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Special Report By THE PARLIAMENTARY OMBUDSMAN FOR PUBLIC ADMINISTRATION

The Ombudsman's investigation of the Police Immigration Detention Centre at Trandum

Presented to the Norwegian Storting on 15 February 2007



To the Storting

The Ombudsman's investigation of the Police Immigration Detention Centre at Trandum

Pursuant to the provisions of Section 12, second sub-section, of the Act dated 22 June 1962 No. 8 concerning the Parliamentary Ombudsman for Public Administration, I wish to submit this Special Report to inform the Storting of my investigation of the situation at the Police Immigration Detention Centre at Trandum. My investigation has given grounds for a number of comments on my part. In particular, I have found that there is reason to emphasize the conspicuous absence of legal regulation of the operation of the Centre which is clearly detrimental in regard to the protection of the internees accorded by the law.

The background for the investigation was a visit to the Centre by three of my staff and myself on 1 March 2006. This visit followed up my earlier visit to the Police Aliens Unit which is responsible for operation of the Immigration Detention Centre. On the basis of the information I had received and my own observations, I decided to carry out a further investigation of certain circumstances at the Centre.

My concluding statement in this case is attached. The statement has been sent to the Ministry of Justice and Police, the Directorate of Police and the Police Aliens Unit. Section 1 comprises introductory comments on the Detention Centre. In section 2, I deal with the use of security cells and other types of enforcement and the requirement for regulation of the operation of the Centre according to ruling law and regulations. Section 3 deals with control of communications, section 4 concerns internment consent, and section 5 deals with the use of hired security personnel. In section 6 I examine the activities offered to the internees, and section 7 concerns the food. Section 8 covers inspection routines at the Centre, section 9 the proposed establishment of a dedicated supervisory council. In section 10 I include some general concluding comments.

Oslo, 15 February 2007

Arne Fliflet



Attachment

Special Report on the Ombudsman's Investigation of the Police Immigration Detention Centre at Trandum

Every year, the Ombudsman visits administrative agencies and institutions. One of the purposes of these visits is to gain a more detailed impression of the situation at each individual body and to spread information on the Ombudsman scheme to civil servants in administrative agencies and to citizens in general. I have experienced that there are grounds for giving priority to visits to institutions where people are deprived of freedom or subjected to other enforcement measures.

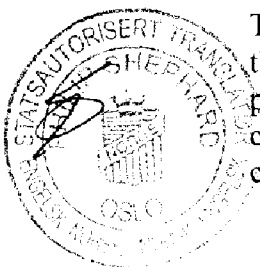
On 1 March 2006, accompanied by three of my staff members, I visited the Police Immigration Detention Centre at Trandum. This visit followed up my visit on 17 November 2005 to the Police Immigration Service (PU), which is responsible for the operation of the Centre. During the visit to Trandum, representatives of the Police Immigration Service and the administration of the Centre provided general information on operations. Subjects discussed included the use of custodial methods and other intervention and enforcement in respect of internees, the work of regulating operation of the Centre in accordance with ruling law and regulations, training of personnel and use of hired personnel, health services for internees, consent to internment and the situation for children and internees who must stay at the Centre for extended periods.

There was also a guided tour of the Centre, where three sections were in use – a family and children's section, a section for single persons and those in custody, and a high security section (section C). The high security section included two security cells (bare cells). There were limited facilities for leisure activities. These comprised access for play and ball games in small outside areas. I was shown a playroom for children and two small rooms, each with a table tennis table and an exercise bicycle. There were also three larger leisure rooms with television, some reading matter and different board games.

I had talks with several of the internees and also received written complaints from some of them. The talks and the written complaints concerned both the situation at the Centre and the processing by the authorities of the individual immigration cases.

The operation of the detention Centre raises numerous issues on lawful protection. On the basis of the information I received and my own observations, I decided to carry out a more detailed investigation of certain circumstances at the Centre. By letter from this office dated 6 April 2006, the Police Immigration Service was requested to submit a report in writing concerning the legal basis for and the use of the Security Section at the Centre including the two security cells in this section. Moreover, PU was requested to explain issues concerning control of internee communications, the inspection routines that were in practice, obtaining consent of internment and the treatment of consenting internees. The use of hired security staff, food and the activity facilities at the Centre were among the other issues raised.

The Police Immigration Service replied by letter dated 3 May 2006. In a letter from this office dated 9 June 2006, the Service was requested to submit more detailed and precise information concerning the use of the Security Section and the two security cells. Moreover, reports were requested concerning the information given to consenting internees on what such consent implies, the hired security personnel and



the inspection routines at the Centre. The reply letter from PU dated 9 July 2006 was sent to this office via the Police Directorate, which did not have any comments to make in this case.

Copies of the correspondence from this office to the Police Immigration Service were sent to the Ministry of Justice and Police for the Ministry's information.

The issues raised by this office and the replies submitted by PU are referred to in more depth and item for item as follows:

1. Introductory comments

The Immigration Detention Centre is a locked institution for foreign nationals sanctioned by the provisions of Section 37 d of the Immigration Act (Norway) dated 24 June 1988 No. 64, in which it is stated that foreign nationals who are held and imprisoned pursuant to the provisions of the Immigration Act shall "as a main rule" be detained in an immigration detention centre. This provision came into force on 5 December 2003 and operation of the Police Immigration Detention Centre as it is today, commenced on 1 July 2004. However, a detention centre for arrested and imprisoned foreign nationals has been operated at the same location for several years before this. The Immigration Detention Centre is at Trandum, close to Oslo Airport Gardermoen. The Centre is managed and operated by the Police Immigration Service, not the Prison Welfare and Probation Service.

In the Annual Report for 2004 for the Police Immigration Service, it is stated that the maximum capacity of the Immigration Detention Centre is 200 internees. However, the average number of internees per day shows a much lower figure. In the Consultancy Letter dated 4 July 2006 from the Ministry of Justice and Police concerning a draft of new regulations sanctioned by the provisions of Section 37 d of the Immigration Act, it is stated that "in the recent period" there has been an average of approx. 30 persons interned at the Centre.

Previously, foreign nationals who were imprisoned pursuant to the provisions of the Immigration Act, were detained in the ordinary prisons, in other words together with convicted prisoners or prisoners under suspicion. One of the reasons for the establishment of the Detention Centre was the criticism of the Norwegian authorities concerning this practice, cf. Ot. Prop. No. 17 (1998-99) p. 68 et seq. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as CPT) raised this issue following a visit to Norway in 1993 and recommended in its report dated 21 September 1994 that persons who were imprisoned pursuant to the provisions of the Immigration Act should be detained separately from other prisoners in custody. CPT also expressed the view that these foreign nationals should be detained in premises other than prisons. CPT's seventh Annual Report dated 22 August 1997 (for 1996) section 29 contains a similar recommendation on a general basis.

There are two groups of foreign nationals who can be imprisoned and interned. Firstly, Section 37, sixth sub-section, of the Immigration Act confers the right to arrest and imprison foreign nationals staying in the Kingdom if the person concerned "refuses to divulge his/her identity" or if there are "reasonable grounds" to suspect that the person concerned has "submitted a false identity". The right to arrest and imprison a foreign national is subject to failure on the part of the foreign national to comply with an order



concerning a specific place of residence or failure to comply with an order to report periodically to the Police. The total imprisonment period may not exceed 12 weeks unless there are "special grounds" for this.

Secondly, Section 41, fifth sub-section, of the Immigration Act allows for arrest and imprisonment of a foreign national if this "is necessary to ensure implementation" of a decision ordering the person concerned to leave the country. This applies similarly if the foreign national "does not take the necessary steps" to procure a valid travel document, and the object of the imprisonment is to "present the foreign national to the consulate/embassy of the country in question for the issue of a travel document". Maximum imprisonment is two weeks, but this may be extended to maximum six weeks if circumstances so demand.

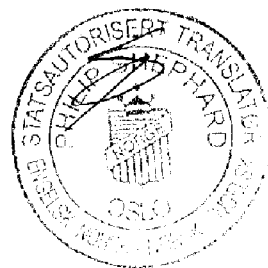
In addition to those who have been imprisoned pursuant to the provisions of the Immigration Act, other foreign nationals have also been accommodated at the Centre for shorter periods at their own consent awaiting repatriation. In the instructions for the Police Immigration Detention Centre dated 24 May 2005, item 6, it is stated that detainment following consent "shall under no circumstances be applied for more than 6 days".

The Police Immigration Service has stated that the Service faces major challenges with regard to the operation of the Detention Centre as the Centre houses families with children, single minors and adults from different cultures and language groups. Many of the internees are under pressure and several of them must also contend with psychological or physical ailments. Frequently, the Service has limited knowledge of the background and situation of the individual. The vast majority of the internees stay only for a few days, but some have been interned for much longer periods, in some cases more than a year.

Arrest and imprisonment pursuant to the provisions of the Immigration Act does not imply that the imprisoned person is suspected of criminal acts nor it is part of criminal proceedings against the person concerned. This situation formed an important part of the reasoning behind the establishment of the internment centre, separating this from the established prison service. However, this gives rise to special problems inasmuch as the operation of the internment centre is not part of the ordinary prison service system which is comprehensively regulated.

At the time of my visit, no separate statutory regulations had been drawn up concerning operation of the Centre. However, instructions for the Centre had been issued by the head of the Police Immigration Service. It was stated that operation was to a great extent based on the rules pertaining to police cells and that PU took a basis in the provisions of the Police Act (Norway) and police-oriented evaluations with regard to the use of custodial measures and enforcement.

During our visit to the Detention Centre and in the Immigration Service's subsequent reports to this office, it was stated that a working group had been formed with the intention of preparing a proposal for establishing statutory regulations for the operation of the Centre. In his capacity as the consultation body, the Ombudsman has received a proposed supplement to Section 37 d of the Immigration Act from the Ministry of Justice and Police and the Ministry of Labour and Social Inclusion in addition to new draft regulations pursuant to the same provision from the Ministry of Justice. Both these Consultation Letters are dated 4 July 2006. Several of the submitted proposals



will be commented in the different sections below.

2. Use of security cells and other enforcement measures. The requirement for statutory regulation of the operation of the Immigration Detention Centre

2.1 The Ombudsman's investigations

By letter from this office dated 6 April 2006, the Police Immigration Service was requested to submit a report on the statutory basis for the use of the Security Section and the security cells at the Centre. Reference was made to information that foreign nationals staying at the Centre at their own consent could also be transferred to the Security Section and to the security cells. A request was also made for further details on what type of situation could justify placement in the Security Section or the security cells as well as a more detailed overview of the frequency of use of security cells at the Centre.

PU was also requested to submit their viewpoint on the conditions in the two rooms used as security cells at the Centre and whether they considered this to be satisfactory. In particular, it was pointed out that the cells had no water, WC or access to daylight. PU was requested to inform this office when the security cells were established and to explain the evaluations that were made in relation to the question of access to daylight.

On the question of allegations in the media concerning the use of restraining straps on unmanageable internees, PU was requested to confirm the verbal information provided during our visit that there were no strap-equipped beds at the Centre, but that in certain cases, handcuffs, foot-irons or cable ties had been used. Furthermore, PU was requested to provide further details on the routines that were followed with regard to decisions to implement such measures, and the statutory authority for the use of such restraining measures.

In the reply from the Police Immigration Service dated 3 May 2006, reference was made to the problems facing the Centre and that these had resulted in the establishment of three separate sections. This was considered to be a necessary step in order to ensure security and orderliness in the day-to-day operation of a detention facility. PU did not consider that such differentiation of the internees should require any special statutory authorisation. However, it was considered that statutory authorisation was a more obvious requirement in cases when internees were removed from the company of other internees or when other enforcement measures were applied.

In their reply, the Police Immigration Service also stated:

“There are no provisions in the Immigration Act or in the appurtenant regulations to this Act on how the Immigration Detention Centre is to be managed and operated. It is stated in Section 37 d of the Immigration Act that the King can issue further regulations concerning the Detention Centre, but no such regulations have been prepared or ratified. This means that there are no further provisions in the Immigration Act or in the appurtenant regulations regulating the access to use of enforcement in relation to internees, additional to the loss of liberty resulting from arrest or imprisonment.

Section 38 of the Penal Code Enforcement Act (Norway) provides further



regulations on restraining measures that can be used by the Prison Welfare and Probation Service in respect of inmates in prison, including use of security cells. The Penal Code Enforcement Act does not however apply to foreign nationals who are imprisoned pursuant to the provisions of Sections 37 and 41 of the Immigration Act, and interned in the Trandum Immigration Detention Centre, cf. Section 37 d, second sub-section, of the Immigration Act and Section 1 of the Penal Code Enforcement Act.

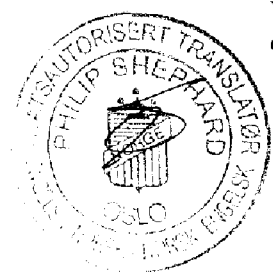
In Sections 7, 10, 11 and 12 of the Police Act, the contents of the general power of attorney is codified. This means that statutory authority for the use of enforcement is no longer encompassed by the previous non-statutory general power of attorney and must be authorised in the aforementioned provisions of the Police Act.

In our opinion, Section 7, cf. Section 8 of the Police Act basically provides statutory authority for confinement in a security cell in order to re-establish orderliness, secure the safety of individuals or to prevent or stop criminal actions. In such cases the Police are both entitled to and obliged to take appropriate action. Confinement in a security cell may also in our opinion be applied in the cases mentioned in Section 12 of the Police Act. Whether such confinement is to be implemented and for how long is to a great extent dependent on a discretionary appraisal, limited however by the service principles expressed in Section 6 of the Police Act.”

The Police Immigration Service did however express the view that the regulatory framework in this area could be clearer, as the abovementioned statutory authorisations are of a general nature and are not adapted to the requirements for restraining measures that are justifiable for proper and secure operation of an immigration detention centre. Lack of clarity in the statutory framework was stated to be unsatisfactory both for the Police and for the internees at the centre.

The Police Immigration Service stated that in certain cases it can be necessary to use restraining measures in relation to internees in the form of handcuffs or cable ties, and that there is sufficient statutory authorisation for the use of such measures in relation to internees at the Centre. Reference was made to the provisions of Section 6, last sub-section, of the Police Act dated 4 August 1995 No. 53 and the Police Instructions dated 22 June 1990 No. 3963 Chap. 3. PU also held that acts of necessity can provide a basis for removing internees from the community and for the use of restraining measures. The Immigration Service stated that foot-irons were not used at the Immigration Detention Centre.

The Police Immigration Service also stated that the two security cells at the Centre were completed in March 2004, and that it had not been possible to take into account the requirement for daylight in the cells for constructional reasons. It was also stated that a minute by minute log is kept in respect of all confinement in the cells, and an anonymised copy of such a log was attached to the reply as requested by this office. The overview of the use of the security cells showed, according to PU, that 48 internees had been placed in such cells during the course of 2005. During the period from 1 January to 15 April 2006, 10 internees had been placed in the security cells. It was stated that the completion of the Security Section in January 2006 had considerably reduced the requirement for the use of the safety cells.



The Police Immigration Service was requested by this office to expand on and to submit grounds for their standpoint that existing practice concerning confinement in security cells could have statutory authority in Section 7 of the Police Act, cf. Section 8 of this Act. PU were also requested to provide information on the duration of confinement in the security cells. During my visit it was stated that confinement in security cells was seldom more than a few hours, but it was also mentioned that in certain cases internees had been confined for several days. PU were requested to explain what measures the Police implement if confinement in a security cell is over a longer period and who is assigned to supervise internees placed in the safety cells. Finally, the Police Immigration Service was again requested to report on the routines that are followed with regard to decisions to implement restraining measures.

In a letter dated 9 July 2006, received by this office on 2 August 2006 after forwarding from the Directorate of Police, PU replied that the provisions of the Police Act which regulate the access for the Police to use restraining measures in service were meant as a codifying of the previous power of attorney. It was further stated:

“The general power of attorney was based on custom and practice, and it was therefore difficult to decide in which cases it was applicable and which measures were provided for. The provisions of the Police Act now permit the use of restraining measures only in certain cases. We are aware that the provisions of Section 7 et seq. of the Police Act are not intended to provide access to measures such as placement in a security cell in the form that this was practiced at the Police Immigration Detention Centre. Neither does the wording in the aforementioned provisions specify placement in a security cell as a restraining measure that can be used by the Police. It must therefore be acknowledged that use of security cells under reference to Section 7 et seq. of the Police Act does not have a strong legal basis.

Despite the fact that there is no statutory framework for the Immigration Detention Centre, the Police Immigration Service has been assigned to operate the Centre and to carry out police duties in the field of immigration. Experience gained from the operation of the Centre has shown that there are considerable problems involved in maintaining order and security. Operation of other comparable detention facilities has shown that placement in a separate cell can be necessary in certain circumstances, cf. for example Sections 37 and 38 of the Penal Code Enforcement Act. In our opinion, there has also been a requirement for placement in security cells at the Immigration Detention Centre. Although there is a weak legal basis for this measure in the provisions of the Police Act, we are of the opinion that at all events, general necessity of action has provided a basis for placement in a security cell.”

The Police Immigration Service states that the duration of confinement of internees in the security cells has varied from a few minutes to approximately 24 hours. Moreover, it is stated that in cases where confinement in security cells has been extended, the routine has been that the security officer on duty must “notify the duty police officer at the Centre, the executive officer and the responsible legal advisor in the Police”. The latter person shall evaluate whether the internee concerned shall be transferred to an ordinary prison.

The request from this office for the Police’s evaluation of the rooms used for security cells at the time I visited the Centre have not been the subject of further comment. In a



letter dated 18 May 2006 from the Police Immigration Service to the Directorate of Police, a copy of which has been sent to the Ombudsman, it was however stated that the two security cells were closed with effect from 12 May 2006. This is also confirmed in the Norwegian authorities' reply to CPI on 28 September 2006. In the letter from the Police Immigration Service to this office dated 9 July 2006, it is stated that two of the standard cells in the Security Section have now been taken into use as security cells. According to PU, these cells have a floor space of approx. 9 sq.metres and have windows, a ceiling light, smoke alarm, bell, radiator and ventilation.

It is also stated in this letter that the other eight cells in the Security Section have additional fittings and furnishings in the form of a bed, mattress, bed-linen, writing table, chair and cupboard, and that the internees in this section have access to all the rooms, WC, shower, smoking room, activity room and exercise yard from 8 am up to midnight. After lock-up for the night, the internee must use the bell to call centre personnel should they wish to use the WC. It was stated that in some cases internees are not locked in their cells at night in the Security Section. According to PU, supervision of internees in security cells shall be carried out by personnel with police authority, but in view of capacity problems, other security personnel have at times carried out supervisory duties.

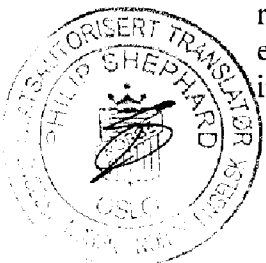
According to the Police Immigration Service, decisions concerning restraining measures are passed by personnel with police authority. The duty officer at the Detention Centre shall, if possible, evaluate the necessity of implementing the measure or whether milder measures could be implemented or if such measures would be insufficient. The use of enforcement is registered, and a report is issued describing the grounds for taking the measures. When using restraining measures, the duty officer must notify the duty police officer at the Centre.

2.2 My comments

2.2.1 Legal regulation

As explained in section 1, the arrest and imprisonment of foreign nationals is sanctioned in the provisions of Section 37, sixth sub-section, and Section 41, fifth sub-section of the Immigration Act. Pursuant to Section 37 d of said Act, such foreign nationals shall as a main rule be detained in an immigration detention facility. The provisions do not provide rules concerning the operation of the detention facility, including use of compulsion, but they do provide for the issuing of a statutory instrument by the King in Council detailing rules for operation. In the legislative background for Section 37 d of the Immigration Act, i.e. Ot.Prop. No. 17 (1998-99) p. 69 – it is emphasized that detainment in a detention facility “will represent deprivation of liberty and regulations will be required relating to security, control, orderliness, etc.”

The statutory authority for the actual imprisonment and for the necessary measures required at a detention centre is satisfactory. With regard to consenting internees, I refer to section 4 below. However, my investigations have shown that there is a strong requirement for explicit regulation of the operation of the Detention Centre, particularly in regard of the comprehensive enforcement measures that are used in respect of certain internees. The present statutory authority governing the use of certain enforcement measures is too vague and is unsatisfactory with regard to the rights of the internees and the duties of the staff.



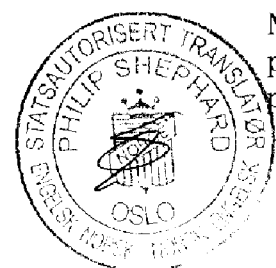
One example which shows that the statutory basis is unsatisfactory, is the use of the two security cells at the Centre. In this case, PU refers to Section 8 of the Police Act. However, this provision only provides for confinement in certain specific cases and also specifies an absolute time limit of four hours for the confinement of an arrested person. Section 12 of the Police Act specifies a longer deadline of 24 hours, but temporary confinement pursuant to this provision is subject to the person concerned being ill and unable to take care of himself/herself. Moreover, it is a condition that the person concerned could constitute a hazard to himself/herself or to others. In addition to these limitations, I would mention that Chapter II mainly deals with public law and order and public areas, cf. the wording of Section 8, first sub-section, No. 1, and thus applies to completely different situations than those applying in a locked institution.

The Police Immigration Centre also mention considerations with regard to acts of necessity as a basis for confinement in the security cells. No reports have been requisitioned from the Police concerning the basis for specific decisions to confine internees in security cells and I am therefore unable to evaluate whether ordinary acts of necessity could give grounds for such confinement in certain cases. However, applying act of necessity as grounds for the use of enforcement measures such as this in a facility where use of compulsion must be said to be part of the day-to-day operation is difficult to accept.

The use of a security cell is an enforcement measure which is also in use in prisons. Detailed regulations of their use are provided in Section 38 of the Penal Code Enforcement Act dated 18 May 2001 No. 21. The Act specifies clear limitations on the use of security cells. The individual prison is also required to give notification at regional level and to notify the Central Administration of the Prison Welfare and Probation Service whenever confinement in a security cell exceeds three and six days respectively. As also emphasized by PU, the provisions of this Act are not applicable to the Immigration Detention Centre.

It is not clear why there are not satisfactory regulations for the operation of the Immigration Detention Centre, despite the fact that it has been in operation for a long time. In other institutions where citizens are deprived of liberty such as prisons and locked psychiatric institutions, a comprehensive set of laws and regulations has been developed, which also govern the use of enforcement in respect of the inmates/patients. I refer to the provisions of the Penal Code Enforcement Act with appurtenant regulations and guidelines, the previous Prisons Act dated 12 December 1958 No. 7 and the Psychological Health Care Act (Norway) dated 2 July 1999 No. 62 with appurtenant regulations. The comprehensive regulations governing the operation of such institutions and the use of enforcement underscores the problems involved in operating an immigration detention centre without a sufficiently clear set of rules.

As I understand the situation, the composition of the internees and the regime at the Detention Centre has gradually developed in a manner that has emphasized the requirement for regulation. It is stated that several of the internees are in a difficult situation, and this is reflected in serious actions against other internees and episodes of self-inflicted injuries. The Security Section at the Detention Centre is now in many ways comparable with an ordinary prison division. Nonetheless, it is positive that the Ministry of Justice and Police and the Ministry of Labour and Social Inclusion have proposed more detailed regulation of the use of enforcement at the Centre. The proposal for new fourth to sixth sub-sections in Section 37 d of the Immigration Act



contains explicit conditions governing when the different enforcement measures may be used and the conditions become stricter when more comprehensive measures are used, for example confinement in security cells. A condition for the use of this enforcement measure is that the circumstances make this “strictly necessary”, the same condition that is specified for use of security cells in prisons, cf. Section 38, second sub-section, of the Penal Code Enforcement Act.

Section 17 et seq. of the proposed regulations complements these provisions. In Section 3 of the proposal, it is emphasized, with reference to the provisions of Section 32 of the Immigration Act, that the provisions of the Public Administration Act (Norway) apply to the Immigration Detention Facility and that the Directorate of Police is the appellate body. The regulations specified in the Public Administration Act place numerous demands on case processing, as well as on the form and content of individual decisions. Section 18, fourth sub-section, of the proposed regulations concerning placement in “a high security section” emphasizes that the foreign national must be informed on the access to appeal. The proposals for the act and regulations do not contain any statutory authority for passing verbal decisions, such as for example Section 7, litra b, of the Penal Code Enforcement Act. I am not aware of any reason for this or what evaluations may have been made in this connection.

Access for the supervisory authorities to carry out a subsequent evaluation of decisions passed at the Detention Centre is strengthened by the requirement for log registration, including decisions regarding transfer to the Security Section and the use of other enforcement measures, cf. Section 18, third sub-section, and Section 19, third sub-section, of the proposed regulations. It is further proposed that routines should be officially established for internal police supervision, cf. Section 25, and the proposal also includes the establishment of an external supervisory council on the same model as the Prison Welfare and Probation Service model, cf. Section 26.

On the basis of PU’s reports to this office, I take as a basis that due regard to security and upholding law and order at the Detention Centre necessitates the use of enforcement measures to a certain extent. In my view, the proposed establishment of a statutory instrument to cover such use is a necessary step to improve the protection accorded by the law for the internees.

2.2.2 The use of certain enforcement measures

Following its visit to the Immigration Detention Centre in October 2005, CPT commented as follows in its report dated 28 March 2006 concerning the security cells:

“In the CPT’s opinion, in their present state, these two cells are unsuitable for detention of any kind.”

I assume that the Norwegian authorities have also concluded that the cells are unsuitable for the purpose as they are now no longer in use. In the Ministry’s comments to the recently submitted draft legislation it is emphasized that the cells to be used for this purpose “must be planned and built in such a way that detention in the cells will be as lenient as possible while simultaneously fulfilling the objective of upholding law and order and security at the Detention Centre or securing implementation pursuant to the provisions of Section 41”. The Ministry also emphasizes that the cells must have access to daylight and must as a minimum requirement contain a clean mattress and blankets or equivalent. I have previously



raised the issue of access to daylight in police cells with the Ministry of Justice (case 1999/2269). In view of the information provided, there are no grounds for pursuing the issue of the design etc. of the cells by this office.

In the aforementioned report from CPT, more detailed information was requested from the Norwegian authorities concerning the routines and practice for the use of "cable ties" in the Security Section. I have noted that in the reply to the Committee dated 28 September 2006, the Norwegian authorities state that such restraining measures are only used in extreme cases, for example in the case of self-injury and violent behaviour in relation to other internees or officers at the Centre. It is emphasized that the duty police officer must issue a report on the incident and the use of "cable ties" took place only twice during the course of 2005. CPT also recommended that a register must be kept of the identity of those placed in isolation, the reason for such detention, information on when the measure was effected and when it was concluded, any other measures that were used, who passed the decision, and where the person concerned was detained. In their reply to the Committee, the Norwegian authorities stated that this register will be established.

Following this, I do not find that there are any grounds for further investigation of the issues concerning use of "cable ties" and solitary confinement.

3. Control of communications

In the notice "Information about the Police Detention Centre, Trandum", which was posted at the Detention Centre and sent to this office after our visit, it was stated that the Police could decide whether the internee could receive letters, visits or telephone calls. However, it was not stated in which cases such limitations could be applied or how this decision was passed. PU was therefore requested to evaluate the practice described in the notice in relation to the regulations on police custody in Section 186 et seq. of the Penal Code Enforcement Act of 22 May 1981 No. 25. According to these provisions, the courts shall pass decisions concerning control of letters and visits, solitary confinement etc. Reference was made to the provisions of Section 37 c, third sub-section, last sentence, where it is specified that the provisions of Sections 170 a and 174 et seq. of the Penal Code Enforcement Act are to apply similarly as far as the provisions are appropriate.

By letter dated 3 May 2006, the Police Immigration Service replied that control of communications was not practised at the Detention Centre and that the item dealing with this subject in the information notice had been included in error. An apology was issued. PU stated that internees are allowed to call free of charge to whoever they wish, five minutes per day. In addition to this, internees may freely call a lawyer, case processing officers in the Directorate of Immigration, the Immigration Appeals Board or the Police. It was further stated that internees are allowed to receive visitors at the Centre during visiting hours between 4 pm and 6 pm, every day of the week. According to PU, internees may also receive visitors outside these hours provided this is justifiable from an administrative and security viewpoint.

According to the Police Immigration Service, persons detained at the Centre very rarely receive mail as in most cases their stay at the Centre is short. PU has not expressly stated whether mail to internees is routinely controlled. However, it is assumed that foreign nationals can freely receive mail, and that this mail is not routinely opened.



The draft legislation provides that internees shall basically have the right to receive visitors, to make telephone calls and to receive and to send mail, cf. the proposal for a new third sub-section in Section 37 d of the Immigration Act and Sections 8 and 9 of the draft legislation. Statutory access is proposed for the Police to pass decisions on controlling measures when certain circumstances make this necessary, but not on a general basis.

The right of the individual to free and uncontrolled communication with the outside world in the form of correspondence, telephone calls and visits is a basic right and special statutory authorisation is required for the authorities to encroach on this right, cf. Art. 8 of the European Convention on Human Rights dated 4 November 1950. This Convention has been adopted into Norwegian law, cf. Section 2 of the Human Rights Act (Norway) dated 21 May 1999 No. 30, cf. Section 3, and takes precedence in relation to other legislation.

The right to uncontrolled communication also applies in closed institutions. As I see it, the underscoring of the internees' rights to free communication and the closer regulation of Police decisions on controlling measures in the draft legislation will mean improved lawful protection of internees.

The Police Immigration Service has issued an apology for the erroneous information included in the information notice posted at the Detention Centre during my visit, and has stated that the notice will be amended accordingly. It is unfortunate that information notices to internees contain incorrect information on such important points and an apology is in order.

I request that a copy of the updated information notice be sent to this office.

4. Consent to internment

4.1 The Ombudsman's investigations

By letter dated 6 April 2006, the Police Immigration Service was requested to explain in more detail how consent to internment was obtained and what information was submitted in advance. These were also subjects discussed during my visit. Moreover, PU was requested to provide information on how any language problems in connection with consent to internment were solved. A report was also requested detailing which restrictions a consenting internee was subjected to and whether internees are searched upon arrival at the Detention Centre. In this connection, reference was made to Section 3.1 of the Instructions where it is stated that "all those detained at the Immigration Detention Centre shall be searched by personnel with police authority".

By letter dated 3 May 2006, the Police Immigration Service stated that consent as a basis for detainment at the Centre was used only to a limited extent and that the new detainment centre for arrivals in Lier, which was put into operation on 27 March 2006 will to a great extent replace this arrangement. For this reason, the Police expected that the requirement for the use of consent would be further reduced. PU explained further that consent was obtained by presenting the foreign national with a declaration of consent and, if required, this was translated for the person concerned by using the services of an interpreter.



The Police Immigration Service underscored that basically it is not relevant to use enforcement measures in relation to persons who have consented to detainment at the Centre. However, there have been one or two occasions when consenting foreign nationals have been arrested and confined, and have then been released. It was stated that the reason for this action was that they caused a disturbance. PU otherwise confirmed that consenting internees were searched upon arrival and their valuables were locked in a safe during their stay at the Centre.

In a new letter from this office, the Police Immigration Service was requested to state whether information is given to the consenting internees on what their consent specifically implies, additional to the declaration of consent itself, for example concerning limitation of movement that the internee is subject to and concerning the relatively comprehensive inspection routines practised at the Centre. PU was also requested to provide further information on the background for searching the consenting internees and was asked whether internees must expressly consent to this.

By letter dated 9 July 2006, the Police Immigration Service confirmed that the written declaration of consent did not provide further information on the nature of detainment at the Immigration Detention Centre with regard to limitation of movement, inspection routines, etc. It was stated that there could have been cases where consenting internees have not received full information on conditions at the Centre apart from the fact that it was a locked institution. With regard to searching, PU stated:

“All those entering the Immigration Detention Centre are searched upon arrival. The object of the search is to find out whether the person concerned has any objects that could be used for self-injury or injury to others at the Centre. No differentiation is made between those who are arrested or imprisoned and those who have consented to internment.”

4.2 My comments

The reports submitted by the Police Immigration Service concerning existing practice in relation to consenting internees can indicate that in some cases consent can have been given on a basis of inadequate information. PU have sent a copy of the declaration of consent that has been in use and that is signed by the foreign national and by the officer receiving the consent. The declaration is worded as follows:

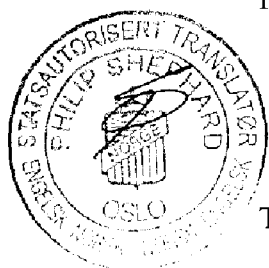
“I give my consent that I can stay overnight at the Police Immigration Detention Centre up to ...

I may leave the Centre whenever I wish, but if I do so, I am aware that I cannot return.”

This is followed by spaces for date and signature and tick-off boxes for information on whether an interpreter has been used or not. At the bottom of the consent form, the following clause has been included:

“The foreign national has been expressly informed that staying at the Centre is voluntary and that he/she may leave the Centre at any time, but if an internee does leave the Centre, it is not possible to return.”

The declaration of consent does not contain any further information on the restrictions



that apply for internees during their stay. The declaration is worded in Norwegian. PU have stated that the services of interpreters have been used when required, but that language difficulties can have had the result that consenting internees have little understanding of the content of the consent declaration. This is problematic in view of the fact that consenting internees are also subject to comprehensive deprivation of liberty and control measures. This includes searching upon arrival and impounding property without express consent to do so. I also make reference to the inspection routines at the Detention Centre that many of the internees regard as problematic in relation to privacy etc., see section 8 below.

I find there is also reason to question whether the individual may be under pressure when consent is given. During my visit, PU stated that several of those staying at the Centre by consent have not had any other place of residence. It is stated in the declaration of consent that a foreign national who leaves the Centre, cannot return. This can mean that some internees have little opportunity to retract their consent after internment.

In my opinion, these circumstances serve to indicate that the practice of placing consenting internees at the Centre cannot continue in the same manner as at present.

In the draft proposal for amendment to the Immigration Act and in the new draft regulations there is no mention of consenting internees. Neither is there any mention of this group in the comments to the amendments. The proposed rules appear to be aimed at regulating the situation for those who are confined at the Detention Centre and have been arrested and imprisoned pursuant to the provisions of the Immigration Act. The deprivation of liberty and many of the other enforcement and control measures also have their reasoning in the considerations behind these provisions.

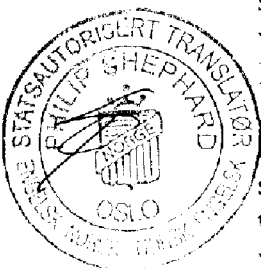
I understand the Ministry's draft proposal to mean that there shall no longer be access to place persons at the Centre by consent. This definition is also taken as a basis in PU's letter dated 9 July 2006. If this is the correct interpretation, it should be more explicit. If there is to be access for placing consenting internees at Trandum, an evaluation must be made on how this is to take place and how the requirement for information on the part of consenting internees can be implemented.

5. Hire of security staff

5.1 The Ombudsman's investigations

During the Ombudsman's visit to the Detention Centre, the question of hired security staff from the company Falk Norge AS (now Group 4 Securicor – G4S) as custodial officers and for transport assignments was taken up. The Police Immigration Service gave details on the requirements for training of security personnel and on how cooperation between the Police and the security company had functioned to date. PU stated that the Police are involved in the engagement of security personnel who are to work at the Detention Centre and that they can demand that unsuitable personnel be re-located.

At the Ombudsman's request, the Police Immigration Service submitted a report on the specific responsibility situation at the Centre, by letter dated 3 May 2006. It was stated that all security personnel employed in Falck Norge AS and who have their place of work at the Police Immigration Detention Centre are under the supervision of the duty



officer at the Centre and that there are always police officers with police authority on duty at the Centre in addition to the security staff. PU also stated that the hired security personnel do not have any “decision-making authority according to regulations” and that they mainly carry out duties connected with the organisation, such as administration of visits, arranging telephone call times, serving of food and escorting internees between sections, in addition to transport duties.

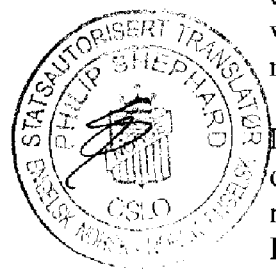
In a new letter from this office, the Police Immigration Service were requested to clarify whether authority has been delegated to hired security personnel with regard to use of enforcement and whether hired security personnel search the internees. In a reply dated 9 July 2006, PU state that hired security personnel at the Detention Centre do not have police authority and do not therefore have “authority to apply enforcement measures in relation to internees”. Hired security personnel shall “keep at a safe distance and notify personnel with police authority” should a situation arise making use of constraint necessary. According to PU, there had been cases “where security personnel had been allowed to search internees”.

5.2 My comments

In an institution where comprehensive control and constraint measures are used, such measures must have sufficient justification in the law. In this connection I refer to my statements under section 2 above. It is also important that those exercising such authority have the necessary training, knowledge and experience. These circumstances were also emphasized by CPT when the Committee visited Norway. In the concluding report following the visit in October 2005, CPT raised the question of whether hired security personnel had received “appropriate training”.

Hired security personnel at the Detention Centre do not have police authority and the Police Immigration Service has emphasized that they cannot therefore use constraining measures in relation to the internees. In PU’s Annual Report for 2004, it is shown that the custodial function is carried out mainly by security personnel. On the basis of the Police’s own description of the situation at the Detention Centre, I assume that acute situations can arise where there is a requirement for the use of enforcement measures. In such situations, PU has stated that hired security personnel shall “keep a safe distance” and notify personnel with police authority. I question whether this routine can be practised in all situations and whether the security personnel are fully aware that basically they cannot resort to the use of constraining measures. The use of hired security personnel for the searching of internees would appear to indicate that the regulations and basic principles of protection by law have had to be put aside for practical reasons and due to lack of resources. The instructions in section 3.1 do not provide for use of hired security personnel for such duties. I must emphasize that it is the responsibility of the Police to organise operation of the Detention Centre in such a way that the risk of those working at the Centre exceeding their authority is kept to a minimum.

In the draft amendments to the Act and regulations, it is proposed that the present use of hired civilian security personnel be discontinued. The security personnel are to be replaced by transport escorts who shall be empowered with limited police authority. Requirements with regard to transport escorts include 3 year secondary school and they shall be recruited from different vocational groups and must complete a 4-week course at the Police College. In the opinion of the Ministry, the proposed amendments will strengthen continuity and the quality of the demanding service at the Detention



Centre.

There is therefore no reason for me to go into further detail concerning the use of civilian security personnel apart from emphasizing the importance of ensuring that comprehensive control and enforcement measures may only be implemented by personnel who have the express authority to take such actions. It must also be ensured that training is appropriate for meeting the challenges at the Centre, which places great demands on personal suitability on the part of the staff. I have duly noted that the aim is to recruit new employees from different vocational groups with differing backgrounds and competence.

6. Activities for the internees

6.1 The Ombudsman's investigations

The scope of activities for the internees, particularly those who are interned for a longer period, was a leading subject during discussions when we visited the Detention Centre. In a letter from this office dated 6 April 2006, reference was made to the notice "Information about the Police Detention Centre, Trandum" that was posted at the Centre. In this notice it was stated that the exercise rooms could be opened between 8 am and 8 pm "if there is enough staff on duty". In the same notice it was stated that opening of the exercise yard was also subject to sufficient staff being on duty. The Police Immigration Service were requested to provide information on to what extent the internees had the opportunity of using the exercise rooms and the exercise yard and whether the personnel situation made this difficult. It was also requested that the Police give their viewpoint on whether they considered that the range of activities was sufficient for those interned for longer periods and whether there were any specific plans for extending the offer of activities.

In their reply dated 3 May 2006, the Police Immigration Service stated that access to the exercise yard and the exercise rooms were open for the internees within the posted time limits, but there had been cases where internees have had to wait for access to these locations as the staff has had to give priority to other assignments. PU acknowledged that the offer of activities could have been better, particularly for internees staying at the Centre for extended periods, but also pointed out that the average stay at the Centre was only 3 days. It was further stated:

"The fact that the offer is not better is due to the fact that the length of stay at the Centre shall not significantly exceed 12 weeks. It is considered that those who stay at the Centre for longer periods hold the solution to their own case and can therefore contribute towards cutting short their stay. Those staying at the Centre for extended periods are foreign nationals of uncertain identity."

6.2 My comments

In the draft legislation at the time the Immigration Detention Centre was established it was a specific requirement that conditions at the Centre must also be suitable for long-term internees. Ot.Prop. No. 17 (1998-99) p. 69 contains the following statement:

"Foreigners who are imprisoned pursuant to the provisions of Section 37, sixth sub-section, and Section 41, fifth sub-section, shall be held at the Detention Centre, but shall as a main rule be kept physically separated. Special regulations will be



prepared for the Detention Centre with statutory authority in the provisions of Section 37 d. Imprisonment pursuant to Section 41 will normally be for a short period only, as such confinement is in connection with the implementation of decisions, while imprisonment pursuant to the provisions of Section 37 will involve varying periods. The two groups must therefore be dealt with separately with regard to the content and meaning of life at the centre.

Inasmuch as imprisonment pursuant to Section 41 is of short duration, activity requirements are less demanding for this group than is the case for those imprisoned pursuant to Section 37.”

I understand that the “content and meaning of life at the centre” is first and foremost the opportunity of employment and different activities during the stay at the Centre. The draft legislation also states that the offer of activities at the Centre must be suitable for internment over a period of time. Information from the Police Immigration Service indicates that differentiation in the offers to those on long periods of internment and to those staying for only short periods, has not been followed up. As previously mentioned, certain internees stay at the Centre for a relatively long period, in certain cases for more than a year. Neither is the condition concerning physical separation according to the grounds for imprisonment followed up. I am not aware of the reason for this.

From experience it is accepted and acknowledged that deprivation of liberty can generally speaking be regarded as a considerable strain, particularly for those who are confined for long periods. It is the responsibility of the authorities to seek to make confinement as easy as possible, and offers of employment and activities are leading themes in this connection. This train of thought serves as a guideline in the Prison Welfare and Probation Service. Convicted persons are obliged to take part in activities during the daytime. In addition, it is stated in Section 21 of the Penal Code Enforcement Act that the Prison Welfare and Probation Service “shall ensure that inmates have the opportunity of participating in activities in leisure hours, including the opportunity of physical and cultural activities”. This obligation on the part of the authorities has its grounds in a requirement to prevent isolation and passiveness on the part of the inmates and the resulting harm that this can cause.

Internment at the Police Immigration Detention Centre is not conditional upon the internee being judged guilty of a criminal act. The measure is not of a penal nature. Imprisonment pursuant to the provisions of the Immigration Act is in many ways similar to being held in custody. As mentioned in section 1, foreign nationals imprisoned pursuant to the provisions of the Immigration Act were previously detained in the ordinary prisons under the same conditions as those serving sentences and those in custody. This continues to be an alternative in some cases. The situation for persons held in custody would appear to be a natural basis for comparison, to a certain extent.

The Prison Welfare and Probation Service has basically the same obligation for adapting confinement for those held in custody as that applying to those serving sentences, cf. Section 52 of the Penal Code Enforcement Act. Work participation, training, programmes and other measures are regulated in Section 49 and in Section 4-3 of the Regulations dated 22 February 2002 No. 183. In Section 4.4 of the guidelines to the provisions of the Act and the Regulations, it is stated: “The organising of employment, etc. shall be given high priority in relation to inmates who desire such



offers". Moreover, in Section 46, first sub-section, second sentence, of the Act, it is stated in relation to this group: "The harmful effects of imprisonment must be prevented as far as possible." The legislative background for this Act underscores the burden for the individual and the importance of "lightening the burden of imprisonment as far as possible", cf. Ot. Prop. No. 5 (2000-2001) p. 120. Report to the Storting No. 27 (1997-1998) concerning prison welfare draws particular attention to the harmful effects of prison custody, see p. 58 et seq.

During the processing of the draft proposal for a revised Section 37 d of the Immigration Act, concerning immigration detention centres by the Storting, the Committee stated: "The deprivation of liberty in a detention centre must be considered to be an equally heavy burden as imprisonment", cf. Recommendation O. No. 42 (1998-1999) p. 17. The experience of the Police that has been passed on to me confirms that detention at the centre can be a heavy burden for many internees. Physical and psychological stress and episodes involving frustration and self-injury do take place. This is also a weighty reason for the comprehensive inspection routines at the Centre, see section 8 below. In such a situation I find it difficult to understand why the Police have not attempted to reduce pressure on the internees to a greater extent, particularly for those interned for long periods. As mentioned above, activating inmates is a recognized and important measure in this connection. At the time of my visit, the opportunities for such activation must be described as modest. Moreover, the standard of the material was very basic.

It is also difficult to understand why conditions in this area for those interned at the Centre for longer periods should be so different from the conditions in prisons, both legally and factually. The fact that the average period of detainment is short and that a minority of internees stays for extended periods, is hardly relevant. The Police Immigration Service state that internees who are interned at Trandum for longer periods "have the solution to their cases in their own hands". I understand this to mean that these foreign nationals can cooperate in order to clarify and verify their identity. Although this can be correct, it is not an acceptable explanation for failure to follow up the conditions in the legislative background for the Act. I must call to mind that the internees have been deprived of their personal liberty and placed in a locked and prison-like centre. In Norwegian legal thinking, humane treatment requires that those deprived of liberty shall be provided with the opportunity of filling the time with meaningful activities. On no account should less than perfect conditions at the Centre be used as a form of pressure in relation to internees.

I have registered that following CPT's visit, the Police Immigration Service made an agreement with the Oslo Public Library and books can now be borrowed in a range of languages. In their report dated 28 March 2006, CPT recommended that the Norwegian authorities should take steps to ensure that all internees were given the opportunity of spending at least one hour in the open air every day. The authorities were also encouraged to continue the work of expanding the offer of activities at the Centre and the opportunities for the internees to use the activities available.

In the draft for a new third sub-section in Section 37 d of the Immigration Act it is laid down expressly that internees shall have the right to spend time in the fresh air and the right to physical activity. Section 13 of the draft proposal further defines the right to fresh air and activity:

"As far as practically possible and unless otherwise provided for in the provisions



of Section 37 d of the Immigration Act, foreign nationals are entitled to at least one hour in fresh air every day. A reasonable range of activities shall be made available to the foreign nationals, both indoors and outdoors.

Special arrangements shall be made for foreign nationals who may be staying at the Centre for an extended period, as well as for children and families with children.

Whenever necessary in order to maintain law and order or security or in order to secure implementation pursuant to Section 41 of the Immigration Act, the Police may control and curtail the foreign national's physical activity and period in fresh air."

In the comments to the Draft Regulations, it is stated on p. 10 that the new rules will ensure an improved offer of activities and that "plans are already underway for the establishment of an activity centre in a building on the adjacent property". Moreover, "some rebuilding work will be carried out on the existing buildings in order to improve the situation for the group of foreign nationals who are detained at the Centre for longer periods".

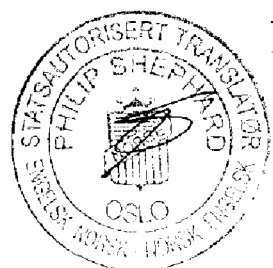
The improvement in the offer of activities that has now been proposed, is positive. In my view, the authorities should however also consider temporary solutions which would provide internees detained for extended periods with an improved offer of activities during the period of rebuilding and extension of the existing buildings. I find that there is also reason to emphasize that the right to spend at least one hour in fresh air is a minimum requirement and arrangements should be made to enable internees to spend longer periods outdoors.

7. Meals

During my visit I was informed that bread, different spreads, etc., milk, juice and hot drinks were always available for internees. Internees were also given one fruit daily, but no vegetables. Dinner comprised freeze-dried food of the type "Real Turmat", instant soup or similar to be mixed with hot water. Many of the internees I and my colleagues spoke to complained about the food. Among other things it was held that over longer periods, the freeze-dried food resulted in stomach trouble.

I understand from the Police that internees are not allowed to bring their own food to the Centre. As far as I understand, there are no other opportunities for buying food or supplementing the food that is issued. This service is available in prisons, cf. Section 3-23, second sub-section, in the Regulations to the Penal Code Enforcement Act dated 22 February 2002.

After our visit, the media reported that the Police Immigration Service had decided to change the fare at the Centre. By letter from this office, PU were requested to submit a report on this, and to explain the grounds for the decision. By letter dated 3 May 2006, the Police Immigration Service stated that following the introduction of hot meals from a catering company, the meals situation for the internees was now considered to be "very good" and comparable with, for example, meals served in the health sector. It was also stated that the food served conformed to religious and cultural requirements. PU enclosed an example of a weekly dinner menu.



The food on offer up to the time of reorganisation of meals, is assumed to have been intended for internees detained for short periods. For those foreign nationals who were detained for weeks and months, the meals situation was less than satisfactory and considerably poorer than at other institutions where people are detained for extended periods such as prisons and hospitals. Prison fare is subject to the regulations in Section 3-23, first sub-section, of the Penal Code Enforcement Act and refers to “ruling regulations”. In circular letter KSF 3/2004 from Central Management of the Prison Welfare and Probation Service dated 28 June 2004, there are further guidelines with regard to the Regulations. These guidelines are based on the nutrition policy recommended by the State Council for Nutrition and Physical Activity, and food served must be “of satisfactory nutritional value” and “varied” (section 2.1). The aim is that every “inmate in Norwegian prisons must be able to eat good and nutritional standard food until satisfied”, cf. Section 2.2 of the guidelines. Nutritionally correct food is further specified in Section 2.3 of the guidelines. Rules are issued with regard to the serving of dinner in Section 3.1, and this includes the offer of fish at least twice a week.

Up to the time of reorganisation following my visit, the diet at the Detention Centre did not meet the above guidelines. I do not know whether the Police had at any time considered following these guidelines, which are not applied at the Centre. There is no information on whether any nutritional evaluation of the food has been made in respect of long-term internees. For this group it is nevertheless difficult to see that there can be any acceptable reasons why the food served should be significantly poorer than the food served to prison inmates.

I request that PU takes due note of the situations I have pointed out, and I assume that the food now served at the Centre is satisfactory from a nutritional viewpoint.

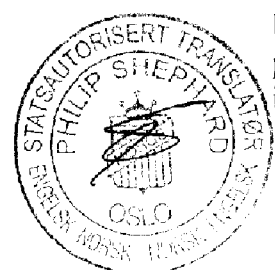
8. Inspections

8.1 The Ombudsman's investigations

Section 2.3 of the instructions for the Police Immigration Detention Centre states the following concerning inspections:

“The Centre shall be inspected every 30 minutes, as a minimum. All doors and windows shall be checked, rooms shall be inspected, and windows checked. Any non-conformance shall be repaired if possible at the location, and the inspection shall be registered in the orderly book.”

In talks with the internees and from other sources, it transpired that many internees felt that they had no opportunity to have a private life due to the frequent inspections. Some of the internees found the inspections disturbing for sleep, etc. It also transpired that the round-the-clock inspections also covered the toilets, showers, etc. By letter from this office, the Police Immigration Service was requested to explain why it was considered necessary to carry out this inspection routine at the Centre. It was stated that the inspection routines appeared to be more comprehensive than in most prisons. Furthermore, PU was requested to provide specific information on how the inspections were implemented, and what precautions, if any, were taken to provide a reasonable balance between the inspection requirements and the right of the internees to have a private life. It was also questioned whether there was actually a differentiation in the intensity of the inspections, for example that the inspections of the rooms of the



consenting internees or the long-term internees are gradually reduced and are less comprehensive.

In letter dated 3 May 2006 the Police Immigration Service emphasized that the officers at the Detention Centre have very little background information or knowledge of the persons that are interned, in contrast to the usual situation in prisons. To quote from this letter:

“It is a fact that the Police must take into account that internees are exposed to stress in a varying degree during the course of their stay.

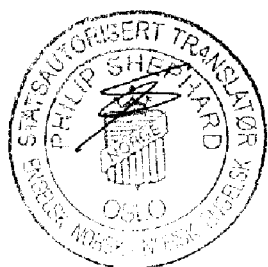
Cases of self-injury and attempted suicide have been registered. It is this situation that has given rise to the requirement for more frequent inspections than is normal in prisons.”

Reference was also made to the fact that when the Centre has between eight and eleven thousand overnight stays per year and so many people live in close proximity to each other, different forms of criminal acts can arise. PU maintain that inspections are and will be carried out in as discrete a manner as possible with due regard to the integrity of the individual, but that in certain cases it is necessary to switch on the lights in the rooms or to use a torch in order to make sure that the situation is safe.

In reply to further questions from this office, the Police Immigration Service repeated in their letter dated 9 July 2006 that the Police frequently have little information on the background, health, possible criminal record, etc. of the individual internee when they arrive at the Centre, usually because those who are interned are frequently of unknown identity, have been in Norway only a short time, and have little or no contact with the Norwegian authorities. It was also stated that most internees stay at the Centre for a few days only and it is therefore difficult to gain a clear picture of the behaviour of the individual internee. PU stated that they had considered whether to introduce less frequent inspections in respect of individual groups, particularly those consenting to internment and those staying for extended periods, but for the time being they had not found that there was sufficient basis to implement such differentiation.

8.2 My comments

I assume that frequent inspections can be necessary in institutions such as the Immigration Detention Centre where there is a large throughput of foreign nationals with different backgrounds and in different situations, many of whom will be under considerable pressure. However, an intensive inspection system applied in respect of all internees gives rise to issues of both an ethical and legal nature. Inspections in bedrooms and in showers and toilet rooms represent an encroachment into the personal domain of the internee also when it is taken into consideration that inspection takes place in a locked centre where control and inspections must be expected. In this connection I refer to Art. 8 the European Human Rights Convention which stipulates the basic principle that all individuals have the right to respect for their private lives. The provision only allows interference by a public authority when this is “in accordance with the law and is necessary in a democratic society in the interests of national security, public safety and the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. This provision thus requires, in addition to clear authorisation, that due regard to the individual’s right to private life



must be weighed against the legitimate purpose that provides the grounds for encroachment into this right.

When the reason for the inspections is security, the actual inspection should not be taken any further than the requirement for due regard to security. With regard to a number of the internees, I must assume that it is clearly unnecessary on the basis of the requirement for security and safety to carry out for example nightly inspections every 30 minutes. This could apply for example to foreign nationals who have been interned for some time and about whom the Police have more knowledge. In this connection, I refer to the decision passed by Borgarting Court of Appeal on 24 May 2006 in which the following is stated concerning the inspection routines at the Centre:

“With regard to whether the question of imprisonment up to 30 May represents a disproportionate encroachment, it is argued in particular that the accused – in the same way as the other internees in the asylum reception centre where he is staying – are routinely subject to inspection every 30 minutes, and during the night this is tantamount to being woken up equally regularly.

According to the Police the grounds for the routine was due regard to the asylum-seekers. When seen separately, the Court of Appeal understands the grounds, *but finds that it must be possible to clarify in relation to A whether such frequent inspection is necessary or desirable*. In these conditions the Court of Appeal finds that the decision to continue imprisonment constitutes an interference into private life, cf. Art. 8 of the European Human Rights Convention or the provisions of the Torture Convention.” (Italics by this office)

In two letters to the Police Immigration Service I have attempted to clarify what evaluations have been made by the Police on the question of inspection frequency and differentiation, but I have not received a satisfactory reply.

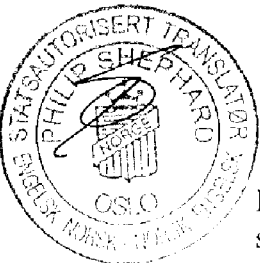
It has been proposed that the right to private life should now be enacted in a new third sub-section of Section 37 d of the Immigration Act:

“As far as is practically possible and unless otherwise provided in statutory law, the foreign national has the right to receive visitors, to make telephone calls, to receive and to send mail, to have access to health services, community with others, fresh air, physical activity, a private life, freedom of religion and philosophy of life.”

The right to private life is repeated in Section 10 of the Draft Regulations:

“As far as is practically possible and unless otherwise provided in Section 37 d of the Immigration Act, the foreign national is entitled to a private life which shall be duly respected.”

In Section 24 of the Draft Regulations, it is stated that “the foreign national shall be subject to proper supervision and shall be placed in such a way that the person concerned is not subject to unnecessary harm or injury, and cannot cause harm or injury to others”. “Due regard shall be taken to the need for undisturbed sleep.” Moreover, “the state of health of the foreign nationals shall be carefully monitored”. “Foreign nationals who are ill or under the influence of alcohol or other intoxicants shall be subject to inspection every half hour unless circumstances require more



frequent supervision.” The time and result of the inspections shall be logged. In the second sub-section the officer responsible for the Centre is given responsibility for “deciding on how supervision is to be carried out during the individual inspections on the basis of what is necessary in each individual case”. Apart from this, the Draft Regulations do not provide any further instructions concerning the frequency of inspections at the Detention Centre.

To a great extent, the Draft Regulations follow the same pattern as the Regulations concerning the use of police cells, Section 2-5 dated 30 June 2006 No. 749, which came into force on 1 July 2006. The provision that due regard shall be taken to the foreign national’s need for undisturbed sleep is however specific for the Draft Regulations.

Although many of the concerns which give grounds for frequent inspections in police cells are also applicable to the situation at the Detention Centre, such as the prevention of self-injury, supervision of the health of internees, etc., there are some important differences. In particular, I must emphasize that many internees are interned for considerably longer periods at the Centre than is the case for detainees in police cells. In this connection, reference is made to Section 3-1 of the Police Cell Instructions where it is stipulated that transfer to prison must take place within two days after the arrest unless this is not possible for practical reasons.

As I understand it, the Draft Regulations provide for a more differentiated inspection routine at the Immigration Detention Centre, but that the system will continue to cover the necessary requirements for safety and security. In my view, PU should again evaluate whether there is a basis for the introduction of more differentiated inspection routines in the period before the Regulations come into force.

9. Proposed establishment of a supervisory council

Pursuant to the proposal for a new eighth sub-section in Section 37 d of the Immigration Act, an external supervisory council is to be established for the supervision of operation of the Immigration Centre and the treatment of the foreign nationals who are staying there. The supervisory council shall be established on the lines of the supervisory councils for the prisons, cf. Section 26 of the Draft Regulations.

I have on several occasions taken up the question of whether a supervisory council should be established in respect of the nation’s police cells in the same manner as the present-day supervisory councils for prisons, and this has been dealt with inter alia in the Annual Reports for 1997, p. 38 et seq., 1999 p. 20 and 2001 p. 39. From the latter Annual Report, I quote:

“It is important that those who are deprived of their liberty in locked institutions have access to an independent body they can speak to in confidence. Such a scheme would help to strengthen their lawful protection and would also contribute towards maintaining public confidence in public authorities when they can see that the actions of public agencies are subject to independent control. The office of the Ombudsman cannot undertake such a function alone. Day-to-day supervision must take place locally.”



The requirements in favour of the establishment of a supervisory council in respect of police cells apply at least equally strongly to the Immigration Detention Centre where a number of individuals are interned for long periods. It is therefore positive that arrangements are now being made for the establishment of an external body to supervise operations at the Detention Centre.

10. Final comments

The Police Immigration Detention Centre at Trandum is a prison-like institution, but without the regulatory framework of the prisons. The absence of such statutory regulatory framework additional to the authorisation provision in Section 37 d of the Immigration Act and the internal guidelines/instructions is obviously negative, first and foremost with regard to lawful protection of the internees. The lack of regulation of operations and the absence of external supervision is in my view particularly unfortunate. This is exacerbated by the fact that many of the internees are in a difficult situation and may have a background which requires extra vigilance on the part of the staff. The Detention Centre has been in operation in its present form since 1 July 2004, and there has also been a locked Detention Centre in operation at Trandum prior to this. A clear and well prepared regulatory framework for the operation of the Centre should have been prepared at a much earlier stage, before the Centre was taken into operation. It is unfortunate that a formal statutory framework covering i.e. the use of force and control measures at the Centre has not been proposed until now.

Both the buildings and the operations at the Detention Centre are adapted to suit the great majority of foreign nationals interned at the Centre for short periods. This applies i.e. to the food served and to the range of activities available as was the situation during my visit. At that time the Police had not put any special measures into operation in relation to those interned for longer periods in order to ease their situation. It is very unsatisfactory that operations and routines have not been adapted to meet the actual conditions. Although the average internment period is 3 to 4 days, and the material conditions can therefore be considered to be satisfactory for internees staying for such short periods, there are a number of foreign nationals who are interned at the Centre for many weeks and months. The operation and routines at the Detention Centre must take this group of internees into account in accordance with the intentions laid down in the preparatory works to the Act.

It is a paradox that the Immigration Detention Centre was established after criticism from CPT, and that internment at the Centre was intended to be of a "mild nature". In many ways, internment at the Centre is "milder" than imprisonment which was and in part still is the alternative for those imprisoned pursuant to the provisions of the Immigration Act. I would emphasize in particular the free access to communal life at the Centre and that internees are not locked in in the evenings with the exception of the security section. However, there are other sides of internment which must be experienced as harder than imprisonment. This applies to the food that was served previously, the opportunities for activities, the inspection routines and the sharing of bedrooms. In standard prisons, inmates usually have a single room, while at the Immigration Detention Centre rooms are shared with other internees.

A special issue which I know has been taken up by NOAS (Norwegian Organisation for Asylum-Seekers), Save the Children, the Children's Ombudsman and others in connection with proposed amendments to acts and regulations, is the internment of minors. Reference is made to the limitations laid down by the UN Children's



Convention of 20 November 1989 and the guidelines issued by UNHCR concerning internment of asylum-seekers. This side of the Immigration Detention Centre has not been included in my investigations, and I am not therefore able to discuss questions connected with minors in more detail. I assume, however, that the Ministry will carefully evaluate the input submitted in this important area.

It is a positive development that a detailed regulatory framework, sanctioned by law, has now been proposed. Otherwise, I refer to my statements under the individual sections above.

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