor understanding of their own mental health state and can play down and understate the harmful effects isolation has on them.⁶⁹ It has also been documented that they can be reluctant to accept psychiatric treatment and avoid seeking such help. This is possibly an attempt to master the situation rather than focusing on the symptoms, or they may not be aware of or understand the development of their own symptoms.⁷⁰ The harmful effects of isolation can therefore be difficult to detect. Both the prison administration and the health services are therefore responsible for assessing the harmful effects regardless of how these are described by the inmates themselves.

61 Shalev, S (2008). A Sourcebook on Solitary Confinement. London: Mannheim Centre for Criminology, London School of Economics. See also: http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

62 University of Essex & Penal Reform International (2016). Essex paper 3. Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, pp. 88–89.

63 Scott, G D and Gendreau, P (1968). Psychiatric Implications of Sensory Deprivation in a Maximum-Security Prison. Canadian Psychiatric Association Journal, 14, 337-341.

64 Lethargy is a state of decreased consciousness that resembles sleep, to which the patient returns automatically after being aroused.

65 Smith, P S (2006). The effects of Solitary confinement on prison inmates: A brief history and review of the literature. Crime and Justice, 34, 441-528.

66 Nolen, J L (2009). Learned helplessness. Encyclopaedia Britannica.

67 Benight, C C & Bandura, A (2004). Social cognitive theory of posttraumatic recovery: the role of perceived self-efficacy. Behavior Research and Therapy, 42, 1129-1148.

68 Shalev, S and Edgar, K (2015). Deep custody: segregation units and close supervision centres in England and Wales. London: Prison Reform Trust.

69 Haney, C (2003). Mental Health Issues in Long-Term Solitary and "Supermax" Confinement. Crime & Delinquency 49, 138.

70 Coid, J et al. (2003). Psychiatric morbidity in prisoners and solitary cellular confinement, 1: Disciplinary segregation.

Journal of Forensic Psychiatry & Psychology, 14, 310 - 315.

4.2 Health effects of solitary confinement

It is well-documented in both old and more recent research literature that isolation can be harmful to health.^{71,72,73,74} The findings indicate that a large proportion held in solitary confinement experience some form of physical or mental problems or symptoms as a result of being isolated.

The harmful effects of solitary confinement can be immediate, but the number of inmates who develop health problems and the severity of such problems increase with the length of confinement.

The most common symptoms are mental, but physiological symptoms and complaints have also been documented. In her Sourcebook on Solitary Confinement, Sharon Shalev summarises possible harmful effects of isolation as being anxiety, depression, cognitive disturbances, perceptive distortions, paranoia and psychosis.⁷⁵ The symptoms can vary from light tension, lack of concentration, hypersensitivity to noise and confused thought processes, to major depression, panic attacks and acute psychosis. Levels of aggression, anger, self-harming and suicidal attempts are also reported to increase. Among the physiological symptoms, attention has been drawn in particular to heart palpitations, diaphoresis, insomnia, back and other joint pains, eyesight deterioration, poor appetite and digestive complaints, lethargy/weakness, tremulousness and feeling cold and aggravation of existing medical problems as a result of isolation.

Isolation can lead to anxiety, depression, confused thought processes, sensory disturbances, insomnia, delusions, psychosis, self-harming and suicide attempts.

71 Shalev, S (2008). A Sourcebook on Solitary Confinement. London: Mannheim Centre for Criminology, London School of Economics. See also http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

72 Smith, P S (2006). The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. Crime and Justice, 34, 476-487.

73 Howard, F F (2018). The effect of segregation. Prison Service Journal, 236, 4-11.

74 Smith, P S (2008). Solitary confinement. And introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement. Torture Journal, 18, 56-62.

75 Shalev, S (2008). A Sourcebook on Solitary Confinement. London: Mannheim Centre for Criminology, London School of Economics. See also http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

76 Shalev, S and Edgar, K (2015). Deep custody: segregation units and close supervision centres in England and Wales. London: Prison Reform Trust.

77 Edgar, K (2018). Segregation by choice. Prison Service Journal, 236, 38-42.

78 Brodsky, S and Scogin, F (1988). Inmates in protective custody: First data on emotional effects. Forensic Reports, 1, 267-280.

'The damage I suffered in solitary confinement will never be mended. I was completely isolated for five or six months without a television. I will never be myself again.'

Inmate interviewed by the NPM



Dato	Avis		Dusj Ferdig	Cellevask Ønsker Ferdig	Tøyvask Lev Ferdig	Luft Ønsker Ferdig	Til.	
	Inn	Ut					Off.tif.	Priv.tif.
C1-4			X	X	X	X		
C1-7			X	X	X	X		
C1-8			X	X	X	X		
C1-9			X	X	X	X		
C1-10			X	X	X	X		
C1-11			X	X	X	X		
C1-12			X	X	X	X		
C1-13			X	X	X	X		
C1-14			X	X	X	X		
C1-15			X	X	X	X		
C1-17			X	X	X	X		
C1-18			X	X	X	X		
C1-19			X	X	X	X		
C1-20			X	X	X	X		
C1-21			X	X	X	X		
C1-22			X	X	X	X		
C1-23			X	X	X	X		

Dayplan in a restrictive unit. "Avslo" = Rejected.

4.3 Harmful effects in particularly vulnerable individuals

People who already have mental health problems or a developmental disability are particularly sensitive to the harmful effects of isolation.⁷⁹ Both Norwegian and international research shows that mental health issues are more prominent in the prison population than in the general population. The majority of all inmates have mental health problems.⁸⁰ A Norwegian survey from 2014 of mental health problems among inmates showed that as many as 65 per cent of the respondents suffered from a primary disorder classified as an anxiety or mood disorder.⁸¹ This includes panic disorders, social anxiety, depressions and post-traumatic stress disorders. The same survey showed that the proportion of drug-related disorders was much greater than in the general population. In a survey in 2018, the Directorate of the Norwegian Correctional Service asked all prisons to report on the number of inmates

*'who, based on their state of mental health, can be perceived as having special needs over and above what the units can reasonably be expected to handle, and that cannot be met by use of regular measures. It was made clear that the units should not obtain medical diagnoses or assessments in connection with the survey, and that the survey sought to register the Correctional Service's own impression of the inmates in their units.'*⁸²

The prisons reported that there were 848 inmates in this category, that is approximately a quarter of all inmates in Norwegian prisons.⁸³ At the same time, research indicates that one in ten inmates in Norwegian prisons have learning difficulties that correspond to a light intellectual disability.⁸⁴

79 Shalev, S (2008). A Sourcebook on Solitary Confinement. London: Mannheim Centre for Criminology, London School of Economics. See also http://solitaryconfinement.org/uploads/sourcebook_web.pdf, p 30.

80 Fazel, S & Danesh J (2002). Serious mental disorder in 23 000 prisoners: a systematic review of 62 surveys. *The Lancet*, 359, 545-550.

81 Cramer, V (2014). The Prevalence of mental disorders among convicted inmates in Norwegian prisons (Project report from the Centre for Research and Education in Forensic Psychiatry, 2014-1). Oslo: Oslo University Hospital.

82 Directorate of the Norwegian Correctional Service, Addendum no 4 to the letter of allocation for 2018 – oppfølging av kritikk vedrørende psykisk syke og isolasjon i fengsel ('follow-up of criticism regarding mentally ill inmates and isolation in Norwegian prisons'), letter of 25 September 2018 to the Norwegian Ministry of Justice.

83 As of 28 August 2018, there were 3,357 inmates in Norwegian prisons.

84 Søndena, E (2009). Intellectual disabilities in the criminal system. Trondheim: Norwegian University of Science and Technology (NTNU).

Minors and young adults are also particularly vulnerable to the harmful effects of isolation.^{85,86} Former UN Special Rapporteur Juan E Méndez has advised against solitary confinement of children. In his report on children deprived of their liberty, he points out that since children are still in a process of development, both physically and mentally, they have different needs from adults. They will also experience pain and suffering differently from adults. Ill-treatment can therefore cause even greater or more irreversible damage in children than in adults. Excessive and prolonged exposure to physiological stresses can have devastating effects on normal development. It can result in learning difficulties, behavioural problems and health problems, including in the long term.⁸⁷ Juvenile offenders have a high incidence of mental health problems and learning difficulties, and come from backgrounds of neglect and trauma in the form of maltreatment and abuse.⁸⁸ The brain of young adults continues to develop until they are well into their 20s.⁸⁹ Normal development depends on adequate relational security, social contact, model learning and activation.⁹⁰ Isolation from the rest of the world is a threat to such development. It has also been pointed out that the possibility of favourable development is undermined through reinforcing aggression and crime.⁹¹

Cultural and language barriers can prevent a person from seeking help for the problems that arise in solitary confinement.^{92,93} Language barriers can also reduce social contact and reinforce the feeling of isolation.

During our visits, we have also seen that language barriers can give rise to misunderstandings and communication difficulties, and, in turn lead to solitary confinement. Figures from the Directorate of Norwegian Correctional Service suggest that non-Norwegian nationals are overrepresented among those held in prolonged isolation in security cells.

4.4 Delayed injurious effects and rehabilitation after solitary confinement

The longer the period of confinement, the greater the risk of lasting disorders and complaints.⁹⁴

We know that difficult life events can trigger mental health problems, and that such problems can develop and reinforce themselves so that it is difficult to get rid of them even if one's life situation improves.^{95,96} For example, further withdrawal following a person's release from solitary confinement or prison can further the development of a depression or anxiety disorder. As described above, solitary confinement can be experienced as highly burdensome, particularly when it entails little social contact, lack of external stimuli and activities, little predictability and a great loss of autonomy. In addition, many inmates have previously experienced traumas in their lives, and a significant proportion suffer from post-traumatic stress disorders.⁹⁷ Situations involving significant loss of control and autonomy can trigger retraumatisation and exacerbate traumatic and other mental health disorders.⁹⁸

85 Norwegian Official Report NOU 2008: 15 (2008). Barn og straff – utviklingsstøtte og kontroll ('Children and punishment – development support and control'). Oslo: Norwegian Government Security and Service Organisation.

86 American Psychiatric Association (8 June 2017). Solitary confinement of juvenile offenders. <https://www.apa.org/advocacy/criminal-justice/solitary.pdf>

87 The UN Human Rights Council, report from the UN Special Rapporteur on Torture, 5 March 2015, A/HRC/28/68.

88 The following is stated in Norwegian Official Report NOU 2008: 15 (2008): 'Children who have committed criminal acts are a marginalised and vulnerable group who will be particularly sensitive to detrimental effects'. NOU (2008). Barn og straff – utviklingsstøtte og kontroll ('Children and punishment – development support and control'). Oslo: Norwegian Government Security and Service Organisation.

89 Lee, J (2016). Lonely Too Long – Redefining and Reforming Juvenile Solitary Confinement. *Fordham Law Review*, 85, 846–870

90 See, for example, Tetzchner, S V (2012). *Utviklingspsykologi*. ('Development psychology') Oslo: Gyldendal akademisk.

91 Meritt, J (2018). Is there a good justification for the segregation of young people? *Prison Service Journal*, 236, 27-32.

92 Leong, F T and Kalibatzeva, Z (2011). Cross-cultural barriers to mental health services in the United States. *Cerebrum*, 2011, 5.

93 Erdal, K et al. (2011). Attitudes about depression and its treatment among mental health professionals, lay persons and immigrants and refugees in Norway. *Journal of Affective Disorder*, 133, 481-488.

94 Smith, P S (2006). The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. *Crime and Justice*, 34, 494.

95 Dohrenwend, B P (1998). *Adversity, Stress and Psychopathology*. New York: Oxford Press.

96 Berge, T & Repål, A (2015). *Håndbok i kognitiv terapi* ('Handbook in cognitive therapy'). Oslo: Gyldendal akademisk.

97 Cramer, V (2014). Prevalence of mental disorders among convicted inmates in Norwegian prisons (Project report from the Centre for Research and Education in Forensic Psychiatry, 2014-1). Oslo: Oslo University Hospital

98 Sweeney, A; Filson, B; Kennedy, A; Collinson, L; & Gillard, S (2018). A paradigm shift: relationships in trauma-informed mental health services. *BJ Psych advances*, 24, 319–333.

Part II

Findings

5

Lack of reliable information about the use of solitary confinement

For many years, the total extent of solitary confinement in Norwegian prisons has been unknown. As early as in the 1990s, the Standing Committee on Justice requested an overview of the frequency and duration of various types of solitary confinement in Norwegian prisons.⁹⁹

Norwegian public authorities have repeatedly been criticised by the UN Committee against Torture for not having an overview of the extent of solitary confinement.¹⁰⁰ In 2012, the committee recommended that Norwegian authorities obtain detailed, official statistics on the use of solitary confinement.¹⁰¹ The committee reiterated the recommendation to provide detailed statistics during its examination of Norway's report in 2018.¹⁰²

Since the Parliamentary Ombudsman first visited a Norwegian prison under the prevention mandate, the lack of reliable information at both the local and national level about the extent of solitary confinement has been a persistent challenge. During a visit to Bergen Prison in 2014, the prison administration stated that statistics on the use of Section 37 of the Execution of Sentences Act concerning exclusion from company as a preventive measure in 2014 could not be provided because of alterations to the Correctional Service's computer system KOMPIS.¹⁰³

5.1 Failure to correctly register administrative decisions

For many years, the Correctional Service has found it challenging to register administrative decisions correctly in its ICT system. In 2015, alterations were in place that were supposed to facilitate a better overview of decisions on exclusion. However, in spring 2018, new errors were found in the system, which meant that the Directorate of the Norwegian Correction Service no longer deemed previously published figures on administrative decisions on exclusion to be reliable. Pending correction of these errors, the prisons shall report all decisions on complete exclusion to the Directorate manually as from autumn 2018. The reporting requirement does not apply to decisions on partial exclusion, which can also entail solitary confinement (see Chapter 2 *Definition of solitary confinement*).

Furthermore, decisions on exclusion are registered in different ways by different prisons due to unclear legislation. Among other things, this is a result of there being no definition of how many hours inmates shall spend out of their cells, and that the criteria for complete and partial exclusion are unclear (see Chapter 2 *Definition of solitary confinement*). Hence, what is considered partial exclusion in one prison can be considered as normal association with other inmates in another. There are also a number of situations in which the individual prisons do not make administrative decisions on exclusion from the company of other inmates.

⁹⁹ Recommendation to the Storting No 6 (1998–99), question 25, concerning the use of Section 53.4 of the Prison Rules that applied at the time, which corresponds to Section 37 of the Execution of Sentences Act.

¹⁰⁰ The UN Committee against Torture's concluding observations on Norway's fifth periodic report on the implementation of the UN Convention against Torture (CAT/C/NOR/CO/5) section 8; on Norway's combined sixth and seventh periodic report (CAT/C/NOR/CO/6-7) paragraph 11, and on Norway's eighth periodic report (CAT/C/NOR/CO/8) paragraphs 17–18.

¹⁰¹ The UN Committee against Torture's concluding observations on Norway's combined sixth and seventh periodic report on the implementation of the UN Convention against Torture (CAT/C/NOR/CO/6-7) paragraph 11.

¹⁰² The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture (CAT/C/NOR/CO/8) paragraphs 17–18.

¹⁰³ The Parliamentary Ombudsman's report after its visit to Bergen Prison 4–6 November 2014, p. 13.



These include situations in which inmates choose to be excluded without having signed the appropriate declaration, and situations in which daily association with other inmates is very limited due to building or staffing conditions of a non-urgent nature. Hence, they are not included in the figures.

Because of the lack of reliable figures, previously published statistics on decisions on complete or partial exclusion have been left out of this report. Excepted is information about particularly prolonged exclusions for the period 2015–2018 and the overview of administrative decisions on complete exclusion during the period September–December 2018. These figures are based on separate reporting schemes.¹⁰⁴

5.2 Sources of error in day surveys

The Correctional Service has conducted nationwide day surveys since 2012 for the purpose of obtaining a more accurate picture of how often and for how long inmates are locked up in their cells. During the period 2012–2018, 19 surveys were carried out on randomly selected weekdays at four-month intervals. In 2018, one day survey was also carried out at the weekend. The surveys are conducted by the Correctional Service Region South, and the regional offices are tasked with obtaining and assuring the quality of the figures obtained from the prisons in their respective regions.

The surveys entail reporting by each individual prison of the number of inmates who have no association with other inmates on that particular day, and the number of inmates who have less than two hours' association with other inmates. As from 2015, the number of inmates with between two and eight hours' association with other inmates is also reported.

There are a number of sources of error associated with the Directorate of Correctional Service's day surveys. Weaknesses related to the method, such as the low number of survey points (three per year), leave room for random variations, and also prevent the figures from giving a representative picture of the extent of isolation and exclusions in Norwegian prisons.

There have been no surveys conducted systematically on weekends, and the category '2–8 hours out of cell' provides no information about the distribution within this category. It is substantially more intrusive and harmful to have 2–3 hours out of cell per day than 7–8 hours.

In our review of the day surveys, we have found that there are no adequate procedures for quality assurance of the figures. Among other things, we have found that reported data from some prisons is lacking. Several prisons have also reported figures for the number of inmates with restrictions on association with other inmates that are clearly lower than what we, based on our visits, have reason to believe is actually the case.

5.3 Uncertain figures on the use of security cells

Concerning the use of security cells, we have reviewed figures for the period 2008–2018 and information about the duration of administrative decisions for the period 2013–2018. In the process, we found incorrect records of such use, and the figures also did not tally with our findings on the use of security cells made during visits to individual prisons. This makes it reasonable to assume that the number of administrative decisions on the use of security cells is also uncertain, and that the actual figure is probably higher.



Signs for marking cell doors.

Main findings

Our collection and review of figures show that there is no reliable overview of the extent of solitary confinement in Norwegian prisons. There are significant sources of error associated with many of the available figures.

This means that the responsible authorities do not have access to information necessary to enable consideration of measures to reduce the use of solitary confinement and limit its harmful effects.

It is highly censurable that, more than 20 years after the Standing Committee on Justice requested such figures, the governmental authorities still lack a reliable overview of the extent of isolation in Norwegian prisons. The figures used in this report must therefore be understood to be minimum estimates throughout.

¹⁰⁴ Prolonged exclusions are reported in accordance with statutory deadlines; see Section 37 fifth paragraph of the Execution of Sentences Act. The figures showing the number of administrative decisions pursuant to Section 37 during the period September–December 2018 are based on the manual reporting scheme.

6

Extensive use of solitary confinement and restrictions on association with other inmates

As described in Chapter 5 *Lack of information about the use of solitary confinement*, there are major weaknesses in the figures. It is clear, however, that solitary confinement and restrictions on association with other inmates represent a major problem in Norwegian prisons. The Directorate of the Correctional Service's three annual day surveys (weekdays) from 2018 indicate that, on average, 33 per cent of the inmates in the prisons that participated in the surveys were locked up in their own cells for 16 hours or more per day.¹⁰⁵ This amounted to just over 880 inmates.

Two hundred of these were locked up in their own cells for more than 22 hours a day, just over half of whom were held in isolation without an administrative decision.

In 2018, one day survey was also carried out at the weekend. It revealed that the share of inmates locked up and isolated was very high during weekends. The figures showed that nearly 50 per cent of the inmates of the prisons participating in the survey were locked up in their cells for 16 hours or more.

Human rights standards on association with other inmates, activity programmes and out-of-cell time

The purpose of a prison sentence is to protect society from crime and prevent recidivism.¹⁰⁶ That is why the time spent in prison should be used to facilitate the inmate's reintegration into society and a life without crime upon being released.¹⁰⁷

All inmates, whether convicted or detained on remand, shall be offered a satisfactory range of daily activities consisting of work, education, vocational training and sports.¹⁰⁸ Inmates shall be followed up socially and medically and offered cultural and leisure activities and at least one hour outdoors every day.¹⁰⁹ The CPT has recommended that inmates should, at minimum, have the possibility of spending eight hours out of their cells every day, and to participate in meaningful and varied activities.^{110, 111}

¹⁰⁵ The surveys were carried out in high-security prisons and a few lower-security prisons that have access to exclude inmates from the company of other inmates and/or have an intake department without communal premises.

¹⁰⁶ The Nelson Mandela Rules, Rule 4.

¹⁰⁷ The Nelson Mandela Rules, Rule 5.

¹⁰⁸ The European Prison Rules, Rule 25(1) and (2); the Nelson Mandela Rules, Rules 4 and 5.

¹⁰⁹ The Nelson Mandela Rules, Rules 23, 104 and 105.

¹¹⁰ Council of Europe: Committee for the Prevention of Torture (CPT), 2nd General Report, 1992, CPT/Inf (1992) 3, paragraph 47.

¹¹¹ Council of Europe: Committee for the Prevention of Torture (CPT), 26th General Report, 2017, CPT/Inf (2017) 5, paragraph 58.



The right to social contact with other people is protected under Article 8 of the European Convention on Human Rights.¹¹² In the case of people who are deprived of their liberty greater scrutiny should be given to measures that further limit the possibility of social contact, and even a minor interference will be seen as an intrusion.¹¹³ Any interference in the inmates' right of association that lacks sufficient basis in national law or is unnecessary or disproportionate can constitute a violation of Article 8.¹¹⁴

Human rights standards on solitary confinement

Solitary confinement shall be used only in exceptional cases, as a last resort, and for as short a time as possible.¹¹⁵ This means that the measure must be strictly necessary and proportionate. The confinement must be proportionate to the risk of the inmate harming others or of being exposed to harm.¹¹⁶ Under the Nelson Mandela Rules, solitary confinement for 22 hours or more per day for more than 15 consecutive days shall be prohibited.¹¹⁷

All forms of solitary confinement should be accurately described in legislation, and it should be clear that solitary confinement must only be used in exceptional cases.^{118, 119}

Procedural safeguards must be in place to guarantee the inmate's welfare and the proportionality of the measure. According to case law established by the European Court of Human Rights, decisions on solitary confinement shall be based on grounds that take account of the inmate's circumstances, situation and behaviour, and it must be evident from the statement of grounds that these matters have been thoroughly assessed.¹²⁰ The statement should be increasingly detailed and compelling according to the duration of the measure.

6.1 De facto solitary confinement

Solitary confinement and restrictions on association with other inmates are extensively used for reasons that cannot be ascribed to the inmates' own behaviour. If inmates are held in isolation because of urgent building or staffing conditions, for example flooding or fire, an administrative decision may be made to exclude them from the company of other inmates.¹²¹

The Correctional Service's own figures show that a significant proportion of inmates in Norwegian prisons are excluded from the company of other inmates on account of more structural and permanent circumstances, however, without this being based on an administrative decision.¹²² Administrative decisions are made in some of these cases, but they are then based on a provision that only allows for exclusion in urgent situations (see Chapter 2 *Definition of solitary confinement*).

112 Commission Decision of 15 May 1980 *McFreeley and Others v. the United Kingdom* paragraph 82; ECtHR 17 July 2012 *Munjaz v. the United Kingdom* paragraph 80; 31 March 2005 *Schneider v. Switzerland* page 14.

113 ECtHR 17 July 2012 *Munjaz v. the United Kingdom*, paragraph 80 ('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').

114 The ECHR Articles 8–10, and the European Prison Rules, Rule 4.

115 The Nelson Mandela Rules, Rule 45, and the European Prison Rules, Rule 53(1); Extract from the 21st General Report of the CPT (2011) on the topic of solitary confinement, CPT/Inf(2011) 28-part2; ECtHR case law, including *Babrar Ahmad and Others v. the United Kingdom* [referenced above] paragraph 212; The UN Special Rapporteur on Torture's report to the UN General Assembly, 5 August 2011, A/66/268, paragraph 89.

116 Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 2011, CPT/Inf (2011) 28.

117 The Nelson Mandela Rules, Rule 44, cf. Rule 43(1)(b).

118 The European Prison Rules, Rule 53.3.

119 Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 2011, CPT/Inf (2011) 28, paragraph 55(b).

120 ECtHR 10 April 2012 *Babar Ahmad v. the United Kingdom* paragraph 212; 4 July 2006 *Ramirez Sanchez v. France* paragraph 145; 14 October 2010 *A.B. v. Russia* paragraph 111.

121 The Execution of Sentences Act Section 37 eighth and ninth paragraphs.

122 Directorate of the Norwegian Correctional Service, *Dagsmålinger og manglende vedtak om utelukkelse* ('Day surveys and lack of administrative decisions on exclusion'), letter of 8 April 2015 to the correctional service regions; Directorate of the Norwegian Correctional Service, *Addendum No 4 to the letter of allocation for 2018 – Oppfølging av kritikk vedrørende psykisk syke og isolasjon i fengsel* ('Follow-up of criticism regarding mentally ill inmates in solitary confinement'), letter of 25 September 2018 to the Norwegian Ministry of Justice and Public Security.

In 2018, the UN Committee against Torture expressed concern about the extent of de facto isolation in Norwegian prisons, and that it was largely based on building conditions and a shortage of staff. The Committee recommended that the Norwegian state party ensure that issues relating to infrastructure and staffing are not used as grounds for exclusion.¹²³

The Committee also pointed out that:

*'conditions of de facto isolation that are similar to solitary confinement are not based on an individual administrative decision with a legal basis for exclusion and therefore cannot be challenged or appealed.'*¹²⁴

After its visit to Norway in 2018, the CPT expressed its misgivings that Section 37 of the Execution of Sentences Act allows inmates to be subjected to complete exclusion from company 'if building or staff conditions necessitate this'. The CPT pointed out that it is not acceptable that inmates may be completely excluded from the company of other inmates for several days, due to logistical reasons (i.e. staff absences or layout of buildings). The Committee recommended that the Norwegian authorities take appropriate measures at Ila Detention and Security Prison, as well as in all other prisons in Norway, to prevent such instances from recurring in the future.¹²⁵

The European Court of Human Rights has stressed that the member states must organise their prison systems so as to safeguard the inmates' dignity, regardless of financial or practical challenges.¹²⁶

Day surveys indicate that isolation on account of financial or practical challenges is the most common form of solitary confinement. In some cases, this represented more than half the instances of isolation. The Parliamentary Ombudsman's own figures also indicate that a clear majority of the instances in which inmates have less than eight hours' association with other inmates are due to such circumstances.

123 The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture, 5 June 2018, (CAT/C/NOR/CO/8) paragraphs 17(a) and (b) and paragraph 18(a).

124 The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture, 5 June 2018, (CAT/C/NOR/CO/8) paragraph 17(b).

125 Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 69.

126 See the ECtHR judgment of 20 October 2016 (Grand Chamber) *Muršić v. Croatia*, paragraph 100 with further references. See also the European Prison Rules, which state that: 'Prison conditions that infringe prisoners' human rights are not justified by lack of resources'. (Basic principle no 4).

127 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act section 17.1. Revised version of 27 October 2008.

128 The Parliamentary Ombudsman's reports after its visits to Bredtveit Prison 15–16 March 2016, p. 24, and Drammen Prison 24–25 May 2016, pp. 24–25.

129 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.3. Revised version of 2 April 2019.

130 See the Norwegian Constitution Article 113 and ECHR Article 8(2).

De facto isolation is largely based on three identifiable sets of circumstances:

1) The absence of national standards on association with other inmates

There are no national standards on when or for how long inmates should normally be allowed to associate with other inmates. According to the Directorate of the Norwegian Correctional Service, 'the start and end of periods when inmates are allowed to be in each other's company shall be decided in advance by the individual prison section'.¹²⁷ As long as this is decided as part of the day's programme, it will be up to each prison and each section to decide on the extent of social contact between inmates each day.

During our visits, we have found wide disparities between the times that both prisons and individual prison sections lock inmates in and out of their cells.¹²⁸

In some prisons, we have found sections that are referred to as communal sections even though inmates are locked up in their cells for an average of more than 22 hours a day. This is also based on the special rules laid down in the Directorate's guidelines for what is known as intake units.¹²⁹ The guidelines allow prisons to use cell blocks that are not adapted for association between inmates, without this being based on an administrative decision.

The lack of clear statutory or regulatory requirements on the extent of association inmates are entitled to, gives rise to confusion about when the imposition of restrictions on association with other inmates require an administrative decision on exclusion from the company of other inmates. This is problematic in light of the principle of legality and the human rights requirement that there must be a clear legal basis for intrusive measures.¹³⁰ In addition to being intrusive, harmful to health and a hindrance to successful reintegration into society, it weakens the inmates' legal safeguards, among other things by removing the right of appeal. It also weakens the governing authority's knowledge about the extent of de facto isolation and exclusion.

Both Sweden and Denmark have minimum national standards for association with other inmates. Both countries have provisions stating that inmates may not be locked up in their cells for more than 12 hours a day. In Denmark, this is provided for in a separate set of regulations: 'In closed prisons, the inmates' own cells may be locked for a maximum of 12 hours during the period between 20.00 and 9.00'.¹³¹ In Sweden, inmates of closed prisons may be locked up in their cells between 19.00 and 08.00. An administrative decision on 'segregation' (exclusion from the company of other inmates) is required to lock up inmates in their cells for more than 12 hours a day.¹³²

2) Limited activities

The Correctional Service shall make suitable arrangements so that convicted persons through their own efforts can avoid committing new acts of crime. This includes that the prison shall arrange for inmates to be offered activities during daytime, for example education or work. Remand inmates may not be ordered to participate in activities other than ordinary cleaning, but are entitled to participate 'insofar as this is practically possible'.

Our findings show that an inadequate offer of activities is one of the main reasons why a large number of inmates are locked up in their cell for much of the day.

Those who are not offered activities are largely locked up in their cells for 16 hours or more a day. In some sections, inmates are in effect confined to their cells for 22 hours or more several days a week because they are not offered activities.

According to figures provided by the Correctional Service, an average of 19 per cent of the inmates did not participate in daily activities in 2017. This figure says little, however, about the extent to which inmates are actually locked up in their cells as a result of lack of activities. For one thing, only four hours of activity is required for an inmate to be registered as having a full programme of activities in the Correctional Service's system. With two hours of activity, the inmate is registered as having a partial programme of activity. In addition to work and education, leisure activities of more than two hours' duration may also be registered as activity.¹³³

This means that many inmates who are offered activities are also locked up in their cells for more than 16 hours a day because the offer is very limited. We have seen numerous examples of this during our visits.



Corridor for open air cells used to provide fresh air for inmates in solitary confinement.

131 The Danish Ministry of Justice, Bekendtgørelse nr. 866 om indsattes adgang til fællesskab m.v. med andre innsatte i kriminalforsorgens institusjoner ('Implementing Regulation No 866 on prisoners' right of association with other prisoners etc. in the Department of Prisons and Probation's institutions'), 25 June 2018, Section 6.

132 Kriminalvården i Sveriges föreskrifter och allmänna råd om fängelse ('The Swedish Prison and Probation Service's provisions and general advice on prisons'), 2011, Chapter 6.

133 In the course of 2019, the Directorate of the Norwegian Correctional Service will prepare new guidelines for keeping activity records.

Several prisons have explained the long period of being locked up partly by the lack of funds to employ more staff following the alterations to the rota scheme in 2014, and partly by the apparent reduction in the use of stand-ins. The Parliamentary Ombudsman has found documentation of this in several prisons. In several instances, the prison employment unit has been closed so that the employment officers can cover for officers on sick leave in the regular prison sections. This means that inmates who should have been working are locked up in their cells for the hours they should have been at work. In one prison where the employment unit had not been closed once in 2016, this happened 18 times in 2017. Another prison reported closing down the employment unit during the summer months. All these cases added to the inmates' isolation. In some prisons, whole sections are closed down from time to time, so that all inmates are confined to their cells during periods when they would normally have the possibility of participating in activities or associating with other inmates. Prisons have reported that the number of positions in the employment and recreational units has been reduced. They have also reported that inmates with special needs and those who were held in isolation were offered fewer activities than prior to the staff cuts.

Our findings also indicate that few activities and under-staffing in communal areas can reinforce the risk of self-isolation among inmates (see section 6.3 *Solitary confinement by choice*).

'There's not much activity here. Two to three hours out of the cell. People don't get mentally ill like from what they have done, but from being here. I'm marked by it, too.'

Inmate interviewed by the NPM

The possibility of socialising with other inmates is often particularly limited during weekends. In December 2018, the Directorate of the Norwegian Correctional Service carried out its first day survey of social contact between inmates at weekends.

The survey showed that nearly half (46 per cent) of the inmates had the possibility of associating with other inmates for less than eight hours. As mentioned above, this figure must be seen as a minimum estimate (see section 5.2 *Sources of error in day surveys*). In several prisons we have visited, the inmates had less than five hours' out-of-cell time a day at weekends. In Arendal Prison, all inmates in the section for convicted offenders were locked up in their cells for 20 hours and 45 minutes a day from Friday afternoon to Monday morning.¹³⁴ Many of the inmates were clearly marked by this. The inmates' cells were also unlocked for less than the recommended minimum eight hours a day at weekends in one of the juvenile prisons.

'I don't work, so I generally just lie here on the bed. Go out for the one hour that it is possible during the day. We have half an hour together in the morning, half an hour at dinner and one and a half hours in the evening.'

Inmate interviewed by the NPM

A central part of Norwegian prisons activity and rehabilitation work has been programme activities. These programmes have helped to increase the individual inmate's out-of-cell time. In the vast majority of prisons we have visited, both inmates and staff tell us that the range of programme activities has been drastically reduced over the past ten years. Programmes like *Brottsbrytet* ('Getting out of crime'), *Pappa i fengsel* ('Dad in prison') and *Sinnemestring* (*Brøset*) ('the *Brøset* model of anger management') are no longer offered in several prisons. There is a demand for programme activities among both inmates and staff in several prisons. The prison administrations tell us that there are no longer funds to cover the costs of such programmes.¹³⁵

134 The Parliamentary Ombudsman's reports after its visit to Arendal Prison, 7–8 February 2018, p. 17.

135 Despite this, figures provided by the Correctional Service show that, while there was a drop in programme activities of 21 per cent from 2014 to 2016, participation in such activities almost doubled from 2016 to 2017. One reason for this seems to be a circular issued by the Directorate of the Norwegian Correctional Service in 2015, in which the threshold for what should be recorded as a programme was lowered. According to prison staff, this has now been given a much wider interpretation than under the previous definition of programme activity.



Reception and remand unit.

3) Prison sections without communal rooms

Many prisons have sections that lack premises where inmates can socialise. Such sections often hold inmates who are isolated by court order, have been excluded from the company of others for control purposes, have chosen isolation or need more extensive supervision. Such sections are also used for assessing newly admitted inmates.

It is common practice for such intake, remand or restrictive units without communal rooms to be used as part of the ordinary prison capacity and, hence, to be occupied by inmates who have a right to associate with other inmates. In one prison, 51 of a total of 155 places were located in sections with very limited or no facilities for association with other inmates. Another prison, with a total capacity of 281, had 77 such places. The number of inmates held in isolation is further increased by a high utilisation of capacity, because inmates in the intake section are 'queuing up' for a place in a communal section. This state of affairs has also been identified by the Correctional Service.¹³⁶ For example, in several prisons we have visited, inmates who were placed in a restrictive unit based on an administrative decision on exclusion had to wait for weeks after the expiry of the period of exclusion before they were able to return to an ordinary communal section.

Some prisons are built in such a way that the so-called communal sections lack communal rooms. In several prisons, inmates had to be escorted to other premises or spend time together in the prison corridor. Inmates who get together in the corridors create major challenges relating to the security of staff and other inmates. In another prison, contact with other inmates (other than at common mealtimes, in the gym on certain weekdays and during time in the exercise yard) was possible for one and a half hours on the prison's attic floor, four days a week. This was not offered on the remaining three days of the week (Friday, Saturday, Sunday).

The Parliamentary Ombudsman has documented in several reports that female inmates have had to serve time in restrictive units because of a shortage of available places in the women's section or because of the absence of a women's section. In several places it was found that, because the women's section was smaller, it was more often closed down when a high number of staff were on sick leave or on transport duty. This means that women in such prisons are more frequently exposed to the risk of isolation, simply because they are women.

¹³⁶ Correctional Service Region South, Kartlegging av innsattes adgang til fellesskap, ('Registration of inmates' access to the company of other inmates'), letter of 2 May 2014 to the Parliamentary Ombudsman.



Cell.

6.2 Solitary confinement as a control measure

Under Section 37 first paragraph of the Execution of Sentences Act, exclusion may be used as a preventive measure against a number of different situations, ranging from self-harm and inflicting injuries on others, violence, threats and other criminal acts, to causing considerable material damage, disturbing the peace and having a negative influence on the prison environment.¹³⁷

The Parliamentary Ombudsman has on several occasions pointed out the problematic aspects of the legislation on solitary confinement as a control measure.¹³⁸ Section 37 first paragraph (e) of the Execution of Sentences Act, which authorises solitary confinement ('exclusion') where 'necessary in order to... maintain peace, order and security' in the prison, is especially problematic. It appears to be a catch-all provision that fails to clarify what types of behaviour might lead to solitary confinement. Section 37 first paragraph sets the threshold for solitary confinement of inmates to where 'exclusion' is deemed to be 'necessary'.

This condition for solitary confinement is less stringent than what follows from human rights standards ('in exceptional cases and when strictly necessary').

The UN Committee against Torture has also pointed out that the legal basis is not precise enough to allow for judicial control or review, and that the legislation must place stricter limits on the use of solitary confinement.¹³⁹ In its concluding observations on Norway's report in 2018, the Committee reiterated its concerns

'That the legal basis for the use and length of solitary confinement continues to be insufficiently precise and may result from discretionary decisions not respecting the principles of proportionality, which prevent the possibility of administrative or judicial supervision and can amount to violations of the Convention'.¹⁴⁰

The Committee recommended that Norway

'Reduce the use of solitary confinement to situations that are strictly necessary and amend the legislative framework in order to limit the use of such confinement to exceptional circumstances'.¹⁴¹

¹³⁷ The Execution of Sentences Act Section 37 first paragraph (a)–(e).

¹³⁸ The Parliamentary Ombudsman's consultation submission of 1 November 2016 on guidelines for exclusion from company pursuant to the Execution of Sentences Act Section 37; the Parliamentary Ombudsman's written input to the UN Committee against Torture of 22 March 2018.

¹³⁹ The UN Committee against Torture's concluding observations on Norway's combined sixth and seventh periodic report on the implementation of the UN Convention against Torture, 13 December 2012 (CAT/C/NOR/CO/6-7), paragraph 11.

¹⁴⁰ The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture, 5 June 2018 (CAT/C/NOR/CO/8), paragraphs 17 and 18.

¹⁴¹ The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture, 5 June 2018 (CAT/C/NOR/CO/8), paragraphs 17 and 18.

That the legal basis is insufficiently precise is also problematic considering the principle of legality as laid down in the Norwegian Constitution.¹⁴²

Our findings indicate that solitary confinement is widely used as a control measure. According to the Correctional Service, almost 600 administrative decisions on complete exclusion were implemented on the basis of this provision during the period September–December 2018 (four months). By comparison, Denmark recorded approximately 400 administrative decisions on exclusion as a control measure for 2017 as a whole.¹⁴³

In connection with the visit to Bergen Prison in 2018, the prison administration reported 446 administrative decisions on complete exclusion from company based on Section 37 of the Execution of Sentences Act in 2017.¹⁴⁴ More than 90 per cent of these decisions were made to ‘maintain peace, order and security’. A review of decisions from other prisons show the same trend.

6.3 Solitary confinement by choice

If an inmate wishes to be excluded from the company of other inmates, the prison administration shall make an administrative decision to that effect on the basis of Section 37 ninth paragraph of the Execution of Sentences Act.

In our experience, based on our visits, many inmates prefer to be excluded because they do not feel safe in the company of other inmates. The Directorate of the Norwegian Correctional Service’s day surveys in 2018 showed that, on average, 33 inmates were excluded from the company of other inmates on their own request on the days of the surveys. The actual figure is probably much higher, because inmates are only placed in the category ‘on their own request’ if they are held in isolation based on an administrative decision on exclusion in accordance with Section 37 ninth paragraph. The Directorate considers that an administrative decision shall only be made where the inmate expressly requests to be excluded from the company of other inmates.¹⁴⁵

Limited staff presence in the communal sections can add to vulnerable inmates’ feeling of insecurity and be a contributory cause of self-isolation. Such conditions can also make isolated inmates more prone to withdraw socially in that they do not feel safe re-associating with other inmates. We have observed this during several visits (see section 8.1 *Inmates who chose solitary confinement (self-isolation)* for a more detailed description on this point). Passivity and withdrawal can also make it difficult for individuals to attend to their own health and welfare, and can be the start of a negative development of further withdrawal and depression (see section 4.2 *Health effects of solitary confinement*).

Norwegian authorities have an obligation to ensure the safety of people deprived of their liberty, and lack of protection can entail violation of the prohibition against inhuman or degrading treatment.¹⁴⁶ Arrangements shall be made to allow for as much social contact as possible between inmates, in a secure setting. Inmates should only be held in isolation for their own protection when their security cannot be ensured in any other way.¹⁴⁷

The Parliamentary Ombudsman has expressed concern that the extent of self-isolation is particularly high in some prisons, and pointed out the importance of prisons making active efforts to ensure a safe prison environment, including for vulnerable inmates. During one visit we found that:

*‘At the time of our visit, five per cent of all inmates had been excluded from the company of others on their own request. According to the prison statistics, there had been 90 administrative decisions on self-requested exclusion in 2016. (...) It emerged that several of those who were or had been excluded from the company of other inmates on their own request did not feel safe, and that they suffered from anxiety disorders’.*¹⁴⁸

142 Article 113 of the Norwegian Constitution.

143 The Danish Department of Prisons and Probation’s statistics for 2017, Table 5.3. See the Danish Sentence Enforcement Act Section 63. Danish legislation does not make any distinction between complete and partial exclusion.

144 The Parliamentary Ombudsman’s report after its visit to Bergen Prison 2–4 May 2018, p. 22 ff.

145 Directorate of the Norwegian Correctional Service, letter of 3 April 2019 to Correctional Service Region West.

146 ECtHR 3 June 2003 *Pantea v. Romania*, paragraphs 188–196; 10 February 2011 *Premininy v. Russia*, paragraphs 70–74.

147 Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28, pp. 4 and 6.

148 The Parliamentary Ombudsman’s report after its visit to Åna Prison, 13–15 November 2017, pp. 31–32.

6.4 Prolonged solitary confinement

According to human rights standards, people shall be held in isolation for as short a period as possible. Under the Nelson Mandela Rules, solitary confinement for 22 hours or more a day for more than 15 consecutive days shall be prohibited. The background to this strict time limit is the risk that the harmful mental effects of isolation can become irreversible after such a length of time.¹⁴⁹

Under Section 37 fifth paragraph of the Execution of Sentences Act, inmates may be held in isolation for up to one year at a time.¹⁵⁰ In the preparatory works to the Act, it is stated that a new one-year period may be initiated after contact with other inmates has been ‘tried out’, with no further indication of what this entails.¹⁵¹ Furthermore, no upper time limits apply to sections adapted for inmates with special needs, or for inmates in the highest security sections, other than that the use of isolation must not appear to be ‘disproportionate’.¹⁵² Nor is there any upper time limit for inmates who request isolation, for the use of isolation on resource grounds or for the use of security cells.¹⁵³

The Parliamentary Ombudsman has repeatedly drawn attention to the problem that Norwegian legislation allows for prolonged solitary confinement, contrary to human rights standards.¹⁵⁴ International human rights bodies have also criticised Norway on this point.

In 2018, the UN Committee against Torture expressed concern about the absence of a set maximum number of days an inmate can be completely excluded from the company of other inmates and recommended that the maximum number of days an inmate can remain in complete exclusion be specified in the legislation.¹⁵⁵

Figures obtained from the Directorate of the Norwegian Correctional Service confirm that, each year, many inmates are held in isolation for 22 hours or more for periods longer than the 15 consecutive days provided for in the Nelson Mandela Rules. The figures indicate that, during the period 2014–2018, there were a total of 754 administrative decisions on complete exclusion for more than 14 days in pursuance of Section 37.

Complete exclusion means that there is no contact whatsoever with other inmates for 24 hours a day. Figures obtained from the Directorate indicate that there were 83 administrative decisions on use of complete exclusion as a control measure for more than 42 days during the period 2015–2018.¹⁵⁶ The longest period of exclusion under an administrative decision was 760 days. According to the figures from the same period, 73 administrative decisions on complete exclusion at the inmate’s own request covered periods of more than 42 days. Twenty-five of the decisions covered 100 days or more, two covered more than 200 days and three covered more than 300 days. The decision covering the longest period was still in effect on 11 February 2019, after 487 days. Isolation for such a long period entails a high risk of irreversible harmful effects on health. The risk of violating the prohibition against inhuman treatment is therefore particularly high in the case of prolonged solitary confinement.

149 The UN Special Rapporteur on Torture’s report to the UN General Assembly, 2011, A/66/268, paragraph 26.

150 Section 37 fifth paragraph only applies to ‘exclusion’ pursuant to Section 37 first paragraph.

151 Ministry of Justice and the Police (2000). Om straffegjennomføringsloven (‘About the Execution of Sentences Act’), Proposition No 5 to the Odelsting (2000–2001), p. 104, section 7.6.3.5. Oslo: Ministry of Justice and the Police.

152 Separate rules apply to this group of inmates as provided for in the Execution of Sentences Act Section 17 second paragraph, see also Section 37 tenth paragraph. Regulations of 22 February 2002 No 183 in pursuance of the Execution of Sentences Act, Section 6-3 third paragraph (exclusion in the highest security sections). See also Regulations of 5 March 2004 No 481 relating to Implementation of the Criminal Sanction of Preventive Detention (in Norwegian only), Section 13(2) final sentence (exclusion in units for prisoners with special needs)

153 It is expressly stated that the one-year time limit only applies to complete and partial exclusion pursuant to Section 37 first paragraph; cf. fifth paragraph. The time limit of three days, with the possibility of a three-day extension subject to an administrative decision at the regional level, only applies to ‘collective exclusion’ of inmates pursuant to Section 37 eighth paragraph. See Directorate of the Norwegian Correctional Service, Dagsmålinger og manglende vedtak om utelukkelse (‘Day surveys and lack of administrative decisions on exclusion’), letter of 8 April 2015 to the correctional service regions.

154 The Parliamentary Ombudsman’s consultation submissions on guidelines for exclusion from company pursuant to the Execution of Sentences Act Section 37 (1 November 2016), and written input to the UN Committee against Torture of 22 March 2018.

155 The UN Committee against Torture’s concluding observations on Norway’s eighth periodic report on the implementation of the UN Convention against Torture (CAT/C/NOR/CO/8), paragraphs 17 and 18.

156 The Execution of Sentences Act Section 37 first paragraph and Section 17 second paragraph (the figures also include some inmates who were subsequently transferred on their own request pursuant to Section 37 eighth paragraph). Five of the 78 decisions had not been closed by 11 February 2019.

Findings from our visits also confirm that inmates are held in isolation for long periods. During a visit in 2017, we found that, for two years running, there had been 19 incidents of exclusion from the company of other inmates pursuant to Section 37 of the Execution of Sentences Act that lasted for more than 15 consecutive days. During a visit to another prison the same year, we found that two inmates had been isolated virtually without interruption since July 2013 and April 2014, respectively.¹⁵⁷

We have also found instances of inmates who have been held in isolation for a very long time because their section lacked activities or communal premises. In one prison, we found that inmates had been held in a section with such limited possibility of associating with other inmates that they were isolated for more than 22 hours a day for four of seven days a week. Inmates we spoke with in that section had been held there for weeks, some for months, and one for more than a year.¹⁵⁸ Such practices are not reflected in the Correctional Service's figures because they are not based on any administrative decision on complete or partial exclusion. The same applies to inmates who are held in isolation on their own request without having signed a special declaration to that effect and whose confinement is thus not based on an administrative decision. As a consequence of this, the prisons also fail to report such solitary confinement as complete

or partial exclusion in accordance with the mandatory deadlines set out in Section 37 fifth and sixth paragraph of the Execution of Sentences Act. This means that no overview of the de facto extent of prolonged solitary confinement is available to the public or the governing authorities. It also means that the regional correctional services and the Directorate have no possibility of following up the extent of solitary confinement in individual prisons.

Some inmates are also held in isolation in security cells for a very long time. This is a particularly intrusive form of solitary confinement. The Directorate of the Norwegian Correctional Service's figures show that, during the period 2015–2018, there were 18 instances of inmates being confined to a security cell for more than six days. The longest period of confinement was 32 days and occurred in 2016. The same inmate was placed in a security cell for a further ten days, one and a half months later. In 2018, there were four administrative decisions covering a period of more than six days, the longest of which was for 16 days. During our visits, we have also seen cases of prolonged solitary confinement in security cells. In one prison, the longest stay lasted for as much as 12 days. In several other prisons, we have found inmates confined to a security cell for four to six days.

'[In] at least one instance this year, an inmate had been continuously isolated in section Z-East for several consecutive months. In another instance, an inmate had recently been transferred temporarily to hospital after prolonged isolation in section Z-East. It emerged that, in both the above instances, the inmates had a very low level of functioning and that their state of health had gradually deteriorated. At the time of our visit, a third inmate had been confined by court order for nearly six consecutive weeks in section Z-East. None of the above had access to meaningful human contact in a way or to an extent that could be deemed to constitute an interruption of isolation or any noteworthy effort at compensatory measures'.¹⁵⁹

157 The Parliamentary Ombudsman's report after its visit to Ila Detention and Security Prison, 6–9 March 2017, p. 28.

158 The Parliamentary Ombudsman's report after its visit to Bergen Prison 2–4 May 2018, pp. 25–27.

159 The Parliamentary Ombudsman's report after its visit to Ullersmo Prison, 29–31 August 2017, p. 25 ff.

Main findings

Solitary confinement and restrictions on association with other inmates are widely used in Norwegian prisons. Some parts of this practice are in contravention of international human rights standards. This applies in particular to solitary confinement that cannot be ascribed to the individual inmate's behaviour, but is exclusively a result of practical or financial challenges in the prison. These challenges are related to the absence in Norwegian legislation of rules that entitle inmates to at least eight hours out-of-cell time a day and to pursue meaningful activities in premises that are adapted for association between inmates.

On some points, the threshold for use of solitary confinement is set too low in Norwegian legislation. Solitary confinement may be used as a control measure when necessary to maintain 'peace, order and security'. This does not reflect that solitary confinement must only be used in exceptional cases.

The high incidence of self-isolation in Norwegian prisons gives cause for concern, and too little systematic and targeted effort is being put into preventing isolation caused by fear and insecurity among inmates. Self-isolation is largely not subject to administrative decisions, and is therefore not reflected in the figures.

Norwegian legislation allows for prolonged solitary confinement, contrary to human rights standards. The absence of strict and clear limits for how long an inmate can be held in isolation is very serious, as the risk of harmful effects associated with prolonged isolation is particularly high. Our findings show that several inmates are held in isolation for months, some for years. Prolonged solitary confinement in sections without communal premises is often not based on administrative decisions, and is therefore not reflected in the official figures.



7

Prisons' follow-up of inmates in solitary confinement

As documented in Chapter 6 *Extensive use of solitary confinement and restrictions on association with other inmates*, a large number of inmates spend much of the day in their own cells. The State has a duty to ensure that they can associate with other inmates, participate in activities and have meaningful human contact. For the group of inmates who are already isolated, it is the State's responsibility to ensure that necessary

measures are put in place to prevent the harmful effects of isolation and put an end to their solitary confinement as soon as the conditions for it are no longer met. Both the correctional service and the health service are responsible for ensuring that inmates do not suffer inhuman or degrading treatment. The responsibility of the health service is described in section 10.3 *Medical follow-up of inmates in solitary confinement*.

Human rights standards on following up inmates in solitary confinement

The prison administration shall take measures to alleviate the potential detrimental effects of isolation on inmates who are or have been in solitary confinement or otherwise excluded from the company of other inmates.¹⁶⁰ This includes giving inmates access to meaningful human contact, for example by facilitating more visits and access to social activities with other inmates, by arranging talks with social workers, psychologists, psychiatrists, a chaplain/imam, or representatives of non-governmental visiting and support organisations.¹⁶¹

Inmates placed in solitary confinement should be subject to no more restrictions than are necessary for their safe and orderly confinement.¹⁶² In cases of prolonged solitary confinement, special measures should be taken to follow up inmates and limit the harmful effects of isolation and ensure that such confinement is terminated as soon as possible. The following was pointed out by the CPT after its visit to Norway in 2018:

*'The longer the measure of complete exclusion from company continues, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community.'*¹⁶³

An individual plan should be drawn up for inmates who are kept in solitary confinement for preventive purposes, based on the grounds for the measure and facilitating re-engaging with the prison community.¹⁶⁴ This plan should attempt to maximise contact with others – staff initially, but as soon as practicable also with appropriate other inmates. The plan should include as full a range of activities as possible, in which staff should encourage inmates to partake. The plan should also facilitate re-engaging with the normal regime. Measures of this kind mentioned in the Correctional Service's guidelines include contact with the prison chaplain and visitors.¹⁶⁵

¹⁶⁰ The Nelson Mandela Rules, Rule 38(2). This rule does not distinguish between solitary confinement, i.e. more than 22 hours without meaningful human contact, and varying degrees of exclusion from the general prison population.

¹⁶¹ Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules, p. 92 ff.

¹⁶² Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28, paragraph 61. The European Prison Rules, Rule 4.

¹⁶³ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 82.

¹⁶⁴ Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28, paragraph 75(c).

¹⁶⁵ Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.20. Revised version of 2 April 2019.



The prison should seek to reintegrate inmates who are held in isolation for preventive purposes (including on their own request) as soon as possible.¹⁶⁶ If it becomes clear that there is a need for long-term protection and no other response is possible, special effort should be put into regime enhancement measures. Examples of such measures would be to identify other inmates with whom the inmate concerned could safely associate and situations where it would be possible to bring the inmate out of cell to get other sensory inputs, meaningful human contact and physical exercise.

7.1 Lack of meaningful human contact

The most effective way of reducing the harmful effects of isolation is to facilitate meaningful human contact. For such contact to be meaningful, it should be empathetic and face to face. The communication should not be fleeting or incidental to the performance of other tasks, such as delivering food trays or medication.¹⁶⁷

The statutory requirement is that inmates who are excluded from company must be seen to several times a day, and the guidelines specify that, as a point of departure, supervision shall take place once an hour. The guidelines also state that inmates may be granted extended access to the open air, the company of staff, visits from friends and family, physical activity or other measures that could prevent the detrimental effects of being excluded from the company of other inmates.¹⁶⁸

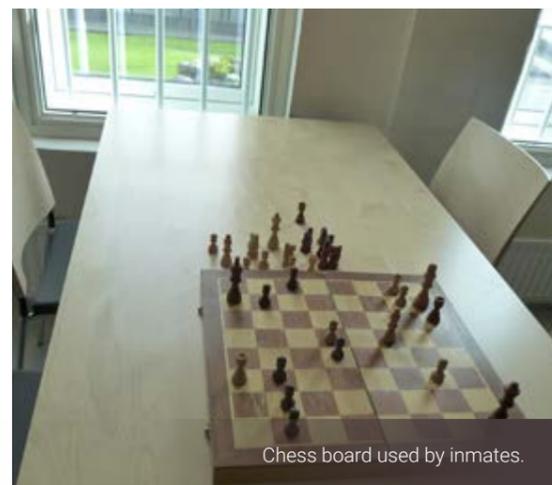
During our visits, we have found that such measures are made limited use of, however. Many inmates have no human contact other than staff supervision. We have also found that the requirement for hourly checks is seldom adhered to in practice, and that such checks often consist of brief messages or questions. The unequal balance of power can also make it difficult for prison officers to establish good relations with inmates in solitary confinement.

In most prisons we have visited, inmates in solitary confinement feel that the officers seldom take the time to engage in a longer conversation. We find few systematic efforts to reintegrate inmates into the general prison population.

This also applies to inmates who have been confined on their own request. Many inmates we meet in restrictive units sit with the curtains closed and lights off in the middle of the day in cells with a poor state of cleanliness and hygiene. Such conditions raise concerns about the adverse effects of isolation, which some prisons show little awareness of.

'An officer comes in the morning and says "good morning", then at breakfast, then for exercise in the yard and then at dinner, and then one who says "goodnight". Other than that, nothing'.

Inmate interviewed by the NPM



Chess board used by inmates.

¹⁶⁶ Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28, paragraph 61 (d).

¹⁶⁷ See Essex Paper 3, Initial Guidance on the interpretation and implementation of the UN Nelson Mandela Rules, written by an expert group organised under Penal Reform International and Essex Human Rights Centre 7–8 April 2016, pp. 88–89.

¹⁶⁸ Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.14. Revised version of 2 April 2019.

Inmates in solitary confinement eat in their cells and do not partake in meals with other inmates. In many cases, the food is placed on a trolley in the corridor for the inmates to pick up. In some cases, and in the case of remand inmates who are held in isolation to prevent destruction of evidence, the food is brought into the cell. We have observed that, in some sections, food is routinely delivered through the hatch in the cell door. In one prison, we were informed that this was common practice and applied to all inmates regardless of why they had been placed in that section. This procedure entailed a further reduction in human contact for inmates in solitary confinement, and could be perceived as dehumanising and enhance the feeling of isolation. The procedure also meant that staff missed an important opportunity to observe and engage in conversation with inmates. In sections with little or no communal facilities and where the cells have a refrigerator, there is even less contact with staff. In such cases, several days' rations of food for meals other than dinner are distributed in one go.

'The TV is my best buddy. They say that all inmates shall have an offer of activities, but that doesn't happen'.

Inmate interviewed by the NPM

Even if staff in many prisons are only able to ensure that they have meaningful human contact with inmates in solitary confinement to a very limited degree, we have seen examples of the opposite. During one visit, we observed a high degree of awareness among both prison officers and in the healthcare department of the importance of following up inmates in solitary confinement, and the inmates told us they were being looked after in a good way. Follow-up by officers included long conversations, extra hours in the gym and time in the library when it was closed to the general prison population. The healthcare department followed up and spoke with inmates in solitary confinement on a daily basis.

7.2 Limited offer of activities for inmates in solitary confinement

Prolonged periods without activity and external input lead to passivity, fatigue and apathy, people's capacity for attention, concentration, planning and motivation is reduced, and they tend to move and talk less. In step with this, their brain activity is significantly reduced. Inmates who spend a long time in their own cell with limited human contact can therefore easily develop passivity.

It is therefore very important to ensure that inmates engage in both physical and mental activity. The CPT recommends that inmates who are excluded from the company of other inmates should be provided with a programme of measures to ensure human contact as well as the maximum possible level of activity.¹⁶⁹ This was also stressed in the CPT's report after its visit to Norway in 2018.¹⁷⁰

The vast majority of prisons we have visited offer few activities to inmates in solitary confinement. As a rule, the offer is limited to use of the exercise yard and gym, and activities that the inmates can pursue in their own cell.

All inmates who are excluded from the company of other inmates shall have the possibility of spending at least one hour outdoors every day. This follows from international standards and, in Norwegian law, from Section 22 of the Execution of Sentences Act.

'Sitting here is like sitting on a desert island, it's extremely demanding. I don't think people understand this. I don't think it's right, whether you have committed a crime or not. Those who put us here should try it themselves'.

Inmate interviewed by the NPM

¹⁶⁹ Council of Europe: Committee for the Prevention of Torture (CPT), The CPT standards, 8 March 2011, CPT/Inf /E (2002) 1 – Rev. 2010. See also the Nelson Mandela Rules, Rule 38.2

¹⁷⁰ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 82.

Inmates in solitary confinement do not normally have access to the prison's regular exercise yards, but have to use confined outdoor spaces, referred to as 'stråleluft'. These are small outdoor cells with high concrete walls and often a steel mesh roof (in some cases a roof that bars any view of the sky). The cells offer limited views and allow for only a minimum of physical activity. In some prisons, the inmates refer to them as 'dog pens', and many say they refuse to use them. Some of these yards measure no more than 12–13 square metres. In some prisons, several inmates are taken to the yard at the same time, but inmates are often let out individually without any contact with other inmates or staff.

Access to the open air, movement and variation are especially important for inmates who are locked up for most of the day. The exercise yards for inmates in solitary confinement are seldom suited to meeting these needs.

'We had the possibility of spending one hour outside in a small room with a mesh roof. Felt awkward standing in a cage like that. I didn't go out for two weeks'.

Inmate interviewed by the NPM



Open air cell - "stråleluft".



'They also let me use the gym nearly every day, even though it's not really allowed. I like to wear myself out, even if I don't normally exercise'.

Inmate interviewed by the NPM

In some prisons, inmates are able to borrow spinning cycles for use in their own cells, while in others inmates may be escorted by staff to an exercise room or gym. Some prisons have separate rooms with spinning cycles and/or thread mills in sections where association with other inmates is not possible. In most places, this is a very limited resource, however, as there are many inmates and staff have limited capacity to lock people in and out.

Staff in several prisons told us that, because of being short-staffed, they seldom had the time to offer as much activity as they would like to. For the vast majority, few activities are on offer in their own cells apart from the television, and borrowing books, magazines or films from the library. In some sections, inmates are escorted to the library, but most inmates in solitary confinement have to use request forms to borrow books. In some prisons, the library service makes a point of visiting inmates who are excluded from the company of other inmates. We have also seen examples of inmates who are allowed to do handwork or pursue adapted education programmes in their cell. These are exceptions, however.

It follows from the purpose provision of the Execution of Sentences Act that the Correctional Service shall make suitable arrangements for remedying the negative effects of isolation for remand inmates.¹⁷¹

The Act also instructs the Correctional Service to prioritise measures to remedy the negative effects of isolation for remand prisoners in accordance with Section 186 second paragraph and Section 186a of the Criminal Procedure Act.¹⁷² This particular legal requirement appears to have borne fruits in the form of more adequate follow-up of remand inmates who are ordered into solitary confinement by the courts. In the prisons we have visited, we have consistently found that there are more systematic measures in place for this group of isolated inmates. In most prisons, this is the group that is thought of when references are made to inmates in isolation. Some prisons have separate written procedures for follow-up of remand inmates in solitary confinement, which include visits to the library and gym, and out-of-cell time during periods when other inmates are locked up. The tasks of limited resources such as the occupational therapist and the recreational unit are in many places limited to following up remand inmates who have been ordered into solitary confinement by a court order. At the same time, remand inmates are often not offered to spend time with other inmates in the exercise yards or gym, due to the risk of evidence being destroyed. Hence, human contact depends entirely on follow-up by staff. In most cases, inmates who are held in solitary confinement on such grounds will be entirely alone when spending time in the exercise yard or gym. Solitary confinement can therefore be particularly intrusive for this group.

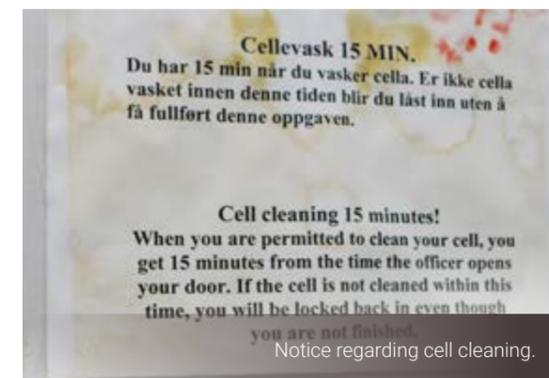
In the report from its visit to Norway in 2018, the CPT emphasised the potentially harmful effects of isolation and recommended that all inmates kept in solitary confinement be offered out-of-cell activities and at least two hours of meaningful human contact every day.¹⁷³

Main findings

In general, inmates in solitary confinement have very little meaningful human contact. Most often, correctional service staff are the only people who have contact with these inmates. They have other tasks and therefore limited possibility of following up inmates. The balance of power between staff and inmates also means that staff cannot replace the human contact that can be achieved by associating with other inmates.



Hatch in cell door.



Notice regarding cell cleaning.

There is too little awareness in some prisons of the importance of following up all isolated inmates regardless of the reason for their solitary confinement and making systematic efforts to reintegrate them in the prison community.

Inmates in solitary confinement have very limited possibilities of pursuing meaningful activities, and they are often left to spend their time outdoors alone in small exercise cells. Limited follow-up means that inmates in solitary confinement are exposed to the risk of inhuman or degrading treatment.

¹⁷² Execution of Sentences Act Section 46.

¹⁷³ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 82.

8 Particularly vulnerable inmates

Findings from our visits show that people of presumed sound mental health can quickly develop symptoms when held in solitary confinement. Some inmates are particularly at risk to the harmful effects of solitary

confinement and being locked up, however. Our findings also show that some groups are particularly prone to end up in solitary confinement. Both these circumstances increase the risk of inhuman treatment.

Human rights standards on solitary confinement of inmates in particularly vulnerable situations

Solitary confinement shall not be imposed on inmates with physical or mental impairments (e.g. mental health issues or physical disabilities) if their condition would be exacerbated by such measures.¹⁷⁴ Inadequate supervision and medical follow-up of inmates in solitary confinement can lead to violation of Article 3 of the European Convention on Human Rights, and a strict view is taken of any ill-treatment of inmates with major mental health problems.¹⁷⁵ The European Court of Human Rights has stated that the state has a special responsibility for ensuring proper health care for prison inmates. This is important because inmates are under the control of the state authorities. They are therefore not able to secure mental health care on their own and depend on prison staff for assistance.¹⁷⁶ The ECtHR further stated that clearly, inmates who suffer from a mental disorder are more susceptible to feelings of inferiority and powerlessness. Because of that, an increased vigilance is called for in reviewing whether the Convention has been complied with.¹⁷⁷

The UN Special Rapporteur on Torture has recommended that minors and inmates with mental impairments should not be subjected to solitary confinement.¹⁷⁸ The Special Rapporteur has also emphasised that children and young people are particularly sensitive to human rights violations, and points out that the vulnerability of children means that the threshold for when treatment or punishment constitutes torture or other cruel, inhuman or degrading treatment is lower than for adults.¹⁷⁹

Lesbian, gay, bisexual and transgender inmates can be more likely than others to be subjected to solitary confinement as a protective measure against violence or threats from other inmates.¹⁸⁰ Measures to protect such individuals against violence and threats must as far as possible be implemented in a way that prevents them from being isolated.¹⁸¹ Inmates from a foreign background can also be more likely to suffer isolation, including as a result of language barriers.¹⁸²

¹⁷⁴ The Nelson Mandela Rules, Rule 45(2).

¹⁷⁵ ECtHR 3 April 2001 *Keenan v. the United Kingdom* paragraphs 109–116. See also 9 July 2007 *Khider v. France*, paragraphs 119–122; 21 July 2005 *Rohde v. Denmark*, paragraph 99; 25 July 2013 *Riviere v France*, paragraph 63; 16 October 2008 *Renolde v. France*, paragraph 120.

¹⁷⁶ 26 November 2009 *Dolenec v. Croatia*, paragraph 170.

¹⁷⁷ 26 November 2009 *Dolenec v. Croatia*, paragraph 170.

¹⁷⁸ The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/268, paragraph 66.

¹⁷⁹ The UN Human Rights Council, report from the UN Special Rapporteur on Torture, 5 March 2015, A/HRC/28/68, paragraphs 69 and 70.

¹⁸⁰ The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/268, paragraph 69.

¹⁸¹ The Yogyakarta Principles, Principle 9(d), and the Council of Europe: The European Committee for the Prevention of Torture (CPT), 21st General Report, 2011, CPT/Inf (2011) 28, paragraph 57(d).

¹⁸² Council of Europe: Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners, 10 October 2012, rules 32.4 and 33.1.



8.1 Inmates who chose solitary confinement (self-isolation)

During our visits, we often meet inmates who have chosen to withdraw from the prison community. Many of them do not feel safe in the communal sections, either because they suffer from mental health problems, feel that the environment is unsafe or as a result of threats from other inmates. We have found that the extent of self-isolation varies greatly between different prisons.

As described in section 4.3 *Harmful effects in particularly vulnerable individuals*, a very high proportion of inmates in Norwegian prisons suffer from mental health problems. Many inmates with whom the NPM has spoken have mentioned that they choose solitary confinement because of mental health problems. It appears that several of these inmates have an unmet need for treatment. Lack of follow-up of this group can place further burdens on the individual (see section 8.2 *Solitary confinement of inmates with mental disorders and a low level of functioning*).

I felt insecure in the exercise yard. I felt threatened and didn't want a beating. Just want to finish serving my sentence; something to do with my past and my anxiety; I feel I have to watch out all the time.

Inmate interviewed by the NPM

We have also found that some inmates are afraid to participate in the prison community because they find some of the other inmates aggressive and unpredictable, and some have experienced harassment and violence in the communal sections. Convicted sexual offenders are often referred to as particularly likely to suffer such episodes. In some prisons, we have also found that transgender individuals choose isolation because they feel insecure in the communal sections. Some inmates say that little human contact makes them feel insecure in the communal areas. To gain control of the situation, they choose complete isolation instead.

Even if an inmate has been placed in isolation by his or her own request, the choice may have been made because the alternative was perceived as impossible or very difficult. Hence, inmates who chose isolation because they feel insecure will also be prone to suffer harmful effects of isolation. See also section 6.3 *Solitary confinement by choice*, on the prison administration's responsibility for creating communal sections that are perceived as safe enough for inmates to come out of self-isolation.

8.2 Solitary confinement of inmates with mental disorders and a low level of functioning

After the examination by the UN Committee against Torture in 2018, the committee concluded that too many inmates with mental health disorders were being placed in solitary confinement in Norwegian prisons, and that their condition was worsening as a result of this.¹⁸³ During our visits to high-security prisons, we regularly meet inmates whose level of functioning is so low that they are only able to participate in an ordinary social regime to a very limited degree. They are therefore moved to restrictive units with little or no access to association with other inmates. In many cases, the development in their state of health gives cause for concern, and, for some, there is a gradual deterioration in their level of functioning while serving in this type of unit. Some troubling information has emerged in latter years about a group of particularly vulnerable individuals with severe mental health problems who serve their sentence in isolation for months and years on end. Ila Detention and Security Prison has been mentioned in particular. Our findings confirm the precarious situation of these individuals. At the same time, we have found that the situation is similar for individuals in a number of other prisons.

We have met individuals with low communication skills who are unable to attend to their personal hygiene or keep their cells clean. Some have a high level of aggression, which makes contact with officers and other inmates difficult. In some cases, their behaviour is clearly odd or bizarre, with symptoms of severe mental disorders. Several of them have been excluded from the company of other inmates for a very long time, in some cases for months and even years. In some of these cases, we have nonetheless found that they have not been diagnosed by the health services.¹⁸⁴

For a number of them, questions can be asked about whether the real reason behind their extended exclusion from company is the deterioration of their mental state resulting from solitary confinement. Findings from our visits also give cause for concern that some of the inmates held in prolonged solitary confinement suffer from some degree of mental disability. This makes them particularly prone to end up in solitary confinement and particularly vulnerable to the effects of isolation (see section 4.3 *Harmful effects in particularly vulnerable individuals*). Our findings also indicate that some of the inmates with mental health problems and a low level of functioning who are held in solitary confinement for a long time come from minority backgrounds and have poor Norwegian and English language skills. This creates further challenges for attending to their well-being, challenges that must be addressed by both the prisons and the health services. The findings also give cause for serious concerns about whether the risk of being held in solitary confinement is increased by language problems and other circumstances associated with their minority backgrounds. In some cases, it gives cause for concern about whether there is too little knowledge about possible war, torture-related and other traumas that the inmate may have suffered in the past. We have on numerous occasions visited cells where inmates are held in solitary confinement under highly censurable conditions.

*'Both the walls and floor were filthy. The floor, radiator and window sill were covered in bits of food and cigarette butts from several weeks' consumption. The smell also told us that the cell had not been cleaned for a long time.'*¹⁸⁵

Inmates are tasked with cleaning their own cells, but some of them are not capable of ordinary cleaning. They depend on the assistance of other inmates or prison officers. In several instances, we have visited cells of inmates in solitary confinement whom neither the prison nor the health service seem to have provided adequate care and follow-up as regards cleanliness and personal hygiene. As a result, these inmates serve their sentences under degrading and potentially harmful conditions.

Ordinary prison measures appear to work poorly for these inmates. Inmates do not appear to be able to change their behaviour while the prison escalates its security approach to the staff's contact with them. For example, the presence of a certain number of prison officers equipped with various forms of protective equipment may be required whenever the cell is unlocked. This means that contact with the inmate is heavily demanding on resources and sometimes contributes to further solitary confinement of the individual concerned.

In its standards for the use of security sections, the CPT points out that there will always be inmates who may pose a special security risk, having regard to what they are convicted of, how they cope with life in prison, or their psychological profile. It is this very profile that puts them at particular risk of suffering ill-treatment. The CPT stresses that this is a group that it is particularly concerned about, because the need for implementing special measure entails a higher risk of inhuman treatment.¹⁸⁶

8.3 Lack of medical assistance to inmates with severe functional impairments in prolonged solitary confinement

Inmates with mental health problems and functional impairments have a particular need for follow-up by the prison health service.

We have observed, however, that follow-up of inmates can be further complicated by the fact that they often withdraw and do not want to have contact with prison officers or the health service. Medical personnel find it difficult to provide medical care to these inmates despite repeated attempts. As described in section 4.1 *Harmful elements of solitary confinement*, it is not uncommon for inmates to be unaware of or refuse help with problems caused by isolation, and that they withdraw from any contact offered during their period of solitary confinement. Some of these situations can start with exclusion as a result of disturbing the peace and end up with self-isolation.

Where an inmate is deemed to possibly suffer from a severe mental disorder and in need of mental health care, transfer to a psychiatric inpatient ward may be relevant. An inmate may also be involuntary admitted for observation and treatment by the specialist health services where the conditions for this are met.¹⁸⁷

183 The UN Committee against Torture's concluding observations on Norway's eighth periodic report on the implementation of the UN Convention against Torture (CAT/C/NOR/CO/8), paragraphs 19–20.

184 The NPM has professional health personnel on its staff and is often accompanied by external medical experts during its visits. The NPM does not make any diagnoses of inmates during its visits, but its combined expertise enables it to say something about the inmate's current situation, state of health and development, based on both meetings with the inmate and reviews of the documentation.

185 The Parliamentary Ombudsman's report after its visit to Ullersmo Prison, 29–31 August 2017, p. 26.

186 Council of Europe: Committee for the Prevention of Torture (CPT), The CPT standards, 8 March 2011, CPT/Inf/E (2002) 1 – Rev. 2010.

187 The Mental Health Care Act Sections 3-2 and 3-3.

We have seen examples of inmates being escorted for admission to a mental health care institution, such as a local acute psychiatric ward, only to be returned to the prison immediately or after only a few days. A review of administrative decisions, logs and reports shows that many of the inmates are transferred back and forth between the prison and specialist health care institutions. After a short stay in a mental health care institution, the inmate often returns to solitary confinement in prison without treatment. Figures from the Directorate of the Norwegian Correctional Service show that the majority of transfers from prisons to mental health care institutions are of less than three days' duration.¹⁸⁸ These problems were also observed by the CPT when it visited Norway in 2018. The delegation was particularly concerned that it once again observed major problems in transferring inmates with severe mental health problems to psychiatric hospitals (especially for longer-term treatment). The CPT stressed that it was not uncommon for the inmates concerned to be returned after only a few days from an acute psychiatric ward to the prison, where they did not receive the care and treatment they required. In particular at Oslo Prison, several severely mentally ill inmates had been sent back and forth between the prison and a psychiatric health care institution.¹⁸⁹

There are a number of circumstances under which inmates with psychiatric disorders are either not transferred to the specialist health services or are returned to the prison very soon.

One barrier seems to be the capacity of the mental health care services. In some cases, we have been told that the inmate must wait to be transferred to a psychiatric inpatient ward because of a shortage of places. Meanwhile, the inmate is left to serve under a regime that entails a high degree of isolation and thus a risk that his or her condition deteriorates and becomes irreversible. During some of the NPM's visits, we have found examples of inmates who have been returned directly to a prison security cell on account of serious concerns that they are dangerous or suicidal. Because of the duty of confidentiality and the risk of identification, we have not described these cases in the individual reports from our visits.

We pointed out in one report that: 'The NPM was particularly concerned that an inmate was discharged from hospital and returned to the prison despite the specialist health care service having stated at the same time that the inmate's severe mental health problems could be exacerbated by the prison environment. The prison administration stated that the inmate in question needed treatment and follow-up that neither the prison nor the prison health service could provide'.¹⁹⁰

In connection with visits to mental health care institutions, we have been told by several therapists that one of the reasons why inmates have been returned has been that the hospital has disagreed with the diagnostic assessments of the referring specialist. Patients are discharged because the criteria for admission to compulsory mental health care are deemed not to have been met. According to several sources, behaviour or symptoms assessed as psychotic or 'suspected psychosis' by the referring specialist and the prison staff abated shortly after the inmate was admitted to hospital.¹⁹¹ This meant that the patient was therefore not assessed as being psychotic or suffering from other acute mental illness.

Our reason for concern is that inmates are admitted to hospital for symptoms that may be caused by solitary confinement, and which are abated when the isolation ceases, only to be returned to what caused these symptoms in the first place.

In connection with some of our visits to high security prisons, we have found inmates serving under an administrative decision on forced medication in prison. It is a condition for such a decision that the individual in question is subject to compulsory mental health care. This is, in turn, conditional on the patient suffering from a severe mental health disorder. Furthermore, it is a condition for compulsory mental health care and forced medication that the patient is 'clearly incompetent to give consent' (the Mental Health Care Act as amended with effect from 1 September 2017). The above conditions, if they are met, indicate that the inmate suffers from severe functional impairment for the period the administrative decision is meant to be in force. This raises concerns about whether the inmate should be transferred to the health services and not serve time in prison.¹⁹²

188 Directorate of the Norwegian Correctional Service, Reply to query from the Parliamentary Ombudsman concerning the need for information for the special report to the Storting, letter of 20 February 2019 to the Parliamentary Ombudsman.

189 Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 97.

190 The Parliamentary Ombudsman's report after its visit to Tromsø Prison, 10–12 September 2014.

191 During its visit to Norway in 2018, the CPT also pointed out that an inmate was discharged and sent back to prison for the same reason; see Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 80.

192 See also the Norwegian Directorate of Health's interpretative statement to the Attorney General of Civil Affairs of 3 February 2010 on compulsory mental health care without admission for prison inmates.

8.4 Solitary confinement of minors and young inmates

Solitary confinement of young inmates is a highly intrusive measure that is potentially very harmful. Minors and young inmates have a high prevalence of mental health problems and learning difficulties, and many come from backgrounds of neglect and trauma in the form of maltreatment and abuse. Normally, the brain of young adults continues to develop until they are well into their twenties, and the risk of harmful effects is greater, including in those aged over 18 years. See also the more detailed description of the increased risk of harmful effects of solitary confinement on minors and young adults in section 4.1 *Harmful effects in particularly vulnerable individuals*. Our findings and figures provided by the Directorate of the Norwegian Correctional Service show that both minors and young adult inmates in Norwegian prisons are held in isolation, however, sometimes for long periods.

According to the Directorate, there were 14 incidents of exclusion for three days or more of inmates under 18 years during the period 2014–2018. In eight of these instances, the exclusion lasted for five days, and the longest duration was 15 days.

Figures from the Directorate show that several inmates between 18 and 23 years are excluded from the company of other inmates for prolonged periods. During the period 2015–2018, 11 inmates between 18 and 23 years of age were subject to 14 administrative decisions on exclusion for 42 days or more. Four of these decisions were for more than 100 days, and one covered a period of more than two years (760 days). Seven of the exclusions were on the inmate's request, six of them in Åna Prison. The other exclusions were based on administrative decisions in the prison. Prolonged solitary confinement of young inmates puts their normal development and rehabilitation at risk. The risk is present even if the individual is over 18 years of age (see section 4.3 *Harmful effects in particularly vulnerable individuals*).

There is no breakdown by age available for inmates who have served in isolation for up to 42 days. In one prison we visited, we found that many of those who chose to isolate themselves were under 23 years of age. Inmates and staff told us that one of the reasons was that some individuals wanted to be shielded from other inmates, often because of anxiety disorders. Among others, we met a young inmate who clearly suffered from mental health problems, who had been in de facto solitary confinement for a long time.

Main findings

Some inmates are particularly prone to end up in solitary confinement and more vulnerable to the detrimental effects of isolation than others. Vulnerability to isolation can be a result of severe mental health problems, young age, war or other traumas in the past and language problems, among other things. In many prisons, there is too little awareness of such risk.

We have observed inmates whose functional abilities have gradually deteriorated in most areas while in solitary confinement. Some of them clearly had an unmet need for health care. We have also met inmates who have chosen solitary confinement because they felt the communal sections to be unsafe. Minors and young people are isolated, sometimes for long periods. This gives grounds for concern considering the risk isolation entails for the cognitive development of young individuals and their possibility of being reintegrated into society and turning their back on crime.

Some who are held in isolation clearly suffer from severe mental disorders. Several of them have been in solitary confinement for very long periods, in some cases for months and even years. It is often difficult to get them admitted to specialist health care institutions. In some cases, they are discharged from psychiatric inpatient wards after a brief stay without receiving treatment, and returned to prison where some of them continue to be held in solitary confinement.

The gradual escalation of prison security measures in response to undesirable behaviour appears to have very poor effect on some inmates. It often results in a very strict level of security; whereby meaningful human contact becomes difficult and the individual concerned becomes even more isolated.

9

Solitary confinement in security cells or restraint beds

Human rights standards on the use of special security regimes

When considering whether Article 3 on torture and other cruel, inhuman or degrading treatment or punishment has been violated, the European Court of Human Rights stresses, among other things, the extent of human contact and sensory deprivation, the physical conditions, the duration of solitary confinement and how the inmate responds to being held in isolation.¹⁹³ The use of security cells is a particularly intrusive form of solitary confinement entailing a very high degree of sensory deprivation. This increases the risk of violation of the prohibition against torture and inhuman treatment.

The CPT has developed standards specifically aimed at the material conditions in such cells and the right to health care.¹⁹⁴ Following its visit to Norway in 2018, the committee also issued specific recommendations relating to the size of the cells, distribution of meals to security cell inmates, clothing and daily follow-up by the health service.¹⁹⁵

Under Section 38 second paragraph of the Execution of Sentences Act, coercive measures shall only be used 'if the circumstances make this strictly necessary, and less forceful measures have been attempted in vain or will obviously be inadequate'.

According to figures from the Directorate of the Norwegian Correctional Service, 334 administrative decisions were made on the use of security cells in 2018. In several prisons visited by the Parliamentary Ombudsman, the supervision protocols showed that some inmates had been placed in security cells without an administrative decision.¹⁹⁶ The actual figure must therefore be assumed to be somewhat higher.

According to the figures, there were four administrative decisions for placement in security cells for periods of more than six days in 2018, the longest of which was for 16 days. During our visits, we have also seen cases of prolonged isolation in security cells. In one prison, the longest stay lasted as much as 12 days. In several other prisons, we have found inmates confined to a security cell for four to six days.

In the case of minors, the requirements are even stricter. A security cell may only be used if absolutely necessary, for the shortest possible period and subject to continuous monitoring.

¹⁹³ ECtHR 10 April 2012 Babar Ahmad v. the United Kingdom, paragraphs 205–209; and 21 June 2005 Rohde v. Denmark, paragraph 93.

¹⁹⁴ Council of Europe: Committee for the Prevention of Torture (CPT), 21st General Report, 10 November 2011, CPT/Inf (2011) 28, paragraphs 56 and 60.

¹⁹⁵ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraphs 107–110.

¹⁹⁶ The Parliamentary Ombudsman's reports after its visits to Bergen Prison 4–6 November 2014, p. 9; to Telemark Prison, Skien branch 2–4 June 2015, pp. 9–10; to Ullersmo Prison 29–31 August 2017, p. 20 ff.



According to figures from the Directorate of the Norwegian Correctional Service, minors were placed in a security cell in ten instances during the period 2014–2018, the last few years primarily in the juvenile prisons. According to the Directorate, in one instance the confinement lasted for more than 24 hours. These figures are uncertain as they do not seem to include six administrative decisions that the Parliamentary Ombudsman found during a document review at Bergen Prison in 2018. The longest stay lasted 15 hours. The minors in question had been transferred from the Juvenile Unit at Bjørgvin Prison, which until then did not have an approved security cell of its own. When reviewing the security cell records, it was found that the prison did not practise continuous monitoring, as required in the case of minors. At least one involuntary body search of an inmate who was a female minor was carried out in the presence of a male prison officer. In another case, there were no records to document how a minor had been treated during a stay of 13 hours in the security cell.

According to figures from the Directorate of the Norwegian Correctional Service, there were 13 instances of use of restraint beds in Norwegian prisons in 2018. In ten of these instances, the inmate was restrained for less than 24 hours, in one instance for 48 hours and in two instances for 72 hours.



Clock visible from the cell.

9.1 Intrusive form of solitary confinement

Features associated with the use of security cells reinforce all the harmful elements of solitary confinement. When confined to a security cell, inmates are stripped of virtually all self-control and autonomy, and are dependant of the staff as regards their own health and welfare.

In many cases, the use of security cells entails extensive use of force in connection with detainment and transportation, as well as a full body search (strip search). This is a traumatic experience for many inmates, and it can increase the risk of mental or physical injuries. It can also add to the burdensome effect of the subsequent confinement.

Security cells are made of concrete, have bare walls, a plastic mattress and a squat toilet in the floor. The design of such cells can cause inmates to lose their sense of time and quickly become disorientated. Many security cells still have no clock that is visible to the inmate or any colour contrasts between the walls, floor and ceiling.



Squat toilet and hatch for food delivery.

After its visit to Ullersmo Prison in 2018, the CPT stated that cells of less than six square metres must only be used for a few hours.¹⁹⁷ During our visits, we have found that some security cells are worn and very small.¹⁹⁸ Another consistent finding is that the cells offer little access to views of the outdoors or natural light. Many security cells have windows that are too high up on the wall to offer a view, frosted windows, or windows that do not let in daylight because they face the adjacent corridor.

Many security cells are constantly lit. This obviously represent a risk of inhuman treatment and can be a great burden on the inmate's health by reducing the possibility of sleep. This is a particular heavy burden for individuals who are experiencing a mental crisis. It is a known fact that sleep has a healing effect and is important where there is a risk of suicide. The Nelson Mandela Rules prohibit the use of constantly lit cells.¹⁹⁹

Security cells are often placed in a separate corridor that is shielded from other sections, and sometimes on a separate floor.

In one prison, the one-way calling system in the security cells had been disconnected because the staff felt there had been too many calls to the guard room. That security cell inmates are denied the possibility of contacting the prison officers via the calling system will reinforce the feeling of being deserted and powerless, and can trigger anxiety in the inmate.

The possibility of maintaining personal hygiene is very limited in a security cell. The squat toilet has to be flushed by the staff from outside the cell. There is no washbasin or shower, and only in very special cases is the inmate taken for a shower outside the cell.

Meals for security cell inmates are always pushed through a hatch near the floor. This limits the possibility of talking with the inmate when handing out meals, and it is a hygiene problem because the meal hatch is often located close to the squat toilet. After its visit to Norway, the CPT stated that food and beverages should, as far as possible, not be delivered through such hatches.²⁰⁰

In the supervision protocols, we have seen several examples of inmates having all their clothing removed. In most cases, the grounds for this are stated as being the risk of suicide. In one prison, inmates were placed in the security cells completely naked as a matter of routine, and were only able to cover themselves with a blanket.

¹⁹⁷ The Directorate of the Norwegian Correctional Service issued requirements for the design of security cells in 2016. Security cells shall be inspected and approved by the Directorate before they are used.

¹⁹⁸ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 108.

¹⁹⁹ The Nelson Mandela Rules, Rule 43.

²⁰⁰ Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 109.

After its visit to Oslo Prison in 2018, the CPT wrote that inmates at acute risk of self-harm or suicide were placed completely naked in security cells. The committee recommended that this should never happen:

*‘in the view of the CPT, such a practice could be considered to amount to degrading treatment’.*²⁰¹

In a number of reports from its visits, the Parliamentary Ombudsman has also emphasised that inmates at risk of committing suicide must not be placed in security cells naked. Where there is an acute risk of self-harm or suicide, the Parliamentary Ombudsman has recommended that rip-resistant clothing be made available. Rip-resistant clothing can be uncomfortable to wear and perceived as stigmatising. Such clothing should therefore never be used as replacement for ordinary clothes as a matter of routine, but only as a last resort to prevent inmates with an acute suicidal risk being confined to a security cell naked.

Most prisons visited by the Parliamentary Ombudsman in latter years now have rip-resistant tunics available.

Despite the CPT’s recommendations and the views made by the Parliamentary Ombudsman on the same subject, after the CPT’s visit, the Directorate of the Norwegian Correctional Service has amended the guidelines to the Execution of Sentences Act so that it is now acceptable to place inmates in security cells in a state of nakedness if ‘it is unreasonable for safety reasons to let the inmates keep their clothes’.²⁰² This amendment does not address the right of particularly vulnerable inmates to be treated with dignity. The amendment is contrary to the recommendations that the Parliamentary Ombudsman has repeatedly put forward and it has not been introduced on reasonable grounds given that the issue of safety can be addressed using rip-resistant clothing.

On the whole, the design of security cells entails a high degree of sensory deprivation and limitation of the inmate’s autonomy. It also entails a clear risk to health.

9.2 Follow-up of inmates in security cells and restraint beds

The conditions described above show that the harmful elements of solitary confinement are particularly prominent when inmates are placed in security cells. The harmful effects of isolation have been described previously in this report (see Chapter 4 *Solitary confinement is an intrusive measure and detrimental to health*).

What is generally known about isolation and the risk of suicide, self-harm and the development of serious mental health disorders indicates that good procedures must be in place for frequent checks and care of individuals who are placed in a security cell. The duty to bring any stay in a security cell to an end as quickly as possible also warrants stringent requirements for following up the inmate.²⁰³

The Execution of Sentences Act does not contain any requirements for follow-up and supervision by staff in connection with the use of security cells or restraint beds. It is clear from Section 38 that the measure must be strictly necessary and that the Correctional Service ‘shall constantly consider whether grounds for maintaining the measure exist’. This entails a duty to follow up inmates regularly and closely.

According to the Directorate of the Norwegian Correctional Service’s guidelines:

*‘Security cells and restraint beds must not be used longer than absolute necessary, and the inmate shall receive the necessary attention and care for as long as the measure is upheld. The staff shall check on the inmate at least once every hour. Continuous monitoring shall be initiated if warranted by the situation. Use of a restraint bed shall be continuously monitored’.*²⁰⁴

Our visits show that most of the supervision during the use of security cells consist simply of a staff member looking through a window or hatch to check if the inmate shows any signs of life. Both the operating procedures and the supervision protocols indicate that monitoring in many places is limited to checking for movement or breathing.

201 Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 110.

202 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7.2. Revised version of 15 March 2019

203 Stang, J & Østberg, B (2006). Innsattes forslag til å forebygge isolasjon i sikkerhetscelle (‘Proposals from inmates on the prevention of isolation in security cells’). Tidsskrift for Norsk Psykologforening, 43, 30–33. See Table 2, p. 32.

204 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019.

Apart from that, the supervision protocols show only brief exchanges on practical matters such as food or medication. There are few examples in the supervision protocols of inmates having been followed up actively, motivated in conversations or otherwise given human support or means to end the stay in the security cell. Among other things, we have pointed out in several reports that, where reasonable in terms of security, security cell inmates should have the possibility of accessing open air, particularly when their stay is of more than 24 hours’ duration.²⁰⁵ The possibility of being out in the open air will also contribute to a degree of normality, establish good communication and ensure the quickest possible return to an ordinary prison cell.

‘They came every 30 minutes, but when you have been there for a long time, you lose all track of time. I learnt to listen for steps and calculate when they would return’.

Inmate interviewed by the NPM

As a rule, only senior prison officers are permitted to unlock the cell door. Any conversation with an inmate during supervision will therefore take place through the hatch or vent in the door. The practice is even stricter in some prisons in that only the senior prison officer is permitted to open the hatch. Communication between supervisory staff and inmates must then take place by making signs or shouting through a reinforced glass pane.

12:10: Lay on his right side. Asked inmate whether he would like a slice of bread. The inmate did not answer the question.

Excerpt from security cell protocol

‘They just come and look through a glass pane, but they don’t speak with you. They don’t ask how you are’.

Inmate interviewed by the NPM

Our findings show that practice varies between prisons as regards how often senior prison officers visit the security cells. As a rule, this happens once or twice per shift. The intervals are in any case several hours long. In one prison, the protocol showed that in most cases conversations with the senior prison officer took place once a day. This meant that there was in fact an interval of 24 hours between each assessment of whether the measure should be lifted.

In our experience, based on our own observations as well as reviews of supervision protocols, the lack of human contact and positive sensory input can create precarious situations for security cell inmates. In one prison, the supervision protocol showed that, after a lengthy period of time, one security cell inmate had smeared the cell window with faeces. Despite this, the inmate was not permitted to take a shower until approximately 24 hours later. It was clear from the supervisory protocol that the inmate both ate and slept in the cell with the window and door smeared with faeces. The same serious conditions have been found to exist in other prisons. In some of these cases, inmates have had to wait long for the cell to be cleaned, even if they have requested that this be done.

13:47: The inmate is lying on his back on the right-hand side of the cell. He has written on the wall with faeces, thrown some faeces under the door. In general, a lot of faeces on the walls. 26 degrees Celsius.

Excerpt from security cell protocol

205 The Parliamentary Ombudsman’s reports after its visits to Vadsø Prison 10–11 May 2016 p. 14; to Trondheim Prison 17–19 March 2015, p. 9; to Åna Prison 13–15 November 2017, p. 28; to Ullersmo Prison 29–31 November 2017, p. 23.

'They put me in this section because I smear things with faeces. With those who make trouble, fight and are mean. When I asked why, they said "because you are ill". But I say that I need help. Not locking up. Here, I am locked up 24 hours a day. No air, nothing.'

Inmate interviewed by the NPM

In one case, an inmate was placed in a security cell after having made what appeared to be a not very serious remark in front of an officer. He stayed calm in the security cell for 24 hours, after which he smeared the cell with faeces. He appeared to become increasingly ill during the stay. It took 12 days before the inmate was removed from the security cell and transferred to another prison. In other cases the supervision protocols have described inmates who have seriously harmed themselves.

The examples show the extremely detrimental effects that confinement in a security cell can have, even after a relatively brief stay. They also show that it can take much too long to receive assistance to reintegrate these persons.

As far as the Parliamentary Ombudsman is aware, the curriculum for prison officers does not include training in how to follow up inmates who have been placed in security cells or restraint beds. The training is limited to how the actual transfer to a security cell or restraint bed should be carried out. We have also not seen any systematic guidance to staff on this subject. The recently revised guidelines issued by the Directorate of the Norwegian Correctional Service contain no specific guidelines on how staff are to deal with inmates to ensure maximum consideration for their welfare and as brief a stay as possible. This is a serious omission.

Records shall be kept of all supervision, to enable subsequent control of how inmates are cared for. Up till now, the guidelines have not specified the content of such records, and in many places the records have been incomplete.

We have also found examples of supervision not being documented, and of pages being missing from the log. Furthermore, we have found several instances of security cell inmates who have no possibility of contacting a lawyer. Requests to do so have in some cases been recorded in the protocol, but the inmate has been told to wait until s/he is let out of the security cell. That the inmate is denied the possibility of contacting a lawyer during such an intrusive measure as use of a security cell represents heightens the risk of integrity violations and undermines the inmate's legal safeguards.

'They found out that I had suicidal thoughts. I was hand-cuffed and taken down. It was in the evening, after the health service staff had left. That they choose to put you in a security cell that is so depressive, I'll never be able to understand. You sit there with the light on all the time because you can't turn it off. Just makes you three times worse in the head.'

Inmate interviewed by the NPM

9.3 Use of security cells in connection with mental crises

Experience from the Parliamentary Ombudsman's visits has shown that, in some cases, inmates assessed as suicidal are placed in security cells. At Åna Prison, around 35 per cent of all inmates who were placed in security cells in 2017 were placed there on grounds of risk of suicide or self-harm. In Bergen Prison, the corresponding figure was 25 per cent. Inmates are placed in security cells on grounds of being suicidal both at night and during the day.

Solitary confinement can increase the risk of suicide, self-harm and development of severe mental health disorders (see also section 4.2 *Health effects of isolation*). It is therefore highly problematic to use a security cell as a measure where there is a risk of suicide. Even if the acute risk of suicide or self-harm can be limited by placing the inmate in a bare cell, the use of a security cell clearly lacks healing and health-restoring elements. The condition and symptoms can worsen, and it cannot be ruled out that the risk of suicide will increase, both in the short and in the long run.

Suicidal persons need to be in touch with empathic, listening and non-judgemental people who show that they understand and are able to build a good rapport with them. It is difficult to see that this can be ensured in a security cell. Research conducted by the Correctional Service has found that conversations with inmates are probably the most effective preventive measure against suicide.²⁰⁶

In one prison, the restraint bed was placed in a narrow corridor between the two security cells, and inmates who were taken to the security cells had to walk past it. In the same prison, many inmates were placed in a security cell on grounds of suicide risk, and several former security cell inmates had experience of previous admissions to mental health care institutions. A restraint bed placed right outside of the security cell can increase the feeling of insecurity in what is already an acute phase. Several of the inmates we spoke with had seen the restraint bed and reacted to it being placed where it was.

'I was surprised to see the restraint bed there. I found it unpleasant in light of how I was feeling. When I saw that bed with the straps, I realised that I could be punished some more.'

Inmate interviewed by the NPM

Our review of security cell supervision protocols relating to inmates who had been transferred on grounds of suicide risk or self-harm has shown that inmates often become silent and apathetic in response to the situation. Others try to harm themselves by banging their head repeatedly against the wall. Both the protocols and the interviews with inmates who had spent time in a security cell showed that many of them had felt abandoned and a keen need for more human contact with the staff. In several cases, it particularly concerned inmates who had expressed a wish to take their own life or who had self-harmed. Even where there is an acute risk of suicide, the log shows that there is limited human contact with the inmates during supervision and that long conversations are rare.

9.4 Use of restraint beds

The CPT has recommended that Norway cease to use restraint beds in prison. Despite this, most of the prisons that use security cells also have restraint beds.

Inmates who are strapped to a restraint bed suffer an intrusion that involves a high risk of being traumatised in an acute life crisis. Close follow-up is therefore needed. Despite the risk of both mental and physical harm, the Execution of Sentences Act and its Regulations do not contain any requirements for staff supervision in connection with the use of restraint beds. It used to be specified in the Correctional Service's internal guidelines that inmates strapped to a restraint bed only required supervision by prison staff once an hour. The guidelines as amended in March 2019 now require continuous monitoring by prison officers.²⁰⁷

In one prison, the bed was positioned so that the restrained inmate was unable to see if anyone was looking after him (the head of the bed was positioned so that the restrained inmate looked straight into a narrow, closed space). In some places, we have also been told that the staff are instructed not to speak with inmates in restraint beds. This is done on the grounds that the inmate should not find the restraint bed more attractive than a stay in a security cell. Such circumstances can reinforce the feeling of being powerless and isolated when the inmate is already subject to a highly intrusive measure. In addition, it displays a lack of knowledge of how persons in such crisis should be met.

²⁰⁶ Hammerlin, Y (2009). *Selv mord og selvmordsnærhet i norske fengsler. Selvmordsforebyggende arbeid i fengsel ('Suicide and suicidality in Norwegian prisons – Suicide prevention work in prisons')*, p. 109. Lillestrøm: The Correctional Service of Norway Staff Academy (KRUS).

²⁰⁷ Directorate of the Norwegian Correctional Service (2002). *Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019.*

9.5 Control of the use of security cells and restraint beds

Any decision to use coercive measures shall be reported to the prison governor. All use of coercive measures shall be reported to the Directorate of the Norwegian Correctional Service on an annual basis. Stays in a security cell shall be reported to the regional level if they exceed three days, and to the Directorate if they exceed six days.²⁰⁸ Use of restraint beds for more than 24 hours shall be reported to the regional level, and any use exceeding 72 hours to the Directorate.

Separate logs shall be kept in connection with all use of coercive measures. Up until March 2019, when the Directorate issued new guidelines, there were no requirements for the content of these logs. This has now been changed and requirements introduced for logging a number of important circumstances, including clothing, supervision, motivational conversations and assessments of whether the measure should be upheld.²⁰⁹ A requirement has also been introduced for logging the times of all supervision by the prison health service.



Restraint bed.

In some places, we have found, among other things, that information is missing about the times of supervision by the health service. This made it difficult for both the prison administration and the supervisory authorities to check whether there had been any follow-up of the inmate's state of health. It was repeatedly found during our visits that administrative decisions to use a security cell lacked a description of other, less intrusive measures that had been tried or assessed.²¹⁰ In some prisons, the Parliamentary Ombudsman found administrative decision based on grounds that were so inadequate that it is doubtful that they met the stringent requirements for use of security cells that are laid down by law.²¹¹

During previous visits to the prisons, the Parliamentary Ombudsman has found weaknesses in some of the logs. There are many instances of incomplete information. An inmate is for example stated to be lying in the same position, without any indication of whether the inmate has been checked for signs of breathing or movement. Many logs lack a description of how the inmate has been followed up in conversations. This is particularly important in order to be able to assess how the inmate is being followed up, how much human contact the inmate has and what systematic efforts are made to bring the stay in the security cell to an end.

In addition to weaknesses in content, we have found major inadequacies in the logging system. Among other things, we have found that several different logging systems are used. The most common form appears to be that supervision is logged in a separate book on a running basis. In several prisons, we have found that pages have been torn out from the log books, or that there are no page numbers so that it is difficult to determine whether the log is complete. In some places, it is uncertain how many days the inmate has spent in the security cell, because there is no information about when the stay was terminated. We have also seen logs according to which all supervision has been carried out every half hour on the minute. This leaves the impression that the log was written in advance and does not reflect actual supervision.

208 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019.

209 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7.4. Revised version of 15 March 2019.

210 The grounds for this must be stated in the decision, see the Public Administration Act Section 25.

211 The Parliamentary Ombudsman's report after its visits to Bergen 2–8 May 2018, p. 16; and to Trondheim Prison 17–19 March 2015, p. 8.

In some instances, the log is kept on loose sheets of paper that are put into a binder together with the relevant administrative decision. In other places, the log is kept as a Word document for the duration of the stay and converted into a PDF file when the stay is terminated.

Some prisons keep supervision protocols in the Correctional Service's computer system KOMPIS. This means that neither the prison nor the supervisory council will have access to the information once the inmate leaves or is transferred from the prison in question. In one prison, some staff logged supervision in KOMPIS, while others logged supervision in a separate book; some logged it in both places, though the information was not always the same.²¹²

All the solutions have obvious weaknesses as regards the possibility of internal and external supervision. Among other things, the Parliamentary Ombudsman has pointed out that:

*'Use of a security cell or restraint bed should be logged in such a way as to ensure correct and complete documentation and prevent any subsequent corrections.'*²¹³

Inadequate procedures and unclear systems for keeping records have made the prisons' control of their own practices difficult, and made it impossible for supervisory bodies and the Parliamentary Ombudsman to fully carry out their control functions. In several prisons visited by the Parliamentary Ombudsman, the supervision protocols showed that inmates had been placed in security cells without an administrative decision. In other places, records of security cell usage have been missing. This is a very serious matter. It is the responsibility of central government authorities to put into place a verifiable system for keeping records of the use of security cells.

Main findings

The use of security cells and restraint beds entails a high degree of sensory deprivation and a risk of harmful effects on health. Our findings include several examples of situations where the use of security cells can have extreme negative impact, even after a relatively short amount of time. They also show that it takes much too long before inmates receive help to get out of unhygienic and degrading conditions.

Findings from our visits show that inmates do not receive the help they need from the prison to bring their confinement to an end as soon as possible. Inmates can thus be held in security cells for longer than strictly necessary. Training and guidelines are lacking on how staff should follow up inmates to ensure maximum consideration for their welfare and as brief a stay as possible.

It is particularly censurable that individuals in an acute life crisis and who wish to harm themselves or take their own life are placed in a security cell without satisfactory follow-up. Informed by research, our findings show that the risk of harm is greater where inmates are confined on account of a mental crisis.

Inmates who are strapped to a restraint bed risk being traumatised in an acute life crisis. Close follow-up is therefore needed. Despite the risk of both mental and physical harm associated with the use of security cells and restraint beds, the Execution of Sentences Act and its Regulations do not contain any requirements for staff supervision in connection with such measures.²¹⁴

Inadequate procedures and unclear systems for keeping records make the prisons' control of their own practices difficult, and prevents supervisory bodies and the Parliamentary Ombudsman from carrying out their control functions.

212 The Directorate of the Norwegian Correctional Service's updated guidelines require that records shall be quality-assured by the prison governor and that the log shall be scanned and saved in Doculive, the Correctional Service's archiving system. It is not yet clear whether the new guidelines will address the concerns that the Parliamentary Ombudsman has had about record-keeping.

213 The Parliamentary Ombudsman's reports after visits to Telemark Prison, Skien branch 2–4 June 2015 p. 12, and Ullersmo Prison 29–31 August 2017, p. 21.

214 The guidelines as amended in March 2019 now require continuous supervision by prison officers. See Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019.

10

The health service's follow-up of inmates in solitary confinement

In Norway, the prison health service is run by the municipal authorities as primary health care provider, even if the services are localised within the prison. Some prisons also have the regional specialist health services present. What is known as 'the import model', where the health service is independent of the Correctional Service, supports the medical personnel's independence of the Correctional Service.²¹⁵ The import model is intended to ensure that medical personnel never partake in administrative decisions on sanctions or in enforcing sanctions.

Inmates in prison are entitled to the same access to healthcare services as the general population, but tend to have greater health issues and a greater need for care. In order to provide equal access, the health service must therefore meet needs that can be different in terms of both quantity and quality.

As described above in this report, the state has a special responsibility for ensuring proper health care for prison inmates (see section 3.3 *Solitary confinement and association with other inmates* and Chapter 8 *Particularly vulnerable inmates*). Those who are deprived of their liberty cannot to the same degree as others procure health care themselves. When inmates are held in solitary confinement, their possibility of contacting the health service themselves is further reduced.

The Correctional Service and the health service have a joint responsibility to ensure that inmates get the medical assistance they need and are entitled to. It is important to prevent fragmentation of this responsibility as a result of the division of responsibility between them.

Human rights standards on the role and responsibility of medical personnel

Inadequate supervision and medical follow-up of inmates in solitary confinement can lead to violation of Article 3 of the European Convention on Human Rights.²¹⁶ A system must therefore be in place to ensure regular supervision by medical personnel of the physical and mental state of health of inmates held in solitary confinement.²¹⁷ The Nelson Mandela Rules set out detailed standards on the role of medical personnel in relation to persons deprived of their liberty who are placed in solitary confinement, excluded from company or subject to other similar interventions.²¹⁸

Medical personnel shall not have any role in the decision to impose restrictive measures.²¹⁹ Their task is to ensure regular medical checks of the inmate's physical and mental health for the duration of the isolation.

²¹⁵ The Directorate of Health (2013). *Veileder for helse- og omsorgstjenester til innsatte i fengsel* ('Guide to health and care services for prison inmates'), p. 12.

²¹⁶ ECtHR 3 April 2001 *Keenan v. the United Kingdom*, paragraphs 109–116. See also 9 July 2007 *Khider v. France* paragraphs 119–122; 21 July 2005 *Rohde v. Denmark*, paragraph 99; 25 July 2013 *Riviere v. France*, paragraph 63; 16 October 2008 *Renolde v. France*, paragraph 120.

²¹⁷ ECtHR 10 April 2012 *Babar Ahmad v. the United Kingdom*, paragraph 212. See also The UN Special Rapporteur on Torture's report to the UN General Assembly, 5 August 2011, A/66/268, paragraph 100.

²¹⁸ Council of Europe: Committee for the Prevention of Torture (CPT), Extract from the 21st General Report, *Solitary Confinement*, 2011, CPT/Inf (2011) 28, paragraphs 62–63.

²¹⁹ The Nelson Mandela Rules, Rule 46(1).



Medical personnel must see to inmates in isolation at the time of placement in isolation, and on a daily basis thereafter, and must provide prompt medical assistance and treatment.²²⁰ Inmates in isolation should be assessed by medical personnel with special training in how to perform mental health assessments.²²¹

Any adverse effect on the inmate's physical or mental health must be reported to the administration immediately. The medical personnel must advise the prison administration if they consider it necessary to terminate the measure for medical reasons.²²² They must also have the authority to review the involuntary exclusion from social interaction of an inmate to ensure that such exclusion does not exacerbate the inmate's medical condition or mental or physical disability.²²³ Medical personnel should also examine the physical surroundings of inmates in solitary confinement, including the hygiene and cleanliness of the cell, temperature, lighting conditions and ventilation, and the inmate's possibility of physical activity.²²⁴

10.1 Organisation of prison health services

The municipal authority in the district where the prison is located is responsible for providing inmates with primary health services, while the regional health trusts are responsible for offering specialist health services.²²⁵

Our experience from visits to prisons shows that the fact that the organisation of the health service varies from prison to prison has consequences for the follow-up and care of inmates in solitary confinement. While several nurses and doctors are often available in large prisons, small prisons often depend on emergency units in local hospitals or doctors on rotation duty who seldom visit the prison. It can be an advantage if doctors who work with the prison health service also get some of their practice outside the prison with a view to professional development and keeping updated. At the same time, it is important that the inmate is followed up by a member of staff who is updated about the special health issues experienced by inmates.²²⁶ Doctors who only sporadically work in prison environments will be less equipped to identify and treat detrimental health effects caused by isolation.

10.2 Notification of medical personnel

Notification of the health service shall ensure that it can provide proper health care, that any injuries suffered in connection with detainment or transfer to a restrictive unit or security cell are identified, and that the inmate's health does not deteriorate as a result of solitary confinement. It is especially important to ensure immediate medical assessment and care of individuals in an acute mental crisis, for example entailing a risk of suicide. One possible measure can be to transfer the inmate to a mental health institution, but other medical assistance without transfer to a hospital can also be relevant. The assessment and care should be given without delay.

The Execution of Sentences Act states that a doctor must be notified of exclusion without undue delay.²²⁷ As regards the use of a security cell or restraint bed, the Act states that 'insofar as this is possible', a medical opinion shall be obtained and taken into account when use of such coercive measures is being considered. Unlike in the case of exclusion, the Act does not require a doctor to be notified when an inmate is placed in a security cell. This does, however, follow from the current guidelines to the Act, as amended.²²⁸ Despite the requirement for notification of a doctor, it is usually a health service nurse that is notified. If an inmate is placed in a security cell outside the prison health service's office hours, the health service is usually not notified until the following day. The Parliamentary Ombudsman has criticised this practice in several reports.²²⁹

220 The Nelson Mandela Rules, Rule 46(1); The European Prison Rules, Rules 43.3

221 The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/ 268, paragraph 100.

222 The Nelson Mandela Rules, Rule 46(2).

223 The Nelson Mandela Rules, Rule 46(3).

224 The UN Special Rapporteur on Torture's report to the UN General Assembly, 2011, A/66/ 268, paragraph 101.

225 The Health and Care Services Act Section 3-9 and the Specialist Health Services Act Section 2-1

226 For an overview of available healthcare services, see the Norwegian Directorate of Health (2017). Annual Report 2017.

227 The Execution of Sentences Act Section 37 seventh paragraph. Human rights standards are based on medical personnel being informed of all use of solitary confinement; see the Nelson Mandela Rules, Rule 46, and the European prison Rules, Rule 43.2.

228 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019.

229 See, inter alia, the Parliamentary Ombudsman's report after its visit to Åna Prison, 13–15 November 2017, p. 37 ff.

The professional ethics of medical personnel

Medical personnel supervising inmates who are held in solitary confinement must recall that they are tasked with following up the inmate as a patient and that they shall not partake in any decision on the use of solitary confinement. Medical personnel are only tasked with safeguarding the patient's health and welfare in accordance with the 'primum non nocere' principle of avoiding harm to the patient.

According to Section 38 second paragraph of the Execution of Sentences Act, 'insofar as this is possible, a medical opinion shall be obtained and taken into account in considering whether a decision shall be made to use a security cell or a restraining bed'. This wording can give the impression that a doctor should be present and involved in the decision on whether to use coercive measures.

In one prison, we found that a doctor from the accident and emergency unit had recommended that an inmate should continue to be strapped to a restraint bed, in conflict with his role as medical personnel. Similar findings were made during visits to two other prisons. Medical personnel should therefore always introduce themselves as medical personnel and clearly inform the inmate as a patient of their role and responsibility.

Note: The Parliamentary Ombudsman's report from a visit to the Skien branch of Telemark Prison, 2–4 June 2015, p. 30. The Parliamentary Ombudsman's report from a visit to Stavanger Prison 16–18 August 2016, pp. 33–34.

10.3 Medical follow-up of inmates in solitary confinement

Inmates in solitary confinement are in a particularly vulnerable situation that requires careful and independent follow-up by the health service. This is both due to the potentially harmful effects of being isolated and because the inmate has no possibility of contacting the health service directly. Some inmates are in a state of health that prevents them from requesting help. The health service therefore plays a decisive role in relation to these inmates. In addition to caring for the health of the inmate, the health service's outreach activities also have a preventive effect.²³⁰ The health service's supervision and presence can help to prevent possible integrity violations.

According to human rights standards, the health service shall look in on inmates in solitary confinement at least once every day.

There is no such requirement in Norwegian legislation.²³¹ Pursuant to the Execution of Sentences Act, the Correctional Service shall notify medical personnel of some forms of isolation (see above), but the responsibility of medical personnel to follow up inmates in isolation is neither regulated by law nor regulation.

In a guide to health and care services for prison inmates, the Directorate of Health has issued guidelines to medical personnel on follow-up of inmates in solitary confinement.²³² The Directorate of Health recommends that medical personnel

'look in on inmates held in isolation when there are medical reasons for supervision. This can be when requested by the inmate, or when information from the Correctional Service or others suggests that there is a need for supervision'.

230 Council of Europe: Committee for the Prevention of Torture (CPT), Extract from the 3rd General Report, Health care services in prisons, 1993, CPT/Inf (1993) 12, paragraph 30.

231 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 38.7. Revised version of 15 March 2019. According to these guidelines, inmates in security cells or restraint beds shall, insofar as it is possible, be attended to by medical personnel at least once a day. In the case of inmates who are excluded from the company of other inmates, the guidelines state that the prison doctor 'is encouraged to look in on the inmate at the soonest opportunity', if there is information to indicate that the inmate is ill or otherwise needs medical assistance.

232 The Norwegian Directorate of Health (2013). Veileder for helse- og omsorgstjenester til innsatte i fengsel ('Guide to health and care services for prison inmates'), p. 44.

In the case of inmates held in a security cell or restraint bed, the guide states that the health and care service should provide the inmate with health and care services if the inmate or the Correctional Service so requests.²³³ This is neither in line with the European Prison Rules nor the UN's Nelson Mandela Rules.²³⁴ It is problematic because medical follow-up of the inmate is dependent on notification of the health service by prison staff. The guide does not take into consideration that the inmate is denied the possibility of contacting the health service directly. We have found examples in several prisons of failure on the part of the health service to look in on an inmate in a security cell or restraint bed to assess the need for medical assistance, in spite of a documented request from the inmate.

The vast majority of prison health services lack procedures to ensure that all inmates held in isolation get such supervision at least once a day, regardless of whether this is requested by the prison staff. Medical follow-up of inmates in solitary confinement is particularly poor outside the prison health service's office hours, during evenings and at weekends. We have also seen a failure to carry out systematic health checks of inmates in solitary confinement during the prison health service's office hours. Lack of checks by medical personnel in connection with the use of security cells was criticised by the European Council's Committee for the Prevention of Torture after its visit to Norway in 2018. The CPT recommended that steps be taken to ensure that a member of the prison health service always visit persons who are confined to a security cell or restraint bed as soon as possible after being informed of the placement and at least every day until the placement ends. This should be systematic and in no case depend on the opinion of the prison staff. The recommendation was sent to all the prisons visited by the committee, and to other prisons where measures are required.²³⁵

Lack of medical supervision

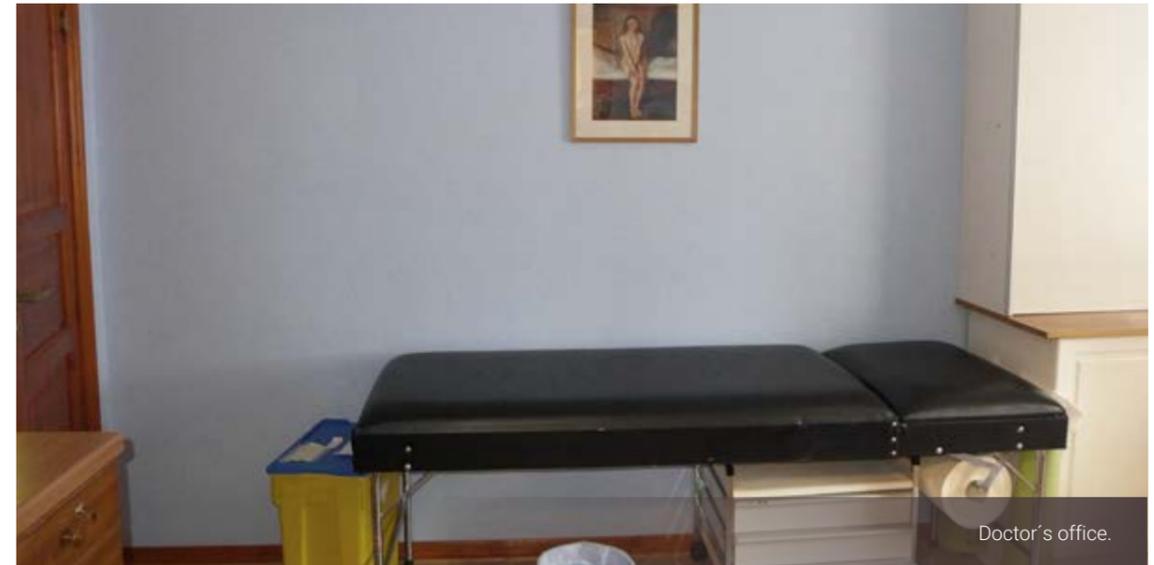
At Åna Prison, the local accident and emergency unit was responsible for follow-up after 15:00 on weekdays and during weekends. A prison doctor was only available three days a week. The staff could not recall any instance of a doctor from the accident and emergency unit being called to a security cell when such cells were used outside the prison health service's office hours.

A review of the supervision protocols showed that there had been a number of complaints of pains or injuries on the part of inmates, but it was not noted that medical personnel had been called. On the contrary, inmates had been told that they had to wait until the medical personnel were due to work. In some cases, several days passed between visits from medical personnel, including in cases where the inmate clearly suffered from major mental health problems or had notified of physical injuries. In one case, the inmate had repeatedly requested medical attention. No health service visit was noted in the log until the inmate was transferred to another prison six days later. In another case, an inmate was placed in a security cell after having set fire to his own cell. The inmate had respiratory problems after inhaling smoke and fumes from the fire and was checked by the accident and emergency unit. No visits from medical personnel were noted in the log during the following four days after the fire. Those four days coincided with a public holiday.

233 The Directorate of Health (2013). *Veileder for helse- og omsorgstjenester til innsatte i fengsel* ('Guide to health and care services for prison inmates'), p. 47.

234 See the Nelson Mandela Rules, Rule 46(1), and the European Prison Rules Rule 42.2.

235 Council of Europe: Committee for the Prevention of Torture (CPT), Report to the Norwegian Government on the visit to Norway 2018, CPT/Inf (2019) 1, paragraph 107.



10.4 Need for more knowledge and staff training

Many inmates have complex medical issues that require special competence. The municipal authorities are responsible for primary prison health services. In many municipalities, the prison health service does not have a doctor in a permanent position, while others have a doctor in a very limited part-time position or for only a short period. There is currently limited contact between the health services in different prisons, and there is no common platform in the form of a national centre of competence or a professional network to support the exchange of experience and development of the professional quality of these services.

Highly experienced as well as less experienced prison doctors often agree that there is a need for increased knowledge and competence about the health of prison inmates. This is particularly important as regards the detrimental effects of isolation and the duty of medical personnel to safeguard the health of inmates who are held in solitary confinement.

The Parliamentary Ombudsman's visits have shown that there is a need for more knowledge and training of medical personnel employed by the prison health service. This applies to an even greater degree in the case of employees in municipal accident and emergency units, who are responsible for following up inmates in solitary confinement outside the prison health service's office hours.

Main findings

Our findings show widely varying practices between different prisons as regards the prison health service's follow-up of inmates who are held in solitary confinement, among other things because the organisation of the health service differs.

It is important to notify and keep the health service updated as regards inmates in solitary confinement. There are weaknesses in the notification procedures in several prisons.

The Norwegian regulatory framework and practice are not in accordance with international human rights standards as regards daily medical supervision of inmates in solitary confinement. We have found a number of instances in which inmates, some suffering from severe health problems, have served in solitary confinement for a long period without being attended to by medical personnel.

There is a great need for increased knowledge and training of medical personnel charged with caring for inmates in solitary confinement.

11 Supervision and complaints mechanisms

Effective systems and procedures should be in place to prevent inmates being excluded from the company of other inmates and held in solitary confinement other than in exceptional cases and for the shortest possible time.

For the rights of inmates to be safeguarded prior to, during and after being held in solitary confinement, it is essential to have good control systems in place.

11.1 Supervision

Human rights standards on supervision

The Nelson Mandela Rules and the European Prison Rules state that prisons shall be inspected on a regular basis. Both sets of rules recognise the need for both an internal system of regular inspections by the central prison administration and a system of supervision by one or more bodies that are independent of the prison administration. During any form of such internal or independent inspection of prisons and conditions of detention, the inspectors shall have access to places of detention, individuals and information of relevance to the task they are set to do.²³⁶

Because the use of solitary confinement and measures that entail locking up the inmate for long periods of the day entail a risk of inhuman or degrading treatment, it is essential that the supervisory bodies have extensive access to information about all circumstances that can entail such lack of human contact.²³⁷ Such access is very important to be able to assess whether human rights requirements and standards are complied with.

11.1.1 The supervisory councils

Pursuant to Section 9 of the Execution of Sentences Act, supervisory councils shall be appointed that are charged with supervising prisons and aftercare offices and the treatment of convicted persons and inmates. According to the guidelines to the Act, there shall be a supervisory council in each of the Correctional Service's five regions. They are tasked with supervising the prisons and ensuring that inmates are treated in accordance with applicable legislation.

The Ministry of Justice and Public Security shall appoint the head and deputy head of the supervisory council and at least two of its members and their deputies. These are appointed for a term of two years.²³⁸

For more than 20 years, there have been discussions as to whether the supervisory regime provides inmates with adequate legal safeguards.²³⁹ In 1988, the Prison Law Commission pointed out weaknesses in the composition of the supervisory councils, that they did not undertake many visits and that they lacked legal authority.

²³⁶ The Nelson Mandela Rules, Rules 83, 84 and 85. The European Prison Rules, Rules 9, 92 and 93.

²³⁷ Essex paper 3: Initial guidance on the interpretation and implementation of the Nelson Mandela Rules, p. 92.

²³⁸ Regulations to the Execution of Sentences Act Section 3-7. The Directorate of the Norwegian Correctional Service's guidelines (Directorate of Correctional Service 2002). Guidelines to the Execution of Sentences Act and its Regulations, section 9.1, revised version of 27 October 2008.

²³⁹ Eskeland, S (1989). Fangerett: en studie av rettssikkerhet ved fullbyrdelse av fengselsstraff ('A study of legal safeguards in connection with the execution of prison sentences') p. 458. Oslo: TANO.



In NOU 1988: 37 Ny fengselslov ('New prison act'), it was proposed that the regime be discontinued.²⁴⁰ The supervisory councils were also mentioned in Report No 37 to the Storting (2007–2008) *Straff som virker* ('Punishment that works'), where the Ministry recommended that the supervisory regime be reviewed to determine the degree to which it constituted

*'an active control body with the competence and resources to ensure adequate transparency in the Correctional Service's activities. Both the practical aspects and the principles governing supervisory activities should be considered.'*²⁴¹

After the report to the Storting, the Ministry indicated that an assessment of the supervisory councils would be initiated. Since then, there has been an ongoing process at ministerial and directorate level, but it has not resulted in any amendment of the supervisory scheme. In Norway's seventh periodic report to the UN Committee against Torture, which was submitted in 2011, the state authorities wrote that the regime of supervisory councils was not satisfactory and that the system must be reviewed.²⁴²

In 2011, the Parliamentary Ombudsman took the initiative to take a closer look at the supervisory councils.²⁴³ The Parliamentary Ombudsman submitted its opinion in 2013 and concluded that the regime and the supervisory councils' mandate suffered from several weaknesses.²⁴⁴ The review showed that the various supervisory councils functioned in widely different ways, and that there appeared to be no reasonable grounds for many of the differences. There were differences, among other things, in the frequency of prison visits and in how supervision was exercised. It was pointed out that there did not appear to be any systematic effort on the part of the Directorate with a view to training or experience transfer between members who were finishing and starting their term of office.

The delayed appointment of some supervisory councils also meant that they were unable to get started on their tasks at the start of the period. No changes have been made to the supervisory regime after the above opinion was submitted, and the current regulations do not provide a clear framework for the mandate. Furthermore, there is no clear framework for how to conduct supervisory activities or how to handle specific queries from inmates, even though these are the most important parts of the supervisory councils' work.

The organisation of the supervisory councils was assessed again in connection with the reorganisation of the Correctional Service in 2016.²⁴⁵ In the bill and subsequent dialogue between the Directorate of the Norwegian Correctional Service and the Ministry of Justice and Public Security, doubts were raised concerning the independence of the regime. The Directorate has informed the Parliamentary Ombudsman of its submission of draft new guidelines for the supervisory councils to the Ministry of Justice and Public Security in May 2017.²⁴⁶ The Directorate reported on the supervisory councils in January 2019, on the order of the Ministry.

The Parliamentary Ombudsman's visits to high-security prisons during the period 2014–2018 and dialogue with the supervisory councils confirm the shortcomings of the supervisory regime. An unclear mandate, delayed appointment, lack of training and differences in working methods remain characteristic features of these councils.

11.1.2 Supervision of the prison health service and care for inmates in solitary confinement

The supervisory councils report that many of the queries they receive concern matters relating to the prison health service.²⁴⁷ This is also evident from the supervisory councils' annual reports.²⁴⁸ The supervisory councils are not tasked with supervising prison health services, however.²⁴⁹

240 Norwegian Official Report NOU 1988:37 (1988) *Ny fengselslov* (New Prison Act) p. 95. Oslo: Ministry of Justice and the Police.

241 Ministry of Justice and the Police (2008). *Straff som virker* ('Punishment that works'), p. 199. Report to the Storting No 37 (2007–2008) Oslo: Ministry of Justice and the Police.

242 Combined sixth and seventh periodic reports of States parties due in 2011, submitted in response to the list of issues (CAT/C/NOR/Q/7) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paragraphs 23 and 24), p. 12.

243 The Parliamentary Ombudsman, *Tilsynsrådene innen kriminalomsorgen* ('The supervisory councils within the Correctional Service'), letter of 3 October 2011, the Correctional Service's central administration. Off. ref. no 2011/225.

244 The Parliamentary Ombudsman's Opinion (2013): *Undersøkelse av tilsynsrådsordningen i kriminalomsorgen* ('Investigation into the supervisory council regime in the Correctional Service'). Case no 2011/225

245 Ministry of Justice and Public Security (2016). Proposition to the Storting, including a draft bill – Prop. 105 L (2015–2016)

246 The Directorate of the Norwegian Correctional Service, letter of 24 May 2017 to the Ministry of Justice and Public Security.

247 The Parliamentary Ombudsman's Opinion (2013): *Undersøkelse av tilsynsrådsordningen i kriminalomsorgen* ('Investigation into the supervisory council regime in the Correctional Service'). Case no 2011/225.

248 Annual reports sent to the Parliamentary Ombudsman: The Supervisory Council for Correctional Service Region West: Annual reports 2016 and 2017; The Supervisory Council for Correctional Service Region South: Annual reports 2016 and 2017; The Supervisory Council for Correctional Service Region North: Annual reports 2016 and 2017.

249 The Ministry of Justice and the Police's investigation into the supervisory councils for the Correctional Service for the years 2007–2009 – request for an opinion, letter of 12 January 2012 to the Parliamentary Ombudsman. Case no 2011/225.

The municipal authorities have administrative and professional responsibility for health and care services in prisons. The prison health service has a very important role to play in following up inmates who are held in solitary confinement or excluded from the company of other inmates. As described in Chapter 10 *The health service's follow-up of inmates in solitary confinement*, the Parliamentary Ombudsman has on several occasions criticised the prison health service's follow up of inmates who are held in solitary confinement, excluded or otherwise have very limited possibilities of associating with other inmates. This includes criticism of the fact that inmates have not been attended to by medical personnel at least once a day, a requirement set out in the Directorate of the Norwegian Correctional Service's guidelines and that, according to the Nelson Mandela Rules, applies to all inmates in solitary confinement.

It has also been found that some prisons lack procedures for notifying the prison doctor without undue delay of any decision on exclusion from the company of other inmates, or that contact with the health service is not possible outside 'office hours'.

The county governors are tasked with supervising the health and care services and all medical personnel providing health and care services within their respective counties. The Norwegian Board of Health Supervision is the supervisory authority for the healthcare professions. Regular supervision is not carried out of the prison health services in Norway, however. The most recent nationwide supervisory activity was carried out by the county medical officers 18 years ago (2001). Follow-up of inmates in solitary confinement or excluded from the company of other inmates was not part of this system audit.²⁵⁰

11.2 Complaints procedure and the possibility of getting administrative decisions reviewed

Human rights standards on complaints mechanisms

Under the Nelson Mandela Rules, the use of solitary confinement shall be subject to independent review.²⁵¹ Effective external systems are also required for dealing with complaints and reviewing individual cases.²⁵²

The European Prison Rules state that all inmates who are subjected to safety or security measures such as solitary confinement have the right to complain.²⁵³ If the complaint is rejected, the grounds for this shall be stated and the inmate shall have the right to appeal the decision to an independent authority. The rules are based on case law from the European Court of Human Rights concerning the right to an effective remedy provided for in Article 13 of the European Convention on Human Rights.²⁵⁴ The appeal process shall lead to a final binding decision by an authority that is independent of the prison service.²⁵⁵

In its consideration of complaints mechanisms in the Member States, the CPT has emphasised independence and the inmate's access to participate in the complaints procedure.²⁵⁶ Independent complaints bodies should be 'unconnected and separate' from the agencies responsible for persons deprived of their liberty. According to the committee, 'It is essential that they are (...) seen to be, independent'. Inmates deprived of their liberty should have direct, secure and confidential access to complaints mechanisms that process complaints promptly, thoroughly and effectively.²⁵⁷

According to the European Prison Rules, prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance 'when the interests of justice require'.²⁵⁸

250 Norwegian Board of Health Supervision (2002). *Fylkeslegenes tilsyn med helsetjenestene i fengsler 2001 – oppsummeringsrapport* ('The county medical officers' supervision of the prison health service 2001 – summary report'). https://www.helsetilsynet.no/globalassets/opplaster/publikasjoner/rapporter/2002/fylkeslegenes_tilsyn_helsetjenesten_fengsler2001_oppsummeringsrapport_rapport_042002.pdf

251 The Nelson Mandela Rules, Rule 45(1): 'Solitary confinement shall ... be subject to independent review'.

252 ECHR Articles 6, 9 and 13. The European Prison Rules, Rules 70.1, 92 and 93. The Nelson Mandela Rules, Rules 56, 57 and 84

253 The European Prison Rules, Rule 53.7.

254 ECtHR 12 March 2008 *Rodic and Three Others v. Bosnia and Herzegovina*, paragraph 58.

255 Revised commentary to Recommendation CM/Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, European Committee on Crime Problems (CDPC), Council for Penological Co-operation, Strasbourg 22. May 2018, PC-CP (2018) 1 Rev. 2, p. 58.

256 Council of Europe: Committee for the Prevention of Torture (CPT), Report to the United Kingdom Government on the visit to United Kingdom 1994, CPT/Inf (1996) 11, and Report to the Dutch Government on the visit to the Netherlands 1992, CPT/Inf (1993) 15, paragraph 55.

257 Council of Europe: Committee for the Prevention of Torture (CPT), 27th General Report 2017, CPT/Inf (2018) 4.

258 The European Prison Rules, Rule 70.7.

11.2.1 Complaints mechanism

The question of whether an independent complaints body should be established for prison inmates in Norway has been discussed several times. In NOU 1988: 37, the Prison Law Commission recommended the establishment of an independent complaints board. The Ministry at the time referred to the proposal having been supported by several consultation bodies, but rejected it on the grounds that such a solution would 'be costly and to some extent impractical'. Instead, a complaints mechanism was established whereby the inmate complains to the immediate superior body of the body that made the administrative decision. In cases concerning solitary confinement, this will normally be the regional level. Decisions on solitary confinement made by a first-instance regional body may be appealed to the Directorate of the Norwegian Correctional Service.

The complaints mechanism will not be discussed in any more detail in this report, but we stress that it often emerges during interviews with inmates that they are well aware of the possibility of complaining, but many consider it useless to complain because there is little chance that they will be heard. An effective complaints mechanism is an important safeguard to protect the rights of inmates.

The Parliamentary Ombudsman's review of administrative decisions on complete or partial exclusion during the period 2014–2018 shows that the stated grounds for such decisions seldom contain sufficient information about less intrusive measures that have been tried or about why such measures have not been adequate. This undermines the inmate's possibility of gaining access to the actual content of the administrative decision, and of submitting an appeal on an informed basis. Furthermore, the Correctional Service operates with a shorter deadline for appeal than what follows from the Public Administration Act. In the case of decisions on complete exclusion or use of coercive measures, the deadline for appeal is seven days.

11.2.2 Court hearing

In principle, an administrative decision may be reviewed by the ordinary courts. This remedy is used to a very limited degree, however. Court proceedings are expensive and time-consuming. In the health and social care sector, inmates are not entitled to free legal aid in connection with court reviews of administrative decisions on coercive measures.²⁵⁹ The European Court of Human Rights has stated that effective access to court can sometimes compel the state to provide for the assistance of a lawyer.^{260, 261} The mechanism for getting a court review will not be discussed any further in this report.

Main findings

The supervisory regime is not in line with the standards set out in the European Prison Rules and the Nelson Mandela Rules. It is not a regime that ensures systematic and regular inspection, within the limits necessary to safeguard the legal rights of inmates in accordance with human rights standards.

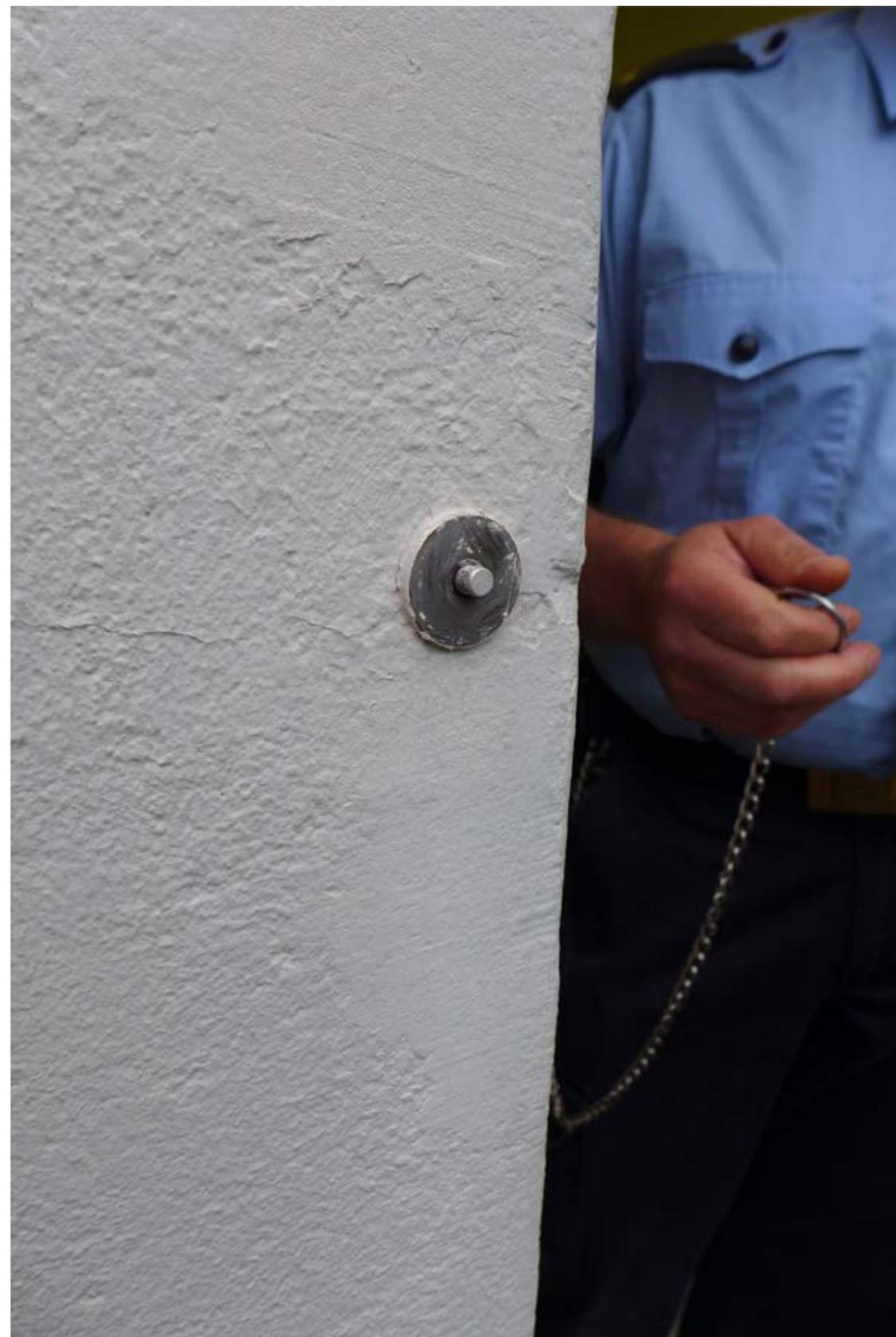
The fact that Norway lacks adequate prison inspection regimes has major consequences for safeguarding and controlling the conditions for inmates in solitary confinement.

The prison health service, which plays an important role in relation to inmates in solitary confinement, is also not subject to regular supervision.

259 The Legal Aid Act Section 16 and the Mental Health Care Act Section 7-1

260 Engbo, H J, and Scharff, P S (2012): *Fængsler og menneskerettigheder* ('Prisons and Human rights'), p. 219. Copenhagen: Djøf Forlag.

261 ECtHR 9 October 1979 *Airey v. Ireland*, paragraph 26.



12

Prevention of solitary confinement

This report shows that many inmates are locked up in their cells for large parts of the day, entailing a risk of harmful effects on their health. As mentioned above, the number of inmates who develop health problems and the severity of such problems increase with the length of confinement. Solitary confinement can also lead to subsequent withdrawal and self-isolation (see Chapter 4 *Solitary confinement is an intrusive measure and detrimental to health*). The serious risk of harmful effects places strict demands on the prison's capacity for preventing solitary confinement.

The lack of human contact in Norwegian prisons is partly a result of factors controlled by the governing authority and partly of factors controlled by the prisons themselves. The regions, the Directorate, the Ministry and the prisons themselves must therefore make every effort to prevent solitary confinement. Our findings indicate that there is a need to strengthen the work of the Correctional Service in order to prevent situations and incidents that trigger solitary confinement.

Human rights standards on prevention

The UN Convention against Torture obliges the state parties to put effective measures in place to prevent situations that entail a risk of torture or other cruel, inhuman or degrading treatment.²⁶²

It was in recognition of the importance of preventing violation of the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment that the UN's state parties adopted an optional protocol on prevention in 2002. The optional protocol established:

*"that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures".*²⁶³

Under the Nelson Mandela Rules, the prison administration's preventive efforts should include effective measures to prevent conflicts and incidents that can lead to disproportionate isolation or solitary confinement. Prison administrations are encouraged to use conflict prevention or other dispute resolution mechanisms to prevent or resolve conflicts.²⁶⁴ Staff should also receive training in preventive and defusing techniques, such as negotiation and mediations.²⁶⁵

²⁶² See the UN Convention against Torture Article 2(1), cf. Article 16(1). See the UN Committee against Torture General Comment No 2, Implementation of Article 2 by States parties, 24 January 2008, CAT/C/GC/2, and the UN Subcommittee on the Prevention of Torture (SPT), The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 30 December 2010, CAT/OP/12/6.

²⁶³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

²⁶⁴ The Nelson Mandela Rules, Rule 38(1).

²⁶⁵ The Nelson Mandela Rules, Rule 76(c).



Sections 37 and 38 of the Execution of Sentences Act can both be seen as containing implicit requirements for prevention. Pursuant to Section 37, the measure must be 'necessary'. Among other things, this means that an assessment shall be made of whether the purpose can be achieved by other, less intrusive measures than exclusion from the company of other inmates.²⁶⁶ Pursuant to Section 38, such measures must be 'strictly necessary', and it is an express requirement in the Act that 'less invasive measures have been unsuccessfully attempted or will clearly be inadequate'. The existing regulatory framework does not, however, confer on the Correctional Service any overall duty to systematically prevent the use of coercive measures such as solitary confinement.²⁶⁷ The Correctional Service 'shall make suitable arrangements for remedying the negative effects of isolation', and to 'prevent or remedy the harmful effects of exclusion'. This is different from preventing the use of solitary confinement. The current legislation falls short of meeting Norway's commitments under international law to prevent situations that entail a risk of torture or other cruel, inhuman or degrading treatment or punishment.

12.1 The responsibility of governing authorities

The main task of the governing authority in preventing the use of solitary confinement is to provide each prison with a framework and conditions that make it possible to use solitary confinement in exceptional cases only (as a last resort) and for as short a time as possible.²⁶⁸

Effective prevention is conditional on knowing where and how measures should be implemented. Such knowledge is dependent on accurate information. Chapter 5 showed that there are major and serious gaps in the information about the number of administrative decisions on exclusion, and that many are in fact excluded without an administrative decision. This applies to inmates who are placed in solitary confinement for financial or practical reasons (see section 6.1 *De facto solitary confinement*), and self-isolation for which no administrative decision is required in the opinion of the Directorate (see section 6.3 *Solitary confinement by choice*).

In Chapter 6 *Extensive use of solitary confinement and restrictions on association with other inmates*, reference is made to the large number of inmates who are locked up in their cells for more than 16 hours a day in units defined as communal sections. The establishment of minimum standards for association with other inmates, in line with our Nordic neighbours, would presumably go a long way towards preventing such confinement.

There are likewise no central guidelines on what the individual prison should to prevent self-isolation or isolation as a result of suicide risk (see section 9.3 *Use of security cells in connection with mental crises*). The Correctional Service's guidelines for the prevention and handling of self-harm, suicide attempts and suicides in prisons provide little guidance on what specific measures staff should take to prevent the solitary confinement of inmates who are considered to be suicidal. The same applies to possible ways of following them up to provide human support and care. The Correctional Service also lacks reliable figures relating to the number of suicide attempts in Norwegian prisons.²⁶⁹ Such figures can constitute important controlling information for obtaining an overall picture of the situation in a prison and of the inmates' general state of health. This is in turn important for the prevention of solitary confinement.

Our review of decisions on complete or partial exclusion and the use of security cells during the period 2014–2018 shows that the grounds seldom include any documentation of measures to prevent exclusion and solitary confinement. The grounds are typically stated in standard phrases such as 'less invasive measures have been tried/ are clearly impossible', without any reference to specific measures. This suggests that there is a need for a more systematic approach on the part of the governing authority, among other things to the question of when the conditions in Section 37 of the Execution of Sentences Act are met and what grounds should be given for administrative decisions.

The prisons have a duty to report prolonged exclusions and stays in security cells to the regional level (after 14 and 3 days, respectively) and to the Directorate of the Norwegian Correctional Service (after 6 and 42 days, respectively). The Parliamentary Ombudsman is not aware that these limits are used systematically to ensure that all prisons comply with the same strict rules on administrative decisions pursuant to Sections 37 and 38 of the Execution of Sentences Act, and that other, less intrusive measures are implemented where possible. Furthermore, many who are held in solitary confinement for long periods are omitted from the figures, including inmates in self-isolation for whom no administrative decisions are made. This undermines the possibility of systematic prevention.

12.2 The responsibility of prisons

Accurate information is important, including in the preventive work of each individual prison. Such information requires that the actual scope is reflected in the figures, however. In that respect, too, lack of knowledge about the real scope of solitary confinement is clearly a problem.

We have found examples in several prisons of the administration not knowing about the different sections' actual routines for locking up inmates. There also appear to be differences between the prisons as regards the administration's knowledge about administrative decisions on exclusion and the breakdown of such decisions by section. The failure to keep records of self-isolation also means that the prison administration is not fully informed about the real figures. One of the consequences of this is wide variations in the local prison administrations' active efforts to reduce the extent to which inmates are locked up in their cells.

Our findings show that some forms of solitary confinement are more predominant in some prisons than in others. There are wide variations between prisons, among other things, in the number of inmates who choose to isolate themselves (see section 8.1 *Inmates who chose solitary confinement (self-isolation)*). The figures for exclusions and placement in security cells also vary widely between prisons, and some stand out more than others, including over time. There may be complex reasons for this. Some prisons have more challenging inmates than others, or have more prison places without communal facilities. The differences are so great, however, that it is likely that the local prison administration and local prison culture also have a bearing on the extent to which such measures are used.²⁷⁰

266 Directorate of the Norwegian Correctional Service (2002). Guidelines to the Execution of Sentences Act and its Regulations, section 37.6. Revised version of 2 April 2019.

267 See the Execution of Sentences Act Section 3 and the Regulations to the Execution of Sentences Act Section 3-35. For purposes of comparison, see the Regulations relating to rights and the use of force in child welfare institutions (the Rights Regulations) Section 1

268 The Directorate of the Norwegian Correctional Service has appointed a working group tasked with preparing a draft programme of measures to prevent the use of solitary confinement. The content of this programme was not yet known at the time of submitting this report.

269 Directorate of the Norwegian Correctional Service, (*Information about suicides in prisons – follow-up information relating to the registration of suicide attempts'), letter of 8 August 2018 to the Parliamentary Ombudsman.

270 The need for prison governors to be assigned a clearer and more central role was also identified in a report submitted to the Parliamentary Ombudsman: Directorate of the Norwegian Correctional Service (2015). Rapport om utelukkelse i kriminalomsorgen ('Report on exclusions in the Correctional Service'), p. 11.

One possible challenge is that the prison governor has largely delegated the authority to decide on the use of solitary confinement to the operative senior officer, inspector or duty officer.²⁷¹ Even though it may be necessary to delegate such authority, the prison governor must be expected to keep updated as regards developments in his or her own prison and to assess the use of measures on a running basis.

Prevention also requires that the measure is discontinued as soon as the conditions for solitary confinement are no longer present, and that active efforts are made to replace solitary confinement by less intrusive measures. In several prisons, we have found long stays in security cells, in some cases of up to 16 days' duration. The majority of security cell supervision protocols have major shortcomings in that they do not document continual efforts to establish a good dialogue or otherwise create conditions whereby inmates can be returned to their own cell (see section 9.5 *Control of the use of security cells and restraint beds*).

Among other things, the Parliamentary Ombudsman has recommended to use motivational conversations and the possibility of going out into the open air to create a good dialogue with a view to speeding up the inmate's return to a regular prison cell. We have also recommended that a programme for the speediest possible return should be drawn up in the case of prolonged exclusion from the company of other inmates.

Main findings

Our findings indicate that there is a need to strengthen the work of the Correctional Service in order to prevent situations and incidents that trigger solitary confinement. The current regulatory framework does not confer on the Correctional Service any duty to put systematic effort into such prevention. The current legislation falls short of meeting Norway's commitments under international law to prevent situations that entail a risk of torture or other cruel, inhuman or degrading treatment or punishment.

United Kingdom: guidance on the use of isolation

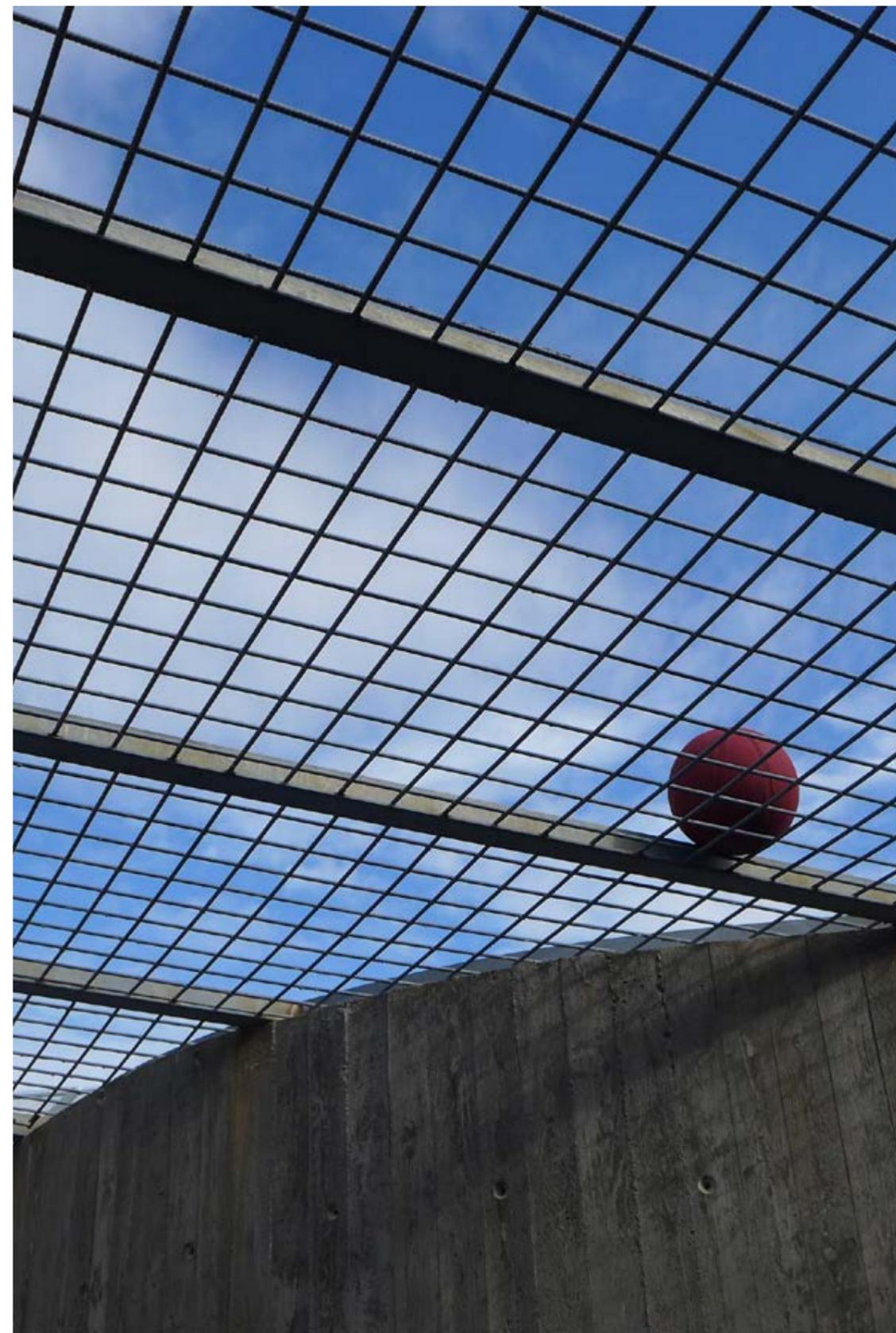
In 2017, the UK national preventive mechanism published comprehensive guidelines on how isolation should be prevented by the competent authorities. Particular emphasis was given to preventing the use of isolation:

Detaining authorities should aspire to prevent or eliminate the use of isolation by focusing on the root causes of incidents that lead to its use, with a specific focus on repeated episodes and self-isolation.

Note: UK NPM, Guidance: Isolation in detention, January 2017.

The lack of accurate information undermines the ability of both prisons and governing authorities to effectively prevent the use of solitary confinement.

There are likewise no central guidelines on what the individual prison should do to prevent self-isolation or solitary confinement as a result of suicide risk. The lack of national minimum standards for association with other inmates also undermines the possibility of preventing solitary confinement and the detrimental effects of isolation. The lack of training and guidelines on how staff should follow up inmates in security cells to ensure as brief a stay as possible has the same effect.



271 Reports sent to the Parliamentary Ombudsman: Directorate of the Norwegian Correctional Service (2015). Rapport om utelukkelse i kriminalomsorgen (Report on exclusions in the Correctional Service), Table 2.4. Overview of the number of decision-makers and their rank.

Part III

Recommendations

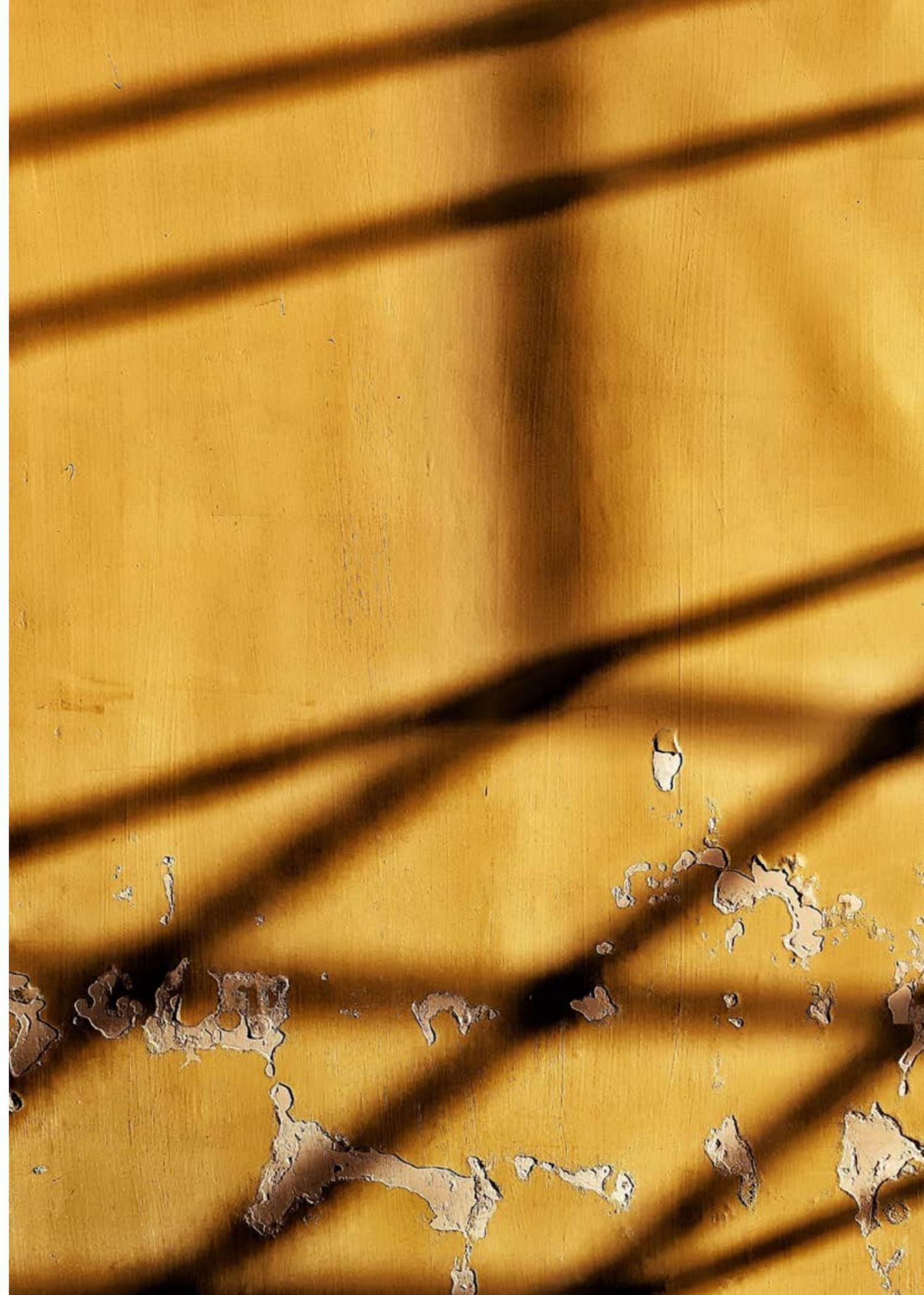
Recommendations

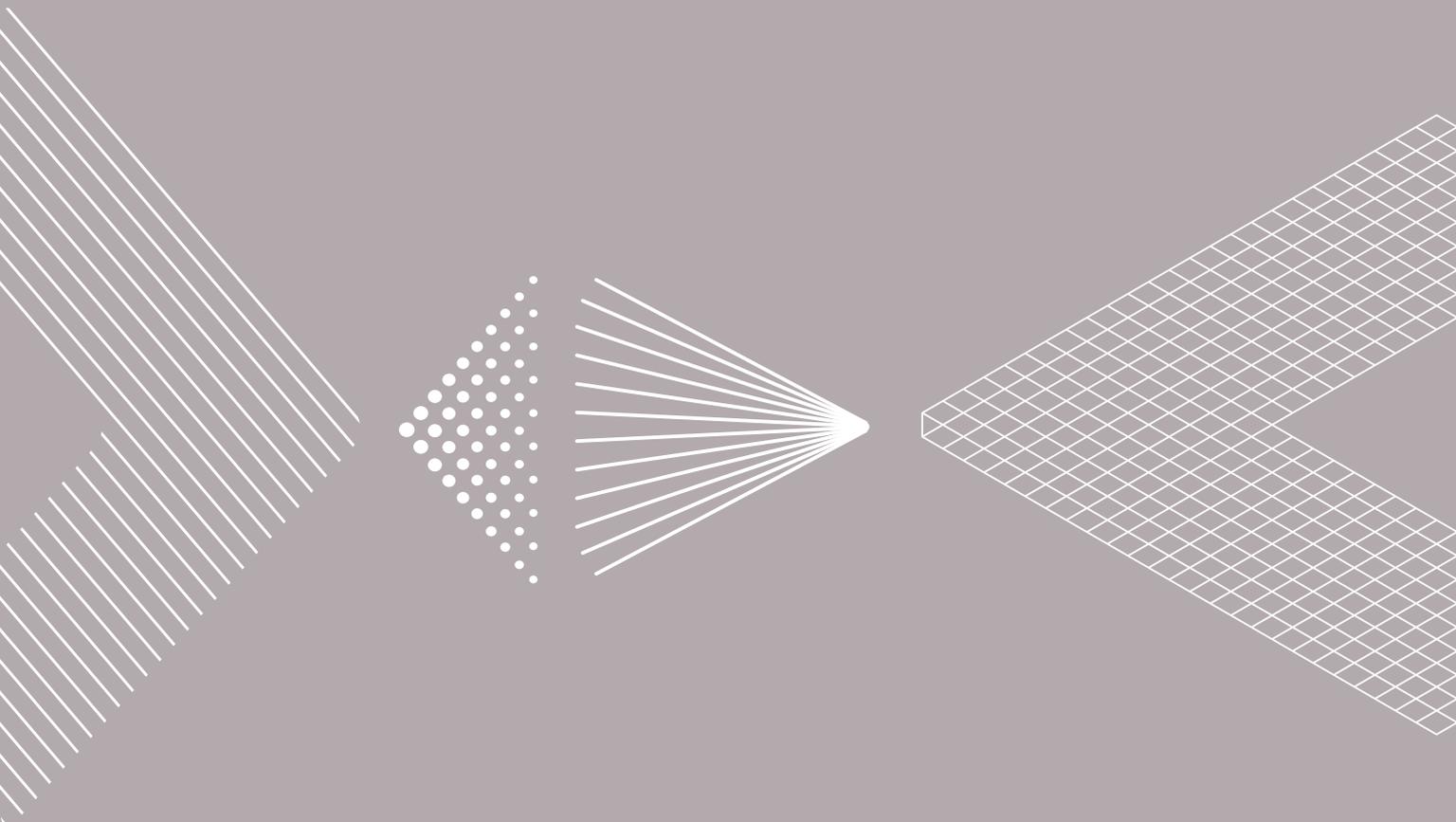
The findings presented in this report paint a grave picture of the use of solitary confinement in Norwegian prisons. The findings show that solitary confinement is extensively used, and that there is a significant risk of inhuman or degrading treatment of inmates subjected to solitary confinement.

Since our first prison visits in 2014, we have consistently found that the use of solitary confinement in Norwegian prisons gives great cause for concern. We have presented our findings and recommendations to the Ministry of Justice and Public Security, the Ministry of Health and Care Services and subordinate directorates on several occasions. In the Parliamentary Ombudsman's opinion, there is a need for more extensive changes than the measures the state authorities have implemented up till now to ensure that human rights standards are complied with in practice.

In order to ensure that inmates in Norwegian prisons do not suffer isolation that can entail violation of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, the Parliamentary Ombudsman recommends the Storting to request that the Government implement the following measures:

- › Ensure reliable and publicly available data on the extent of solitary confinement in Norwegian prisons.
- › Establish a national standard to ensure that inmates have the possibility of associating with others for at least eight hours every day and are offered meaningful activities.
- › Amend the provisions of the Execution of Sentences Act to ensure that:
 - solitary confinement is only used in exceptional cases and for as brief a period as possible;
 - follow-up of all inmates in solitary confinement in accordance with human rights standards;
 - solitary confinement for 22 hours or more a day is prohibited in situations mentioned in the Nelson Mandela Rules.
- › Submit a proposal for a statutory or regulatory duty to prevent the use of solitary confinement in prisons.
- › Strengthen the Correctional Service's supervisory regime by defining a legal mandate that ensures systematic and regular supervision in accordance with international human rights standards.
- › Ensure that common professional guidelines are drawn up to ensure satisfactory follow-up of inmates in solitary confinement.
- › Prepare a plan for closing down or adapting all prison sections currently not adapted for association between inmates.
- › Revise the national guidelines to health and care services for prison inmates, to ensure that the detrimental effects of isolation are identified and that inmates in solitary confinement receive follow-up.
- › Establish by law that the health service is responsible for following up inmates in solitary confinement, so that inmates who are isolated or excluded from company are followed up by medical personnel on a daily basis.
- › Ensure that the prison health services are provided with a stronger common professional platform, with particular focus on competence relating to inmates' special health issues, solitary confinement and the detrimental effects of isolation.





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