
Selected topics from 2020

Increased Isolation and Stricter Conditions in Prison During the COVID-19 Pandemic

In the spring of 2020, the Ombudsman's Preventive Mechanism (NPM) has investigated the consequences of the pandemic on inmates in several prisons. The investigation concluded that many inmates experienced their imprisonment as more difficult during the initial phase of the pandemic, due to restrictions imposed for infection control.

Intrusive infection control measures in prisons

Conditions in prisons make it difficult for inmates to protect themselves against infection, and inmates also have a higher rate of ill-health than the general population. Therefore, many inmates are at risk of developing serious illness from the coronavirus. In addition to this, prison inmates are particularly at risk of human rights violations as a result of measures imposed to control the pandemic.

The Ombudsman's previous visits to prisons have documented extensive use of solitary confinement, even during normal operations. The Ombudsman was concerned about how the pandemic would affect imprisonment conditions as intrusive measures were introduced quickly to prevent outbreaks in prisons.



Front page of the report "Investigation under the OPCAT mandate: Protecting prison inmates during the COVID-19 pandemic".



Corridor in a prison visited by the NPM.

In the spring of 2020, the Ombudsman therefore conducted an investigation of how inmates were safeguarded in Norwegian prisons during the initial period after the outbreak of the COVID-19 pandemic. The investigation was based on information we obtained covering the period from 12 March to 14 May 2020.

Methodological limitations and consequences for the investigation

The NPM's work was also affected by the pandemic. On 11 March 2020, we decided to temporarily suspend our visits to avoid exposing anyone to increased risk of infection. At the same time, it was essential to still be able to safeguard our mandate, even in a situation where physical visits could not be conducted.

Physical visits permit us to observe conditions at the places we visit and give us the opportunity to gain the confidence of those we speak to through

direct conversations. We thus gain a better insight into both formal and informal rules and routines. As this was no longer an option, we had to develop new methods and utilise sources other than observations and interviews for the investigation.

We carried out a survey that was distributed to a sample of inmates in four prisons. A survey cannot replace the interviews that we normally conduct with inmates; however, it did present an opportunity to include inmates' perspectives when physical visits were not possible. In the survey, we asked how the inmates had experienced the infection control measures; what kind of compensating initiatives they had been offered, and whether they had been placed in quarantine due to the coronavirus.

Other sources included written information from relevant authorities, including dialogue with the Norwegian Correctional Service.¹ We carried out telephone interviews with prison authorities in ten prisons, analysed written information and procedures from these prisons and from the prison health services in eight of the ten prisons. We spoke to the heads of the Supervisory Boards in the Correctional Service's five regions and consulted voluntary organisations and members of the NPM's Advisory Committee

The sample size of the survey limited the opportunity to establish decisive findings concerning local practices in each prison. The recommendations given in the report were therefore primarily addressed to the relevant central authorities and not to the individual prisons.

To ensure the findings were as representative as possible, we obtained information from both high and lower security sections, from female and male inmates and from prisons in all five Correctional Service's regions.

¹ See the response from the Ministry of Health and Care Services to the written enquiry from the Ombudsman here: <https://www.sivilombudsmannen.no/aktuelt/tortur-forebygging/om-konsekvensene-av-covid-19-for-frihetsberovede-svarbrev-fra-tre-departementer/>

Measures designed to protect inmates from infection

In the period after 12 March, the number of inmates in prisons was reduced via initiatives such as early release, suspended sentences and transfer to home detention. This made it possible to avoid inmates having to share a cell; it also made it easier to maintain physical distancing and to safeguard hygiene requirements. This is assumed to have been important measures to limit the risk of infection.

The Correctional Service also introduced measures to ensure that inmates received information about the COVID-19 pandemic. The Correctional Service cooperated with voluntary agencies in drafting information materials and in setting up information channels to assist next of kin.

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The officers organised various games, contests, outdoor exercise, bingo, quizzes etc. Very pleased !

Inmate

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Infection control measures led to significant restrictions on inmates' daily lives

In the spring of 2020, a number of restrictions were placed on the daily lives of prisoners, brought about by infection control measures. For example, activities and work programmes were discontinued or reduced considerably. Education programmes were largely cancelled, as it was not considered possible to adapt to digital education, as was the case in schools elsewhere in the country. Visits were no longer permitted; however, arrangements were made for inmates to remain in contact with

their lawyer in a way that safeguarded infection control, for example by telephone or through a glass screen. To reduce the adverse effects of these restrictions, several compensatory measures were introduced.

Inmates were given access to tablet computers to keep in contact with friends and family who could no longer visit, and the call time for ordinary telephone calls was extended. Several prisons also continued certain work and activity sessions that were consistent with infection control rules. Various activities were organised, such as quizzes, games, extended TV channel access and outdoor training. The survey indicated that significant creativity had been applied in several prisons, regarding compensatory activities.

Despite the compensatory measures that were introduced, the impression was that many inmates felt that they spent much more time locked in their cells during a 24-hour period than they would under normal circumstances. Consequently, many of the inmates experienced serving during this period as challenging. Several inmates also reported that they were not given the opportunity to make use of the compensatory measures.

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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

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Routine solitary confinement of new inmates

One of the most intrusive infection control measures was the implementation of routines for exclusion of inmates from the community (solitary confinement). The Ombudsman considered whether this was in accordance with human rights standards. In particular, the Ombudsman examined the introduction of routine solitary confinement of new inmates by the imposition of fourteen days quarantine.

Exclusion and solitary confinement

The Execution of Sentences Act Section 37 permits a prison to determine that an inmate, wholly or partially shall be “excluded from the company” of other inmates. This can be imposed if it is deemed necessary to prevent inmates from continuing to influence the environment in the prison in a particularly negative manner, to prevent inmates from harming themselves, acting violently, threatening others, to prevent significant material damage, to prevent criminal acts or to maintain peace, order and security in the prison.

During the pandemic it was decided that all new inmates should be “wholly excluded” from the company of other inmates for fourteen days. According to the Correctional Service’s guidelines, “wholly excluded” from other inmates means that the inmate shall not be in the company of other inmates at all. Complete exclusion under normal circumstances thereby represents solitary confinement as defined in the Mandela Rules. In this article the term “solitary confinement” therefore refers to this form of exclusion.

As a consequence of the measure that was introduced on the national level via a Circular from the Correctional Service on 3 April 2020, a large number of inmates were placed in quarantine without symptoms of COVID-19 and without confirmed exposure to a possible infection situation.

In the view of the Ombudsman, which is further substantiated in the report² from the investigation, infection control considerations do not provide sufficient grounds for solitary confinement insofar as the measure is not related to the inmate’s conduct.

Moreover, the Ombudsman examined whether the measure was in accordance with human rights requirements with respect to proportionality and necessity. In the Circular from the Correctional Service, no instruction to consider less intrusive measures was given, such as health assessment procedures or testing. The Directorate of Health had not found that exclusion from the prison community was necessary to maintain infection control standards. In the Ombudsman’s view, it is problematic that the Correctional Service chose to act against the advice of health professionals in this case. Solitary confinement imposed due to infection control considerations should always be based upon medical necessity.

New inmates are in a particularly vulnerable situation and have among other things, an increased risk of suicide. Therefore, it is concerning that many of the respondents in our survey stated that they had limited access to compensatory initiatives, for example virtual visits, during the time they were placed in quarantine.

In the survey, only around half of the respondents who stated they had been placed in solitary

2 Read the full report here: https://www.sivilombudsmannen.no/wp-content/uploads/2020/09/Norwegian-NPM-report-on-Covid-19_revised-versjon_2.pdf



Exercise yard in a prison visited by the NPM.

confinement replied “yes” to the question about whether they had been given extra telephone time and video conversations via tablet computers. Several of the respondents also stated that they had little access to the outdoors during the period. In the investigation we pointed out that inmates who were placed in solitary confinement due to confirmed or suspected infection, should be offered daily outdoor time in line with the Correctional Service’s memorandum. At the same time, we found that the Directorate of Health had apparently given directions to the prison health services that inmates placed in solitary confinement due to infection, should not leave their cells. This illustrates the importance of close coordination and dialogue between the Correctional Service and the health authorities.

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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 would not wish this on anyone.

Inmate
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Inmate's right to healthcare during a pandemic

The prison healthcare services play an essential role in safeguarding the health of inmates, also during a pandemic. The Ombudsman has repeatedly noted that the capacity of the prison healthcare services is inadequate.³ The investigation showed that the challenges in regard to the general capacity of the healthcare services were exacerbated during the pandemic. Inmates experienced greater difficulty in contacting healthcare services during the COVID-19 pandemic than under normal circumstances, as the healthcare services had to prioritise emergency care.

It also appears that adverse effects from solitary confinement and psychological strain as a result of quarantine and solitary confinement have not been given adequate attention. The Ombudsman notes that inmates in quarantine and solitary confinement are deprived of their liberty and cannot safeguard their own interests. Therefore it is unfortunate that inmates who have been placed in quarantine and solitary confinement have not received necessary supervision from prison healthcare services. Of the fifty respondents who stated that they had been placed in quarantine or solitary confinement, only one stated that they had received daily visits by the healthcare services. This is in breach of the Mandela Rules and the WHO's provisional guidelines on COVID-19 in prisons, which determine that inmates placed in solitary confinement must be supervised daily, respectively once or twice per day.⁴

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«[...] had a conversation lasting three minutes with the healthcare services on the day of arrival, but no further contact.»

Inmate
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Doctor's office in a prison visited by the NPM.

3 See also The Parliamentary Ombudsman's Special Report to the Storting on Solitary Confinement and Lack of Human Contact in Norwegian Prisons, Document 4:3 (2018/19), chap.10; Parliamentary Ombudsman's report from visit to Oslo Prison, 1922 November 2018; Arendal Prison 68 February 2018; Åna Prison, 1315 November 2017; Ullersmo Prison, 2931 August 2017; Bergen Prison 46 November 2014.

4 Mandela Rules, rule 46 no. 1; (WHO) Europe, "Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance", 15 March 2020, p. 21.

Legal safeguards

Even though central authorities have maintained an ongoing dialogue during the pandemic, findings from the investigation suggests that the Correctional Service has found it challenging to adapt the health authorities' general infection control advice to the prison sector. We also found examples of the introduction of intrusive emergency infection control measures by some municipalities, before central guidelines had been drawn up. Lack of clarity regarding statutory authority and absence of national guidelines adapted to the prison context increase the risk that intrusive measures are introduced locally without an adequate evaluation of proportionality.

The Supervisory Boards for the correctional services did not conduct physical supervision during the period of investigation; however, they had largely continued the processing of individual enquiries from inmates. Alternative methods of supervision had been considered to some degree, but these had not yet been implemented. The restrictions that were imposed upon inmates indicated that arrangements should have been in place for effectively working supervisory bodies, also during the pandemic.

Conclusion

The pandemic created an ambiguous situation, particularly in its initial phase. The measures that were implemented must be considered in light of the available information about the virus and level of infection in the community at the time when the measures were introduced. The Correctional Service succeeded in avoiding major infection outbreaks in prisons and introduced a broad spectrum of measures to protect the rights of inmates during the pandemic. At the same time, the Ombudsman's investigation concluded that there had been major variations in the inmates' access to compensatory measures during this difficult period. The investi-

gation indicated that many inmates experienced a high degree of isolation during the period.

It is particularly concerning that intrusive measures such as quarantine and solitary confinement were introduced based on unclear statutory regulations, and that inmates in quarantine and solitary confinement did not receive adequate supervision from the healthcare services.

The purpose of the investigation was to contribute to a reduction in the risk of inhuman and degrading treatment in case of a possible new pandemic outbreak. In the report, feedback regarding eight central issues was given to the responsible authorities. These concerned, inter alia, the need for close coordination and dialogue between the Correctional Service and the health authorities. The report from the investigation was distributed to the Ministry of Justice and Public Security, the Ministry of Health and Care Services, the Correctional Service and the Directorate of Health. It was also made available to all prisons and transitional houses in all five regions of the Correctional Service. In addition, findings from the investigation were shared with national preventive mechanism agencies in other countries. The report is also available on the Parliamentary Ombudsman's website.⁵