SIVILOMBUDSMANNEN
Norwegian Parliamentary Ombudsman

Investigation under the OPCAT mandate

Protecting prison inmates during the COVID-19 pandemic

June 2020

National Preventive Mechanism against
Torture and Ill-Treatment

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I. Torture and Inhuman Treatment

The prohibition against torture and other cruel, inhuman or degrading treatment or punishment is established in several international conventions that have been ratified by Norway.

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), adopted in 1984, is the key international convention prohibiting the use of torture. 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 vulnerable 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. 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]

Norway ratified the Optional Protocol in 2013.

[1] Section 3a of the Parliamentary Ombudsman Act.

II. The Parliamentary Ombudsman's Mandate

As a result of Norway's ratification of the Optional Protocol to the UN Convention against Torture in 2013, the Parliamentary Ombudsman was issued with a special mandate to prevent torture and other cruel, inhuman or degrading treatment or punishment.[2] The Parliamentary Ombudsman has established its own National Preventive Mechanism (NPM) in order to fulfil this mandate.

The NPM regularly visits locations 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.

The Parliamentary Ombudsman has right of access to all places of detention and the right to speak in private with persons who have been deprived of their liberty. The Parliamentary Ombudsman also has right of access to all necessary information that is relevant to the conditions for persons deprived of their liberty.

The risk of torture or ill-treatment occurring 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 complies with Norwegian law.

The Parliamentary Ombudsman's consideration of factors that constitute a risk of torture and ill-treatment is based on a wide range of sources. During its visits, the Ombudsman examines the conditions at the institution through its own observations, interviews and a review of documentation. Private interviews with those who are deprived of their liberty are a particularly important source of information, because they have first-hand knowledge of the conditions at the institution in question. They are in a particularly vulnerable situation and have a special need for protection. Interviews are also conducted with the staff, management and other relevant parties. Documentation is also obtained to elucidate the conditions at the institution, such as local guidelines, administrative decisions on the use of force, logs and health documentation.

After each visit, the Parliamentary Ombudsman writes a report describing its findings and recommendations for preventing torture and other cruel, inhuman or degrading treatment or punishment.

The reports are published on the Parliamentary Ombudsman's website and the institutions visited are given a deadline for informing the Ombudsman about their follow-up of the recommendations. These letters are also published.

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

[2] Sivilombudsmannsloven § 3 a

[3] See 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/30/6.

III. Summary

The Parliamentary Ombudsman has investigated the safeguarding of inmates in Norwegian prisons during the initial period following the outbreak of the COVID-19 pandemic. The investigation is based on information obtained concerning the period between 12 March to 14 May 2020.

The pandemic, particularly in the initial phase, created an extraordinary and complex situation. The measures that were implemented must be considered in light of the information available about the virus, as well as infection rates in society at the time when the measures were introduced. The lack of knowledge of how the virus was transmitted, its reproduction rate and concerns regarding capacity within the health services meant that far-reaching measures were introduced in society, including within the correctional services.

The purpose of this investigation is to contribute to a reduction in the risk of inhuman and degrading treatment in case of a new pandemic outbreak.

We have examined initiatives implemented by the relevant authorities and the consequences they have had for inmates in a sample of prisons. The study is based on information provided by the Ministry of Justice and Public Security, the Ministry of Health and Care Services, the Directorate for Correctional Service and the Directorate for Health, interviews with and information provided by prison management and the health services in a range of prisons, and a questionnaire distributed to a selection of inmates in four different prisons.

In the period after 12 March, the number of prison inmates was reduced via measures such as early release, suspended detention and transfer to home detention. The measures made it possible to avoid inmates having to share a cell; they also made it easier to maintain physical distancing and to safeguard hygiene requirements. It must be assumed that the implementation of these measures has been vital to the success of preventing major outbreaks of infection in the prisons.

Steps were taken to ensure that inmates received information about the COVID-19 pandemic. The Norwegian Correctional Service cooperated with voluntary agencies in drafting information material and in setting up information channels to assist next of kin.

During the period under review, several restrictions were placed on the daily lives of prisoners for the purpose of infection control. For example, activities and work sessions were discontinued or reduced considerably. Education was largely cancelled as it was not considered possible to adapt to digital education as was the case in schools outside of prisons. Visits were no longer permitted; however, arrangements were made to ensure that inmates could maintain contact with their lawyer without risking infection, for example by telephone or through a glass screen.

To reduce the adverse effects of these restrictions, several compensatory measures were introduced. Data tablets were introduced as an alternative for maintaining contact with friends and family who could no longer visit, and the call time for ordinary telephone calls were extended. Several prisons continued certain work and activity sessions that were consistent with infection control measures. Activities such as quizzes, extended TV channel access and indoor training were offered, and the study indicated that considerable creativity was applied in several prisons, regarding compensatory activities.

Despite the compensatory measures that were introduced, the impression from the study is that many inmates experienced spending considerably more time locked in their cells during a 24-hour period than they would under normal circumstances. Consequently, many inmates experienced serving during this time period as challenging. Several inmates also stated that they were never given the opportunity to make use of the compensatory measures.

One of the most comprehensive infection control measures was the introduction of routines for exclusion from the prison community (solitary confinement). The Parliamentary Ombudsman has considered whether this was in accordance with human rights standards. In particular, the Parliamentary Ombudsman has examined the introduction of routine exclusion of new inmates by the imposition of a 14-days quarantine. Even though the health authorities advised against it, mandatory quarantine was introduced by the Norwegian Correctional Service. The principal reason was the absence of the possibility to test new inmates for the Corona virus, concerns about reduced capacity within the prison health service and concerns for inmates particularly vulnerable to infection.

The risk of infection with the Corona virus must be balanced against the serious adverse effects of solitary confinement. The study shows that the complete exclusion of all new inmates for 14 days, without this being based on an individual assessment of the risk of infection, was not in accordance with the requirements for necessity and proportionality, as stipulated in human rights requirements.

The Parliamentary Ombudsman also found that women inmates had to undergo quarantine in a high security prison, regardless of whether they were to serve their sentence in a high or lower security facility. The reason given for this was that effective infection control measures could not be implemented in lower security facilities reserved for women.

We have also examined whether the pandemic has had negative consequences for inmates' access to health care. Findings indicate that inmates have experienced more difficulty in contacting health services during the COVID-19 pandemic than under normal circumstances, as the health services have prioritized emergency treatment. The Parliamentary Ombudsman is concerned that inmates in quarantine and medical isolation, who are unable to safeguard their own interests, have not received necessary follow-up from the prison health service. It also appears that adverse effects from isolation and psychological strain as a result of quarantine and isolation have not been given adequate attention.

The relevant authorities have indeed maintained an ongoing dialogue during the pandemic; however, the study suggests that the correctional services have found it challenging to adapt the health authorities' general infection control advice to prison circumstances. We found examples of comprehensive emergency infection control measures introduced in some municipalities, before central guidelines had been issued. Lack of clarity regarding statutory authority and absence of national guidelines properly adapted to a prison context increase the risk that radical measures are introduced locally without an adequate evaluation of proportionality.

The Supervisory Boards for the correctional services had not conducted physical inspections during the period under review; however, with the exception of one board, they had largely continued the processing of individual enquiries from inmates. Alternative methods of supervision had been considered to some degree but were not yet implemented. The extensive restrictions that were

imposed on inmates during the period indicate that it is vital to have supervisory bodies that can function effectively, also in extraordinary situations.

IV. Key Feedback to the Responsible Authorities

Based on the Parliamentary Ombudsman's evaluation of the safeguarding of inmates during the COVID-19 pandemic, we would like to highlight the following key points regarding the authorities' further work with COVID-19 and other similar situations in the future.

- **Comprehensive infection control measures, such as solitary confinement, must be based on a medical decision and be pursuant to legislation. Infection control measures must comply with human rights requirements of necessity and proportionality. There is a need for clarification of the legal framework for comprehensive infection control measures from municipal authorities in state institutions such as prisons.**

- **When the daily lives of inmates are severely restricted, as they have been during the COVID-19 pandemic, it is a prerequisite that inmates receive timely and updated information in a format and language they understand.**

- **On entering an institution, assessments of the inmate with prison health services should be carried out as quickly as possible, at the latest within 24 hours. The assessment interview should incorporate a mapping of potential infection.**

- **All inmates who are held in solitary confinement must be supervised daily by health services, regardless of the reason for their isolation. Inmates who are held in isolation due to indicated or suspected infection should be examined by health personnel at least twice per day.**

- **Inmates must be given the opportunity to take care of their personal hygiene and to maintain physical distancing. This is on the premise that the inmates have their own cell and adequate access to toilet and hand washing facilities.**

- **On introduction of extreme and general restrictions regarding contact with the outside world, such as prohibition of visits, it is decisive that the authorities make alternative arrangements that enable inmates to maintain contact with their closest family.**

- **The Ministry of Justice and Public Security, the Ministry of Health and Care Services, the Directorate for Correctional Service and the Directorate for Health should jointly ensure that infection control measures are adapted to the situation for inmates in prisons in accordance with human rights standards.**

- **The Ministry of Justice and Public Security should ensure that the Supervisory Boards are given the necessary authority (or competence) and capacity to maintain effective supervision adapted to the situation.**

1 Introduction

1.1 Risk Scenarios

The COVID-19 pandemic has presented particular challenges for prison inmates. It has been well documented that prison inmates generally have a higher morbidity rate than the rest of the population. This, and/or advanced age, may present a risk of severe course of illness from the coronavirus. Conditions in several prisons also involve a higher risk of infection, due to poor sanitary facilities and risk situations such as body searches and spending time in confined common areas.

The Parliamentary Ombudsman's Special Report to the Storting on Solitary Confinement and Lack of Human Contact in Norwegian Prisons documented extensive challenges related to prison healthcare services.[4] Even before the COVID-19 pandemic, prisons had problems with ensuring sufficient access to healthcare. The need for effective measures to protect inmates against infection put even greater pressure on prison healthcare services.

Persons deprived of their liberty are especially at risk of having their basic rights violated due to measures implemented to combat the pandemic. After several prison visits, the Parliamentary Ombudsman has documented considerable problems related to solitary confinement under normal operations. These problems were magnified during the pandemic. The combination of vulnerability among those who are deprived of their liberty, intrusive pandemic measures, and less monitoring by oversight bodies creates a challenging risk scenario.

1.2 The Pandemic and Human Rights

This report is based on information obtained in the period up to 14 May 2020. The investigation focuses on the infection control measures that were implemented by the authorities, and the consequences of the pandemic and these measures for the inmates in a selection of prisons. The purpose of the investigation is to contribute to a reduced risk of inhuman and degrading treatment associated with the management of a potential new pandemic outbreak.

The fundamental principle of the investigation is that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.[5] Torture and other cruel, inhuman or degrading treatment or punishment is strictly prohibited, and no derogation is to be permitted under any circumstances, including in emergency situations.[6]

The state has a duty to implement measures to protect the lives and health of prison inmates. This includes protection against dangerous infections.[7] All measures that involve potential infringements of the inmates' fundamental human rights, including infection control measures, must have a legal basis, and must be both necessary and proportionate, under the prevailing circumstances.

[4] Special report to the Storting on solitary confinement and lack of human contact in Norwegian Prisons, Doc. 4:3 (2018-2019).
[5] The UN International Covenant on Civil and Political Rights (ICCPR) Article 10, no.1.
[6] The Norwegian Constitution, Article 93, ECtHR Article 3, UN Convention against Torture Article 1, cf. 16, and ICCPR Article 7.
[7] See the ECtHR judgment on Câtâlin Eugen Micu v Romania, 5 January 2016, appeal no. 55104/13. See also the Mandela Rules, Rule 25, no. 2.

The pandemic created an extraordinary and ambiguous situation, especially during the initial phase. A subsequent examination of the management of the pandemic must take this into account. The acuteness of the pandemic, in addition to the available knowledge, had an impact on the assessment of measures that were deemed necessary and proportionate at that particular time. However, requirements for efficient infection control measures increase over time as information on the pandemic and its consequences becomes available.

Several international human rights organisations have given their recommendations to national governments on the management of COVID-19 and the treatment of individuals who have been deprived of their liberty. In this study, the Ombudsman has focused on the primary recommendations from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[8], the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) [9] (hereafter referred to as the "Committees", and the World Health Organization (WHO)[10].

[8] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "*Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic*", CPT/Inf (2020)13, 20 March 2020. Hereafter "CPT 2020".
[9] UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), 7 April 2020. "*Advice of the Subcommittee to States Parties and National Preventive Mechanisms relating to the Coronavirus Disease (COVID-19) pandemic (adopted on March 25th, 2020)*", CAT/OP/10. Hereafter "SPT 2020".
[10] World Health Organization (WHO) Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance", 15 March 2020. Hereafter "WHO 2020".

2 Implementation of the Investigation

In light of the COVID-19 pandemic, the Parliamentary Ombudsman decided on 11 March 2020 to suspend its physical inspections, to avoid exposing anyone to the risk of infection.

It has nevertheless been crucial for the Parliamentary Ombudsman to safeguard its mandate to prevent inhuman or degrading treatment, also under circumstances where the Ombudsman cannot conduct physical visits. The rapid implementation of intrusive measures has given us reason to obtain a broader idea of the consequences of these measures in a short period of time. This report is therefore a study of the conditions in a selection of Norwegian prisons during the first 10–12 weeks of the COVID-19 pandemic.

2.1 Sources and Methods

Our decision to temporarily suspend all visits made it necessary to use sources other than observations, private interviews and on-site reviews of documents. Key sources of data for this investigation include the following:

- Letter from the Ministry of Justice and Public Security and the Ministry of Health and Care Services, received on 20 April and 4 June, respectively.[11]
- Information obtained from the Directorate of Norwegian Correctional Service and the Norwegian Directorate of Health.
- Phone interviews with prison management in ten prisons, as well as written information and procedures from the prisons.[12]
- Written information and procedures obtained from prison healthcare services in eight prisons.[13]
- A survey distributed to a selection of inmates in four prisons.[14]
- Phone interviews with the chairs of the five Supervisory Boards for the Norwegian Correctional Service.
- Dialogue with non-profit organisations, such as "For Fangers Pårørende" (FFP – for families of prison inmates), the Red Cross and WayBack.
- Input from members of the Parliamentary Ombudsman's National Preventive Mechanism advisory Committee.

[11] These letters were in response to a letter sent by the Parliamentary Ombudsman, dated the 2nd and 3rd of April 2019.

[12] Bastøy and Ravneberget prisons (low security), Bergen prison, Bredtveit prison and detention centre, Bodø prison, Halden prison, Oslo prison, Romerike prison, Stavanger prison, and Trondheim prison. The interviews were conducted during weeks 18 and 19.

[13] Bastøy and Ravneberget prisons (low security), Bergen prison, Bredtveit prison and detention centre, Bodø prison, Oslo prison, Stavanger prison, and Trondheim prison. The information was received during weeks 18 and 19.

[14] Bredtveit prison and detention centre, Halden prison, Oslo prison, and Romerike prison. The studies were conducted during weeks 19 and 20. In total, 122 inmates responded to the survey, 32% female and 68% male. A sampling of inmates was selected from the various prisons. We received between 15 and 51 responses from each prison.

- Meeting with the Directorate of Norwegian Correctional Service and the Norwegian Institution for Human Rights (NIM) regarding Norwegian Correctional Service's management of the COVID-19 pandemic (14 May 2020).

We obtained data from prisons and prison healthcare services in all Norwegian Correctional Service regions, from both high-security and low-security prisons, including experiences from both male and female inmates.

2.2 Methodological Limitations and Implications for the Investigation

When the Parliamentary Ombudsman conducts visits as part of the mandate for prevention, we inspect the conditions of the institution we are visiting through observations, interviews and reviews of documents. During these visits, we always prioritise interviews with persons who have been deprived of their liberty. Obtaining information through surveys cannot replace these interviews; however, it does present an opportunity to obtain some information on the views of the inmates when physical visits are not possible.

The source base for this investigation limits the opportunity to establish reliable information on local practices in each prison. We will therefore not address specific recommendations to the institutions with which we have been in contact in connection with the investigation. Addressees for this report is primarily the Ministry of Justice and Public Security, the Ministry of Health and Care Services, the Directorate for Correctional Service and the Directorate for Health.

3 Measures to Prevent the Spread of Infection in Prison

After 12 March, multiple measures were implemented in Norwegian prisons due to the COVID-19 pandemic, which had an impact on both staff and inmates. In addition to the primary measures introduced by the relevant ministries, the prisons introduced new procedures and routines for cleaning and sanitation, and general operations. This chapter focuses on measures implemented by government authorities.

3.1 Temporary Suspension of Prison Visits

At a national crisis response meeting on 13 March 2020, the Directorate of Norwegian Correctional Service decided that inmates' right to visits in accordance with the Execution of Sentences Act, Section 31, would be temporarily suspended. The reason for this measure was to reduce the risk of spreading the infection during the pandemic. This was communicated to the correctional service regions in a letter dated 17 March.[15] Neither family nor friends of the inmates, or the Norwegian Correctional Service's cooperate partners would have access to the prisons, and lawyers were encouraged to have consultations with their clients via phone or videoconference.

Pursuant to the Execution of Sentences Act, Section 31, first paragraph, inmates generally have the right to receive visitors. The Norwegian Correctional Service can deny visits in accordance with the fourth paragraph "if there is reason to assume that the visit will be misused for planning or conducting a criminal act, evasion of execution of the sentence, or acts that may disturb peace, order and security". These exemptions are intended to be exhaustive.[16] Exemptions can only be made if there are individual circumstances involving the inmate that would indicate a need to deny visits. A pandemic does not appear to be a valid reason. The suspension of visits therefore appears to have been implemented without a legal basis.

In a letter to the Ombudsman, the Directorate of Norwegian Correctional Service states that the "exemption provision in the fourth paragraph was not intended for a situation such as that caused by COVID-19". The Directorate also states that:

> "The purpose of the exemption provision is to deny visits if the implementation of these involve a risk that they would disturb peace, order and security. At this point during the pandemic, it was unclear as to the seriousness of the disease for certain groups of people, and of course the extent of the risk of infection at the time. Suspending the opportunity to receive visits was considered absolutely necessary for preventing the introduction and spread of infection in the prisons. Permission to suspend opportunities to receive visits must therefore also be considered out of pure necessity in such an emergency."[17]

The Ombudsman has noted these considerations but points out that it is unfortunate that such extensive restrictions of inmates' fundamental rights were implemented without legal basis.

[15] Directorate of Norwegian Correctional Service, letter of 17 March 2020 to the Correctional Service regions.
[16] See Ot.prp. no. 5 (2000-2001), Act relating to the execution of sentences, etc. (Execution of Sentences Act), special notes for Section 31, page 162 and Directorate of Norwegian Correctional Service's guidelines for the Execution of Sentences Act, Section 31, Ch. 31.6, updated 10 October 2017.
[17] Directorate of Norwegian Correctional Service, letter of 9 June 2020, reply to follow-up questions by the Parliamentary Ombudsman regarding implemented temporary measures during the COVID-19 pandemic.

However, we realise that the pandemic has created an extraordinary situation, and that there has been little time to assess the impact of necessary changes.

The permission to deny visits is regulated by the provisions of 27 March, pursuant to the Corona Act.[18] These regulations were later replaced by temporary amendments to the Execution of Sentences Act, which were determined by the Storting on 26 May.[19] According to these, visits can only be denied if an objective assessment has determined a risk of infection or health hazard, or if sick leave among correctional staff makes it exceptionally difficult to carry out the visit. The Norwegian Correctional Service shall facilitate contact between inmates and their "families or other persons who are significant for the inmate's welfare by the use of remote communication". The Norwegian Correctional Service has facilitated this by purchasing tablets and extending the ordinary call time for inmates (see Ch. 4.2 *Tablets and Extended Phone Time as a Compensatory Measure*). On 18 May, the Directorate of Norwegian Correctional Service issued new guidelines to the prisons regarding visits.[20] These guidelines, based on considerations for infection control, determine how the visits should be conducted and who may visit.

3.2 Personnel and Staffing

During March and April, measures were implemented to reduce the number of inmates in the prisons. These measures included early release, interrupted sentences, and transfer to home detention. There were around 200 inmates in double or multi-occupant cells at the time these measures were introduced. In a letter of 13 March, the Norwegian Correctional Service stated that cells would no longer be shared, and prisons were successfully able to provide single cells for all inmates by 8 April. By 29 April, the Directorate of Norwegian Correctional Service had granted 326 early releases and 121 interrupted sentences. This reduced the prison population from 3189 inmates to 2591 between 12 March and 5 May.[21]

These measures are consistent with recommendations by CPT and SPT, and were essential for reducing the risk of infection in the prisons.[22] This was also essential for alleviating the staffing problems caused by quarantine rules and other extensive infection control measures implemented at the same time, which had an impact on the number of available staff members.

At the beginning of the pandemic outbreak, there was a high rate of absences among staff in correctional services, due to quarantine after foreign travel, primarily associated with the winter holiday week. Nevertheless, all the prison governors we interviewed stated that staffing during the period just after the COVID-19 measures were introduced had stabilised and was now adequate. Several mentioned that sick leave among staff members had been lower than before the measures were implemented. Despite limited operations due to infection control measures, the prison

[18] Interim regulations, 27 March 2020 no. 461 regarding execution of sentences to alleviate the consequences of the COVID-19 outbreak, Section 1.
[19] Interim Act of 26 May 2020 related to changes in the Execution of Sentences Act (measures to alleviate the negative consequences of COVID-19), see Section 45a regarding prison visits. The Act will be repealed on 1 November 2020.
[20] Directorate of Norwegian Correctional Service, letter of 18 May to the correctional service regions regarding inmates' right to receive visitors.
[21] Information given at a meeting between the Directorate of Norwegian Correctional Service, Norwegian National Institute of Human Rights, and the Parliamentary Ombudsman on 14 May 2020.
[22] SPT, 2020, Article 9 b), d), and f); CPT, 2020, point 5).

governors we spoke with believed that the prisons had managed to perform their most important duties.

Reductions in the number of inmates will increase capacity to protect the remaining prison population. The Parliamentary Ombudsman also received information regarding urgent early releases, where certain inmates were released without the necessary assistance services or housing. This has major implications for the security and welfare of individuals, and is also unfortunate from a societal perspective, as it could increase the risk of infection in the general population. Based on WHO's recommendations, inmates who have been quarantined due to suspicion of infection should only be released once prison healthcare services have ascertained that the inmate is released to a place where quarantine can continue.[23] The Council of Europe's working group on criminal policies states that released inmates must be given assistance in finding a suitable place of residence, and must be equipped with the means to manage their daily lives immediately after release.[24]

As an additional measure, all summons of inmates to low security prisons and transitional housing were suspended.[25] Summons to high security prisons were sent if these were considered necessary for security reasons. Remands continued as before, however prisons were chosen based on considerations for infection control. For instance, remanded inmates were not brought to Oslo prison for a period due to its notably poor sanitary conditions. Inmates were instead distributed across other prisons in the Region East of the Correctional Services.[26]

3.3 Opportunities for Maintaining Personal Hygiene

The opportunity to maintain personal hygiene is a fundamental right for prison inmates. The SPT recommends that hygiene equipment and utensils are available for inmates, to enable them to carry out the same infection control measures and personal hygiene routines that have been recommended for the rest of the population.[27] According to the prison governors we spoke with, all prison inmates had access to their own sinks just after the pandemic measures were introduced. However, inmates in several prisons had to share a shower and toilet. This is consistent with earlier findings by the Ombudsman on prison visits, where we noted that building conditions made it difficult to ensure the sanitary needs of the inmates. Several of the respondents in the survey expressed concerns about not being able to shower frequently enough, and that the shared bathrooms were infrequently cleaned during this period.

The Parliamentary Ombudsman has previously noted problems involving inmates that did not have access to toilets in their cells.[28] It may take time for inmates to be let out of their cells to use the toilet. As a consequence, inmates may have to urinate in the sink or in a bucket toilet. An arrangement of this sort will make it difficult to ensure proper personal hygiene.

[23] WHO, 2020. page 28.
[24] Council of Europe, COVID-19 related Statement by the Members of the Council for Penological Co-operation Working Group, (PC-CP WG) 17. April 2020.
[25] Determined by the Norwegian Correctional Service in a letter dated 13 March 2020 (ref. 202004037-35). In a letter dated 8 May 2020 (ref. 202004037-530), a few restrictions were eased.
[26] Romerike, Halden, Kongsvinger and Eidsberg prisons.
[27] SPT, 2020. Article 9 j).
[28] See e.g., the Parliamentary Ombudsman's thematic report *Women in prison* (2016) and report on the visit to Ullersmo prison (2017).

3.4 COVID-19 Information for Inmates

CPT and SPT emphasise that those who are deprived of their liberty must receive reliable and updated information in a language they understand concerning the measures imposed on them, the duration of these, and the justification for them.[29] In its interim guidance, the World Health Organisation (WHO) Europe notes the importance of establishing good information flows and routines for informing inmates, to minimise the risk of inaccurate information, rumours and uncertainty.[30]

> *"The staff has been bewildered. We received different information from each staff member. They told us 'that's just how it is'. It seems as though they never had a meeting for the entire staff where they made any decisions or figured out what sort of information they could actually give us. When we received the pamphlet, it felt like it was 'too late'. They never seemed to be coordinated, and the entire time they just said that it was prison management that made the decisions. Prison management took a long time to finally decide what should be done."*
>
> Inmate

Proper information is a right as well as a security measure. It is important for limiting the risk of conflicts and creating trust in, and agreement on measures. Those who are deprived of their liberty and do not speak Norwegian, must receive information in a language they understand. Information should be specially adapted and provided for minors and people who require this for other reasons.

The Directorate of Norwegian Correctional Service has prepared a pamphlet for inmates on COVID-19. All prisons we were in contact with had distributed these pamphlets to their inmates after its publication on 17 April 2020. At the time, the pamphlet was available only in Norwegian, English and Russian, but was later translated to several other languages.[31] This information pamphlet was completed somewhat late, and the lack of available information in several languages earlier may have caused greater confusion for some of the inmates regarding the justification for the imposed measures.

Results of the survey indicates that many of the inmates did not feel they had received adequate information about the situation and the reasons for the measures. For instance, 24 percent of the respondents in the survey replied that they did not know whether they were in the high-risk group, and in danger of becoming seriously ill if they developed COVID-19. Although a large majority (82 percent) of the inmates who replied to the survey stated that they had received information about COVID-19 from the prison, only 44 percent were satisfied with the information they were given. Several noted that it took a long time to receive the information, that the information was inconsistent, or that there was too little information on the practical implications for the inmates.

We found one example of good practice in a routine pamphlet in one of the prisons that emphasised the importance of providing information on COVID-19 to the inmates "individually". This was done to ensure that everyone had received and understood the information.

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[29] SPT, 2020. Article 9 q) and CPT, 2020. Point 4).
[30] WHO 2020, page 15.
[31] Norwegian Correctional Service, 2020. *Coronavirus: Measures that apply in prison.* Available at: https://www.kriminalomsorgen.no/tiltak-som-gjelder-innsatte.525465.no.html [visited 22 April].

The media has played a significant role for inmates and across society in terms of information about COVID-19 and implemented infection control measures. Many prison governors referred to the media as an important source of information for inmates. Nevertheless, it is essential that the prisons themselves take responsibility for providing inmates with information that is adapted to the prison context. For instance, updated infection control guidelines from the Norwegian Institute of Public health (FHI) must be continually available to all inmates.

The Directorate of Norwegian Correctional Service established a separate hotline for family members on 15 April, and updated their websites at an early stage, with information on the implications of the COVID-19 pandemic. Non-profit organisations, such as "For Fangers Pårørende" (For Families of Prison Inmates), the Red Cross and WayBack, quickly became involved in the Norwegian Correctional Service's work. These organisations assisted in communication with family members and took the initiative to create the COVID-19 pamphlets for inmates. The fact that the Directorate of Norwegian Correctional Service made use of non-profit organisations in the development of information material for inmates is constructive. It is also positive that the non-profit organisations have become involved in the efforts to devise compensatory measures for inmates, partly through regular meetings. For instance, the Directorate cooperated with RøverRadion on the communication of information.[32]

[32] Røverradion is a radio programme run by inmates in Norwegian prisons.

4 Measures to Compensate for Lack of Activity and Human Contact

When the authorities imposed restrictions to prevent and limit the spread of COVID-19 on 12 March 2020, life inside Norwegian prisons was drastically altered. Work programmes and activities were either suspended or significantly reduced. Educational programmes for inmates were mainly discontinued because it was not considered feasible to use digital instruction, which was done by other schools in Norway. Visits from family members and others were suspended, with the exception of representatives from prosecuting authorities, the police and lawyers, as well as mentors involved in efforts to prevent radicalisation and violent extremism in the prisons.[33] All furloughs and escorted leaves were halted.[34] Day release from prison and leave for transitions to housing were also put on hold.[35] This chapter takes a closer look at the Norwegian Correctional Service's measures to compensate for restrictions imposed due to COVID-19.

4.1 The Importance of Activity and Human Contact

The fundamental rights of those who have been deprived of their liberty must always be protected, even in extraordinary circumstances, such as the outbreak of a pandemic. The European Committee for the Prevention of Torture (CPT) recommended that inmates in a normal situation should at least have the opportunity to spend eight hours outside the cell each day. Several human rights organisations have declared that inmates must have the right to fresh air every day, and to engage in meaningful and varied activities.[36] Although a pandemic legitimises some restrictions, these must never be extended beyond what is necessary and proportionate. For instance, CPT recommends that inmates must have the opportunity to spend time outdoors for at least one hour each day, also during the pandemic.[37]

The Parliamentary Ombudsman has previously noted that solitary confinement and lack of human contact can cause serious harm.[38] Prison inmates compose a group that is more vulnerable to mental health issues than the rest of the population. Reduced activities and absence of human contact with a community, family and friends may therefore have adverse effects.

The European Convention on Human Rights (ECHR), Article 8, protects the right to live in a space of socialisation.[39] Additional restrictions for people who have already been deprived of their liberty

[33] The Norwegian Correctional Service, 2020. *Coronavirus: Are you a family member of someone who is in prison?* Available at: https://www.kriminalomsorgen.no/er-du-paaroerende-til-noen-i-fengsel.525467.no.html (Website, read 28 May 2020).
[34] On 30 April, the Norwegian Correctional Service opened for necessary escorted leaves and social leaves for minor inmates. From 8 May, it opened for social leave for inmates at lower security levels and leave for transitions to housing. On the same date, it opened for day release from transitional housing.
[35] Permission to participate in work, educational instruction, programmes or other measures outside the prison, cf. the Execution of Sentences Act, Section 20.
[36] CPT, 2nd General Report, 1992, CPT/Inf (1992) 3, paragraph 47.
[37] CPT, 2020, point 7).
[38] Special Report to the Storting on Solitary Confinement and Lack of Human Contact in Norwegian Prisons, Document 4:3 (2018/19). Hereafter "Special report, Document 4:3 (2018/19)"
[39] See Special report, Document 4:3 (2018/19), page 36, footnote 112; European Prison Rules, Rule 25 no. 1 and 2 and the Mandela Rules, Rules 4 and 5.

must be strictly examined. Intrusions on inmates' opportunities for socialisation must have an adequate basis in national laws and must be both necessary and proportionate.[40]

Human contact is necessary for good mental health, and both the scope and quality of contact is important. Limiting a person's opportunity for social contact with other people is a considerable intrusion on personal integrity and autonomy.[41] Both SPT and CPT have emphasised that the opportunity for contact with family and friends is a fundamental right under the pandemic as well, and that compensating measures should be facilitated if restrictions of this type are imposed.[42] When introducing such extensive and general restrictions on contact with the outside world, such as the suspension of visits, the authorities have a duty to facilitate continued contact between inmates and their families and friends.[43]

4.2 Tablets and Extended Phone Time as a Compensatory Measure

One of the compensatory measures for suspended physical visits was to provide the inmates with access to tablets/iPads.[44] These tablets were also used by some of the prisons for educational instruction, as well as consultations with healthcare services.

> *"... earlier, we had to use computers for Skype calls. Now we can offer more calls with families. They use the iPads for remote teaching too, with the opportunity for several calls at the same time. This has increased our services. Earlier, each inmate had one hour of Skype time per month, plus some extra time now and then. Now they can all use Skype up to two hours a week."*
>
> Prison manager

The Directorate of Norwegian Correctional Service stated that 700 tablets had been purchased and that more than 10,000 calls had been conducted by mid-May.[45] Yet several of the respondents in the survey, 30 percent, stated that they had not been given the chance to use a tablet.

Although certain prison governors mentioned some practical problems at first, prison management was generally positive toward the use of tablets. For instance, two prisons mentioned that more visits had been carried out simultaneously than before, since they did not have to rely on available capacity in the visitation rooms. One prison provided additional phone time as a compensatory measure for inmates who had trouble using the tablets, partly because elderly family members found it difficult to use. Some of the prison governors we spoke with, and inmates who responded to our

[40] European Convention on Human Rights, Articles 8-10; European Prison Rules, Rule 4; Special report, Document 4:3 (2018/19), p. 36.
[41] Special report, Document 4:3 (2018/19), p. 24.
[42] SPT, 2020, Article 9 k); CPT, 2020, point 7).
[43] See e.g. the ECtHR's judgment in the case of *Messina mot Italia* (no. 2), 28 September 2000, appeal no. 25498/94, paragraph 61, and in Vintman v Ukraine, 23 October 2014, appeal no. 28403/05, paragraph 78. Similarly, see the Norwegian National Institution for Human Rights (NIM), the Hearing on the proposal for interim regulations on sentencing in accordance with the Corona Act, to alleviate consequences of the outbreak of COVID-19, etc., 30 March 2020, pages 3-4.
[44] Interim law on 26 May 2020 related to amendments in the Execution of Sentences Act (measures to alleviate negative consequences of COVID-19), see Section 45a regarding prison visits.
[45] Information given at a meeting between Norwegian Correctional Service, NIM and the Parliamentary Ombudsman, 14 May 2020.

survey, noted that the offer of contact by tablet worked well for those who had family living far away, and who usually did not get many visits. Many inmates also enjoyed getting a better idea of their families' daily lives through the screen, such as through watching children play.

Feedback from the inmates who responded to our survey typically mentioned that contact with family members via tablet was "better than nothing", and "a positive measure, but not the same as a normal visit". At the same time, several respondents noted that it had taken several weeks to establish the measure, and the technical solutions did not always function adequately in some prisons.

The use of tablets for contact with the outside world is an especially important measure for inmates who have families living far away or outside Norway. The survey also documented that several inmates had been denied contact with their families because a visitation permit was required, similar to that required for physical prison visits. The permit process is intended to clear visitors before they are allowed to enter the prison. This means that inmates with families living abroad, or families who cannot be cleared for visits for other reasons were unable to use tablets for contact with their families. Several inmates mentioned problems with approval and long case processing time, which meant that they were not able to see their families by tablet. We were also informed of a special case where the office providing criminal record certificates had been closed due to COVID-19. The inmate was therefore unable to have their family approved for a video visit.

Contact with family and friends via video chat is an important compensatory measure, and one that the Parliamentary Ombudsman has repeatedly called for.[46] It is positive that the prisons have now managed to provide a solution for virtual visits, and the arrangement with video chats via tablets should be a supplement to ordinary visitations from now on. At the same time, it is difficult to understand why the same requirements for approving family members apply to both video visits with inmates and physical visits in prison.

Another compensatory measure implemented was to extend inmates' phone time from 20 to 40 minutes per week. Domestic calls were free for inmates, but 20 minutes of international phone calls were also covered by the Norwegian Correctional Service.[47] The prisons stated that this was practice, however, in the survey, 12 percent of the respondents stated that their phone time had been limited after COVID-19 measures were introduced. Only 18 percent of the respondents replied that they had been offered additional phone time, and 10 percent answered, "don't know" to the question of whether they had been offered more phone time.

The above-mentioned results indicate that the Norwegian Correctional Service has implemented important measures to compensate for suspended visits. At the same time, our study indicates that a larger share of inmates has not received sufficient compensation for the lack of opportunity to receive visits from families and friends in person, for various reasons. This is concerning and not entirely consistent with standards for human rights (see Ch. 4.1 *The Importance of Activity and Human Contact*).

[46] See the Parliamentary Ombudsman's reports, incl. *Women in prison* (2016), p. 50.
[47] Information given at a meeting between the Norwegian Correctional Service, the Norwegian National Human Rights Institution and the Parliamentary Ombudsman on 14 May 2020.

4.3 Activities

All prison governors we spoke with acknowledged that activity services for inmates had been reduced due to the COVID-19 measures, and that the inmates had fewer opportunities for socialisation. Yet most prison governors denied that inmates were necessarily more isolated than before the COVID-19 pandemic. When asked whether they believed that compensatory measures were sufficient in preventing a sense of isolation, several of the prison governors answered yes. However, they pointed out that this depended on the type of unit in which the inmate was placed. Intrusions were more extensive when restrictions were implemented in low security prisons than in high security prisons. In the latter, inmates were already experiencing many of the same restrictions.[48]

Several prisons maintained some work and activity services that complied with infection control measures, such as inmate responsibilities for cleaning tasks ("hall boy" and "hall girl"), and inmates who worked in laundry facilities. Some prisons also maintained kitchen duty. One prison doubled the number of inmates working with cleaning, thereby giving additional inmates activities they would normally not do. There were, however, practical challenges involved in offering work to inmates in several prisons.

> *"The way things are now; it works really well. [We have] fewer inmates than normal, so we have more time to follow up."*
>
> Prison manager

> *"[...] But it's so boring – it's not so much the isolation, but it's incredibly boring. You get cabin fever, especially in an open unit. They just sit there. That's not good."*
>
> Prison manager

Many of the inmates who responded to the survey commented on restrictions imposed on mealtimes. In many places, shared mealtimes are an important arena for socialisation and a sense of community. We also found several examples of prisons that maintained their practice of shared mealtimes among the inmates. They managed this by organising smaller groups within the units (cohorts), who were "viewed as a household", combined with focus on ensuring physical distance between the inmates that were not in the same cohort. In one prison, activities such as outdoor time and exercise were carried out in cohort groups, and one low security prison removed chairs in the

> *"I don't work, and there's not much to do inside the cell. We don't socialise much."*
>
> Inmate

> *"We have kept our work activities, but we can only offer this to half the number of inmates who would normally receive them. So many of the inmates are just sitting and waiting.*
>
> Prison manager

[48] It must be noted that activity services described here did not apply to all inmates, and that there were variations between units and between prisons.

dining hall to ensure greater distance between the inmates. Certain low security prisons closed their dining halls and found alternative solutions, by bringing ingredients to the inmates so that they could prepare their own meals in their living units.

All prisons stated that they had more restrictions at the beginning of the pandemic, and many of the prison governors said they had relaxed these measures over time, as they learned how to manage the infection control measures. Several prisons were eventually able to restructure, to enable some work activities to continue. A few prisons resumed activities such as pottery, textile work and woodworking. One of the prisons resumed greenhouse maintenance. Prison governors also stated that they had retained work groups that could be engaged in outdoor areas, with maintenance tasks such as sweeping, gardening and tidying. One prison continued its workshop operations, while another prison began manufacturing personal protective equipment such as visors and jackets, where some of the inmates participated in this work.

> *"The officers arranged different games, contests, outdoor exercises, bingo, quizzes, etc. Very pleased!"*
>
> Inmate

The prisons we contacted appeared to display some creativity in their efforts to offer hobbies to compensate for restrictions in activities. Many of the prisons had involved the inmates in choosing games and activities. Several of the inmates responding to the survey mentioned creative solutions for activities offered in the prisons, which were appreciated.

> *"There was a lot of alone time and long days, since the work activities were stopped. There was a sense of isolation since the visits were cancelled."*
>
> Inmate

> *"My biggest problem is the changes in social contact. We were allowed to socialise twice a day to compensate for the loss of visits and furloughs. Shortly after, this was reduced to one hour a day at different times. To top it off, we don't even have the "right" as they say, to social contact on weekends. There are two officers […] I would like to praise for at least arranging some time for socialisation during weekends."*
>
> Inmate

More than half of the inmates who participated in the survey answered "yes" to the question of whether activities during the week had been limited due to prison measures for the pandemic. Half of the inmate respondents added that they were not offered extra activities.

4.4 Physical Activity

Exercise rooms were closed at the beginning of the pandemic due to the risk of infection. Over time, several prisons found alternative solutions to compensate for closed exercise rooms. Exercise equipment such as mats, rowing machines, spinning bikes and treadmills were purchased. In some prisons, the gyms could be used by a limited number of inmates at a time. One prison prepared a home workout video for use in the cells, and another prison distributed DVDs with yoga programmes. In another prison, a physiotherapist developed individual exercise programmes for the inmates. Several prisons moved their exercise equipment outdoors.

> *"We closed our gym for a day, but then the inmates started lifting each other in the exercise yard, which likely did not comply with infection control measures. So, we moved the exercise equipment outdoors. Inmates have hand sanitisers and paper towels and clean the equipment after use. Our recreational leader now takes spinning bikes out into the exercise yard, and they have group sessions outdoors. Exercise time in the gym has been reduced. They can exercise with "their families" [cohorts]. We also have table tennis. There are more than 100 exercise mats for the cells – with instructions on how to clean them, etc. And the inmates can also go jogging."*
>
> Prison manager

4.5 Educational Services

All educational instruction and school programmes for Norwegian Correctional Service were cancelled during the pandemic outbreak, with the exception of inmates at youth units, who were offered remote instruction. A few prisons reported that they were able to resume some of the educational programmes. One prison stated that they permitted a few inmates who were working toward their apprenticeship certificates to use the workshops. Other reported that they prioritised inmates who were taking exams. Inmates responding to the survey also confirmed that educational programmes had been reduced due to the COVID-19 measures. Tablets were subsequently used for instruction in at least two of the prisons, and we found that some prisons facilitated opportunities for inmates to take exams or get their apprenticeship certificates.

4.6 Other Services

Several prisons have offered inmates some extended TV services as a compensating measure, and many more have been renting DVDs from the library than before. A few of the prison governors we spoke with mentioned solutions where inmates could borrow books and DVDs even if the libraries were closed for ordinary visits. Some prisons also reported that they had used more money on food because they viewed a variety of good food as an important compensatory measure.

4.7 Time Out of Cell

Despite a gradual relaxation of restrictions in several places, a clear majority of inmate respondents to the survey stated that they spent more time locked in their cells during a 24-hour period due to the COVID-19 measures than they normally would. A majority stated that this was related to cancelled schools and activities, as well as changes in mealtime routines and to routines in general. At one prison, some of the inmates viewed the increased cell time as a result of changes in the staff rotation shifts and staff breaks.

Daily statistics performed by the Directorate of Norwegian Correctional Service on 29 April 2020, showed that 757 inmates out of 2364 had been registered with less than 8 hours of social contact on that particular day.[49] Based on the total number of inmates included in the statistics, this indicated a slight rise from the previous calculation performed in 2019, from approx. 30 percent to approx. 32 percent.[50] These figures must be viewed with caution, as they are a result of manual reports from each prison. Methodological weaknesses, such as few statistics measurements (three per year), may involve random variations, which means that these figures do not represent a complete picture of the scope of social contact in Norwegian prisons.

[49] The Norwegian Correctional Service, Region South, letter to the Directorate of Norwegian Correctional Service of 29 May 2020, Assessment of the absence of social contact – results from daily statistics measurements, 29/04/2020.

[50] According to information obtained from the Norwegian Correctional Service, the distribution of inmates with less than eight hours outside their cells on the dates in question in 2019 was as follows: 1st measurement, 29 April – 916 out of 2720 inmates (33.6 percent); 2nd measurement, 15 August – 928 out of 2775 inmates (33.4 percent) and 3rd measurement, 28 November, 875 out of 2901 inmates (30.1 percent).

5 The Use of Solitary Confinement as an Infection Control Measure

One of the most intrusive measures for preventing infection from spreading through the prisons has been to implement routines for exclusion of inmates from the community (solitary confinement). In this chapter, we will discuss whether solitary confinement as an infection control measure is consistent with human rights standards. The implementation of routine solitary confinement of new, asymptomatic inmates raises particular questions.[51]

5.1 Infection Control Measures Must Be Legal, Necessary and Proportionate

All measures that restrict inmates' fundamental rights must have a legal basis. They must also be necessary and proportionate. Both CPT and SPT state that this also applies to infection control measures implemented during the pandemic.[52]

Infection control measures such as quarantine and medical isolation may be necessary to protect the population against infection. At the same time, such measures will intrude on individuals' freedom and right to private life. These measures may be especially challenging in prison, since inmates have already been deprived of their liberty.

Infection control measures implemented by confining inmates to their cells alone are especially intrusive and may have a detrimental effect on inmates' health. Many prison inmates struggle with mental health issues that make them especially vulnerable to isolation. Considerations for infection control must therefore be balanced against other considerations, such as the risk of detrimental effects of solitary confinement.

5.2 Introduction of Infection Control Measures That Amount to Solitary Confinement

From 13 March, during the early phase of the pandemic outbreak, arrangements were made for quarantine in several of the prisons to reduce infection. These quarantine measures, which amounted to solitary confinement in several places, were implemented locally by decision of a local prison or Chief Medical Officer in each municipality. We were informed that a Chief Medical Officer in one municipality had determined that all new inmates should be placed in quarantine for a minimum of 14 days.[53] This quarantine would involve no contact between new inmates and existing prison inmates. The Infectious Disease Control Act, Section 4-1, first paragraph, letter d, permits municipalities to "confine persons in geographically restricted areas or impose other restrictions in their freedom of movement for up to seven days at a time". This law does not permit municipalities to impose solitary confinement up to 14 days at a time. In light of the preparatory work on the law, it is unclear whether, or to what extent, this decision permits *quarantine*, without evidence of infection or suspicion of infection.[54] Such measures must, under any circumstances, satisfy the basic

[51] Circular from the Norwegian Correctional Service 6/2020 – Implementation of quarantine and isolation due to the coronavirus in correctional services – valid from 01/04/2020, 3 April 2020.
[52] See CPT 2020, point 4 and SPT 2020, paragraph 9 g).
[53] Note regarding preparedness for corona infection at Ringerike municipality's healthcare services for inmates of Ringerike prison, 19 March 2020.
[54] See Ot.prp. no. 91 (1992-1993), page 144, special notes for Section 4-1 of the Act, where the first paragraph, letter d "permits decisions on confining infected persons or persons with suspected infection to a smaller,

requirements of the Infectious Disease Control Act, Section 1-5 (also see Ch. 7 *Cooperation Between Judicial and Health Authorities*).[55]

At a national crisis response meeting at the Directorate of Norwegian Correctional Service on 23 March, a decision was made to introduce rules for the implementation of quarantine and medical isolation for all prisons in Norway. This was communicated to the prisons in letters dated 2 April and 3 April.[56] The Directorate referred to the Norwegian Correctional Service's follow-up of health authority recommendations regarding quarantine and medical isolation, and that this would have to be done by excluding inmates from the community of other inmates.

In addition to inmates who would have been placed in quarantine even if they had not been in prison, the target group for the quarantine measures included all new inmates.[57] The Circular did not highlight the presence of symptoms among the new inmates. In a letter to the prison regions, the measure of quarantine for all new inmates was justified in the following manner:

> "As a result of the continued development of the corona outbreak situation, the Norwegian Correctional Service has determined, after a crisis response meeting, that exclusion in accordance with the Infectious Disease Control Act, Section 37, shall be enforced with immediate effect, also for new inmates. This means that all inmates in high security prisons shall immediately be excluded from the prison community for a period of 14 days. This measure shall also apply to inmates in remand."[58]

The Directorate determined that the quarantine measure would generally be carried out as a full exclusion from the prison community for 14 days. Full exclusion means that the inmates would have no social contact with other inmates during the day (full solitary confinement).[59]

In exceptional cases, inmates could be quarantined with partial exclusion, where they would have some contact with other quarantined inmates. This could apply to inmates that were asymptomatic for respiratory infection, in cases where social contact was unproblematic in terms of infection control and security, or when inmates were deemed capable of maintaining a social distance of two metres. This partial social contact would normally occur outdoors but could take place indoors if the

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geographically restricted area". It also states that it is not permitted to "use coercive methods for implementing a measure under letter d". In contrast, see the Ministry of Health and Care Services Circular I-4/2020, 29 Mars 2020, Guidelines for municipalities on local quarantine rules or travel entry restrictions in connection with the COVID-19 outbreak - Measures in accordance with the Infectious Disease Control Act, Section 4-1, letter d.

[55] According to the Infectious Disease Control Act, Section 1-5, first paragraph, infection control measures must "be based on a clear, professional medical justification, and must be necessary for infection control purposes, and appear to be an expedient solution after a comprehensive assessment". According to the second paragraph, coercive measures "may not be used when, according to the nature and circumstances of the case, it would be a disproportionate intrusion".

[56] See the Directorate of Norwegian Correctional Service, New clarifications regarding the exclusion of inmates, letter of 2 April 2020, and the Norwegian Correctional Service Circular 6/2020 – Implementation of quarantine and isolation in connection with the coronavirus in correctional services – valid from 01/04/2020, 3 April 2020.

[57] E.g. due to foreign travel, close contact with infected persons, or because they are in a household with infected persons.

[58] The Directorate of Norwegian Correctional Service, New clarifications regarding the exclusion of inmates, letter of 2 April 2020.

[59] The Directorate of Norwegian Correctional Service, Exclusion from the community as a preventive measure, Guidelines of the Execution of Sentences Act, Section 37, paragraph 37.4, revised 2 April 2019.

staffing situation and building design was considered unproblematic. Social contact with other inmates could only take place with other quarantined inmates who were also asymptomatic.

In addition to quarantine, rules were also introduced on the use of medical isolation. The target group for this type of measure included inmates with confirmed infections, inmates with symptoms of infection, or inmates that were assumed to be infected, based on a professional health assessment. The Directorate determined that medical isolation should be carried out as a full exclusion from the prison community in accordance with the Execution of Sentences Act, Section 37, first paragraph. Inmates who were placed in medical isolation would not have access to the prison community, and personal protective equipment would be required for all contact between these inmates and staff members.

5.3 Scope of Isolation due to COVID-19

As of 19 May 2020, the Norwegian Correctional Service identified coronavirus infection in ten staff members of correctional services, six inmates (all at Bastøy prison), and three convicted persons on probation (altogether 19 people).[60] Norwegian Correctional Service has therefore generally managed to prevent the infection from entering the prisons. This is very positive.

At the same time, estimates by the Directorate of Norwegian Correctional Service indicate that a large number of inmates during the same period were placed in a highly intrusive and lengthy solitary confinement as a quarantine measure. An overview of the number of inmates who were fully excluded from the prison community as of 30 April 2020, showed that 100 out of 141 ongoing decisions for exclusions (70.9 percent) were due to COVID-19.[61] One of the statistics measurements performed by the Norwegian Correctional Service on 29 April 2020, point in the same direction.[62] This showed that 114 inmates were fully excluded from the prison community on this particular day, which means that they had no social contact at all with others. This was the highest number of exclusions identified since the second tertiary of 2015. On the same day, another 50 inmates had less than two hours of social contact with others in the prison community.

Norwegian Correctional Service's statistics do not distinguish between inmates that have been confined due to suspected infection (e.g. fever or respiratory symptoms) or as a routine quarantine measure for newly arrived inmates. The Ombudsman's findings indicate that quarantine measures aimed at new asymptomatic inmates were clearly the most frequent, and that these measures were implemented as solitary confinement with less than two hours outside the cell each day. Among the 50 respondents to our survey who stated that they had been in quarantine or isolation for infection control purposes, about 60 percent answered that they had been placed in quarantine because of recent arrival to prison, or because they had returned from an interruption in their sentences, or were transferred from another prison. About 30 percent stated that they had been placed in quarantine or isolation for other reasons, such as high fever or other symptoms, or due to contact

[60] The Norwegian Correctional Service's overview of coronavirus measures, see https://www.kriminalomsorgen.no/korona-tiltak-i-kriminalomsorgen.6293259-237613.html (opened 26 May 2020).
[61] The Directorate of Norwegian Correctional Service, Statistics on isolation in Norwegian Correctional Service April 2020.
[62] The Norwegian Correctional Service, Region South, letter to the Directorate of Norwegian Correctional Service of 29 May 2020. Assessment of lack of social community – results from daily statistics, 29/04/2020.

with a person with confirmed infection, or because they chose it themselves. About 8 percent of the respondents had no idea why they had been placed in quarantine or isolation. It is concerning that some inmates are unaware of the reasons for their isolation, and it is inconsistent with WHO recommendations.[63] (See more on WHO's recommendations in Ch. 5.5 *Specific Information On Routine Solitary Confinement of New Inmates*.)

5.4 Required Legal Basis

On 3 April 2020, Borgarting Court of Appeal delivered a verdict in a case concerning detention on remand.[64] The prison had introduced a quarantine regime that, in practice, entailed solitary confinement for the initial 14 days of inmates' time spent in prison. The Court of Appeal considered the regime in light of Article 8 of the ECHR and the requirement of a legal basis therein. The quarantine regime did not have a basis in laws or regulations. However, the Court found that the regime did have a basis in national law. Based on the acute risk of contagion presented by COVID-19, the measure could, "…at least during the initial phase be based on prison decisions and supplemented by considerations of principle of necessity". The Court also emphasised the following:

> "In the Court of Appeal's view, the legal basis must be determined by legislature in order for the use of quarantine – which for inmates has the same effect as solitary confinement – to be continued beyond a transitional period."[65]

On the same date the verdict was delivered, the Directorate of Norwegian Correctional Service issued its Circular on the implementation of quarantine and isolation in correctional services due to the coronavirus.[66]

In the Circular, the Directorate referred to the Execution of Sentences Act Section 37, first paragraph (e) as the legal basis for implementing quarantine and isolation in connection with the pandemic. This provision allows correctional services to determine whether an inmate should be wholly or partly excluded from the company of other inmates, if this is necessary in order to maintain peace, order and security". The legal basis is presumed to be the same, irrespective of whether the justification for quarantine or isolation is incarceration, symptoms of disease, confirmed disease, etc.

The Parliamentary Ombudsman has on several occasions pointed out weaknesses in legislation concerning isolation as a control measure, especially the condition "necessary in order to maintain peace, order and security". [67] The catch-all characteristic of this provision makes it unclear as to what type of behaviour could result in isolation. At the same time, the preparatory works of the Act indicate that the purpose of exclusions pursuant to Section 37, first paragraph, was to prevent unwanted acts by inmates.[68] The Directorate of Norwegian Correctional Service has subsequently

[63] WHO, 2020. Page 5.
[64] Borgarting Court of Appeal 3 April 2020, LB-2020-50640.
[65] Verdict, see the premises, paragraphs 9-10.
[66] Circular KDI 6/2020 – Implementation of quarantine and isolation in connection with coronavirus in the correctional service – effective 01/04/2020, 3 April 2020.
[67] Special report, Document 4:3 (2018/19), pages 43-44. See also the consultation submission of 1 November 2016 concerning guidelines for exclusion from company pursuant to the Execution of Sentences Act Section 37 and the Parliamentary Ombudsman's written input to the UN Committee Against Torture of 22 March 2018.
[68] Ot.prp. no. 5 (2000–2001) On the Act relating to the execution of sentences etc. Chapter 13.1, separate commentary to Section 37, page 164.

expressed that a situation involving considerable risk of rapid spread of the coronavirus in prisons indicated that exclusion was necessary in order to prevent the disturbance of the necessary stability in the company of prisoners and to avoid a negative effect on peace, order and security in the prison. The Directorate also recognises that Section 37, first paragraph, letter e, is principally directed at incidents of unwanted behaviour among inmates, and that they see the need for a sufficiently unambiguous legal basis.

In the Ombudsman's view, the Execution of Sentences Act Section 37, first paragraph, (e) hardly forms a legal basis for solitary confinement justified on the basis of infection control considerations, as long the measure is not linked to the behaviour of the inmate in question.[69]

The fact that a legal basis is sought for isolation for infection control purposes shows the risk in giving legal bases for intrusive measures such a broad and discretionary design. In its concluding observations, the UN Committee Against Torture expressed its concerns that the legal basis for use of isolation was imprecise. The Committee highlighted that it 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".[70]

The Parliamentary Ombudsman also notes that the Court of Appeal's requirement of a legal basis for intrusive measures amounting to solitary confinement in prison must be clarified by legislature. A Circular from the Directorate of the Norwegian Correctional Service is not satisfactory for such an intrusive measure. The Ministry's interim regulations of 27 March 2020 regarding execution of sentences to address the consequences of COVID-19 outbreaks did not contain rules regarding quarantine or solitary confinement.[71] The Ministry of Health and Care Services COVID-19 regulations also do not contain special rules that form a basis for quarantining all new prison inmates.[72] In a letter to the Parliamentary Ombudsman of 4 June 2020, the Ministry of Justice and Public Security referred to the interest in a clarified legal basis, and that work was in progress.[73] As of 15 June 2020, the Ministry has not provided further information. The Ombudsman notes that clarifications are needed to determine whether the Ministry of Justice and Public Security, or the Ministry of Health and Care Services should have the primary responsibility for changes in rules concerning intrusive measures that are justified on the basis of infection control; (see more details in Ch. 5.5 *Specific Information On Routine Solitary Confinement of New Inmates* and in Ch. 7 *Cooperation Between Judicial and Health Authorities*).

[69] Similarly, see the letter of 5 May 2020 from the Norwegian National Human Rights Institution to the Ministry of Justice and Public Security and the Directorate of Norwegian Correctional Service, Fulfilment of inmates' human rights in prison measures to address the consequences of COVID-19 outbreaks.
[70] UN Committee Against Torture, concluding observations on Norway's eighth report on the implementation of the UN Convention Against Torture, 5 June 2018, CAT/C/NOR/CO/8, paragraphs 17 and 18.
[71] Interim regulations of 27 March 2020, no. 461 regarding the execution of sentences to address the consequences of COVID-19 outbreaks.
[72] Regulations of 27 March 2020, regarding infection control measures etc. in connection with the coronavirus outbreak (COVID-19 Regulations).
[73] Ministry of Justice and Public Security, undated letter to the Parliamentary Ombudsman received 4 June, Information regarding the implications of COVID-19 for persons deprived of their liberty, page 4.

5.5 Specific Information On Routine Solitary Confinement of New Inmates

In the Circular, the Directorate of Norwegian Correctional Service established a *principle rule regarding routine solitary confinement* for all new prison inmates as a quarantine measure. The purpose of the measure, to protect inmates' from contracting the coronavirus, was legitimate. The question is whether the measure complies with human rights requirements of necessity and proportionality.

5.5.1 Assessment of Less Intrusive Measures

A basic prerequisite for such a measure to be considered necessary is the absence of less intrusive measures that could safeguard the same objective.[74]

The Directorate has established that quarantine that amounts to solitary confinement shall be the clear starting point for all new inmates for 14 days, irrespective of symptoms or suspicion of infection. No clear guidelines were given regarding the avoidance of solitary confinement, other than that "minimum human contact should be facilitated every day". Findings from the Ombudsman's study and the Directorate's own figures indicate that the Circular's clear guidelines regarding isolation of new inmates have been observed locally. The consequence of this appears to have been large-scale, intrusive and long-term solitary confinement.

Such a starting point is not consistent with human rights requirements stating that measures amounting to solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible.[75]

As justification for routine solitary confinement of all new inmates, the Directorate refers to "further development of the situation in connection with the coronavirus outbreak". Aside from this, the Ombudsman cannot see that the Directorate provided a justification that can explain why such an intrusive measure was necessary in all cases. Among other things, we cannot see that the Directorate provided a justification as to why partial exclusion was insufficient to achieve the objective regarding protecting inmates against infection. It is unfortunate that the Circular did not contain clear guidelines to prisons with an assessment of less intrusive measures.

5.5.2 Lack of Professional Medical Justification for Infection Control Measures

In its Circular, the Norwegian Correctional Service stated that isolation of all new inmates was necessary for compliance with health authority recommendations for quarantine and isolation. The Directorate of Norwegian Correctional Service established a cooperation with the Norwegian Directorate of Health at an early stage on the management of the COVID-19 pandemic in prisons, with weekly meetings to discuss a number of infection control measures. A good cooperation between correctional services and health authorities is essential for preparing effective infection control measures. The Ombudsman learned that the Directorate of Health had been asked for advice on whether to implement quarantine for all new inmates. Representatives from the Directorate of Health expressed verbally that the measures appeared to be problematic, and that it was unnecessary to implement such extensive measures, as long as other infection control measures

[74] CPT, 2020, point 4.
[75] The Mandela Rules, Rule 45 (1).

were in place.[76] In a letter dated 26 March, the Directorate of Health advised against this type of quarantine measure:

> "With respect to infection control, the Norwegian Directorate of Health has found nothing to indicate that all new inmates or transferred inmates should be placed in a 14-day quarantine, unless they have clear symptoms of respiratory infection, have arrived from a foreign country, have been in close contact with infected persons, or have been transferred from a unit with a known outbreak of infection. We therefore recommend that all new inmates be assessed for symptoms, possible close contact and travel."[77]

After some deliberation, the Directorate of Norwegian Correctional Service decided against the advice from the Directorate of Health. This decision was apparently based on the lack of opportunities for testing new inmates for SARS-CoV-2, concerns regarding poor capacity of municipal prison healthcare services, and concerns about vulnerable inmates (see more information below).

It is important to distinguish between isolation as a prison control measure (solitary confinement), and medical isolation and quarantine for infection control reasons. It is problematic that the Norwegian Correctional Service chose to ignore such clear professional medical recommendations. Isolation implemented for infection control purposes should always be based on medical necessity, and according to SPT and WHO, this requires an independent health examination. The measure must also be proportionate, of limited duration, and subject to procedural safeguards.[78] The Council of Europe has emphasised that solitary confinement of an inmate with an infectious disease can only be justified if such measures would have been implemented for the same medical reasons outside the prison walls.[79] Quarantine should also only be implemented if it is based on medical criteria, where the inmate may have been exposed to infection.[80] Quarantine measures are normally less intrusive than medical isolation, and does not necessarily mean that the individual is entirely cut off from physical contact with others.

Both SPT and WHO have recommended that the states avoid infection control measures that involve solitary confinement, where the inmates spend more than 22 hours alone in a cell each day without meaningful human contact.[81] WHO emphasised that the pandemic must not be used to undermine fundamental safeguards, including the ban on prolonged solitary confinement for more than 15 days.

[76] This is information from phone interviews with meeting participates and meeting logs from the Directorate of Norwegian Correctional Service.
[77] Letter from Norwegian Directorate of Health to the Directorate of Norwegian Correctional Service dated 26 March 2020, Reply to the request for quarantine rules for inmates in Norwegian prisons.
[78] See SPT, 2020. Paragraph n); WHO, 2020, page 5. Also see David Cloud, JD, MPH, Dallas Augustine, MA, Cyrus Ahalt, MPP, & Brie Williams, MD, MS, The Ethical Use of Medical Isolation – Not Solitary Confinement – to Reduce COVID-19 Transmission in Correctional Settings, note April 2020. Available here: https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf
[79] Council of Europe, COVID-19 related Statement by the Members of the Council for Penological Co-operation Working Group, (PC-CP WG) 17 April 2020.
[80] WHO, 2020, page 9. Also see WHO, Interim guidance on 19 March 2020, Considerations for quarantine of individuals in the context of containment for coronavirus disease (COVID-19), page 2.
[81] SPT, 2020, paragraph 9 n); WHO, 2020, page 5, cf. Mandela Rules, Rule 44.

According to the Mandela Rules, clinical decisions in prison must be made by healthcare personnel.[82] WHO determined that this fundamental principle should also apply during the pandemic.[83] An implication of a similar principle is the authority given to the Directorate of Health by the Infectious Disease Control Act in terms of recommendations, supervision and occasionally orders to municipalities and government agencies on how infection control measures should be designed.[84]

The Ombudsman found that staff members in prison healthcare services were involved in the assessment and decisions regarding who should be placed in quarantine or medical isolation. However, these findings indicate that this only applied if the inmates developed symptoms, or when there was suspicion of exposure to infection - not when newly arrived inmates was routinely subjected to solitary confinement. Routine solitary confinement of all newly arrived inmates, regardless of symptoms or suspicion of exposure to infection, is much more intrusive than the general infection control recommendations by the Norwegian Institute of Public Health, regarding quarantine for the general population. Implementation of quarantine in a prison is significantly more intrusive than quarantine in a private home, since the inmate has only a prison cell as a living space. As mentioned, the Directorate of Health has advised against such an intrusive measure. The Directorate of Health also recommended that: "Health and care services in prison during the crisis situation with the coronavirus should generally deal with inmates in the same manner as other healthcare personnel in society."[85]

Findings from the Ombudsman's study also indicate that female inmates are especially vulnerable to differential treatment. The study found that female inmates were required to undergo quarantine in a high security prison regardless of whether they were sentenced to a high or low security prison. The reason given for this was that it was not possible to ensure effective infection control measures at a lower security facility for women. This is extremely unfortunate.

5.5.3 Health Screening and Testing as an Alternative to Solitary Confinement

A less intrusive infection control measure, which would be a relevant alternative to routine solitary confinement, is a health screening, combined with testing of inmates.

Under normal circumstances, Norwegian Correctional Service should assess the health of new inmates as soon as possible, through an intake interview and medical examination.[86] This is an important measure for detecting symptoms of infection or exposure to infection.[87] In its Interim Guidance on the Management of COVID-19 in Prisons, the World Health Organization (WHO) recommended that all inmates should be checked for fever and lower respiratory symptoms upon arrival in prison. Special attention should be paid to persons with infectious diseases, according to WHO. If an inmate has symptoms consistent with COVID-19, or if they were previously diagnosed with COVID-19 and continue to experience symptoms, WHO recommends placing them in medical

[82] Mandela Rules, Rule, 27 no. 2.
[83] WHO, 2020, page 5.
[84] See the Infectious Disease Control Act, Sections 7-10 first and second paragraphs.
[85] The Norwegian Directorate of Health, Decisions and recommendations, Ch. 6.8 Prison health (updated 25 March 2020), available at https://www.helsedirektoratet.no/veiledere/koronavirus/kommunehelsetjenesten-og-tannhelsetjenesten/fengselshelse Also see Norwegian Institute of Public Health's recommendations for sectors working with persons who may be infected with COVID-19 (police, customs, prisons, etc.)
[86] Mandela Rules, Rule 30 and CPT, Health Care in prisons, CPT/Inf (93)12-part, paragraph 33.
[87] Mandela Rules, Rule 30 d).

isolation while awaiting a medical examination and testing.[88] SPT and CPT have also recommended a focus on health screening for COVID-19 in prison.[89]

In the verdict from Borgarting Court of Appeal, as noted above, the Court called for individual assessments of the need for "extensive and intrusive measures imposed on asymptomatic inmates, such as solitary confinement, for as long as 14 days". The Court recommended "remedial measures, and to determine whether newly arrived inmates in custody should be offered testing as an alternative to solitary confinement for infection control reasons".[90]

The Circular issued on the same date did not discuss the opportunity for health screening combined with inmate testing as an alternative to routine solitary confinement. The Ombudsman's study indicates that the Directorate of Norwegian Correctional Service, in its dialogue with the Directorate of Health, requested the opportunity to test all new inmates to reduce the risk of infection and to avoid the use of solitary confinement as a measure. The Norwegian Institute of Public Health stated that it saw no reason to change the test criteria, and that it would not prioritise testing of asymptomatic individuals beyond a few specifically defined groups, such as patients in nursing homes and other healthcare institutions.

The lack of testing opportunities was apparently the main reason why the Directorate of Norwegian Correctional Service saw it necessary to isolate all new inmates to prevent infection. As noted above, the Directorate of Health had advised against this measure, and instead recommended that all new inmates be screened for symptoms, possible close contact and travel.

It was apparent that the Directorate of Norwegian Correctional Service was concerned that the poor capacity of several municipal prison healthcare services would make it difficult to carry out sufficient health screening. In certain places, pandemic measures also meant that prison healthcare services had abandoned all face-to-face contact with inmates (see Ch. 6.2 *Health Screening and Testing of Inmates and Staff).*

Results of the Ombudsman's study show that some prison healthcare services have offered testing of inmates that are symptomatic, if there is suspicion of exposure to infection, or if they are in a high-risk group (See Ch. 6.2 *Health Screening and Testing of Inmates and Staff*)**.** Only one of the healthcare services we were in contact with stated that they had been actively testing in order to reduce the length of quarantine for the inmates. Toward the end of April 2020, testing capacity in the country increased dramatically, and the Norwegian Institute of Public Health recommended that everyone who had symptoms of COVID-19 should be tested.[91] At this time, the solution of a systematic health screening combined with the opportunity for testing all symptomatic inmates seemed even more achievable.

Another possible measure is the establishment of smaller groups or cohorts of inmates that would only have contact with each other, and not be moved around or given contact with inmates from other units. Cohort isolation is now being offered in a few prisons.[92] The extent to which less

[88] WHO, 2020.
[89] See CPT 2020, point 6 and SPT 2020, paragraph 9 f).
[90] Borgarting Court of Appeal, 3 April 2020, LB-2020-50640.
[91] Norwegian Institute of Public Health, News item 29 April 2020, Test criteria for COVID-19 have been expanded.
[92] Information by the Directorate of Norwegian Correctional Service at a meeting with the Parliamentary Ombudsman and Norwegian National Institution for Human Rights (NIM), 14 May.

intrusive measures were considered as alternatives to routine solitary confinement of all new inmates at the beginning of the pandemic is unclear.

The acute nature of the pandemic made it difficult to determine what measures would be necessary to prevent infection during the first phase of the outbreak. Later assessments should take this into account. The requirement for government assessments has become more stringent over time, and valuable information is now available. The Ombudsman's study indicates that the Norwegian Correctional Service did not carry out a broad assessment of less intrusive measures at a sufficiently early stage that could have protected inmates from infection. This especially applies to the lack of a comprehensive assessment of systematic health screening upon arrival in prison, combined with testing of inmates with symptoms of infection. This type of approach was recommended by WHO as early as April. The Norwegian Directorate of Health also gave its recommendations directly to the Norwegian Correctional Service.

The Directorate of Norwegian Correctional Service eased up on routine solitary confinement as a quarantine measure after 18 May.[93] The purpose was to avoid isolation that was not absolutely necessary, and instead perform specific, individual assessments before implementing measures. New inmates will still be isolated as a quarantine measure, but only until these individuals have been screened by prison healthcare services and possibly tested for infection. This new practice is far more consistent with the human rights requirement of necessity. However, this would require a health screening upon arrival, or no later than 24 hours after arrival (see Ch. 6.2 *Health screening and testing of inmates and staff*).

5.5.4 Proportionality[94]

The Directorate's introduction of routine solitary confinement for all new inmates has helped to minimise the risk of bringing the infection into the prisons, and so far, correctional services has largely avoided infection. However, the use of lengthy solitary confinement to prevent infection has also caused distress and potentially harmful health consequences for many inmates.

When determining whether to implement such intrusive infection control measures, it is necessary to balance the interests safeguarded by the intrusive measure and the harm caused by the measure.[95]

The purpose of introducing routine solitary confinement of all new inmates was to protect inmates from infection. As an infection control measure, this has likely been effective, as the risk of infection has been strongly reduced. However, the low infection rates and low reproduction rates since 15 March indicate that the risk of infection was quite low. [96] The risk of a serious course of illness for individual inmates with potential infections can now also be considered relatively low. An assessment of the proportionality of the quarantine measure, when the Directorate of Norwegian Correctional Service introduced this nationally for all high security prisons in early April, must be viewed on the basis of the acute nature of the situation and the lack of information at the time. Yet it

[93] The Directorate of Norwegian Correctional Service letter of 8 May 2020 to the prison regions, *Relaxing implemented measures to reduce the risk of infection and delay the spread of infection in prisons.*
[94] In the following, proportionality is described in a narrow sense, i.e. the part of a necessity assessment that deals with the consideration of interests.
[95] CPT, 2020, point 4.
[96] Norwegian Institute of Public Health, weekly report for weeks 15-16, published 21 April 2020.

is somewhat unclear as to what extent the Directorate of Norwegian Correctional Service's took into account assessments by health authorities when designing this intrusive infection control measure.

The detrimental effects of isolation can be serious for some inmates. The implications of the Directorate of Norwegian Correctional Service's Circular were that new inmates in quarantine would be forced to spend more than 22 hours alone in their cells each day, without meaningful human contact. Such isolation, especially over a period as long as 14 days, involves a high risk of inhuman treatment. It is important to note that solitary confinement that extends for more than 15 days is prohibited by human rights minimum standards.[97] If such confinement is extensive enough, it could be considered another deprivation of liberty.[98] In that case, the human rights requirements for deprivation of liberty must be satisfied.[99] Deprivation of liberty may be permitted in order to prevent the spread of infectious diseases, however, individual assessments will still be necessary. Less intrusive measures must first be considered and found insufficient.[100] It is a well-known fact that new inmates in remand are often in an especially vulnerable situation, with a higher risk of suicide, which could be exacerbated by solitary confinement. The Circular makes no exceptions for new inmates who are minors, and who would be particularly vulnerable. There are no reasons given for why routine solitary confinement of minors should be considered proportionate. Nor does the Circular explain how the requirement that isolation of minors must be strictly necessary should be interpreted in the context of COVID-19.[101]

Several inmates who participated in the survey had experienced the 14 days of solitary confinement upon arrival as distressing (see Ch. 6.3 *Vulnerability Associated With COVID-19* and Ch. 6.4 *Attention to Isolated and Quarantined Inmates*).

> *"As a new inmate, the first 14 days are the hardest. When you also have everything taken away from you and are shut off in a cell, it gets worse. If this corona keeps up, things need to be improved."*
>
> Inmate

> *"Isolation was incredibly difficult and painful. I considered [...] taking my own life [...] I have never been in prison before, so this transition was crazy [...] I wouldn't wish this on anyone."*
>
> Inmate

5.5.5 Implementation of Routine Solitary Confinement Justified on the Basis of Infection Control

The assessment of proportionality is also influenced by how isolation measures are implemented in practice. CPT and SPT have recommended that necessary restrictions introduced as a result of COVID-19 must be compensated by measures to reduce the detrimental effects of isolation, partly by ensuring meaningful human contact for inmates, and other opportunities to maintain contact with

[97] Mandela Rules, Rule 44 cf. 43 no. 1 b).
[98] See ECtHR judgment in Munjaz v United Kingdom, appeal no.2913/06, 17 July 2012, paragraph 80.
[99] ECtHR judgement in Munjaz v United Kingdom, appeal no. 2913/06, 17 July 2012, paragraph 63-73.
[100] ECHR Article 5, no. 1, letter e; ECtHR judgment in Enhorn v Sweden, appeal no. 56529/00, 25 January 2005, paragraph 44.
[101] Execution of Sentences Act Section 37, second paragraph.

family and friends.[102] Furthermore, basic needs must be safeguarded, especially by ensuring inmates' daily outdoor time of at least one hour and the opportunity to maintain personal hygiene.[103]

The Directorate of Norwegian Correctional Service largely accommodated these aspects in the Circular. Isolated persons should be prioritised with regard to compensatory measures, including measures to compensate the lack of visits. It was also emphasised that isolated persons should be prioritised in terms of opportunities to access the outdoors.

The Directorate of Norwegian Correctional Service also determined that "minimum human contact should be facilitated every day." As of 18 May, correctional services shall "have a special focus on harm-reducing measures for isolation and ensure that inmates receive a minimum of two hours of meaningful human contact."[104]

In our survey, only 58 and 50 percent of inmates who stated that they had been in solitary confinement answered 'yes' to the questions of whether they had been offered extra phone time or use of video calls, respectively. Only a third of the inmates who had been in solitary confinement reported that they had been offered new or extra activities to compensate for the suspension of ordinary visits and other restrictions. Although the Directorate of Norwegian Correctional Service's Circular accommodates the recommendations of the Committees, our findings suggest that compensatory measures were limited or were initiated late in the period covered by the survey.

Findings from the study indicate that isolated inmates have less frequently experienced compensatory measures than other inmates. This is surprising, considering that they were to be prioritised. At the same time, the findings are uncertain, and the selection of respondents makes it difficult to draw definitive conclusions on this matter.

Although the overall impression is that daily outdoor time is consistently offered in the surveyed prisons, the duration of access to outdoor areas appears to have relied on capacity and resources. This is also reflected in the written routines internally in the prisons. For example, one routine stated *"Access to open air/showering may occur when the service permits and does not conflict with other tasks. Focus on hygiene."*

In some prisons, inmates who either were or had been isolated stated that the allocated outdoor time could be as little as 10-15 minutes. At one prison, several new inmates stated that they had not been offered outdoor time for several days, due to their isolation as a quarantine measure. Some of them stated that they had not been offered outdoor time for more than a week. The prison in question had only registered that two inmates had not been offered outdoor time in the first half of March. These two were said to have been placed in solitary confinement due to suspected infection, and at the recommendations of health personnel. The available factual basis is sparse, and the Ombudsman has therefore not assessed this in more detail.

[102] SPT, 2020. Article 9 (k); CPT, 2020. point 7.
[103] SPT, 2020, Article 9 (i); CPT 2020, point 7.
[104] The Directorate of Norwegian Correctional Service's letter of 8 May 2020 to the correctional services' regions, *Relaxation of implemented measures to reduce the risk of infection and delay the spread of infection in prison*.

Just over half of the respondents who were or had been in solitary confinement also stated that they had been outdoors on their own without contact with other inmates or staff, the majority of which had to stay in an open air cell and not an ordinary exercise yard.[105] Certain prison governors stated that they later established routines in the quarantine sections where inmates were able to be outdoors together with other quarantined individuals.

The Ombudsman notes that inmates who are isolated due to confirmed or suspected infection should, according to the Directorate of Norwegian Correctional Service, be offered daily access to open air. At the same time, the Directorate for Health appears to have issued contradicting recommendations for prison healthcare services, when stating that inmates who are isolated due to infection must not leave their cells. Such ambiguities illustrate the importance of close coordination and dialogue between correctional services and health authorities (see Ch. 7 *Cooperation Between Judicial and Health Authorities*).

5.6 Need for Review of Intrusive Infection Control Measures

The above review confirms that there were no legal basis for the implementation of routine solitary confinement of all new inmates for 14 days, at least beyond a brief transitional period. Furthermore, the Ombudsman's review indicates that the measure, as it was designed prior to relaxing these measures in the letter of 18 May, did not comply with the requirements of necessity and proportionality. In the Ombudsman's view, central government authorities have not performed adequate assessments to determine whether less intrusive alternatives to routine solitary confinement were available and suitable to prevent infection. There is particular reason to emphasise that the measure of routine solitary confinement was introduced despite the fact that health authorities advised against the measure and believed that less invasive measures could achieve the same objective.

Based on the findings, the Ombudsman sees the need for rules for the implementation of infection control measures that would be better suited to the situation of prison inmates. This includes rules governing when infection control measures such as quarantine and medical isolation can be implemented and how the measures should be executed in a prison.

In this context, the Parliamentary Ombudsman stresses the need for a close cooperation between correctional services and health authorities. This is important in order to ensure that the infection control measures, as used in the general population, are based on a clear professional medical justification and the protection of individual legal safeguards.[106] In particular, the legal framework should ensure that infection control measures could occur in accordance with the human rights requirements of necessity and proportionality.

[105] 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. See also Special report, Document 4:3 (2018/19), page 52.
[106] Infectious Disease Control Act, Section 1-5.

6 The Effect of Pandemic Measures on Healthcare Services

Both SPT and CPT state that the right of inmates to equal and available healthcare services must be safeguarded on par with the rest of the population. The Committees emphasise that during the pandemic, measures must be implemented to identify and protect especially vulnerable persons against infection.[107]

6.1 Availability of Prison Healthcare Services During COVID-19

During a pandemic, prison healthcare services have a crucial role in ensuring good infection control, and protecting inmates in high-risk groups, as well as inmates who develop COVID-19. At the same time, they must ensure healthcare services for other ongoing healthcare needs. In a Special Report on solitary confinement and lack of human contact in Norwegian prisons, as well as other visit reports, the Parliamentary Ombudsman has addressed the poor capacity of healthcare services in many prisons.[108] During the COVID-19 pandemic, we received notifications of concern regarding healthcare services operating with an even poorer capacity than usual, due to the reprioritisations of municipal healthcare services. The Parliamentary Ombudsman has examined whether the pandemic has had negative implications for inmates' access to healthcare services.

Two of the eight prison healthcare services we were in contact with had changed their shift rotation systems to ensure staffing in case any of the healthcare staff members were exposed to infection or had to be quarantined. Two of the prison healthcare services stated that they could bring in staff from other parts of the municipal healthcare services if necessary.

Several of the prison healthcare services also stated that they have had no choice but to prioritise acute care, and that less urgent cases and routine examinations have had to wait. Our survey indicates that inmates have found it more difficult than usual to reach the healthcare services during the COVID-19 pandemic. Half of the respondents stated that they had noticed changes in healthcare services in connection with the COVID-19 pandemic. Many respondents noted that their already limited services had become even more curtailed.

> *"Extremely poor healthcare services can lead to negative consequences for inmates. For instance, I had reported suicidal thoughts, but received no help from a doctor or other healthcare personnel for about a month."*
>
> Inmate

Several of the healthcare services reported that some consultations were carried out by phone, and we have registered feedback from inmates who said that they found it difficult to communicate with healthcare services without seeing them in person. Nevertheless, one of the healthcare services stated that they did prioritise in-person consultations with patients who they thought needed this.

[107] SPT, 2020. Article 9 a); CPT, 2020. Point 6.

[108] See the Special report, Document 4:3 (2018/19), Ch. 10; the Parliamentary Ombudsman's report after visiting Oslo prison, 19-22 November 2018; Arendal prison 6-8 February 2018; Åna prison, 13-15 November 2017; Ullersmo prison, 29-31 August 2017; Bergen prison 4-6 November 2014.

SPT states that the restrictions implemented in prisons in connection with the COVID-19 pandemic will increase the need for mental health support for inmates.[109] In its Interim guidance for prisons, WHO has emphasised that inmates' experiences of the situation will deviate from those who experience restrictions in their normal lives, and that mental health support services for inmates should be expanded.[110] In the survey, several inmates stated that regular sessions with their psychologists had been halted. Two of the eight prison healthcare services we were in contact with stated that they had maintained consultations with psychologists and physiotherapists over the phone.

The Ombudsman's impression is that inmate healthcare services have been reduced as a result of infection control measures for COVID-19, as has been the case with healthcare services outside the prisons. The Parliamentary Ombudsman did not have the opportunity to explore the specific consequences of this for prison inmates. As emergency care has to some extent supplanted other healthcare services, it is important to ensure that the regular healthcare needs of inmates are ensured in the less acute phase of the pandemic. Our investigation confirms the challenges regarding the general capacity of prison healthcare services, and we note that these challenges have been magnified during the pandemic.

6.2 Health Screening and Testing of Inmates and Staff

In its Interim guidance, the World Health Organisation (WHO) Europe recommends that prison healthcare services check all new inmates for fever and lower respiratory symptoms.[111]

All prison healthcare services stated that they had conducted interviews with new inmates within 24 hours of their arrival in prison, or the first working day after arrival. A few healthcare services stated that they had made changes in the procedures for arrival interviews during the COVID-19 pandemic. All prison healthcare services stated that they included a risk assessment and symptoms of COVID-19 in their arrival interview (see Ch. 5.5 *Specific Information on Routine Solitary Confinement of New Inmates*). Some of the healthcare services reported that they conducted arrival interviews in a cell in the quarantine unit instead of the medical unit. Others stated that they conducted the interview with the appropriate distance and possible use of personal protective equipment. Prison healthcare services in one prison reported that new inmates were assessed "initially by phone", while another prison stated that the prison healthcare services considered whether "arrival interviews can be conducted according to normal procedures after the Norwegian Correctional Service have made their assessment of the risk of infection. If it is considered unadvisable, the local emergency ward should be contacted."

[109] SPT, 2020. Article 9 s); 10 g).
[110] WHO, 2020, page 5.
[111] WHO, 2020, page 4.

The latter practice does not comply with the requirement that all inmates are seen by healthcare personnel as soon as possible after arrival in prison.[112] It is also problematic with respect to the professional autonomy of healthcare services, if the prison in practice determines whether or not the inmates should meet personnel from prison healthcare services. Healthcare personnel should always meet new inmates in person for an arrival interview, unless there are extraordinary circumstances that suggest another action. The arrival interview is essential for observing potential symptoms. The newly arrived inmate must be examined in person in case of need for physical examinations, such as measuring blood pressure, taking temperatures, or listening to lung sounds, etc. Furthermore, it is essential that healthcare personnel perform an adequate suicide risk assessment, given the increased risk of suicide for newly arrived inmates. This type of assessment requires communication, trust and observations that are not possible through phone contact alone. Inmates also have a legal right to see healthcare personnel upon arrival in prison. Healthcare personnel must identify themselves as such, and inmates must be informed that their health information is handled in confidence. The Ombudsman reminds healthcare personnel that they have a responsibility to document and report injuries consistent with the disproportionate use of force prior to incarceration.

> *"[...] regarding [...] infection in prison, I think it's a paradox that after two weeks in isolation, I was moved to a unit [...] where staff members walk in and out without any protective gear. If I am infected by a staff member, the consequence for me will be two more weeks in isolation without access to outdoor time. The quarantine was tough [...] and I wouldn't want that again for anything in the world."*
>
> Inmate

We have examined the prisons' routines for testing inmates for COVID-19. The number of inmates who have been tested differs from prison to prison. When we conducted the study, only one of the prison healthcare services stated that they tested all inmates who had symptoms. Others stated that they followed the testing criteria from the Norwegian Institute of Public Health. Bastøy Prison, which so far is the only prison that has had an outbreak of infection among inmates, reported having tested 50 inmates. Other prisons had not tested any inmates. Only one of the healthcare services we were in contact with stated that they engaged in active testing to reduce the length of quarantine for the inmates.

Not all prison healthcare services tested staff members. Some left this task to primary healthcare services outside the prison. One problem has been that routines and availability of tests have varied between municipalities. For instance, during the outbreak of infection at Bastøy, differences in practice in the municipalities where staff members resided determined whether they had the opportunity get tested for COVID-19 or not. We found only one prison where healthcare services routinely offered testing for staff members based on the same criteria used for essential healthcare personnel. The healthcare service in this case had arranged this with the Chief Medical Officer in the municipality.

[112] Mandela Rules, Rule 30; CPT, 2020. Point 6; SPT, 2020, paragraph 9 a).

6.3 Vulnerability Associated With COVID-19

Both CPT and SPT recommend greater attention to vulnerable inmates with respect to healthcare services during the pandemic, including health assessments of inmates that are at high risk of infection from COVID-19.[113]

All healthcare services we were in contact with stated that they had assessed high-risk inmates in their prisons. Prison healthcare services followed the guidelines of the Norwegian Institute of Public Health (FHI) when defining high-risk groups for COVID-19. In addition to criteria defined by the Norwegian Institute of Public Health, some of the healthcare services mentioned persons struggling with substance abuse as a particularly vulnerable group because of both mental and physical health problems related to the substance abuse. Prison governors we spoke to confirmed that healthcare services had assessed inmates in the high-risk group.

> *"We reacted to situations where a staff member could come to work with a cold, but that this was not considered serious for the inmates."*
>
> Inmate

None of the healthcare services the Parliamentary Ombudsman had been in contact with had assessed vulnerability in any other manner than by the importance of "risk of a serious course of illness upon infection with COVID-19".

In the study, the Ombudsman found few examples attention to the health implications of the infection control measures, such as the ill effects of isolation, and other negative effects on inmates' mental health. In the Ombudsman's view, an assessment of vulnerability should have had greater focus on the health implications of implementing such intrusive measures as was done during the pandemic.

6.4 Attention to Isolated and Quarantined Inmates

In the Special Report to the Storting on Solitary Confinement and Lack of Human Contact in Norwegian Prisons, the Parliamentary Ombudsman notes that isolated inmates are in an especially vulnerable situation, and that this requires thorough and independent monitoring of healthcare services.[114] Healthcare personnel should see isolated inmates as soon as they are placed in medical isolation, and thereafter on a daily basis. They must also respond quickly with medical assistance and treatment as needed.[115] WHO recommends that inmates who are in quarantine or isolation for infection control reasons should be seen by healthcare personnel at least twice a day, and that this should involve checking the inmates' temperatures and observing any possible symptoms of COVID-19.[116]

Our findings show the differences in how healthcare services have followed up inmates under medical isolation. Some of the prison healthcare services we were in contact with stated that they had seen inmates who were placed in quarantine or medical isolation on a daily basis. In other

[113] CPT 2020, point 6; SPT 2020 paragraph 9 a).
[114] Special report, Document 4:3 (2018/19)
[115] Mandela Rules, Rule 46 no. 1; European Prison Rules, Rule 43.2–42.3
[116] WHO, 2020, page 21.

prisons, quarantined inmates were followed up daily by phone. Some were offered daily calls or conversations "as needed". Healthcare personnel in one prison saw inmates daily upon suspicion of infection, due to exposure to the disease or respiratory symptoms. New inmates in quarantine were seen to during the quarantine period, but not daily.

The survey given to inmates painted a somewhat different picture of the follow-up by healthcare services. Among the 50 inmates that reported having been placed in quarantine or isolation for infection control reasons, only one reported that they had been seen to daily by prison healthcare services. A total of 19 respondents stating that they had been placed in quarantine or isolation, stated that they had not been seen to by healthcare services, and ten respondents replied that they had been seen to less than once per week. Many of the respondents expressed that they had experienced isolation in quarantine as both physically and mentally distressing.

> *"The doctor came by once. He felt my forehead with his hand in a glove. Was told that he would return the next day, but he never came. That was upsetting."*
>
> Inmate

> *"[...] had a conversation lasting three minutes with the healthcare service on the day of arrival, but no further contact."*
>
> Inmate

It is difficult to get a good impression of how often inmates in quarantine and medical isolation was seen to by healthcare personnel. The Parliamentary Ombudsman is concerned that inmates in quarantine and isolation have not received the necessary attention from prison healthcare services. There also appears to be little focus on the harmful effects and the mental health issues caused by quarantine and isolation. This means that there is a greater chance that inmates do not receive adequate mental health care, and that there is too little focus on preventing detrimental effects of isolation. These findings also give cause for concerns for the role of healthcare personnel and their capacity to identify worsening of potential symptoms of COVID-19 among inmates in quarantine.

6.5 Lifesaving First Aid During the COVID-19 Pandemic

At a meeting between the Directorate of Norwegian Correctional Service and the Norwegian Directorate of Health on 7 April 2020, a decision was made to follow the recommendations by the Norwegian Resuscitation Council regarding cardiopulmonary resuscitation (CPR) during the COVID-19 pandemic, which is consistent with police practice.[117] This information was given to the prisons on the intranet page of the Directorate of Norwegian Correctional Service the same day. The recommendation included performing CPR "according to ordinary guidelines, with rescue (mouth-to-mouth) breaths. If COVID-19 is suspected or identified, the recommendation states that only chest compressions should be given, and rescue breaths should be avoided". This recommendation is

[117] Norwegian Resuscitation Council, 4 March 2020. Available at: https://nrr.org/no/nytt/310-norsk-resuscitasjonsrad-nrr-onsker-a-gi-to-viktige-forstehjelps-relatert-anbefalinger-om-coronavirus

consistent with recommendations by the Norwegian Directorate of Health regarding CPR and COVID-19 for emergency personnel.[118]

Representatives from prison management in all nine prisons we were in contact with were under the impression that the Directorate of Norwegian Correctional Service had given them general instructions to avoid rescue breaths CPR during the COVID-19 pandemic. Some prison governors expressed that this was difficult; however, most of them did not question the procedure. The management of only one prison was critical of the risk of infection and emphasised its staff had been instructed to save lives if necessary.

Even if available information had solely focused on the importance of correctly performed first aid, and emphasised that the likelihood of COVID-19 infection when giving mouth-to-mouth rescue breaths was low, based on the level of infection in Norway, it would appear that most of the prisons believe that rescue breaths should not be performed for infection control reasons. This constitute a clear risk that inmates will not receive adequate assistance if they require lifesaving first aid. This is a very serious problem.

[118] Norwegian Directorate of Health, 6 April 2020. Recommendations: Cardiopulmonary resuscitation (CPR) during COVID-19. Available at: https://www.helsedirektoratet.no/veiledere/koronavirus/kommunehelsetjenesten-og-tannhelsetjenesten/legevakt/hjerte-og-lunge-redning-hlr-under-COVID-19

7 Cooperation Between Judicial and Health Authorities

Norwegian prison healthcare services are independent of correctional services and operated by municipalities as their primary healthcare service provider. Prison inmates have the same right to healthcare as the rest of the population. Prison healthcare services follow the guidelines set by the Norwegian Directorate of Health.[119]

The Directorate of Norwegian Correctional Service is responsible for facilitating prison healthcare services. In a special report to the Storting on solitary confinement and lack of human contact in Norwegian prisons, the Ombudsman wrote: "Correctional services and healthcare services have a collective responsibility for ensuring that inmates receive the healthcare they need and have a right to. It is essential that this responsibility is not pulverised by the division of responsibility between them."[120] This point must be emphasised also under extraordinary circumstances such as a pandemic. In its Interim guidance, WHO stresses that coordination and good cooperation between health authorities and correctional services are crucial for ensuring the protection of prison inmates as well as society.[121]

The Norwegian Directorate of Health and Directorate of Norwegian Correctional Service maintain a continual dialogue, partly through weekly meetings, to facilitate the coordination of measures for prisons and healthcare services for inmates. In addition to decision making regarding infection control, the Directorate of Health and the Directorate of Norwegian Correctional Service have been working on recommendations for prison healthcare services in light of the COVID-19 pandemic. These recommendations specify that prison healthcare services shall provide prisons with guidance and supervision and maintain daily contact with Correctional Service.[122] The dialogue between the directorates also involves the need for testing staff and inmates, as well as health assessments of inmates.

Despite the dialogue between the directorates, our findings indicate the correctional services have carried out intrusive measures for the purpose of infection control that extend far beyond the professional infection control recommendations by health authorities (see Ch. 5 *The Use of Solitary Confinement as an Infection Control Measure*).

In some areas, there appears to be a need for infection control recommendations that are more adapted to the unique circumstances of prison inmates. For example, it appears that correctional services have found it difficult to determine how the health authorities' general health recommendations for the public should be carried out in prisons. This especially applies to the formulation of COVID-19 regulations.[123] Another example is the contrast between the guidelines by the Directorate of Health and those of the Directorate of Norwegian Correctional Service regarding

[119] Norwegian Directorate of Health, 2013. Health and care services for prison inmates. Updated December 2016.
[120] Special report, Document 4:3 (2018/19), page 70.
[121] WHO, 2020.
[122] HDI, 2020. Coronavirus – decisions and recommendation. National guidelines, Ch. 6.8 Prison health. First published 06 March 2020. A revision of the guidelines is planned for week 25.
[123] Regulations of 27 March 2020 related to infection control measures, etc. for the coronavirus outbreak (COVID-19 regulations).

outdoor time for inmates who are isolated due to infection, as noted in Ch. 5.5 *Specific Information On Routine Solitary Confinement of New Inmates*. We are also aware that there has been some discussion between judicial authorities and health authorities regarding the need for testing inmates and staff in correctional services.[124]

As part of the planning process in how to manage another potential outbreak of infection, the Ombudsman believes that prison healthcare services should be included to a greater extent in health authorities' infection control plans. This is essential in order to ensure that measures are planned and carried out in a manner that is more suited to the prison situation. Inmates must be protected by the same infection control measures by professional health authorities as the rest of the population, while also protecting their legal rights. These efforts should be carried out in close cooperation with the Ministry of Justice and Public Security and the Directorate of Norwegian Correctional Service.

At the local level, many of the prison healthcare services the Parliamentary Ombudsman has been in contact with describe good cooperation between correctional services and the prison healthcare services. All prison healthcare services stated that they had been asked their thoughts on local measures in the prisons. Many also stated that prison healthcare services were involved in coordination groups, crisis response meetings, and similar functions in connection with COVID-19. This is consistent with the recommendations by WHO. Nearly all described good cooperation with the municipal Chief Medical Officer, the Directorate of Health and the Institute of Public Health. We have also learned that the cooperation between prison healthcare services and correctional services in certain prisons have not functioned optimally.

In the early phase of the outbreak, before Norwegian Correctional Service prepared central guidelines for the prisons, the Chief Medical Officers in certain municipalities made emergency decisions on infection control measures in the prison, in accordance with the Infectious Disease Control Act (see Ch. 5.2 *Introduction of Infection Control Measures That Amount to Solitary Confinement*).[125] For instance, in one municipality, the Chief Medical Officer decided against the intake of new inmates to the prison. In another municipality, the Chief Medical Officer instructed the local prison to devise plans for intensive care and palliative care at the prison, if the capacity of local healthcare services became so overburdened that it could not provide such services. This obviously occurred during a phase with a great deal of uncertainty about how the pandemic would develop, and fear of major consequences. A lack of guidelines from national health authorities will increase the risk that intrusive measures will be implemented locally, without an adequate assessment of proportionality.

We assume that the differences in municipal infection control measures reflect the variations in the infection situations of the municipalities. Risk assessments in each municipality will therefore differ. At the same time, the Ombudsman's findings indicate a need for a clarification of the legal boundaries for intrusive infection control measures from municipal authorities in state-owned

[124] Norwegian Directorate of Health, letter of 25 March 2020 to the Directorate of Norwegian Correctional Service. Revised letter regarding the management of COVID-19 in prisons.
[125] See the Act relating to the control of communicable diseases (Infectious Disease Control Act) of 5 August 1994, Section 4-1, that gives municipal boards (or chief medical officers in urgent cases) the authority to implement infection control measures, such as closing or limiting an enterprise, isolation and restrictions in freedom of movement, etc.

facilities such as prisons. The purpose of the Infectious Disease Control Act, in addition to protecting the population from infectious diseases, is to ensure that health authorities and other authorities implement necessary infection control measures and coordinate their infection control efforts. The legal rights of individuals impacted by the infection control measures must also be safeguarded.[126] There is also a need for a review of the Infectious Disease Control Act in light of the information gathered from the COVID-19 pandemic, to ensure that the legal framework for municipal infection control measures protect the inmates' human rights.

[126] See the Infectious Disease Control Act, Section 1-1 (purpose of the act), second and third paragraph.

8 Supervision and Access to Lawyer

The CPT and the SPT emphasise the importance of ensuring legal safeguards for inmates during this extraordinary situation. They recommend that independent bodies tasked with visiting all places where people are deprived of their liberty, including national preventive mechanisms, continue to be guaranteed access.[127] The Committees stress the importance of effectively functioning mechanisms to reduce the risk of inhuman and degrading treatment during COVID-19.[128] Inmates' right to contact with a lawyer is essential to ensure legal safeguards, and the Committees note that access to legal assistance shall be safeguarded under all circumstances and at all times.[129] The Ombudsman has examined how inmates' legal safeguards was ensured during this period, and, especially, what types of supervisory efforts have been implemented.

The Supervisory Boards are mandated to exercise the governmental authorities' supervision of prisons. The system with Supervisory Boards have long been controversial, and on several occasions, the Parliamentary Ombudsman noted extensive weaknesses in the system of supervision in Norwegian Prisons.[130] The COVID-19 pandemic further challenges the work of the Supervisory Boards. At the same time, the importance of their work increases, as prisons have been operating with less transparency that under ordinary circumstances.

All five Chairs of the Supervisory Boards stated that they, until further notice, have suspended physical inspections in their regions due to the pandemic. With the exception of the Board in the Correctional Services' Region West, where the board's work has mainly been suspended since October 2019,[131] the decision to suspend inspections was made by the Chair of the Supervisory Board, as a result of their own or the Board's assessment or following contact with the Correctional Services' regional office. Infection control considerations and the Directorate of Norwegian Correctional Service's suspension of visits was emphasised in the assessments. The Supervisory Boards had received neither information nor guidelines from the Ministry of Justice and Public Security on how to deal with COVID-19, despite the fact that the Ministry is the appointing authority and the Supervisory Boards are not subject to the Correctional Services' authority to issue

[127] SPT, 2020. Article 7 and 9 (h) and (p); CPT, 2020. Point 10).
[128] See *inter alia* SPT, 2020. Articles 9 (h) and (p); CPT, 2020. Points (9) and (10).
[129] SPT, 2020. Article 9 (p); CPT, 2020. Point 9).
[130] Pursuant to Section 9 of the Execution of Sentences Act, Supervisory Boards shall be appointed that are charged with supervising prisons and aftercare offices and the treatment of convicted persons and inmates. There is currently one such Supervisory Board for each of the Correctional Service's five regions. The Supervisory Board members are appointed by the Ministry of Justice and Public Security and the Supervisory Board members therefore do not have any formal connection to the Correctional Service. However, the Execution of Sentences Act Section 9 gives the Directorate of Norwegian Correctional Service the authority to determine the geographic distribution of the supervisor councils' areas of responsibility.
[131] In an interview of 13 May 2020, the Supervisory Board chair in Region West described the situation in the Supervisory Board as "suspended". This is a result of a lengthy, unresolved situation concerning remuneration of work hours where the Directorate of Norwegian Correctional Service in autumn 2009 rejected a submitted claim from the chair and vice-chairperson. The decision was appealed, and at the time of the interview with the Parliamentary Ombudsman, the matter remained unresolved. According the Supervisory Board chair, no physical supervisions have been carried out in Hordaland since October 2019, while in the two other areas in the region, Sogn and Fjordane and Møre and Romsdal, only essential tasks could be performed.

instructions. Each Supervisory Board has therefore been left to assess how to comply with its mandate and implement its tasks during the pandemic measures.

With the exception of Region West, all Supervisory Boards reported that the ordinary case procedure has been maintained, meaning that communications and complaints from inmates could continue to be processed. Three of the Supervisory Board Chairs reported that they had conducted phone meetings with inmates in specific cases after 12 March. This is consistent with the Committee's recommendation to maintain existing mechanisms for complaints, even if the Parliamentary Ombudsman's received information that the number of communications to the Supervisory Boards has remained at a relatively low level both before and during COVID-19.

Several Supervisory Boards stated that they have increased their phone contact with the prisons. The Supervisory Boards in Regions North and South stated that they contacted the prisons in their regions early and requested that inmates be informed of continued operations for the board, and that they could be reached during COVID-19. In addition, three Supervisory Boards had collected written information from the prisons in the region regarding measures and handling of the pandemic.

Prison governors we spoke with confirmed that the Supervisory Boards had not conducted physical supervision after 12 March. At four prisons, the Supervisory Board had been in contact by phone or email, or contact had been forwarded to/from inmates, while six prisons had not had any contact with the Supervisory Boards in this period.

The Parliamentary Ombudsman found that the Supervisory Boards to a certain extent had considered alternative methods for supervision in case the situation caused by COVID-19 stretched out in time. Use of video conference and meetings with inmates outdoors were highlighted alternatives. In-person supervision with necessary infection control measures was also mentioned. Two Supervisory Boards had been offered facilitation of physical visits to specific prisons.

The Parliamentary Ombudsman has not collected extensive information regarding opportunities for the inmates to make complaints to the Supervisory Boards, or limitations on access to lawyers due to COVID-19. The Supervisory Board chairs stated that the number of communications from inmates has remained relatively unchanged since 12 March. The Supervisory Board in one region had experienced a slight decrease in communication but found it too soon to say whether this was in connection with COVID-19, or other factors such as a reduction in the number of inmates. None of the Supervisory Boards had received communications relating directly to COVID-19.

The Ministry's interim regulations of 27 March 2020 regarding the execution of sentences to address the consequences of COVID-19 outbreaks gave permission to refuse visits, also from lawyers, if the visit cannot be conducted in a manner that is sound in terms of health.[132] In the Circular regarding the same regulations, the Directorate of Norwegian Correctional Service emphasises that if physical visits from lawyers were permitted, the consultation must be implemented with the use of a glass

[132] Interim regulations 27 March 2020 no. 461 regarding sentencing to alleviate negative consequences of the COVID-19 outbreak, Section 1. Later replaced by the Interim act of 26 May 2020 regarding changes in the Execution of Sentences Act (measures to alleviate negative consequences of COVID-19).

partition and otherwise in accordance with the Norwegian Institute of Public Health's general infection control advice.[133]

The Parliamentary Ombudsman is not aware of the extent to which consultations with lawyers have been limited to for instance, remote communication, but the investigations have shown that inmates' access to a defence lawyer has been a matter of concern, not least leading up to court hearings where the need for planning and closer dialogue with the inmate is considerable. For instance, the review of evidence is challenging through a glass partition or via video conference and can at worst compromise inmates' right to due process. Satisfactory alternatives to physical meetings are especially difficult in circumstances where the inmate does not speak Norwegian and requires an interpreter.

Infection control considerations are weighty social considerations in an outbreak of epidemics, and this was also emphasised when both the Parliamentary Ombudsman and the Supervisory Boards suspended physical visits to the prison institutions. CPT also stresses the importance of sufficient precautions so that independent bodies observe the do-no-harm principle. At the same time, the Committees emphasise that physical visits should not be suspended entirely, precisely because the risk of inhuman treatment may increase due to the infection control measures.[134]

In an acute phase of a pandemic, alternative methods for supervision should quickly be put in place that allow for contact with inmates.[135] In addition, methods should be established as to how physical visits can be conducted in accordance with infection control advice.[136] It is the Ombudsman's assessment that comprehensive measures that were introduced indicate the importance of supervisory bodies that can function effectively, also in extraordinary situations such as a pandemic. This is primarily the responsibility of the Ministry of Justice and Public Security. Lack of control and central guidance for supervisory activities may affect the way in which the supervision functions, and in turn, the legal safeguards of inmates.

In this extraordinary situation, the circumstances in the Supervisory Board in Region West give rise to additional concerns as inmates in the region in reality have not had a fully functioning Supervisory Board since autumn 2019.[137]

[133] The Directorate of Norwegian Correctional Service Circular 5/2020 on the new regulations for the execution of sentences, to alleviate consequences of the COVID-19 outbreak, 1 April 2020.
[134] CPT, 2020. point 10) and SPT, 2020. Article 7.
[135] See *inter alia* HM Inspectorate of Prisons (HMIP), Alternative approach to scrutiny during the COVID-19 pandemic, 20 April.
[136] See *inter alia* HM Inspectorate of Prisons (HMIP), Health and safety guidance for brief scrutiny visits during the COVID-19 outbreak, 20 April 2020.
[137] According to the chair of the Supervisory Board, the last physical inspection in Hordaland was conducted in October 2019. The Parliamentary Ombudsman does not know the dates of the most recent inspections conducted in Møre and Romsdal or Sogn and Fjordane.

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