

Thematic report

Use of solitary confinement in prison
Norwegian law and practice in a human rights perspective

National Institution for Human Rights

UiO : Norwegian Centre for Human Rights
University of Oslo

“After five months in C1 things started happening in my head. It’s just like I’ve got a rubber hood over my head. I said this to a prisoner who had spent seven months under a ban on correspondence and visitors; he recognised the sensation – the rubber hood. He’d had trouble with the rubber hood for a whole year afterwards. Help! I thought at the time.”

Frank, prisoner (2001)

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PREFACE

As National Institution for Human Rights (NI), the Norwegian Centre for Human Rights (NCHR) is officially mandated to follow the human rights situation in Norway by monitoring activity, preparation of expert reports and providing advisory services. In accordance with this mandate, this report presents an expert study that examines the use of solitary confinement in Norwegian prisons by reference to our international human rights obligations. The report was prepared by Johannes F. Nilsen, with the guidance of Elin Saga Kjørholt.

In the process of preparing this report, NI has consulted a broad range of bodies at both national and international level. NI has received advice and comments from the UN Special Rapporteur on torture, the UN Committee against Torture and other international experts. At national level, we have received useful input from several organisations that provide prisoner visitation services, prisoners, lawyers, staff members of the Parliamentary Ombudsman, and researchers in the field of correctional services and human rights. NI has also had contact with the Norwegian Correctional Services at local, regional and central level, and wishes to thank the agency for its accommodating attitude. Special thanks are extended to Senior Research Fellow Peter Sharff Smith at the Danish Institute for Human Rights, Research Fellow Thomas Horn at the University of Oslo, deputy advocate Nora Hallén, the Juss-Buss Prison Group, the Salvation Army's prisoner visitation programme, and researchers Yngve Hammerlin, Berit Johnsen and Ragnar Kristoffersen of the Correctional Service of Norway Staff Academy (KRUS) for their comments and contributions during the process.

NI hopes that this report will make a constructive contribution to the discussion on how the fundamental rights of prisoners can be safeguarded without compromising prisons' legitimate need for security.

Oslo, 22 June 2012

Nils Butenschøn, Director, Norwegian Centre for Human Rights

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SUMMARY

Use of solitary confinement as a means of control in prisons is a very serious measure imposed on prisoners, which is harmful to health, but which is nonetheless used extensively all over the world. NI has conducted an expert study that examines the use of solitary confinement in Norwegian prisons by reference to Norway's international human rights obligations. The subject of this assessment has been the provisions of the Execution of Sentences Act governing prison-ordered solitary confinement. The study was initiated as a result of repeated criticism by various international and national bodies of the use of solitary confinement in Norway. Solitary confinement is a very extensive interference with an individual's personal freedom, which goes beyond the already substantial restrictions inherent in deprivation of liberty. Furthermore, there is broad consensus that solitary confinement can be very harmful to a person's physical and mental health, and that the measure does not promote prisoners' return to society, which is the overarching goal of the Norwegian Correctional Services.

Human rights instruments set standards for the design of statutory framework for the use of solitary confinement. These are criteria for how clearly the legal requirements must be formulated in order to meet the minimum standard of foreseeability for the prisoner, both in terms of the circumstances in which solitary confinement can be applied, for what purposes and for how long a period of time.

Furthermore, the human rights instruments establish requirements for adequate administrative rules for the use of solitary confinement. These requirements concern which persons can make decisions regarding the use of solitary confinement, which procedures these persons must follow, the prisoner's right to present his case as part of the procedure and his right to be informed of the grounds for the measure.

Human rights instruments also set stringent requirements for the use of solitary confinement in practice. Under this framework, solitary confinement must only be used in exceptional cases, as a last resort and for as short a time as possible. In that connection, requirements are set as regards conditions of detention, the severity and duration of the measure, the purpose of the measure and its effect on the individual prisoner, and the way statutory guarantees of due process function in practice. The more severe and invasive the solitary confinement, the more stringent the requirements that are set, and the health of persons placed in solitary confinement must be safeguarded by providing adequate stimulation and meaningful social contact.

Finally, human rights standards set requirements with regard to the quality of mechanisms for the control and review of solitary confinement measures. Such requirements include effective internal inspections and controls, adequate prison-

specific and health supervision, both internal and independent appeal possibilities, and an effective, real judicial review.

The report demonstrates several problematic aspects of the Norwegian rules for and practice of the use of solitary confinement.

Firstly, the report shows that several of the legal grounds for solitary confinement are so vague that it is doubtful that they meet the minimum requirements regarding clear formulation that are prescribed by the human rights instruments. Objections concern the vague and discretionary nature of statutory authority for solitary confinement, the failure to state the purpose of the measure, and the lack of or very wide time limits.

Secondly, the report shows that certain administrative rules in prison cases undermine fundamental guarantees of due process. Prisons are given disproportionately broad powers which impede prisoners' possibility of protecting their interests in cases relating to solitary confinement, because access to the grounds for and information on the cause of the measure may be withheld.

Thirdly, the report points out a number of problems related to the way rules governing solitary confinement are applied in practice. The statistics compiled, which are presented in chapter 6, show that extensive use is made of solitary confinement; in 2011, a total of 2757 decisions were made in respect of a prison population of around 3600. Seen in conjunction with the variations from one prison to another, this could indicate that some prisons make disproportionate use of solitary confinement. The figures for preventive solitary confinement are particularly high and may indicate that the measure is used in practice as a punitive sanction, contrary to Norwegian law. Statements by various national and international bodies also offer examples of practices that are worrying in a human rights perspective.

Fourthly, the report shows that the existing control and review mechanisms do not appear to provide adequate protection for prisoners' due process rights. This inadequacy lies particularly in the lack of independence in complaints procedures, limited real judicial review and a deficient supervisory system. In NI's opinion, the control and review mechanisms, seen as a whole, do not meet human rights standards for effective, independent review and supervision.

These findings are troubling, considering the seriousness of the measure and the well-documented harmful effects of solitary confinement.

NI's general impression is that the Execution of Sentences Act has attached excessive importance to prison-related considerations to the detriment of the prisoners' due process rights. Accordingly, it is NI's opinion that the Norwegian authorities should consider carrying out a broad-based review of legislation and practice, with an explicit focus on prisoners' due process rights. NI recommends that such a review be based on human rights standards and that the mandate should include the following main elements: 1) A critical assessment of legal authority for solitary confinement,

including the introduction of stricter criteria for the exercise of discretion and more precisely formulated legal requirements for use of solitary confinement, 2) introduction of stronger prisoner rights in administrative procedures, 3) a thorough review of practice in which reported cases of solitary confinement are examined by reference to human rights standards and Norwegian legislation, and 4) an overall review of control and review mechanisms by reference to human rights requirements.

In NI's view, the political authorities bear the ultimate responsibility for remedying the due process deficiencies identified in this report. Solitary confinement is a serious measure that is damaging to health, and the Norwegian authorities must, in our opinion, provide a clearer framework for the use of solitary confinement so that less of the responsibility for assessments is placed on individuals in the administrative system.

1. INTRODUCTION

1.1 Use of solitary confinement in prisons

It is a fundamental principle that all persons deprived of their liberty shall be treated humanely, and with respect for their human rights.¹ Within the limits imposed by prison life, imprisoned persons therefore have the same fundamental rights as other persons. It is also a generally accepted principle that imprisoned persons shall only be subject to the minimum restrictions necessary.

Most countries have rules that permit the use of solitary confinement in connection with the execution of sentences, as a control measure, as punishment or for protection purposes. In special cases, the possibility of using solitary confinement may be necessary as a means of control in order to ensure internal prison security. However, solitary confinement is used extensively throughout the world. This practice is worrying, because solitary confinement is one of the most invasive instruments of power that can be applied by authorities in respect of their citizens. There is broad consensus among health professionals that solitary confinement can lead to serious harmful health effects, particularly of a psychological nature.² Moreover, studies show that use of solitary confinement to calm prisoners down often has the opposite effect, and can cause aggression to escalate among the prison population.³

1 See, i.a. Rule 1 et seq. of Basic Principles of the European Prison Rules.

2 See Sharon Shalev, A Sourcebook on Solitary Confinement, LSE/ Mannheim Centre for Criminology, 2008 pp. 9- 24 [hereinafter Shalev 2008]. See also Appendix 1 to this report.

3 See i.a. R. McCleery (1961), Authoritarianism and the Belief System of Incurables. I: Cressey, D. [ed] The Prison, New York, pp. 260-306 ; Bottoms A. E. (1999) Interpersonal Violence and Social Order in Prisons. I: Tonry, M. et al. Crime and Justice: A Review of Research. Vol. 26, Prisons. University of Chicago Press.

Prolonged solitary confinement can have a negative impact on the development of a prisoner serving his sentence, causing the prisoner to gradually become more mentally unstable and difficult to control. This limits the prisoner's ability to be reintegrated into an ordinary prison regime. For certain vulnerable prisoners, solitary confinement can cause a psychotic breakdown and, as its most extreme consequence, also contribute to suicide. In the longer term, solitary confinement can also adversely affect the person's ability to establish meaningful social relationships and to function after being released. This is unfortunate, considering that one of the basic purposes of punishment is to rehabilitate offenders and return them to society.

Given the harmful effect that solitary confinement can have on the individual and society at large, it is important that awareness of this effect be reflected in very strict rules for the use of solitary confinement.

1.2 International criticism

International monitoring bodies have repeatedly criticised Norway for its use of solitary confinement in the administration of criminal justice. Criticism has mainly been directed at the tradition of using solitary confinement in combination with police detention or remand in custody. However, the international monitoring bodies have also expressed concern about the use of solitary confinement by prison authorities. The UN Human Rights Committee and the UN Committee against Torture have pointed out their concern about the Norwegian authorities' lack of overview of the total extent of this practice. The UN Working Group on Arbitrary Detention has referred to the very vague, discretionary nature of the provisions governing prisons' use of this measure, and pointed to the need for a more independent complaint mechanism. In connection with each of its five visits to Norway, the European Committee for the Prevention of Torture (CPT) has identified problems related to the use of solitary confinement in Norwegian prisons. On several occasions, the CPT has found serious psychological symptoms in individual prisoners placed in solitary confinement.

1.3 The topic of the report

NI has chosen to examine more closely the use of *prison-ordered* solitary confinement pursuant to the Execution of Sentences Act. Such measures can be imposed on both convicted prisoners and remand inmates. The reason for choosing this topic is NI's general impression that prisoners' due process rights are inadequately safeguarded in connection with the use of solitary confinement.

NI has chosen to delimit the focus of the report to exclude court-ordered solitary confinement. This is because the issue has been elucidated in a variety of contexts, including international monitoring (see above), whereas there is less discussion of prison-ordered solitary confinement despite the fact that the due process challenges that it presents are just as great. In NI's consideration, the problems related to court-

ordered solitary confinement differ in nature from those caused by solitary confinement imposed by prisons. Judicial proceedings and the due process guarantees afforded by the Criminal Procedure Act, at least as a starting point, provide more adequate protection of individuals' legal rights. In this context, the problems appear to be more ascribable to an uncritical tradition, where strict rules are not respected in practice. NI is also aware that a thorough research project is currently being conducted on the use of solitary confinement in detention on remand.⁴ For the same reasons, the scope of the report also excludes the use of police custody, which in practice means solitary confinement in a security cell. A number of international monitoring bodies and national actors in the field of human rights have actively addressed these issues; among other things, the Norwegian Bar Association has played a prominent role in focusing attention on this topic for several years.

1.4 Clarification of terms

There is no internationally recognised definition of solitary confinement. In this report, the term "solitary confinement" is used in reference to situations where prisoners spend 22-24 hours a day alone in their cell with no contact with other prisoners, with 1-2 hours of outdoor exercise or sporadic social contact. A similar definition is used by the UN Special Rapporteur on torture.⁵

In some cases, prisoners are also subjected to solitary confinement in combination with work, school or participation in communal leisure activities. This is referred to as *partial solitary confinement* in the report.

Solitary confinement mainly means exclusion from the ordinary prison community. Meaningful contact with other people is typically reduced to a minimum, even though prisoners placed in solitary confinement are entitled to contact with prison employees, a lawyer, access to health services and visits from families and friends.

1.5 The structure of the report

Chapter 2 of the report contains a thorough presentation of the human rights framework for the use of solitary confinement. The third chapter of the report provides a brief overview of the Norwegian system for use of solitary confinement.

By reference to the human rights standards, chapter 4 discusses the Norwegian legal requirements for solitary confinement, chapter 5 the Norwegian rules of procedure, chapter 5 the use of solitary confinement in Norway and chapter 7 Norwegian control and review mechanisms. The final chapter contains an overall assessment, and recommendations to the Norwegian authorities.

⁴ Research fellow Thomas Horn is currently writing a dissertation with the working title «Isolasjon i varetekt – en rettspolitisk studie av straffeprosesslovens regler om fullstendig isolasjon i varetekt» [Solitary confinement in detention on remand – a legal policy study of the provisions of the Criminal Procedure Act relating to complete solitary confinement in detention on remand].

⁵ Special Rapporteur Juan Mendez, A/66/268, 5 August 2011, p. 8. See also Shalev (2008), p. 2.

2. HUMAN RIGHTS FRAMEWORK CONCERNING THE USE OF SOLITARY CONFINEMENT

2.1 Overview of international conventions and standards

The International Covenant on Civil and Political Rights (Articles 7 and 10), the UN Convention against Torture (Article 1, cf. Article 16) and the UN Convention on the Rights of the Child (Article 37a) all impose limits on the use of solitary confinement, and their respective Committees of Experts have pointed out in interpretative statements and the processing of individual complaints that solitary confinement must be limited to exceptional cases only.⁶

The UN's Special Rapporteur on torture has played a particularly active role in demanding stricter limits for the use of solitary confinement, and has stated that solitary confinement must only be used in "very exceptional circumstances, as a last resort, for as short a time as possible".⁷ The Special Rapporteur has also recommended a total prohibition of the solitary confinement of minors and mentally ill prisoners – and an absolute time limit of 15 days for all types of solitary confinement. The recommendation of a maximum limit of 15 days is based on medical research showing that damaging psychological effects can become permanent after that period of time.⁸ The Special Rapporteur has particularly cited the *Istanbul Statement on the Use and Effects of Solitary Confinement* in support of his views.⁹ This statement was drawn up by a group of prominent international experts, as the result of concern about the growing use of solitary confinement in many countries. The statement describes the serious damaging health effects caused by solitary confinement, presents the human rights standards and formulates recommendations to government authorities. These recommendations advocate restricting the use of solitary confinement to the greatest possible extent, and implementing measures to ensure that prisoners who are placed in solitary confinement are provided with meaningful social contact.

The European Convention on Human Rights (ECHR) is an important legally binding instrument for ensuring that prisoners serve their sentences in humane conditions. In a number of individual complaint cases, the European Court of Human Rights (the ECtHR or the Court) has found that use of solitary confinement constitutes a violation of the ECHR. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has also made a significant contribution to the development of standards for use of solitary confinement, by

6 See i.a. the UN Committee on Human Rights, General Comments 21/44 6 April 1992 ; UN Committee on the Rights of the Child, General Comments, No. 10 (2007), paragraph 89.

7 Special Rapporteur Juan Mendez, A/66/268, 5 August 2011.

8 Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement, Crime and Delinquency", Vol. 49, No. 1, pp. 124-156.

9 Adopted on 9 December 2007 at *The International Psychological Trauma Symposium*, Istanbul.

making visits of inspection to member states, and because their standards are often endorsed by the Court. The CPT's recommendations are not legally binding, but states normally comply with them. The European Prison Rules are another key human rights instrument.¹⁰ The rules are not legally binding per se, but are inspired by the case law of the Court and CPT practice, and can thus be seen as a step towards a codification of European minimum standards for prison conditions.¹¹

Because the limitations on the use of solitary confinement are elaborated most clearly in European practice, the issues in this report will primarily be addressed on the basis of ECtHR case law, the CPT's recommendations and the European Prison Rules. However, reference will be made to standards drawn up within the UN system wherever relevant.

2.2 The European Human Rights Convention (ECHR)

2.2.1 Article 3 of the ECHR – conditions during solitary confinement and due process guarantees

General comments on the provision

Article 3 of the ECHR lays down that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This wording prohibits torture and other serious violations to the personal integrity. The prohibition is absolute, and may not be derogated from in any circumstance. The Court has stated that protection against torture and other serious violations of personal integrity has status as customary international law.¹²

In its case law, the Court has determined that in order for a complaint to fall within the scope of Article 3, the situation complained about has to have attained a minimum level of severity.¹³ This threshold principle indicates the minimum limit for a violation to have occurred. Whether the threshold has been exceeded is determined by a case-by-case assessment in which weight is given to such factors as the duration of the violation of personal integrity, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.¹⁴ The distinction between what the Court deems to be torture and inhuman or degrading treatment is contingent on an assessment of the degree of severity.¹⁵

10 Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006.

11 Van Zyl Smit & Sonja Snacken, *Principles of European Prison Law and Policy* (2009), pp. 375-376.

12 *Al-Adsani v. the U.K.*, Application no. 35763/97.

13 («attain a minimum level of severity»), *Ireland v. the U.K.* A 25 (1978), paragraph 162.

14 *Ibid.*

15 *Ibid.* paragraph 167.

Prison cases

Conditions of detention in prison often give rise to questions concerning “inhuman and degrading” treatment, where prisoners have been subjected to violations that are not deemed to be sufficiently serious to constitute torture. The Court has emphasised that member states have an obligation to ensure that persons deprived of their liberty serve their sentence in conditions that respect human dignity, that the implementation of measures does not subject the person concerned to distress or suffering that exceed the level inherent in a normal execution of sentence, and that the prisoner’s health is adequately secured by medical treatment, among other things.¹⁶ When assessing the case, the Court takes into consideration the cumulative effect of these factors.¹⁷

Solitary confinement

The Commission, and later the Court, have addressed the question of whether solitary confinement amounts to a violation of Article 3 in a number of cases.¹⁸ The threshold for it constituting a violation has in practice been set quite high, and in some cases the Court has accepted very prolonged and severe solitary confinement. The Court has determined that complete sensory deprivation, coupled with total social isolation, can destroy an individual’s personality, and constitutes a form of degrading or inhuman treatment in violation of Article 3.¹⁹ In particularly serious cases, solitary confinement can also constitute torture.²⁰ The absolute nature of the prohibition means that such measures cannot be justified in the interests of security or by other reasons, once the minimum threshold is deemed to have been exceeded. Another matter is the fact that it is relevant to the actual assessment of whether the minimum threshold has been exceeded whether the measure is justified by circumstances relating to the individual such as particularly dangerous behaviour, or manipulation of other prisoners. The Court has emphasised that solitary confinement per se does not constitute a violation of Article 3, and that solitary confinement may be permitted for security or disciplinary reasons, or to protect a prisoner against reprisals.²¹

Key factors in the assessment

The question whether prolonged solitary confinement is a violation of Article 3 is determined by an assessment of the conditions of detention concerned, the severity and duration of the measure, and the purpose and effect of the measure on the

16 Kudła v. Poland, Application no. 30210/96, paragraph 92.

17 Dougoz v. Greece, Application no. 40907/98, paragraph 46.

18 European Commission of Human Rights, see i.a.: Ensslin, Baader, Raspe v. Germany, Application no. 7572/76, Kröcher and Möller v. Switzerland, Application no. 8463/78. The Court, see i.a.: Öcalan v. Turkey, Application no. 46221/99, Ilascu and Others v. Moldova and Russia, Application no. 48787/99 ; Ramirez Sanchez v. France, Application no. 59450/00; Csullog v. Hungary, Application no. 30042/08.

19 Ramirez Sanchez v. France, Application no. 59450/00, paragraph 123.

20 Ilascu and Others v. Moldova and Russia, Application no. 48787/99.

21 Ramirez Sanchez, paragraph 123 ; Babar Ahmad and Others v. the U.K., Application no. 24027/07 ; 11949/08 ; 36742/08 ; 66911/09 ; 67354/09.

individual.²² In such an assessment, weight will also be given by the Court to the quality of current rules of procedure, control and review mechanisms, and prisoners' access to health care. This highlights that the factors considered are a combination of substantive and procedural requirements.²³ Thus it is a question of an overall assessment, in which the Court also attaches importance to the effect in each individual case.

Conditions of detention during solitary confinement

The overall assessment covers both the physical conditions of solitary confinement and the detention regime. The physical conditions of solitary confinement include such elements as the size and design of the cell, sound and light conditions and sanitary facilities. The Court attaches great importance to the physical conditions of solitary confinement in its overall assessment. In *Ilascu and others v. Moldova and Russia*, the Court found that the solitary confinement of a man sentenced to death for eight years in poor detention conditions amounted to torture.²⁴ The Court emphasised that the cell was not heated, and lacked both natural light sources and ventilation. The applicant was also deprived of food as a punishment, and was only allowed to shower at intervals of several months.

The detention regime consists of, *inter alia*, access to open-air activity, training and activity programmes, meaningful social contact with prison staff, contact with the outside world in the form of visits from family members and access to the media. In *Iorgov v. Bulgaria*, where the applicant was sentenced to death and subjected to a restrictive regime of solitary confinement, the Court found that this constituted a violation of Article 3.²⁵ The Court referred in particular to the fact that, for a period of three years, he had spent almost 23 hours a day alone in his cell, and had otherwise had very little human contact. He was not allowed to join other categories of prisoners for meals, or to participate in other activities. Nor was the applicant allowed more than two visits per month. In *Onoufriou v. Cyprus*, the applicant, in parallel with 47 days of solitary confinement, was subjected to a total prohibition on receiving visits. The Court found this to be a violation of Article 3 and pointed out that this strict detention regime exposed the applicant to "suffering clearly exceeding the unavoidable level inherent in detention".²⁶ The Court also emphasised that "...although instructions were given on 31 October 2003 to release the applicant from solitary confinement, the instructions were misplaced and as a consequence the applicant spent a further seven days in solitary confinement after his release had been ordered".²⁷

22 Rohde v. Denmark, Application no. 69332/01, paragraph 93.

23 Zyl Smit & Snacken (2009), p. 279.

24 *Ilascu and Others v. Moldova and Russia*, Application no. 48787/99.

25 *Iorgov v. Bulgaria*, Application no. 40653/98, paragraph 82.

26 *Onoufriou v. Cyprus*, Application no. 24407/04, paragraph 80.

27 *Ibid*, paragraph 71.

In cases where the justification for solitary confinement is deemed to be acceptable, and the physical conditions of such confinement are decent and the need for human contact is secured in other ways, case law shows that the Court is inclined to accept very long periods of solitary confinement.²⁸ In such cases, the Court has traditionally drawn a distinction between this type of isolation and solitary confinement that entails total sensory deprivation and total social isolation, by using the expression “relative social isolation”.

The severity and duration of the measure

At the same time, the ECtHR has made it clear that even a regime of relative social isolation cannot be maintained indefinitely. This was established in *Ramirez Sanchez v. France*, where the applicant was placed in solitary confinement for a total period of eight years and two months.²⁹ The legality of the original decision to impose solitary confinement was not disputed; the question was whether the extremely long period of solitary confinement constituted a violation of Article 3.

In this decision, the ECtHR determined that in cases of protracted periods of solitary confinement, it is subject to a strict obligation to investigate the matter to decide whether the measure was justified, necessary and proportional compared with other alternatives available, which due process guarantees the applicant has, and which measures are being implemented by the authorities to safeguard the applicant’s physical and mental health. Moreover, the Court stated that substantive reasons must be given for extending a protracted period of solitary confinement. The decision must make it possible to ascertain whether the authorities have carried out a reassessment that takes account of any changes in the prisoner’s circumstances, situation or behaviour. The Court also determined that the grounds for such measures will need to be increasingly detailed and compelling the more time goes by. The Court further pointed out that solitary confinement is a form of “imprisonment within the prison” and that such measures must only be used exceptionally, and after every precaution has been taken.

Nevertheless, in the *Ramirez Sanchez* case, the Court ultimately accepted the extremely prolonged measure. The Court justified this by making particular reference to the applicant’s status as a very dangerous terrorist, that he had suffered no harmful effects as a result of the measure, and that he had had extensive contact with the outside world. In certain other cases, too, the Court has accepted very harsh, prolonged solitary confinement regimes.³⁰ Thus case law shows that the Court is more apt to accept prolonged, strict solitary confinement if this is justified by

28 *Ramirez Sanchez v. France*, Application no. 59450/00, *Messina v. Italia* (No. 2), Application no. 25498/94.

29 Paragraph 145.

30 *Messina v. Italia* (No. 2), Application no. 25498/94 ; *Öcalan v. Turkey*, Application no. 46221/99.

circumstances relating to the individual such as particularly dangerous behaviour. It must be emphasised, however, that all of these were special cases.³¹

In a decision in the spring of 2012, *Piechowicz v. Poland*, the ECHR concluded that a violation of Article 3 had occurred in another case concerning a particularly strict, prolonged regime of solitary confinement.³² The applicant, who was considered to be a “dangerous detainee”, was placed in solitary confinement for almost two years and nine months, was monitored constantly by surveillance cameras, subjected to body searches every time he went in and out of his cell, and placed in handcuffs and ankle cuffs every time he left his cell. The Court noted that the statutory provision authorising the strict detention regime was worded very vaguely, with the result that the scope of the provision could cover a great many persons. By extension, the Court pointed out that the statutory provision did not link the person’s status as a “dangerous detainee” to his actual behaviour in prison. The Court accepted the original decision to subject the prisoner to the strict regime. On the other hand, the Court could not accept that the continued, routine and indiscriminate application of all the highly invasive measures was necessary to maintain prison security. The Court particularly emphasised the fact that the prisoner did not receive adequate social stimulation and human contact, the authorities’ failure to seek to mitigate harmful effects, and the routine application of the other special security measures. Accordingly, the ECtHR held that there had been a violation of Article 3.

The purpose of the measure

The purpose of the measure constitutes a key element of the overall assessment. Prolonged isolation is therefore more likely to be a violation of Article 3 if the grounds for the measure are deemed to be inadequate.³³ An example of this is the case *Matthew v. the Netherlands*, which concerned a violent and uncooperative remand prisoner who was placed under a strict solitary confinement regime.³⁴ The authorities sought to justify the measure by referring to the Court’s earlier decision in the *Messina* case, in which solitary confinement of a convicted mafia member for four years and six months was not found to be a violation.³⁵ In both cases, the treatment was considered to be “relative social isolation”. Moreover, the measure in the *Matthew* case was of a shorter duration than in the *Messina* case. Nonetheless, the Court found a violation in the *Matthew* case. The Court pointed out that the purpose of the measure in the *Messina* case was to prevent the applicant from re-establishing contact with his criminal network, while in the *Matthew* case the justification was the applicant’s failure to adapt to an ordinary prison regime. In the Court’s view, this did not constitute sufficient grounds for such a long period of solitary confinement, and it

31 See the Ramirez Sanchez case, in which the Court emphasised that the applicant was deemed to be “one of the world’s most dangerous terrorists. Accordingly, it is understandable that the authorities should have considered it necessary to take extraordinary measures to detain him”, paragraph 101.

32 Application no. 20071/07.

33 Zyl Smit & Snacken (2009), p. 279.

34 Application no. 24919/03.

35 Application no. 25498/94.

called for stronger focus on alternative measures. The Court thereby appeared to accept more stringent measures if they are justified in the interests of external security than in cases where the purpose is to maintain internal order in the prison.³⁶

In *A.B. v. Russia*, the applicant had been subjected to solitary confinement as a remand prisoner for three years.³⁷ The applicant was suspected of an economic crime, and had not behaved violently while on remand. He was not considered to be dangerous, and the only purpose of the measure was to protect him from other prisoners. The Court noted that the risk in question was vaguely formulated, and that it was not possible to assess whether the authorities had specific suspicions that someone wished to harm the applicant. The Court found that there had been a violation of Article 3, and attached particular importance to the fact that the authorities had at no time reassessed the question of maintaining the protracted solitary confinement. Moreover, the Court underscored the fact that “solitary confinement is one of the most serious measures which can be imposed within a prison”.³⁸ In several other cases, the Court has been concerned by the application of solitary confinement in respect of prisoners who are not considered to be dangerous or difficult, and solitary confinement that has no reasonable connection with the specified purpose, or where restrictions are maintained even if the prisoner is no longer considered to be a security risk.³⁹

Individual effects

The Court also takes into consideration the damaging effects caused by solitary confinement in each individual case, although it is unclear how much importance should be ascribed to this in an overall assessment. In the *Sanchez* case, the Court appears to have given great weight to the fact that neither health personnel nor the applicant himself considered that the long period of solitary confinement had caused him any harmful effects.⁴⁰ There are also examples of the Court attaching great importance to the actual harmful effects of such detention regimes. In the *Ilascu* case, in which the Court found a violation of Article 3, the very strict solitary confinement regime had deleterious effects on the applicant’s health, which moreover deteriorated as a result of many years of incarceration. Moreover, the Court pointed out that the applicant “did not receive proper care, having been deprived of regular medical examinations and treatment”.⁴¹ In *Rohde v. Denmark*, a remand prisoner was isolated from other prisoners for almost one year, and developed a psychosis as a result of the measure. In this case, the Court found, with four votes against three, that Article 3 had not been violated. The decision has been strongly criticised and cited as an example of the Court’s passive attitude with regard to the harmful psychological

36 Zyl Smit & Snacken (2009), p. 280.

37 Application no. 1439/06.

38 Paragraph 104.

39 *Csüllög v. Hungary*, Application no. 30042/08, paragraph 34 og 36; *Khider v. France*, Application no. 39364/05, paragraph 118- 119.

40 *Ramirez Sanchez*, paragraph 140-144.

41 *Ilascu*, paragraph 438.

effects of prison detention.⁴² In *G.B. v. Bulgaria*, on the other hand, the individual harmful effects were the decisive factor. The Court emphasised that even though solitary confinement was known to have had harmful effects, the regime was maintained for several years, and therefore found a violation of Article 3.⁴³ The Court stated that even though the applicant had received adequate assistance from health services; this could not replace the need for human contact.

The treatment of persons with mental illnesses has also been a topic of discussion for the Court on several occasions in connection with Article 3.⁴⁴ The Court has emphasised that specially adapted measures are required for suicidal prisoners with serious mental illnesses.⁴⁵ In *Renolde v. France*, the Court found that there had been a violation of Article 3 after a psychotic prisoner hanged himself while in solitary confinement in a punishment cell.

Requirement of due process guarantees

When assessing whether solitary confinement constitutes a breach of the prohibition against inhuman or degrading treatment under Article 3 of the ECHR, the Court has been increasingly concerned with due process guarantees.⁴⁶

In the new judgment *Babar Ahmad and Others v. the UK*, the Court underscored the importance of avoiding arbitrary decisions regarding solitary confinement by having in place procedural safeguards guaranteeing the prisoners' welfare and the proportionality of the measure.⁴⁷ By extension, the Court formulated five requirements:

Firstly, solitary confinement should only be used in exceptional cases, and after every precaution has been taken. The Court referred in this connection to Rule 51.1 of the European Prison Rules. Secondly, the decision to impose solitary confinement must be based on genuine grounds, both initially and when the duration of the measure is extended. Thirdly, the actual decision must make it possible to establish that an assessment of the situation has been carried out that takes into account the prisoner's circumstances, situation and behaviour. An adequate statement of reasons must also be provided, which should be increasingly detailed and compelling as time goes by. Fourthly, the ECtHR emphasised that a system of regular monitoring of the prisoner's state of health must be established. Finally, the Court determined that it was of pivotal importance that the prisoner be able to obtain an independent judicial review of the content of, and grounds for, a protracted solitary confinement regime.

42 Hans Jørgen Engbo og Peter Scharff Smith [hereafter Engbo & Smith 2012], *Fængsler og menneskerettigheder*[Prisons and Human Rights], (2012), p.146 et seq., Murdoch (2006), p. 255.

43 *G.B. v. Bulgaria*, Application no. 42346/98. paragraph 85.

44 *Aerts v. Belgium*, Application no. 25357/94 ; *Keenan v. the U.K.*, Application no. 27229/95 , *Rivière v. France*, Application no. 33834/03.

45 *Rivière*, *ibid*, *Renolde v. France*, Application no. 5608/05.

46 *Se bl.a. Piechowicz v. Poland*, Application no. 20071/07 ; *Horych v. Poland*, Application no. 13621/08 ; *Csüllog v. Hungary*, Application no. 30042/08 ; and *Onofriou v. Cyprus*, Application no. 24407/04.

47 Application nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, paragraph 212.

2.2.2 Article 8 of the ECHR – special comments on the requirement of clear statutory authority

General

The requirement of statutory authority for the exercise of authority that constitutes an interference with human rights is a fundamental human rights principle in the relationship between states and the individual.⁴⁸ The following section examines the topic of the minimum requirements that apply under the ECHR with regard to the wording of statutes which provide legal authority for interventions such as solitary confinement.

As shown above, complaints regarding solitary confinement are usually considered by reference to Article 3 of the ECHR. This provision lays down an absolute prohibition against serious violations of personal integrity, and once the minimum threshold is deemed to have been exceeded, a violation is found to have occurred. Naturally, in such cases no requirements may be set regarding legal authority for this type of violation.⁴⁹

However, a requirement of statutory authority applies as a condition for interference with the right to private and family life under Article 8 of the ECHR. The exercise of this right may not be interfered with unless it is “in accordance with the law”, i.e. a requirement of statutory authority is specified as one of three cumulative requirements.

The case law of the European Commission on Human Rights shows that the issue of the solitary confinement of prisoners can be assessed under Article 8 of the ECHR.⁵⁰ *McFeeley v. the U.K.* concerns IRA members who were periodically placed in solitary confinement in connection with prison protests.⁵¹ The applicants claimed that their right to associate with other prisoners was protected under the right to private life, and that exclusion constituted interference in the exercise of their rights under Article 8. The Commission agreed, and pointed out that the term “private life” encompassed “to a certain degree the right to establish and to develop relationships with other human beings...”.⁵² Furthermore, the Commission confirmed that “... this element in the concept of privacy extends to the sphere of imprisonment and that their removal from association thus constitutes an interference with their right to privacy...”. Without discussing the issue to any great extent, the Commission found that the

48 In Norwegian law this also follows from the principle of legality, which is constitutional customary law.

49 Another matter is the fact that the Court has also attached great importance to vaguely worded provisions that authorise measures, in cases concerning Article 3. See i.a. *Piechowicz v. Poland*, Application no. 20071/07, and *Horych v. Poland*, Application no. 13621/08.

50 See detailed discussion in Thomas Horn’s article, *Er isolasjon av innsatte i politiarrest i strid med EMK artikkel 8?* [Is Solitary Confinement of Inmates in Police Custody Contrary to Article 8 of the ECHR?], *Tidsskrift for strafferett* 2012 no. 1 [hereafter Horn 2012], p. 26 et seq.

51 *McFeeley et al. v. the United Kingdom*, Application no. 8317/78 [The Commission].

52 Paragraph 82.

partial solitary confinement of the prisoners had to be regarded as a lawful and proportionate reaction to the prisoners' protest actions under Article 8 (2).

The Court determined as early as in 1993 that Article 8 can be applied when assessing detention conditions where the high threshold for a violation of Article 3 has not been exceeded.⁵³ In *Dolenec v. Croatia*, the Court stated the following: "In this connection the Court stresses that its case law does not exclude that treatment which does not reach the severity of Article 3 may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on physical and moral integrity."⁵⁴ As recently as in the *Piechowicz* case, the Court allowed the assessment of the applicant's arguments regarding a particularly restrictive solitary confinement regime by reference to both Article 3 and Article 8.⁵⁵ However, the Court first found a violation of Article 3, and therefore concluded that no separate topic arose for consideration by reference to Article 8 as regards this issue.

The Court's case law thus allows the possibility that restrictions such as solitary confinement can constitute violations of Article 8, and that the threshold for finding a violation is lower than in the case of Article 3. Mention can otherwise be made of the fact that British courts have assessed solitary confinement regimes by reference to Article 8 of the ECHR in two recent cases.⁵⁶ The following section describes the substance of the requirement of statutory authority.

Special comments on the requirement of statutory authority

i) General comments

The requirement of statutory authority entails that the measure must have a sufficient basis in domestic law, and that this legal basis must be consistent with fundamental rule of law principles.⁵⁷ According to the Court's case law, this principle requires that the legal authority is sufficiently accessible and foreseeable. The Court's case law indicates that the requirement of accessibility chiefly means a requirement that an adopted source of legal authority has been made publicly known.⁵⁸ In Norwegian law, this is assured by publishing statutory and regulatory amendments in the Norwegian Law Gazette. In the present context, the requirement of foreseeability is most relevant.

ii) The requirement of statutory precision

53 *Costello-Roberts v. the U.K.*, Application no. 13134/87.

54 Application no. 25282/06; see also *Junkhe v. Turkey*, Application no. 52515/99, paragraph 71, *Wainwright v. the U.K.*, Application no. 12350/04, paragraph 43.

55 See chapter 2.2.1.

56 High Court of Justice. Administrative Court, *Bary & Others, R (on the application of) v. Secretary of State for Justice & Anor* [2010] EWHC 587 (Admin), 19 March 2010; High Court of Justice, Queen's Bench Division, *Malcolm v. Ministry of Justice* [2010] EWHC 3389 (QB), 21 December 2010.

57 *Gillan and Quinton v. the U.K.*, Application no. 4158/05, paragraph 76.

58 *Silver and others v. the U.K.*, Application nos. 5947/72 ; 6205/73 ; 7052/75 ; 7061/75 ; 7107/75 ; 7113/75 ; 7136/75, paragraph 87.

The requirement of foreseeability entails that the legal basis must be formulated in such a way as to make it possible for the individual to calculate his legal position in advance, and so as to protect him from the arbitrary exercise of authority. In other words, it is a question of a requirement of sufficient statutory precision.

This was established by the Court in the *Sunday Times* case, in which the Court determined that “*a norm cannot be regarded as ‘law’ unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able...to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.*”⁵⁹ Furthermore, the Court has laid down that “*the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.*”⁶⁰ Thus the legal basis for the measure must to a sufficient degree indicate the scope and requirements or guidelines for the exercise of discretion (the “manner of its exercise”).⁶¹

At the same time, the Court has stated that even though absolute precision is desirable, this could result in rigid legislation that is unable to keep pace with society’s development.⁶² Thus, to a certain extent, the Court has accepted discretionary legal authority for invasive measures. A guideline for assessing the requirement of statutory precision is whether it is possible to adopt a more precise wording without entirely precluding reasonable flexibility.

iii) Indication of purpose as a minimum requirement

According to legal theory, the Court’s case law indicates that a minimum requirement must be set to the effect that the purpose of a statute which confers power on the executive finds a reasonably clear expression in the statute.⁶³ The rationale for this is that a legally defined purpose will constitute a substantive legal condition, or a guideline that imposes binding limitations on the public administration’s exercise of discretion. In *Herczegfalvy v. Austria*, a person who was placed under compulsory mental health care was subjected to censorship of correspondence. The provision in national law cited by the authorities as the legal basis for the measure authorised limitations on contact with the outside world for persons subject to compulsory commitment. However, the provision did not indicate which purpose or interests such measures were intended to safeguard. The Court concluded that this legal basis did not meet the requirement of statutory authority. The purposes which the public administration is supposed to promote in connection with its exercise of authority must thus be explicitly stated in the legal basis for the measure or in the statute in which such basis is set out. At the same time, it may be objected that such a minimum

59 *The Sunday Times v. the U.K.* (No. 1), Application no. 6538/74, paragraph 49.

60 See i.a. *Malone v. the U.K.*, Application no. 8691/79, paragraph 68; *Hasan and Chaush v. Bulgaria*, Application no. 30985/96, paragraph 4; and *Silver and others v. the U.K.*, Application nos. 5947/72 ; 6205/73 ; 7052/75 ; 7061/75 ; 7107/75 ; 7113/75 ; 7136/75, paragraphs 88-90.

61 Nikolaj V. Skjerdal, *Kvalitative hjemmelskrav* [Qualitative Requirements for Legal Authority], 1998 [hereafter Skjerdal 1998], pp. 77-78.

62 *Sunday Times*, Application no. 6538/74.

63 Skjerdal refers i.a. to *Malone v. the U.K.* [ref. above], and *Herczegfalvy v. Austria*, Application no. 10533/83.

requirement does not necessarily safeguard the general consideration of foreseeability, because statements of purpose are often worded in a vague manner. However, the Court's practice is based on the premise that such statements of purpose must establish *real legal limitations* on the authority of the public administration.

iv) Stricter requirements for severe measures

A reasonably clear statement of purpose is not necessarily sufficient to meet the statutory authority requirement in the ECHR. In cases involving invasive forms of exercise of authority, Convention case law indicates that the legal authority must be subject to explicit limitations beyond a general statement of purpose.⁶⁴ The requirements regarding the precision of the legal basis are based to a substantial degree on the nature or type of right that is interfered with, how invasive the measure is and against whom it is directed.⁶⁵ The question must be answered following an overall assessment of each individual case. The essential issue must be that the individual is able to a reasonable degree to foresee the reactions with which his own behaviour may be met, and that he is given adequate protection against the arbitrary exercise or abuse of authority.

v) "Systemic justice"

The requirement that the legal basis for measures must indicate the scope of and guidelines for the public administration's exercise of discretion must also be assessed in the light of the entire framework for the public administration's exercise of authority. This is often formulated as a requirement of "systemic justice".⁶⁶ In assessing whether the requirement of statutory authority is met in a specific case, the European Court of Human Rights takes account of whether the decision has been made on the basis of adequate administrative procedures, and whether an effective judicial review is carried out.⁶⁷ The justification for this approach lies in the general purpose of the statutory authority requirement, namely to prevent arbitrariness and the abuse of authority (the rule of law principle). Also, the fact that a certain level of precision is required in the legal grounds empowering the public administration to interfere with the rights of individuals is a prerequisite for the effective subsequent assessment of legality. In several cases, the Court has emphasised the importance of the public administration being subject to effective national judicial control in its statement of reasons for approving the legal basis as "law".⁶⁸

64 See i.a. Calogero v. Italy, Application no. 15211/89, Domenichini v. Italy, Application no. 15943/90 and Olsson v. Sweden (No. 1), Application no. 10465/83.

65 Groppera Radio AG et al. v. Switzerland, Application no. 10890/84, paragraph 68.

66 Skjerdal (1998), p.90, and Official Norwegian Report 2001: 32, chapter 19.2.3.

67 Kruslin v. France, Application no. 11801/85 ; Huvig v. France, Application no. 11105/84; Herczegfalvy v. Austria, Application no. 10533/83.

68 See i.a. Gillow v. the U.K., Application no. 9063/80, paragraph 51 ; Olsson v. Sweden (No. 1), Application no. 10465/83, paragraph 62.

2.2.3 Article 13 of the ECHR – right to an effective remedy

Article 13 of the ECHR lays down that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ...”. To be entitled to an effective remedy under Article 13 of the ECHR in connection with the use of solitary confinement, the person must have an arguable complaint concerning violation of another Convention right.⁶⁹

The national authority need not necessarily be a court, but must have the power to decide on the factual and legal aspects of the complaint, and to provide a possibility of obtaining redress if the Convention is found to have been violated.⁷⁰ The Court has in practice accepted that *the aggregate of* several national complaint mechanisms may satisfy the requirements for an effective remedy under Article 13.⁷¹ The assessment of whether the remedy is effective does not depend on the probability of the individual’s complaint succeeding; the decisive factor is the existence of an effective remedy.

The Court’s case law shows that the remedy must be real and effective. Therefore, it is not sufficient if the complaints body does not have the authority to make binding decisions. In *Silver and others v. the U.K.*, the Court found that the British control and supervisory mechanisms did not satisfy the requirements under Article 13 because they could not make binding decisions.⁷²

The Court has considered the question of the right to an effective remedy in certain cases concerning solitary confinement.⁷³ In *Csüllog v. Hungary*, where the prisoner was subject to strict solitary confinement in a high-risk unit, the Court stated that the review of Article 13 must be interpreted in the light of Article 6 of the ECHR.⁷⁴ It pointed out that the fundamental criterion of fairness, including the principle of equal opportunities (“equality of arms”) in Article 6, is an important element of an effective remedy. A remedy could not be deemed to be effective “...unless the minimum conditions enabling an applicant to challenge a decision that restricts his or her rights under the Convention are provided.” In the case in question, the review body had not been given access to the prison’s reasons for considering the prisoner to be dangerous. The Court stated that “...it is not persuaded that its powers go beyond the control of the legality of decisions taken by the prison authorities based on undisclosed secret information. In these circumstances, it cannot exercise a

69 Ramirez Sanchez, Application no. 59450/00,

70 Rotaru v. Romania, Application no. 28341/95.

71 Silver and Others v. the U.K., Application nos. 5947/72 ; 6205/73 ; 7052/75 ; 7061/75 ; 7107/75 ; 7113/75 ; 7136/75, paragraph 113.

72 Ibid. This applied to the Board of Visitors and the Parliamentary Commissioner for Administration. While it is true that the British courts could deliver binding judgments, their jurisdiction was limited to reviewing whether the conditions laid down in the British Prison Act were complied with. At that time, the court could not review whether the Act was in accordance with the ECHR because the Convention had not been incorporated into British law. See also Rodic and Three Others v. Bosnia and Herzegovina, Application no. 22893/05.

73 Ramirez Sanchez v. France, Application no. 59450/00 ; Csüllog v. Hungary, Application no. 30042/08.

74 [See note above].

substantive review that is required for an effective remedy to be provided by a competent national authority to comply with Article 13. Without proper information as to the reasons for the security classification, neither the prosecution service nor the prisoners are in a position respectively to review or challenge the decisions of the prison authorities. The Court would add that the provision of the information in question does not necessitate the full disclosure of the sources thereof.” In the light of this, the Court held that there had been a violation of Article 13.

2.2.4 Article 6 of the ECHR– requirement of a judicial review

Article 6 of the ECHR guarantees a fair trial in certain types of civil and criminal cases. Article 6 (1) lays down that: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

ECHR case law indicates that several measures that interfere with the rights of prisoners may fall within the scope of the part of Article 6 concerning civil rights.⁷⁵ A complaint is covered by the provision if it concerns a real and serious dispute regarding a right of a “civil” nature. Unlike complaints under Article 13 of the ECHR, it is not a requirement that the right be protected by the Convention, as long as it applies in domestic law. In *Ganci v. Italy*, the complainant was subject to a particularly restrictive detention regime, which included limited contact with his family. The Court concluded that the restrictions were clearly within the ambit of the part of Article 6 that concerns civil rights. This and similar decisions indicate that several types of interference with the rights of prisoners under domestic law enjoy the protection of Article 6 (1).⁷⁶ The protection afforded by Article 6 may be of pivotal importance, because the provision requires that reviews of interference with rights of a “civil” nature by a judicial body must generally be full reviews.⁷⁷ In other words, the Court normally requires that the judicial body must also be able to review all aspects of the free discretion exercised by the public administration.

2.3 The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

2.3.1 The CPT’s general attitude towards solitary confinement

In reports on its visits, the CPT has often been critical of the use of solitary confinement. In its Annual General Report for 2011, the Committee chose to focus on the situation of prisoners who were subjected to various forms of solitary

⁷⁵ See Engbo & Smith (2009), p. 216 et seq. ; *Ganci v. Italy*, Application no. 41576/98 ; *Gülmez v. Turkey*, Application no.16330/02, *Enea v. Italy*, Application no. 74912/01.

⁷⁶ *Gülmez v. Turkey*, Application no. 16330/02 ; *Enea v. Italy*, Application no. 74912/01 ; *Boulois v. Luxembourg*, Application no. 37575/04.

⁷⁷ *Albert and Le Compte v. Belgium*, Application no. 7299/75; 7496/76, paragraph 29, *Ortenberg v. Austria*, Application no. 12884/87, paragraph 31. Compare, however, *Zumtobel v. Austria*, Application no. 12235/86.

confinement.⁷⁸ The Committee pointed to the very damaging effects that solitary confinement can have on prisoners' state of health, and stated that the practice of placing prisoners in solitary confinement potentially raises issues related to the prohibition of torture and inhuman or degrading treatment.

According to the CPT, solitary confinement must only be used in exceptional cases, as a last resort and for as short a time as possible.

2.3.2 Prison-ordered solitary confinement

With regard to solitary confinement imposed by prison authorities, the CPT noted that in many countries this type of solitary confinement is imposed for a very long period of time and without an adequate decision-making process. It was therefore of key importance that rules existed to ensure that solitary confinement was not imposed too readily, too often or for too long a period of time. The CPT acknowledged that it will, in exceptional cases, be necessary to place prisoners in solitary confinement in order to protect them from the rest of the prison population, for instance because of their membership of a gang, or to protect vulnerable prisoners. The CPT emphasised that solitary confinement must only be used as protection when there is absolutely no other way of ensuring the safety of the prisoner.

2.3.3 Material conditions

The CPT raised the issue of minimum standards that should apply to the design of, and facilities in, cells used for solitary confinement. The cells should never measure less than 6 square metres, and should have both natural and artificial lighting sufficient to allow the prisoner to read in the cell. The prisoner must be provided with satisfactory sanitation facilities, and be able to shower as often as the other prisoners. According to the CPT, the outdoor exercise area should be large enough to enable the prisoners to exert themselves, and should be protected from inclement weather.

2.3.4 Regimes in solitary confinement

As a basic principle, prisoners in solitary confinement should be subject to no greater restrictions than are necessary for their safe and orderly confinement. The CPT also underscored the importance of special measures to minimise the damage caused by solitary confinement. In cases where long-term solitary confinement must be applied for the prisoner's own safety, special efforts should be made to enhance the detention regime, and to identify individual prisoners with whom the prisoner concerned can safely associate.

⁷⁸ 21st General Report of the CPT, CPT/Inf (2011) 28, Strasbourg, 10 November 2011 [The report deals with court-ordered solitary confinement in respect of persons who have not been convicted of an offence, solitary confinement imposed within the prison system as a disciplinary sanction, as a preventative measure, or to protect the prisoner].

2.3.5 The role of health personnel

The CPT emphasised that health personnel must never participate in any part of a decision-making process related to solitary confinement, except where the measure is imposed for medical reasons. However, health personnel have an independent responsibility for monitoring the health of prisoners placed in solitary confinement, and to notify the prison authorities if a prisoner's state of health makes it unjustifiable to keep him in solitary confinement.

2.3.6 Requirement of statutory authority

The CPT made a number of recommendations for the formulation of statutory authority for the use of solitary confinement. The CPT stated that "...provision must be made in domestic law for each kind of solitary confinement which is permitted in a country, and this provision must be reasonable." The CPT further emphasised that "(t)he law should specify the precise circumstances in which each form of solitary confinement can be imposed...". Furthermore, the CPT recommended that the law should specify the persons who may impose solitary confinement, the procedures to be followed by those persons, and the prisoner's right to present his case as part of the procedure. Moreover, a requirement should be laid down in the law that the prisoner should be given the fullest possible reasons for the measure, although in some cases it might be necessary to withhold specific details in order to protect a third party, or on security-related grounds. The CPT also recommended that the frequency of and procedures for review of the decision and the procedure for appealing the decision be specified in the law.

2.3.7 Procedural safeguards

In its work, the CPT has focused particular attention on procedural safeguards, and makes relatively detailed recommendations on such matters. According to the CPT, stringent controls are necessary in the case of solitary confinement imposed by prisons for preventive purposes, because the duration of such confinement can be very long.

Requirements relating to prison staff

The CPT recommends that prison-ordered solitary confinement should only be imposed by the highest-ranking member of staff in the prison, and that such personnel and the senior prison management should be notified immediately if solitary confinement is imposed by other persons in an emergency.⁷⁹

The first days

If the prisoner is placed in solitary confinement, the CPT recommends that a full written report of the incident should be drawn up before the member of staff who made the decision goes off duty. Such a report should state the reason for the

⁷⁹ The CPT's Annual General Report CPT/Inf (2011) 28, Strasbourg, 10 November 2011, p. 45 et seq.

measure, the time the decision was made and the prisoner's own views on the proceedings as far as these can be ascertained. The CPT recommends constant, logged monitoring of all cases for the first few hours. In all cases where solitary confinement continues for longer than 24 hours, a full review of all the circumstances of the case should be conducted with a view to lifting the measure as early as possible.

The next stage

If it becomes clear that solitary confinement will be required for a longer period of time, a person outside the prison in question, for example, a prominent member of the prison service's central management should be involved. If the person in question decides that the decision to impose solitary confinement should be maintained, the CPT recommends that an interdisciplinary meeting be called at which the prisoner can present his case. The primary purpose of such a meeting is to draw up a progression plan with a view to resolving the problems which require the prisoner to be kept in solitary confinement. Such a plan should also make provision for a wider range of activities in the cell, increased social contact with the prison staff and individual prisoners and visits from friends and family. The overarching goal must be to reintegrate the prisoner into the main prison community.

Long-term solitary confinement

The CPT recommends that a review of the decision to impose solitary confinement be carried out at least after the first month, and thereafter at least every three months, in which the prison assesses progress by reference to the progression plan. The CPT points out that the importance of reviewing decisions increases the longer the measure is applied, and that more resources must be used to reintegrate the person into the prison community. The prison director and senior members of staff should visit prisoners subjected to long-term solitary confinement daily, and familiarise themselves with each prisoner's progression plan.

2.3.8 Independent appeal

The CPT recommends making provision for appeals of decisions to impose solitary confinement to an independent authority. When assessing the appeal mechanisms of member states, the CPT has given particular weight to independence in relation to local or central prison authorities, and prisoners' opportunity to participate in the appeal process.⁸⁰

2.4 The European Prison Rules (EPR)

2.4.1 General principles

Rule 3 of the EPR prescribes that "[r]estrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective

⁸⁰ CPT *United Kingdom Visit* 1994 [CPT/Inf(96) 11] ; CPT *the Netherlands Visit* 1992 [CPT/Inf (93) 15] § 55.

for which they are imposed.” The EPR further state that “[t]he regime provided for all prisoners shall offer a balanced programme of activities”, and the prison regime “shall allow all prisoners to spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction”.⁸¹

2.4.2 Use of solitary confinement

According to the EPR, order in the prison shall be maintained while “ ... taking account of the requirements of safety, security and discipline while also ensuring prison conditions which do not infringe human dignity and which offer meaningful occupational activities and treatment programmes to inmates...”⁸² While the EPR recognise the need for special high security or safety measures such as solitary confinement, Rule 53.1 establishes that such measures shall only be used “in exceptional circumstances”. Moreover, under Rule 53.6, such measures “shall be applied to individuals and not to groups of prisoners”.

2.4.3 Requirement of statutory authority

Rule 53.3 establishes that “[t]he nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law”.

2.4.4 Requirement of a complaints mechanism

According to Rule 53.7, any prisoner who is subjected to special high security or safety measures shall have a right of complaint in the terms set out in Rule 70.

Rule 70.1 states that prisoners shall have ample opportunity to make complaints to the prison director or to any other competent authority. In other words, the public administration must themselves be able to receive and assess the prisoner’s objections to the decision. If such a complaint is rejected, it follows from the Norwegian translation of Rule 70.3 that the prisoner shall “be provided with reasons and have the right to appeal against the decision to a higher authority”. This translation is unfortunate, as the English version establishes that “the prisoner shall have the right to appeal to an *independent* authority”.⁸³ Thus, a complaints mechanism of this nature shall be established independently of the prison service’s internal complaints procedure.⁸⁴ No further requirements are set with regard to the organisation of the complaints mechanism. According to the commentary to the EPR, the member states are free to designate an independent body to deal with complaints against administrative decisions.⁸⁵ It is also stated that the key requirement is that the complaints procedure must end in a final *binding* decision taken by an independent authority.

81 Rules 25.1 and 25.2.

82 Rule 49.

83 Our italics.

84 See also Van Zyl Smit & Snacken (2009), p. 308.

85 Commentary to *Rec(2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, pp. 31-32.

Under Rule 70.7, prisoners “... are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require”. Although this wording is a little vague, it can, in NI’s opinion, be read as a strong request for free legal assistance in prisoners’ cases.

2.4.5 Requirement of public inspections and independent monitoring

Rule 9 of the EPR adopts the basic principle that [a]ll prisons shall be subject to regular government inspection and independent monitoring”.

Under Rule 92, “prisons shall be inspected regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules.”⁸⁶ Such administrative inspections shall be carried out by public bodies, such as government ministries, or inspectors under the control of a public authority. The rules are flexible with regard to the scope of such inspections, which may vary from routine controls to a full inspection of conditions of detention.

Furthermore, Rule 93.1 states that “[t]he conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public.” The member states are free to choose a monitoring system, provided that the designated body is independent, has sufficient resources and qualified staff.⁸⁷ The EPR do not lay down any other requirements regarding the type of authority that the monitoring body must have.

2.5 Increased international focus on the damaging effects of solitary confinement

The strict threshold in the case law of the European Court of Human Rights

As demonstrated above, the only interpretative body that can make binding decisions, i.e. the European Court of Human Rights, has set a relatively high threshold for determining that a violation of the ECHR has taken place. In some cases, the Court has accepted the use of very protracted periods of solitary confinement, and has been criticised for its reluctance to consider the damaging psychological effects of such measures.⁸⁸ Human rights expert Jim Murdoch has accused the Court of “... a lack of

⁸⁶ On this point, the translation is again imprecise; compare with the English version, which reads as follows: “Prisons shall be *inspected* regularly by a governmental agency in order to assess whether they are administered in accordance with the requirements of national and international law, and the provisions of these rules”[our italics].

⁸⁷ Commentary to *Rec(2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*, pp. 36-37.

⁸⁸ Engbo & Smith (2012), p. 130. Particular mention is made here of the *Rohde v. Denmark* case, in which the complainant developed a psychosis as a result of solitary confinement.

imagination, or at least of judicial understanding of the impact of solitary confinement upon prisoners and too-ready an acceptance of state interests”.⁸⁹

Signs of change

At the same time, more recent Court case law is showing signs that the Court may be adjusting its restrictive policy. The Court is focusing greater attention on member states’ grounds for imposing solitary confinement, especially in cases where such confinement becomes prolonged. The Court is increasingly emphasising the need for legal safeguards, including precise statutory authority, adequate administrative procedures, adequate monitoring of health and prison conditions and effective review of administrative decisions. If the treatment does not fall within the scope of Article 3, the Court’s case law also allows assessment of whether the right to private life has been breached under Article 8 of the ECHR.

Increased recognition of the damaging effects of solitary confinement

Furthermore, the Court’s case law shows growing recognition of the fact that solitary confinement is harmful to health, and that prisoners who are deprived of the company of other prisoners must be given sufficient stimulation and meaningful social contact to prevent damaging effects. The clearest sign of this development is that the Court is increasingly basing its decisions on the soft-law standards for the use of solitary confinement that are being formulated and developed by the UN and Council of Europe’s monitoring bodies.

In its decision in *Babar Ahmad v. the U.K.*, the Court endorses the CPT’s statements on the adverse effects of solitary confinement:

“Solitary confinement is one of the most serious measures which can be imposed within a prison ... and, as the Committee for the Prevention of Torture has stated, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilitiesIndeed, as the Committee’s most recent report makes clear, the damaging effect of solitary confinement can be immediate and increases the longer the measure lasts and the more indeterminate it is...”.⁹⁰

The Court has similarly endorsed the European Prison Rules, which affirm that solitary confinement shall only be used “in exceptional circumstances”.⁹¹

The Court also refers to *The Istanbul Statement on the use and effects of solitary confinement*, and the fact that the UN’s Special Rapporteur on torture has urged states to follow these recommendations with a view to limiting the use of solitary confinement.⁹² The principle that solitary confinement must only be used in

⁸⁹ Jim Murdoch, *The Treatment of prisoners, European Standards* 2006 [hereafter Murdoch 2006], p. 255.

⁹⁰ Application nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, paragraph 207.

⁹¹ Ramirez Sanchez, Application nos. 59450/00, paragraph 139.

⁹² Ibid, paragraphs 120-121.

exceptional cases, as a last resort and for as short a time as possible, is thereby clearly anchored in the Court's case law. There is also reason to believe that the Court will adopt an increasingly critical attitude to the solitary confinement of particularly vulnerable groups such as remand prisoners, mentally ill prisoners and minors.

The soft-law standards described above thus contribute significantly to the further development of legally binding standards that set more stringent limits on the use of solitary confinement. Moreover, at least as important, the soft-law standards function as a source of direct influence on states in their review of their penal systems. Even if they are not legally binding, these standards often lead to changes in practice. A notable example is the influence exercised by the CPT through its visits of inspection and dialogue with government authorities. In NI's opinion, these human rights standards, even independently of the endorsement of the Court, should be regarded as very weighty recommendations to Norwegian authorities in connection with the shaping of specific policies in this field.

2.6 A recapitulation of the human rights framework

As demonstrated in the preceding chapters, a number of human rights conventions and monitoring bodies establish rules and principles which impose limitations on government authorities' use of solitary confinement. The different standards overlap to some extent, and several human rights standards often regulate the same issues. The following paragraphs provide a brief, non-exhaustive recapitulation of the human rights framework for the use of solitary confinement.

Human rights instruments establish requirements for the design of the statutory framework for the use of solitary confinement. These include requirements for how clearly legal conditions must be worded in order to satisfy the minimum requirement of foreseeability for the prisoner with regard to the circumstances in which solitary confinement may be applied, for which purposes and for how long.

The human rights instruments also set requirements as to satisfactory rules of procedure for the use of solitary confinement. These requirements concern the persons who may make decisions to impose solitary confinement, the procedures to be followed by those persons, the prisoner's right to present his case as part of the procedure and his right to be provided with grounds for the measure.

The human rights framework set strict requirements for the use of solitary confinement in practice. In accordance with this framework, solitary confinement must only be used in exceptional cases, as a last resort and for as short a time as possible, and in this connection requirements are set for conditions of detention, the severity and duration of the measure, its purpose and its effect on the individual prisoner, and for the way statutory guarantees of due process function in practice. Stricter requirements are imposed the more serious and invasive the solitary confinement, and the health of persons placed in solitary confinement must be

safeguarded through the provision of sufficient stimulation and meaningful social contact.

Finally, human rights standards set requirements for the quality of mechanisms for the control and review of solitary confinement measures. These requirements cover such matters as effective internal inspections and control mechanisms, adequate supervision of prison conditions and health, the possibility of making a complaint to both an internal and an independent body, and a real and effective judicial review. These standards form the basis for the assessments and recommendations presented by NI in this report.

3. THE NORWEGIAN SYSTEM FOR THE USE OF SOLITARY CONFINEMENT

3.1 The organisation of the Norwegian Correctional Services

Correctional services in Norway are administered by the Correctional Services Department of the Ministry of Justice. The Correctional Services are organised at the central, regional and local level. The Correctional Services Directorate (KSF) is a subordinate unit of the Ministry's Correctional Services Department, and regional administration is carried out through six regional offices which in turn are responsible for local prisons and probation offices. In addition, there is an independent specialised research and training institution, the Correctional Service of Norway Staff Academy (KRUS), which is placed under the Correctional Services Department.

3.2 Legislation governing the use of solitary confinement

The Execution of Sentences Act governs the execution of sentences of imprisonment and other criminal sanctions; see section 1 of the Act. Authority for the use of prison-ordered solitary confinement is provided by the provisions of this Act. The provisions are supplemented by several regulations, guidelines and circulars.

The basic rule is that prisoners are entitled to the company of other prisoners as far as is practically possible.⁹³ Exceptions from this general rule must be authorised by law.

Solitary confinement imposed by prisons is defined in the Act as “exclusion from the company of other prisoners”, and can be applied as a preventive measure under section 37, an immediate reaction to a breach of discipline under section 40, or in a special unit pursuant to section 17 (2).⁹⁴ These three main types of solitary

⁹³ Section 17 (1) of the Execution of Sentences Act.

⁹⁴ Section 17 (2).

confinement are assessed in this report. These rules are correspondingly applied to remand prisoners under section 46 of the Act; see section 52. The full text of the provisions of the Act may be found in Appendix 1 to this report. For reasons of space, NI has not assessed any issues related to the other provisions of the Act that authorise the use of measures similar to solitary confinement.⁹⁵

4. LEGAL REQUIREMENTS FOR THE USE OF SOLITARY CONFINEMENT

4.1 The issue

This chapter addresses the issue of whether Norwegian legal grounds for the use of solitary confinement are compatible with the minimum human rights standards requiring clear statutory authority.

The human rights instruments set requirements for the elaboration of the legal framework for the use of solitary confinement. These requirements stipulate how clearly conditions must be worded in order to satisfy the minimum requirement of foreseeability for the prisoner with regard to the circumstances in which solitary confinement may be applied, for which purposes and for how long. These limits are defined by the requirement of statutory authority in Article 8 of the ECHR (to some extent Article 3), and the recommendations regarding clear statutory authority that follow from the CPT's recommendations and Rule 53.3 of the European Prison Rules. This is described in further detail in chapter 2 of the report.

By reference to the human rights framework, chapters 4.2 – 4.4 discuss the provisions of the Execution of Sentences Act regarding solitary confinement as a preventive measure pursuant to section 37, solitary confinement as a consequence of a breach of discipline pursuant to section 39, and solitary confinement in a special unit pursuant to section 17 (2). NI's conclusions are set out in chapter 4.5.

4.2 Solitary confinement as a preventive measure – section 37 of the Execution of Sentences Act

4.2.1 General comments

The issue of statutory precision is particularly relevant in connection with section 37 of the Execution of Sentences Act, which provides authority for the most drastic

⁹⁵ Prisoners may no longer be subjected to solitary confinement as a punishment under Norwegian law, but the Act permits a sanction of partial solitary confinement under section 40 (2) (d). Solitary confinement measures may also be adopted in connection with the use of coercive measures under section 38 of the Act, or if a prisoner is suspected of concealing intoxicants in his body; see section 29 (2).

restrictions on access to the prison community. The provision permits the correctional services to subject prisoners to “complete or partial exclusion” (solitary confinement) as a preventive measure, for up to one year at a time for specified purposes. The purpose of the provision is to prevent continued undesirable behaviour on the part of a prisoner.⁹⁶ Inherent in this purpose is a fundamental precondition that the decision must be based on specific, objective circumstances.

Solitary confinement as a punishment or a disciplinary sanction is no longer permitted under Norwegian law, and the provision must therefore only be used as a preventive measure.⁹⁷ However, several experts have expressed concern about the possibility of the provision being used as punishment in practice.⁹⁸ As explained below, such concerns arise from the highly discretionary nature of the requirements set out in the provision for placing prisoners in solitary confinement.

The maximum limit for solitary confinement pursuant to section 37 is one year. The Correctional Services’ guidelines specify that an attempt shall be made to return prisoners who have been in isolation for one year to the prison community. If this does not function in one prison, an attempt shall be made in the main community in another prison before continued exclusion can be considered.

Under section 3-35 of the Regulations to the Execution of Sentences Act, any damaging effects of exclusion from company shall “as far as possible be prevented or remedied”.⁹⁹ NI considers it unfortunate that no rules exist that lay down minimum requirements for social contact or activities, referring in this connection to Rules 25.1 and 25.2 of the European Prison Rules and the CPT’s standards.¹⁰⁰ Reference is made in this connection to the fact that Denmark has recently adopted regulations containing such provisions.¹⁰¹

4.2.2 Assessment of evidence/risk

The purpose of solitary confinement pursuant to section 37 is essentially to prevent undesirable incidents in the future. Apart from actual incidents that are relevant for assessing future risk, it is therefore not a question of submitting evidence in the ordinary sense. Decisions must be based on the risk assessment carried out by the prison staff member responsible for making such decisions. Based on the wording of the provision, however, the degree of probability that must be shown for both past

96 Point 3.40 of the Norwegian Correctional Services guidelines.

97 See, however, footnote 95 above.

98 See i.a. *Alternative report to the UN Human Rights Committee regarding Norway’s sixth Periodic Report under the International Covenant on Civil and Political Rights*, NGO Forum for Human Rights, December 2010, p. 43; Ståle Eskeland, *Rettsikkerhet og fengselsmessige hensyn i den nye straffegjennomføringsloven* [The Rule of Law and Prison-related Considerations in the New Execution of Sentences Act], Juss-Buss [ed.] Tvers gjennom lov til seier, Oslo 2001, p. 98 et seq.

99 Regulations of 22 February 2002 No. 183 to the Execution of Sentences Act

100 See chapters 2.3 and 2.4 of this report.

101 Executive Order No. 281 of 26 March 2012 relating to prisoners’ access to the company of other prisoners in correctional institutions.

circumstances and future risk is unclear.¹⁰² No clarification of this question is provided by the regulations, the guidelines or the preparatory works to the Act.

4.2.3 Necessity as a basic condition

For all measures applied pursuant to section § 37, a basic condition is set out in the first paragraph to the effect that the measure must be “necessary”. This is further supplemented by section 37 (2), which states that the Correctional Services shall decide on partial exclusion if this is sufficient in order to prevent situations pursuant to the first paragraph. Point 3.40 of the Correctional Services guidelines establishes a clearer limitation, whereby consideration “shall” be given to whether other, less drastic measures are sufficient *before* a decision to impose solitary confinement is made.

Section 37 (3) establishes that solitary confinement “shall not be maintained longer than is necessary and the Correctional Services shall ‘constantly’ consider whether grounds for the exclusion continue to exist”. The third paragraph thus makes it clear that the requirement of necessity also applies to maintenance of solitary confinement. It is unclear what is meant by “constant” consideration. The wording does not provide the public administration with any clear guidance in terms of fixed times for controls, thereby increasing the risk of disproportionate interventions. By way of comparison, rules have been established in Denmark stipulating that institutions must assess whether the legal requirements for solitary confinement are satisfied at least once a week.¹⁰³ In NI’s opinion, consideration should be given to establishing a similar statutory rule in Norway.

In NI’s view, the criterion of necessity requires that several different assessments must be made – thus it is a complex condition. The following must be assessed: 1) whether the purposes can be achieved by means of less drastic measures, 2) which incidents could occur if solitary confinement is *not* imposed and 3) how likely it is that this incident will occur. NI takes the view, which has received support in several quarters, that the current criterion of necessity is too vaguely worded.¹⁰⁴ In a case-by-case perspective, the measure can easily be seen as necessary on the basis of some (legitimate *per se*) prison-related consideration or other.¹⁰⁵ NI therefore recommends expanding on the criterion of necessity, and in addition asks the authorities to consider a requirement of “strictly necessary”.

The permitted grounds for solitary confinement are exhaustively listed in section 37 (1) (a) – (e). However, several of the alternatives are worded so vaguely that it is dubious whether sufficient consideration has been taken of the prisoners’ due process rights.

102 The exception is section 37 (7), which explicitly requires an ordinary preponderance of evidence. In such case, however, the standards of proof apply to incidents that have already occurred.

103 Section 63 (7) of the [Danish] Sentence Enforcement Act.

104 Brev Juss-Buss, 30. mai 2012, ref: MWN; E-mail of 7 June 2012 from research fellow Thomas Horn.

105 Compare Thomas Horn, *Varetekt som risikoøvelse*, *Kritisk Juss* 2011 p. 49 et seq.

4.2.4 Negative influence on the prison environment – section 37 (1) (a)

Subparagraph (a) determines that a decision to impose solitary confinement may be made to “prevent prisoners from continuing to influence the prison environment in a particularly negative manner”. The text offers no guidance as to the type of behaviour that might be considered to have a particularly negative influence on the prison environment. The wording suggests that the prisoner’s behaviour must be of a significantly negative nature, and an attempt has been made to remedy the vagueness by setting a requirement of a prior written warning. This gives the prisoner a certain degree of foreseeability, but does not fully solve the problem of it not being clearly stated what type of behaviour could qualify as a particularly negative influence on the environment. Could this, for instance, include a breach of the activity duty, bullying of prisoners or staff, noise and shouting, condescending conduct or similar circumstances? In this respect, wide scope is left for the prison staff’s own interpretations.

No specification of how this alternative is to be applied is provided in the regulations, the guidelines or the preparatory works. Even though the purpose has been stated in accordance with the minimum standards established by the ECtHR, it is nonetheless doubtful to what extent the said statement of purpose constitutes a real legal limitation. Other than requiring a prior written warning, the legislation offers no further guidance. As legal grounds for potentially very prolonged solitary confinement, this is problematic and on the borderline of what is acceptable under the minimum human rights standards. In NI’s view, the authorities should see to it that more precise guidelines are drawn up for the exercise of discretion.

4.2.5 Peace, order and security - section 37 (1) (e)

Pursuant to this subparagraph, the prisoner may be placed in solitary confinement if this is deemed necessary in order to “maintain peace, order and security”. “Security” is a definable concept, and refers to the maintenance of security in society and internal prison security. The meaning of “peace and order” is unclear and, based on this wording; a great many different matters can therefore be placed in the category under subparagraph (e). Circumstances such as inappropriate shouting and screaming, a lack of order in the cell, oversleeping, scolding, refusal to carry out an order or minor vandalism will all qualify. Moreover, the wording raises the question of to what extent breaches of prisons’ *internal* regulations will qualify as a ground for exclusion.

According to the Correctional Services guidelines, breaches of the duty to engage in prison activities fall within the scope of subparagraph (e), to the extent that the breach is so serious that it disturbs peace, order and security in the prison. No other elaboration is provided by the regulations, guidelines or preparatory works to the Act.

Alternative (e) appears to be a miscellaneous provision, designed to encompass undesirable behaviour that is not covered by the other alternatives. The system

applied in the Act could mean that the circumstances specified in (e) must be of the same degree of seriousness as the others, but the wording offers no clarification. On the contrary, the wording suggests that the threshold for solitary confinement in these circumstances is lower than for the other alternatives. In judicial theory, it is also assumed that certain less serious circumstances may be covered.¹⁰⁶

Thus the lower limit for application of this alternative is unclear, and it looks as though the authorities have not taken a principled position on this issue anywhere in the legislation. Although the provision technically states the purpose as a limitation, the topic of assessment (“peace, order and security”) is so vaguely worded that it is unclear how an effective review can be carried out. Moreover, the fact that there is no specification of the degree of probability required for evidential and risk assessment purposes further undermines the prisoner’s due process rights.

All in all, this alternative provides very limited guidance as to the type of behaviour that can give rise to a sanction. This is particularly worrying in view of the seriousness of the measure, and the fact that the prisoner risks spending a very long time in solitary confinement. NI considers this ground for solitary confinement to be highly dubious by reference to the human rights standards described above.

4.2.6 Collective exclusion - section 37 (7)

Under the seventh paragraph, all or some prisoners may be placed in full or partial solitary confinement “if it is probable that an unspecified number of prisoners have committed or are in the process of committing such acts as are mentioned in the first paragraph...”.

Under this wording, the Correctional Services have the power to apply collective exclusion on the same basic conditions as for individuals. The objections described above to wide limits for the exercise of discretion therefore also apply to the seventh paragraph. The wording of the seventh paragraph covers acts that have already taken place as well as acts in progress. Incidentally, the reference to “such acts as are mentioned in the first paragraph” is a technical legal error, because the focus in the first paragraph is not acts, but on the *purposes* that constitute legal grounds for solitary confinement. It must be assumed that what is meant here is that an act that can constitute a ground for exclusion under the first paragraph can also give grounds for collective exclusion. Moreover, an explicit requirement has been set with regard to the probability that the acts have been, or are in the process of being, committed. The guidelines make it clear that the requirement in question concerns the ordinary preponderance of probability.

The guidelines stipulate that the acts in question must pose a serious threat to prison security, and mention prisoner riots or vandalism. This could indicate that the

¹⁰⁶ Birgitte L. Storvik. *Straffegjennomføring etter lov av 18. mai 2001 nr. 21* [Execution of Sentences pursuant to the Act of 18 May 2011 No. 21], 2nd edition 2011 [hereafter Storvik 2011], p. 205.

threshold for implementing collective measures is more stringent than the threshold for individual measures. It is unfortunate that a more stringent threshold of this nature is not explicitly laid down in the Act.

Collective exclusion may also be applied “if urgent building or staff conditions necessitate this”. The stipulation that the circumstances must be urgent indicates that it is a narrow exception provision. The guidelines confirm this, and mention such examples as a fire or an extraordinary shortage of staff. The exclusion is limited to three 24-hour periods, with the possibility of extension for another three 24-hour periods based on a decision at regional level if “there are special reasons for doing so”. In the event, according to the guidelines, consideration must be given to transferring the most active prisoners to other prisons in order to alleviate the situation, or to whether the use of a sanction pursuant to section 40 is sufficient. The wording of the statutory authority on this point is probably in conformity with the requirements of statutory precision described above. Another matter is that weighty objections may be raised to decisions to impose solitary confinement that are made on such grounds; see Rule 53.6 of the European Prison Rules.¹⁰⁷ Furthermore, experts contacted by NI consider it very unfortunate that such very diverse purposes as preventing a prison riot and building or staff conditions are covered by the same provision, since the purposes are very different.¹⁰⁸

4.2.7 Building or staff conditions, etc. - section 37 (8)

Under the eighth paragraph, a prisoner may be wholly or partly excluded from the company of other prisoners “if building or staff conditions necessitate this, or if the prisoner himself or herself so wishes”.

With this wording, the threshold for the use of exclusion appears to have been set at a lower level than in the case of collective exclusion, because there is no requirement that the building or staffing conditions must be “urgent”. At the same time, use of the word “påkrevet” [required] may be interpreted as an indication that the need must be more pressing than is the case for conditions deemed to be “nødvendig” [necessary]; see the seventh paragraph. [In the English translation of the Act, the same word, “necessitate”, has been used for both words. – Translator’s note] However, such differences in the choice of words have not been elaborated on in current legislation.¹⁰⁹ All in all, the threshold appears to be lower for measures pursuant to section 37 (8) than for measures pursuant to section 37 (7). This is confirmed in a new addendum to the Act on minors and solitary confinement, in which it is proposed that a distinction be made between minors and adults with regard to the threshold for use of the measure where this point is concerned. In the case of adults, the measure must still be deemed to be “required”, whereas in the case of minors, the

¹⁰⁷ See chapter 2.4.1.

¹⁰⁸ E-mail of 7 June 2012 to NI from research fellow Thomas Horn.

¹⁰⁹ See, however, Proposition to the Odelsting (2000-2001), which appears to assume that the building or staffing conditions in question must be urgent.

building or staffing conditions must be “urgent” and the measure “strictly necessary”.¹¹⁰ To the extent that human rights standards permit the use of solitary confinement at all for resource-related reasons, such permission should be very narrow. In this respect, there is reason to bear in mind that a basic principle has been adopted in the European Prison Rules to the effect that the lack of resources does not justify conditions of detention that infringe the human rights of prisoners.¹¹¹

Furthermore, it is not clear from the system applied in the Act which time limitations apply. The time limit of three 24-hour periods applies explicitly to collective exclusion, while the one-year limit applies only to the first paragraph (a) – (e); see section 37 (4). This issue is not clarified in the regulations, guidelines or preparatory works to the Act. Substantial considerations dictate that the time limit for exclusion on grounds of building or staffing conditions for one prisoner should not be longer than for collective exclusion. However, in view of the statutory precision requirements described above, the length of time the prisoner may expect to be placed in solitary confinement should be clearly stated. This applies especially because the measure in question is not a consequence of the prisoner’s own behaviour.

Prisoners may also be excluded pursuant to section 37 (8) if they themselves so desire. In such cases, an exception can be made from the absolute time limit of one year.¹¹² The Act does not specify in detail how such wishes are to be assessed. The guidelines state that the cases concerned must be exceptional, and that there must be “special grounds”, without elaborating on the kind of grounds that might be relevant. However, they state that the prison must consider whether there are any alternative measures, such as transfer to another unit or prison. However, no efforts are made to address the problem that a desire for continued solitary confinement may be due to threats from other prisoners, or to social withdrawal as a result of long-term solitary confinement.

4.3 Solitary confinement as a consequence of breaches of discipline - section 39 of the Execution of Sentences Act

Under section 39 of the Execution of Sentences Act, the Correctional Services may exclude a prisoner from the company of other prisoners for up to 24 hours, if it is “probable” that the prisoner has committed an act that may result in a sanction pursuant to section 40, second paragraph, (c), (d) and (e). This reference means that the act in question must make it relevant to impose a sanction of loss of privileges, exclusion from communal leisure activities or other leisure activities, or loss of the right to leave for up to four months.

The acts that give the Correctional Services the power to impose such sanctions are not specified in the provision, any provision in the regulations to the Act or the

110 Prop. L 135 (2010-2011), p. 193 et seq.

111 See Basic Principles, Rule 4.

112 Cf. section 37 (4), last sentence.

guidelines. Section 40 (1) states that the sanctions set out in the second paragraph may be imposed “if prisoners wilfully or negligently breach the rules for peace, order and discipline or preconditions and conditions in or pursuant to this Act”. This wording must be deemed to cover provisions laid down in the Execution of Sentences Act, the Regulations, the guidelines, internal provisions and conditions set in connection with leave. The scope of application is obviously very wide, and provides little foreseeability for the individual prisoner. Examples of behaviour which will probably give rise to a sanction are the use of intoxicants, fighting, threats, breaches of conditions for leave and vandalism. Furthermore, within the limits of the Act, the Correctional Services have been given a wide margin of discretion with regard to the choice of sanction. The guidelines prescribe that great weight shall be given to foreseeability and equal treatment, while differentiated sanctions may be imposed based on individual circumstances. Based on current legislation, however, it appears obvious that these considerations are not properly addressed.

Nor is the purpose of the provision stated in the text of the Act. From a human rights perspective, a specification of purpose in the text of the Act is probably an absolute minimum requirement. It is true that the guidelines state that such exclusion is particularly relevant for preventive purposes, or when an immediate reaction to undesirable behaviour is required.

NI appreciates that there is a need for a certain flexibility with regard to the use of sanctions. Nevertheless, in NI’s opinion, the Norwegian authorities, by adopting such vague legal requirements for application, have attached too much importance to prison-related considerations at the expense of the prisoners’ due process rights.

4.4 Solitary confinement in a special unit – section 17 (2) of the Execution of Sentences Act

The company of other prisoners in a unit with an especially high security level (“high risk unit”) or a unit for prisoners with special needs may “be wholly or partly restricted in the interests of peace, order and security, or if it is in the interests of the prisoners themselves or other prisoners, and does not appear to be a disproportionate interference”.

This wording indicates that prison authorities have very wide discretionary powers to apply solitary confinement to prisoners in such units. Like section 37 (1) (e) of the Act, the reference to peace, order and security makes it difficult to envisage how an effective review can be carried out in such cases. It is also worth noting that while section 37 (1) lays down that solitary confinement must be “necessary” in order to maintain peace, order and security, section 17 (2) instead prescribes that the company of other prisoners may be wholly or partly limited “in the interests of” these purposes. This can naturally be interpreted as a further lowering of the threshold for imposing solitary confinement. Just what is meant by “the interests of the prisoners

themselves or other prisoners” in a given case must also be said to be very vaguely worded.

The provision appears to be structured in such a way that grounds are required for the company of other prisoners where prisoners in special units are concerned.¹¹³ Such prisoners shall otherwise not share the company of prisoners from other units.¹¹⁴ In its case law, the European Court of Human Rights has found a violation of Article 3 in several cases where solitary confinement is routinely imposed, without the prisoner’s status as a dangerous detainee being linked to actual prison incidents.¹¹⁵ Prisoners in a high risk unit are generally subject to a significantly more restrictive regime of controls than those serving their sentence in an ordinary closed prison. In some cases, being placed in such a unit may in fact constitute complete solitary confinement, because there are no other prisoners in the unit.

The only real limitations that this provision can be said to set is that the measure must not appear to be a “disproportionate intervention”. This presupposes that there is a reasonable balance between the prison and security considerations that constitute grounds for the measure and its consequences for the individual prisoner. Moreover, the placing of the provision in section 17 (2), and the explicit exception of these prisoners from the scope of section 37, mean that the maximum time limit of one year laid down in the Act does not apply in these cases.¹¹⁶

The rationale for extended powers to limit the company of other prisoners in these units is that special account must be taken of security, the composition of the prisoner population and the prisoners’ special needs. The potentially damaging effects of prolonged solitary confinement shall instead be compensated for by increasing contact with prison staff and by expanding the range of activities.¹¹⁷ However, it is unfortunate that the minimum requirements relating to this point are not set out more precisely. NI does not doubt that certain prisoners have very deviant behaviour, and that several can be unpredictable and difficult to handle. At the same time, it is important to underscore that the measure in question is a drastic limitation of the prisoners’ opportunities for meaningful social contact with others, and that the risk of permanent damage increases with long-term solitary confinement. The uncertainty to which the prisoners are subjected due to the lack of a time limit for the duration of solitary confinement probably increases this risk. The apparently unlimited latitude that prisons have for imposing solitary confinement pursuant to section 17 (2) reveals a need for stronger guarantees of due process.

113 Section 6-3 (2) of the Regulations of 22 February 2002 No. 183 to the Execution of Sentences Act.

114 Section 6-3 (1) of the Regulations.

115 *Piechowicz v. Poland*, Application no. 20071/07; *Horych v. Poland*, Application no. 13621/08, see chapter 2.2.

116 See *også* section 6-3 (3) of the Regulations.

117 Point 6.7 of the Correctional Service guidelines, and section 13 (2), last sentence, of the Regulations of 5 March 2004 No. 481 relating to execution of the special sanction, preventive detention.

In NI's view, the requirements laid down in section 17 (2) are worded so vaguely that they do not enable prisoners, to a reasonable extent, to foresee the sanctions to which their behaviour may give rise. Objections concern the discretionary power to impose exclusion, the lack of time limitations and the lack of specifications of minimum requirements for the provision of activities and social contact.

4.5 Is the formulation of the Act in accordance with human rights standards of clear statutory authority?

The above review shows that several of the provisions of the Execution of Sentences Act confer very wide, discretionary powers to place prisoners in solitary confinement.

Highly discretionary legal requirements

First of all, it is worrying that the provisions contain highly discretionary legal requirements, which appear to be difficult to review in practice. This applies to varying degrees to all of the legal grounds described above, but perhaps particularly to the power to impose preventive solitary confinement pursuant to section 37 and solitary confinement in units for prisoners with special needs and high risk units pursuant to section 17 (2). In both cases, prisoners may be placed in solitary confinement for the purpose of maintaining "peace, order and security" in the prison. In NI's view, these wordings are contrary to the CPT's recommendations of statutory precision in the formulation of grounds for solitary confinement, and perhaps also the requirement of statutory authority as practiced by the ECtHR.

Lack of statement of purpose

There are also deficiencies in the formulation of the statutory authority for immediate solitary confinement pursuant to section 39, as the provision does not even contain a clear statement of the purpose of the measure. This seems to conflict with the minimum requirements set by the Court pursuant to the statutory authority requirement. Furthermore, as shown above, application of the provision is linked to the suspected breach of very poorly defined rules.

Indefinite or very broad time limits for application

Another concern is that the statutory authority for solitary confinement does not provide sufficient foreseeability as regards the duration of the measure. Solitary confinement pursuant to section 17 (2) is not subject to any time limitations, other than the requirement that the measure must not be disproportionate. This seems to be contrary to the European Prison Rules regarding the clear regulation of the duration of extra security measures. Even if several of the statutory authorities described contain provisions regarding reporting to a higher level of public administration, it is uncertain, due to the vague wording of these statutory authorities, how effective such control can be. A further objection is that the general maximum time limit of one year is very broad.

NI recognises that, to a certain degree, discretionary statutory authority is inevitable, because the public administration must be able to perform its functions in an effective manner. However, it follows from the foregoing that the public administration's margin of discretion must be limited substantially where the application of serious measures in respect of individuals is concerned. In NI's opinion, the authorities have not taken sufficient account of the prisoners' due process rights when formulating statutory authority for solitary confinement. All three provisions have problematic aspects by reference to the requirements of clear statutory authority prescribed by the human rights standards. Accordingly, NI urges the Norwegian authorities to consider a legislative amendment in which greater account is taken of prisoners' due process rights.

5. PROCEDURAL RULES REGARDING THE USE OF SOLITARY CONFINEMENT

5.1 The issue

The issue in this chapter is whether the Norwegian procedural rules regarding the use of solitary confinement comply with the due process requirements in human rights standards.

Human rights standards require there to be satisfactory procedural rules for the use of solitary confinement. The requirements include who may decide to impose solitary confinement, what procedures such persons must follow, and a prisoner's right to present his case during the procedure and to receive a statement of reasons for the measure. These rules derive particularly from Article 3 of the ECHR and the recommendations of the CPT, and are described in chapter 2 of this report.

Based on the human rights framework, chapter 5.2 discusses section 6 of the Execution of Sentences Act regarding authority to make decisions and section 7 regarding access to documents and statements of reasons. NI's conclusions are set out in chapter 5.3.

5.2 Procedural rules relating to the use of solitary confinement in Norway

5.2.1 Who may make decisions to impose solitary confinement?

It is the individual prisons that make decisions under the Execution of Sentences Act, unless the Act states expressly that the regional level has decision-making authority.¹¹⁸ According to the guidelines, the general rule is that the director of the

¹¹⁸ See section 6 of the Act.

prison, or a person authorised by him, decides individual cases at first instance.¹¹⁹ Accordingly, the director may delegate authority to an assistant commissioner, chief inspector, etc. In the case of high risk units, however, it is always the director, or a person authorised by him, who must make the decision.

Certain solitary confinement measures are deemed to be so serious that the regional level must make the decision.¹²⁰ This applies to complete solitary confinement exceeding 14 days pursuant to section 37(4), and solitary confinement in a security cell that exceeds three 24-hour periods pursuant to section 38(4). The director is responsible, and decides who is to make the decision on his behalf.

These requirements regarding authority to make decisions are consistent with the CPT recommendations. NI nevertheless points out that it may be necessary to specify directly in the Act who is authorised to make such decisions, to replace the current general reference to the “Correctional Services”.

5.2.2 Reporting rules

As regards decisions to impose solitary confinement as a preventive measure pursuant to section 37 of the Execution of Sentences Act, special rules apply regarding the reporting of long-term measures. As the rules are a key part of subsequent controls by the Correctional Services, this is described in chapter 7 of the report.

5.2.3 Failure to respect the principle of the right to be heard

The right to be heard in administrative proceedings is a fundamental requirement under administrative law. The requirement of such a right means that an administrative body must give parties affected by the exercise of its administrative authority an opportunity to protect their interests. A precondition for mounting an effective defence is that the person affected receives information about the subject matter of the case. The Public Administration Act thus also provides that such persons are generally entitled to access to the case documents of the administrative body, and to an adequate statement of reasons.

Pursuant to section 7 of the Execution of Sentences Act, the procedural rules in the Public Administration Act also apply to the Correctional Services. Prisoners are therefore generally entitled to know the content of documents on which a decision in a specific case is based, when the prisoner in question is considered a party to the case.¹²¹ A solitary confinement decision is an individual decision, and reasons must generally be given for it.¹²² The statement of reasons must refer to the legal rules and factual circumstances on which the decision is based. The main considerations that

¹¹⁹ Section 2.2 of the Correctional Services Directorate guidelines.

¹²⁰ Section 6(2).

¹²¹ Section 18(1) of the Public Administration Act.

¹²² Section 24 of the Public Administration Act.

have been decisive in the exercise of administrative discretion should also be mentioned.¹²³

However, the Execution of Sentences Act contains separate rules that substantially limit the right of prisoners to access documents and to a statement of reasons. Pursuant to section 7(c) of the Act, “[a] party is not entitled to inspect a document that contains information which it is deemed inadvisable in the interests of another person for the party to obtain knowledge of. Nor is the party entitled to become acquainted with information in a document if inspection thereof is inadvisable for security reasons, or in the interests of the investigation of criminal offences.” Further, section 7 (d) states that exceptions may be made from the duty to state grounds “if such grounds will disclose information that is excepted from the right to inspection pursuant to subparagraph (c)”.

NI recognises that the special security considerations that apply in prison may necessitate certain limitations on access to information. If a prisoner is excluded from company as a result of information from another prisoner, it may be necessary to keep this information secret to protect the person in question. As mentioned above, the CPT has acknowledged that it may be permissible to withhold information in exceptional cases to protect a third party or for security-related reasons.¹²⁴

Nevertheless, NI takes the view that the exception provisions are so widely drafted that they render the prisoner’s right of access and right to a statement of reasons largely illusory. A power to make an exception in cases where it is “deemed inadvisable” in the interests of another person establishes a very low threshold for refusal. The same applies to the power to make an exception because it “is inadvisable for security reasons”. Moreover, the Correctional Services Directorate’s procedural guidelines contain no clarification of the threshold for excepting such information.¹²⁵ The draft act states that the statutory amendment constituted a significant expansion of the power to limit access to documents and statements of reasons, although this was not critically examined in any great detail.¹²⁶

In a prison context, where the Correctional Services can implement a range of interventions affecting prisoners, the opportunity to obtain information about the reasons for the decisions is vital in order for the prisoners to have a real opportunity to protect their interests. For one thing, sufficient information will enable the prisoners to assess whether there may be a basis for appealing against the decision.¹²⁷ Moreover, a reasoned decision may help the prisoner in question to accept the measure. A further consideration is that a duty to provide reasons may keep the

¹²³ Section 25 of the Public Administration Act.

¹²⁴ See chapter 2.3.

¹²⁵ *Veiledning om Saksbehandlingsreglene i Forvaltningsloven og Straffegjennomføringsloven* § 7 [Guidelines on the procedural rules in the Public Administration Act and section 7 of the Execution of Sentences Act], sections 3.7 and 4.2.

¹²⁶ Proposition No. 5 (2001-2002) to the Odelsting, p. 55 et seq.

¹²⁷ Storvik (2011), p. 84.

person responsible for the decision accountable and aware, thus avoiding “routine decisions”. In addition, an adequate statement of reasons is crucial for ensuring that complaints bodies are able to assess the lawfulness of the measure and whether the limits for the exercise of discretion have been observed.¹²⁸

The special exception rules in the Execution of Sentences Act thus mean that key information and the reasons for a decision can be withheld. In NI’s view, the power to except information should be used rarely, and only to prevent dangerous situations or where the information in question is sensitive and could damage the prisoner or another person.¹²⁹ NI is therefore of the opinion that the wide power to except information is contrary to the requirements set out in the case law of the European Court of Human Rights and the CPT recommendations.

5.3 Do the procedural rules comply with the due process requirements in human rights standards?

The above account shows that the Execution of Sentences Act contains satisfactory rules on authority to make decisions, and that there is a reporting system that can help to limit the use of the vague, discretionary legal authority for solitary confinement.

However, the Act contains special procedural rules that substantially undermine the fundamental guarantees of due process contained in the Public Administration Act. The exception rules mean that prisons are granted a very wide discretion to make decisions to impose solitary confinement without granting prisoners access to the information on which the measure is based. The ability of prisoners to protect their interests vis-à-vis the prison is thus highly limited. NI is of the opinion that the Norwegian authorities should consider restricting the power to make exceptions, based on the human rights requirements applicable to administrative procedure in cases concerning solitary confinement.

6. USE OF SOLITARY CONFINEMENT

6.1 The issue

The issue in this chapter is whether the use of solitary confinement is a problem in Norway, by reference to the human rights framework.

¹²⁸ An illustrative example of this is Supreme Court Reports 2006, page 1300, a case concerning the review of a decision to place a prisoner in a high risk unit. Major parts of the basis for the decision were kept secret from the prisoner pursuant to sections 7(c) and (d) of the Execution of Sentences Act, and from the courts pursuant to section 204(2) of the Civil Procedure Act in connection with legal proceedings to review the lawfulness of the decision. The Supreme Court found that there was no right of access or duty to state reasons for the decision.

¹²⁹ Compare Storvik (2011), p. 81.

The human rights framework imposes strict requirements for the use of solitary confinement in practice. These principles state that solitary confinement should only be used in extraordinary cases, as a final resort and for the shortest possible period of time, and requirements are imposed in this context with respect to detention conditions, the severity and duration of the measure, the purpose and effect of the measure on the individual, and how statutory guarantees of due process function in practice. Stricter requirements are imposed the more serious and drastic the solitary confinement; and the health of persons in solitary confinement must be protected by providing sufficient stimulation and meaningful social contact. The human rights framework governing the use of solitary confinement have been drawn up in accordance with Articles 3 and 8 of the ECHR, the recommendations of the CPT, and sections 53.1 and 53.6 of the European Prison Rules. This framework is described in chapter 2 of the report.

Based on the human rights framework, chapters 6.2 to 6.7 evaluate the use of the provisions of the Execution of Sentences Act relating to solitary confinement as a preventive measure pursuant to section 37, solitary confinement following a breach of discipline pursuant to section 39, and solitary confinement in a special unit pursuant to section 17(2). NI's conclusion is set out in chapter 6.8. The evaluation has been undertaken based on collected sources.

6.2 Statistics

6.2.1 Lack of publicly available statistics

The biggest problem involved in evaluating Norwegian imprisonment practices is that statistics on the use of prison-ordered solitary confinement are not available to the public. For many years, legal aid organisations have asked the authorities to publish figures on the use of such solitary confinement. In the 1990s, the Standing Committee on Justice of the Storting (the Norwegian parliament) requested figures showing how often and for how long solitary confinement was used, whether there were variations between prisons, and the grounds for solitary confinement.¹³⁰ Such statistics have still not been published, with the exception of data on solitary confinement in a security cell pursuant to section 38.¹³¹ Others have pointed out that it is notable that the justice sector, which publishes detailed statistics on its activities in most areas, has given so little priority to maintaining an overview of the scope of a measure as serious as solitary confinement.¹³²

¹³⁰ Recommendation S No. 6 1998-99, question 25 [the enquiry related to the application of section 53.4 of the Prison Regulations, corresponding to section 37 of the current Execution of Sentences Act].

¹³¹ Correctional Services Directorate, annual statistics for 2009.

¹³² Mikkel Haugerud, *Isolasjon i norske fengsler* [Solitary confinement in Norwegian prisons], Materialisten 2/11 2011 [hereafter Haugerud 2011], p 42 et seq.; Vårin Hellevik, *Bruk av isolasjon i norske fengsler* [Use of solitary confinement in Norwegian prisons], published as Juss-buss Stensilserie no. 84, 2001 [hereafter Hellevik 2001], chapter 8.2.

International monitoring bodies have repeatedly criticised Norway for its deficient overview of the use of solitary confinement.¹³³ In connection with Norway's seventh report to the UN Committee against Torture, the committee requested "updated detailed statistics on the use of solitary confinement and the number of days spent on solitary confinement." In their 2011 state report, the Norwegian authorities replied that the Correctional Services' IT system currently did not allow the production of detailed statistics on prison-ordered solitary confinement, but that this was considered worrying and would be followed up.

6.2.2 Collected statistics, etc.

NI has nevertheless obtained annual statistics concerning the application of sections 37 and 39 of the Act in the period 2009–2011.¹³⁴ The statistics specify the total number of decisions under these two provisions per year, classified by individual prisons and regions. The figures also show whether the decisions concerned convicted persons, remand prisoners or persons sentenced to preventive detention.

Preventive solitary confinement pursuant to section 37 (1) (e) of the Execution of Sentences Act falls into a special category as regards the scope of solitary confinement in prisons. A review of the annual statistics for 2011 shows that a total of 2,492 such decisions were registered as being necessary "for maintaining peace, order and security", compared to a total of 265 decisions based on all the other grounds specified in section 37 (1) (a) – (d). Some prisons also use solitary confinement pursuant to sub-paragraph (e) to a much greater extent than others. This applies, among others, to Ullersmo, Åna, Bergen, Oslo and Halden prisons, which all registered over 200 decisions in 2011. The figures also show that solitary confinement of remand prisoners accounts for almost one-third (843) of the total number of registered decisions under section 37 (1) (a) – (e).

A review of developments in the period from 2009 to 2011 shows that there has been an increase of around 25 percent in the number of decisions based on "peace, order and security", a rise which cannot be explained by reduced use of the other grounds. The figures also reveal a marked increase in the numbers of decisions at certain prisons: Trondheim, Tromsø and Ullersmo prisons have reported a doubling of the number of such decisions. At Halden prison, 99 decisions pursuant to sub-paragraph (e) were registered in 2010, while the figure for 2011 is 281. Bergen prison is an exception, with use falling from 281 to 203.

The figures further show that prisoners were excluded from company on building or staffing grounds in 449 instances in 2011. The figures for the different prisons vary considerably in this area, and more than half of the decisions were registered at

¹³³ See, i.a. the recommendations of the UN Human Rights Committee, November 2011, CCPR/C/NOR/CO/6, paragraph 11; the recommendations of the UN Committee against Torture, November 2007, CAT/C/NOR/CO/5, paragraph 8 and the CPT's recommendations to Norway, December (CPT (2011) 70), paragraphs 71-85.

¹³⁴ The statistics were received from the Correctional Service of Norway Staff Academy (KRUS).

Ringerike. Remand prisoners account for over half (254) of the registered number of exclusions based on this ground.

Voluntary solitary confinement is registered separately, and a total of 276 decisions on such confinement were made in 2011. Remand prisoners accounted for around one-quarter (68) of these decisions. There are large variations between the prisons, and as much as 141 of the decisions were registered at Åna prison. The same applies to registered decisions concerning immediate exclusion pursuant to section 39. While the total number of registered decisions was a little more than 200, and almost half of these (90) concerned remand prisoners, use varies significantly between prisons. The prisons in Oslo and Halden appear to have a tradition of using section 39, while this is the exception at Ila and Ullersmo.

The number of exclusions based on building or staffing grounds has been halved from 2009 to 2011, and the number of registered instances of voluntary solitary confinement has also fallen considerably.

By way of comparison, the extent of preventive solitary confinement appears to be much lower in Denmark, where the total prison population is also somewhat larger than that of Norway. With a prison population of approximately 4,000, 600 to 800 cases have been registered annually in Denmark in the last 10 years.¹³⁵ However, Denmark makes extensive use of solitary confinement as a sanction, with almost 2,700 decisions in 2009. Following the entry into force of the Execution of Sentences Act, it is unlawful to use solitary confinement as a disciplinary measure in Norway, with the exception of immediate exclusion for 24 hours pursuant to section 39 and up to 20 days' partial solitary confinement as a sanction pursuant to section 40. The fact that the number of preventive solitary confinement decisions in Norway is about as high as the number of decisions in Denmark relating to solitary confinement as a penalty may indicate that a practice has developed in Norway under which the measure is in reality applied as a penalty.

The above figures must probably also be viewed in the light of other factors, such as a 10 percent increase in the prison population, and a trend towards increasing violence and threats against staff during the same period, as well as differences between the prisoner profiles at different prisons.¹³⁶ Part of the explanation may also be a growing proportion of foreign prisoners, as communication problems arise or difficulties are experienced in adapting to Norwegian rules. It is difficult to state with any certainty whether, or to what extent, the increase can be ascribed to such circumstances. It is nevertheless disquieting that by far the most common ground for solitary confinement is the very vague criterion that it is considered necessary to maintain "peace, order and security". In NI's view, this may indicate that the Correctional Services are using solitary confinement as an instrument in connection with less serious deviant behaviour.

¹³⁵ Engbo & Smith (2012), p. 142.

¹³⁶ E-mail from Ragnar Kristoffersen at KRUS, 11 May 2012.

A weakness of the aforementioned annual statistics is that they do not distinguish between full and partial solitary confinement, and do not specify the duration of each individual decision. As regards the use of preventive solitary confinement pursuant to section 37, local prisons are required to report to the regional level all exclusions exceeding 14 days, and all partial exclusions exceeding 30 days. NI contacted the six prison regions, requesting figures showing the number of reported decisions exceeding these time limits. In a joint letter, the regions stated that such figures are not available publicly or internally within the Correctional Services.¹³⁷

NI has subsequently conducted searches of electronic public records to find the number of reports to the Correctional Services Directorate from the prison regions regarding exclusion exceeding 42 days pursuant to section 37.¹³⁸ The documents, which are exempt from public disclosure, are given a case number representing an individual prisoner. The search indicates that, in total, 29 prisoners were subjected to solitary confinement exceeding 42 days in 2011. It is apparent from the document titles that in the case of certain prisoners, the already highly prolonged solitary confinement period was subsequently extended countless times. One document was entitled “*decision concerning full exclusion for the eleventh time; see section 37, first paragraph, subparagraphs (b) and (e), of the Execution of Sentences Act*”.¹³⁹ Another prisoner appears to have been in solitary confinement almost continuously from March to December 2011.¹⁴⁰

6.3 Previous surveys

Few surveys have been conducted of Norwegian practice relating to prison-ordered solitary confinement. The Norwegian authorities do not appear to have been particularly interested in this issue and, as far as NI has been able to discover, have never conducted an overall review of practice. By comparison, the Danish authorities have reviewed legislation and practice twice in the last 10 years with the aim of reducing the use of prison-ordered solitary confinement.¹⁴¹

The most thorough study of practice in recent times was completed by Vårin Hellevik for Juss-Buss in 2001.¹⁴² Based on a representative sample, the study found that the percentage of prisoners subjected to various solitary confinement measures in the course of serving their sentences was high, and that the percentage rose in line with

¹³⁷ Letter from the Norwegian Correctional Services, eastern region, 9 May 2012. Ref. no. 201209522-3. NI received the same answer from the Correctional Services Directorate; see email from Director A. Skulberg of 27 May 2012.

¹³⁸ The reporting duty is set out in sections 37(4) and (5) of the Act.

¹³⁹ Case no. 2011/05624, doc. no. 10, 17 October 2011, From: Norwegian Correctional Services, southern region.

¹⁴⁰ Case no. 2011/02901, doc. nos. 1-16, in the period 29 March 2011–16 December 2011, From: Norwegian Correctional Services, southern region.

¹⁴¹ Danish Prison and Probation Service working group, *Limitation of exclusion from company and solitary confinement of prisoners*, 1 September 2010; see also the working group report of December 2001.

¹⁴² Hellevik (2001). The study examined information collected from electronic prisoner records and prisoner files kept on paper, as well as sentences served at four prisons in eastern Norway from November 1999 to June 2000. Studies of the numerical data were also supplemented by interviews with 12 prisoners.

the length of the sentence. Almost half of the prisoners had been subjected to at least one solitary confinement measure during their sentence, while the corresponding proportion among those who had served more than two years was $\frac{3}{4}$.¹⁴³ On average, each prisoner had been subject to prison-ordered solitary confinement for 35½ days, and about four percent of the prisoners in the sample had been in solitary confinement for more than 100 days. The study also found that practice varied considerably in the four prisons surveyed, a fact which was explained by reference to differences in the prisoner composition, differing application of discretionary rules and differing thresholds for accepted behaviour in the prisons. The most common reasons given for solitary confinement were drug use and conflicts with prisoners or staff. Prisoners with mental disorders and drug problems were over-represented among those isolated for 60 days or more – more than half had psychiatric problems, and almost 80 percent had drug problems. The study also found that prisoners from outside Europe were placed in solitary confinement on account of their behaviour more often than Norwegian prisoners.

In 2008, the Norwegian Bar Association conducted a survey which showed that solitary confinement is also used in the case of minors serving prison sentences.¹⁴⁴ The survey uncovered that 7 of the 10 minors imprisoned at the time, had been subjected to solitary confinement for a longer period without any break other than one hour's outdoor exercise. Three of the children had been in solitary confinement for three months or more, while the others had been in solitary confinement for periods of several weeks.

A Fafo report from 2011 showed that many disabled prisoners have served their sentences in material conditions that constitute a breach of human dignity and personal integrity.¹⁴⁵ In the case of physically disabled prisoners, a lack of accessibility in several prisons meant that the prisoners were effectively confined to their cells, without having committed any breach of prison regulations. The report also uncovered other highly censurable circumstances. For example, one prisoner stated that he had not been able to shower for six months, while another had not had his catheter cleaned for several months.

6.4 International criticism

The UN monitoring bodies have primarily criticised Norway for the use of solitary confinement for remand prisoners. The reduced focus on the specific use of prison-ordered solitary confinement is probably due to the inability of the Norwegian

¹⁴³ Solitary confinement measures included decisions relating to solitary confinement made under the old Prisons Act (now repealed), restriction of leisure time, preventive solitary confinement and immediate solitary confinement for disciplinary purposes.

¹⁴⁴ The survey is referred to in the supplementary report 2009 regarding Norway's fourth report to the UN Committee on the Rights of the Child, made by *Forum for barnekonvensjonen*, p. 34.

¹⁴⁵ Hilde Haualand, *Straffet og isolert – Innsatte med funksjonsnedsettelse i norske fengsler* [Punished and isolated – prisoners with disabilities in Norwegian prisons], Fafo report no. 2011:01, January 2011.

authorities to provide an overview of the extent of the practice, a fact which several UN expert committees have criticised.

The CPT, which has visited Norway five times in total, has often expressed concern about the use of solitary confinement following its visits to Norwegian prisons. In 1993, the committee identified several prisoners suffering from serious psychiatric afflictions following long-term solitary confinement.¹⁴⁶ In its next report, the committee advised the Norwegian authorities to be more cautious regarding the use of solitary confinement and to prepare detailed guidelines to ensure that prisoners in solitary confinement can participate in meaningful activities and have sufficient social contact.¹⁴⁷ In 1999, the committee once again identified serious damaging effects suffered by prisoners due to solitary confinement.¹⁴⁸

In 2005, the committee visited Ila prison, Ringerike prison and Trondheim prison. In its report on the visit, the CPT again expressed strong concern about the use of solitary confinement.¹⁴⁹ The committee considered the detention regime for prisoners in several of Ringerike's units to be especially poor. Among others, this applied to new arrivals and prisoners subject to prison-ordered solitary confinement, who were kept in their cells for more than 22 hours per day. It was discovered that one prisoner had been kept in solitary confinement for more than 77 days after the expiry of the decision, solely due to a lack of capacity. The committee also found that the three prisoners in Ringerike's high risk unit were subject to a very restrictive detention regime. The committee found that one of these prisoners had been subject to this regime similar to solitary confinement for almost two years.

The committee's most recent visit to Norway took place in May 2011.¹⁵⁰ In general, the committee considered the detention regime in the prisons to be satisfactory, but criticised the fact that prisoners in certain units at Skien and Bergen prisons were largely confined to their cells.¹⁵¹ The committee found the conditions for minor prisoners in the youth unit at Bjørgvin to be highly satisfactory, but pointed out that a 15-year-old who had not been allocated a place in the unit had spent seven months in an ordinary prison and been placed in solitary confinement at weekends due to staff shortages. Staffing problems were also the reason why a minor detained at Oslo prison was in practice confined to his cell for 22 hours per day. The committee also emphasised the importance of ensuring that prisoners in solitary confinement are monitored daily by qualified health personnel. The committee was generally sceptical about the use of solitary confinement as an immediate measure in connection with a

¹⁴⁶ CPT/Inf (94) 11.

¹⁴⁷ CPT/Inf (97) 11.

¹⁴⁸ CPT/Inf (2000) 15.

¹⁴⁹ CPT/Inf (2006) 14.

¹⁵⁰ This time, the CPT visited the prisons in Bergen, Bredtveit, Oslo and Skien. The CPT also specifically examined the conditions for minors at Bjørgvin prison and Eidsberg, and the conditions for persons sentenced to preventive detention at Ila prison.

¹⁵¹ CPT/Inf (2011) 33.

suspected breach of discipline pursuant to section 39, and queried the authorities' reasons for this practice.

6.5 National case law

The Norwegian courts rarely deal with cases concerning prisons, but some decisions have related to solitary confinement measures.

A number of decisions by lower courts show that the courts are cautious as regards reviewing the exercise of discretion by the Correctional Services. In 2002, Oslo District Court gave a judgment relating to a complainant imprisoned in the high risk unit at Ringerike prison, who was considered to present a particularly high escape risk following an attack on the prison.¹⁵² He had been convicted of multiple serious crimes, including the murder of a prison officer in connection with an escape. In practice, he was subject to solitary confinement, as he was the only prisoner in the unit. The court stated that high-risk classification was, "... an assessment falling within the discretion of the prison administration, which the court will be cautious about reviewing." The court also commented that the detention conditions in question were very strict, and that a continued long-term stay in the unit was not advisable. However, the court emphasised that the prison had implemented several measures to ease the situation, and that assessments of the prisoner's health were conducted on an ongoing basis. Accordingly, the court held that the decision was valid, and not contrary to Article 3 of the ECHR.

Case law also shows that courts, like prisoners, may be refused access to internal prison information, making it difficult to conduct a real, effective review. In Supreme Court Reports 2006, page 1300, the Supreme Court reviewed a decision to place a prisoner in a prison's high risk unit. Material parts of the basis for the decision were kept secret from the prisoner pursuant to section 7, (c) and (d), of the Execution of Sentences Act, and from the courts pursuant to section 204(2) of the Civil Procedure Act concerning reviews of the lawfulness of a decision. The Supreme Court concluded that, in the case in question, there was no right of access or duty to give reasons for the decision.

Moreover, case law demonstrates that difficulties often arise in situations where the Correctional Services have put *remand prisoners* in solitary confinement pursuant to section 52 of the Execution of Sentences Act. In practice, there are various examples where the courts take the view that the accused can no longer be kept in solitary confinement under section 186a of the Criminal Procedure Act. However, the Correctional Services have the power to place remand prisoners in solitary

¹⁵² TOSLO-2002-1580. See also RG 1999, page 717, where Oslo District Court reviewed the validity of a decision regarding solitary confinement under the old Prisons Act. The district court stated that section 16 of the Prisons Act, which set rules applicable to the communal activities in prison, gave the prison authorities relatively wide powers to place a prisoner in solitary confinement, and that prison-related reasons had to be accepted. However, see RG 2001, page 450, where the court reviewed an exercise of discretion by the Norwegian Correctional Services.

confinement pursuant to the rules in the Execution of Sentences Act; see section 52 of the Act. When considering continued remand in custody, the courts are in such cases faced with a choice between release and remand in custody with solitary confinement.

In Supreme Court Reports 2005, page 140, the Appeals Selection Committee of the Supreme Court considered a case concerning court review of a decision by the Correctional Services to transfer an accused (A) to a high risk prison unit in a case concerning continued remand in custody.¹⁵³ In reality, the transfer meant solitary confinement, as the accused was not permitted contact with other prisoners. A submitted that the court of appeal had incorrectly interpreted the provisions in the Criminal Procedure Act relating to remand in custody in concluding that legal controls on the substance of coercive means cannot be reviewed in connection with continued remand in custody. According to A, the courts' review had to cover all material aspects of imprisonment, including transfer to a high risk unit pursuant to the Execution of Sentences Act. The Appeals Selection Committee stated that the Criminal Procedure Act cannot be interpreted to mean that the district court has jurisdiction to review the lawfulness of administrative decisions. Reviews of the lawfulness of decisions by the Correctional Services under the Execution of Sentences Act had to be conducted by the courts in proceedings brought under the Civil Procedure Act. Nevertheless, the court must review on its own initiative whether the coercive measure would be disproportionate in view of the nature of the case and the circumstances otherwise; see section 170a of the Criminal Procedure Act, see also section 184. In this case, the committee found that remand in custody was neither unnecessary nor constituted a disproportionate measure pursuant to the Criminal Procedure Act. Nor was imprisonment deemed contrary to Article 5(4) of the ECHR.

In a case heard by Borgarting Court of Appeal in 2011, a remand prisoner was detained at Ila prison. For building-related reasons, he was subject to conditions equivalent to full solitary confinement in accordance with section 186a of the Criminal Procedure Act, without the Correctional Services having made the requisite, lawful individual decision.¹⁵⁴ The court of appeal found that imprisonment in these circumstances would constitute a disproportionate intervention, and ordered that the accused should be released or transferred to an ordinary remand cell where he had company.¹⁵⁵

6.6 Criticism by the Parliamentary Ombudsman

The Parliamentary Ombudsman has criticised the practice of the Correctional Services in several cases concerning solitary confinement. Case 2006/993 is one

¹⁵³ Supreme Court Reports 2005, p. 140.

¹⁵⁴ RG 2011, p. 853.

¹⁵⁵ See also TOSLO-2010-178484, where the Correctional Services had placed a remand prisoner in solitary confinement based on non-urgent building considerations pursuant to section 37(8) of the Execution of Sentences Act after the solitary confinement measures under the Criminal Procedure Act had been lifted. The court ordered the release of the accused.

example of prisoners being excluded from the company of other prisoners under section 37(1)(e) based on minor breaches of the rules. The prisoner had overslept on two occasions, and was placed in partial solitary confinement because the prison considered this necessary for maintaining peace, order and security. The Ombudsman found that the decision appeared strict, and stated that, “[t]he question whether the measure was necessary to maintain peace, order and security, or whether other, less radical measures were sufficient, was not considered satisfactorily. It can be questioned whether the decision was influenced by the capacity problems in the unit in question.”

In case 2011/510, the Ombudsman uncovered several serious deficiencies in legal safeguards in a case where a prisoner was put in solitary confinement at Trondheim prison for approximately 110 days pursuant to section 37(1)(e). The solitary confinement only ended when the prisoner was transferred to hospital for medical treatment. The Ombudsman found no reason to criticise the legal basis for the solitary confinement decision, but took the view that the statement of reasons for the decision should have been more detailed. The decision did not link the legal conditions to the requirement of necessity, and it was not stated expressly whether the requirement was met and why. Nor was it stated whether less drastic measures such as partial solitary confinement, company with individual prisoners or transfer had been considered. The Correctional Services were also criticised for several breaches of the provisions of the Execution of Sentences Act relating to reporting to superior bodies. Both the prison and the region had breached their reporting duty, one result of which was that it took the region 80 days to undertake an independent assessment of the basis for solitary confinement. This was partly due to the fact that the local prison did not report the solitary confinement for 29 days. The Ombudsman did not accept that the region’s reasons for the failure to report – staff holidays and a lack of continuity among the responsible officials – could justify the failure to comply with the reporting duty. The Ombudsman expressed surprise at the region’s statement that the reporting breach, “... did not substantially alter the practical situation of the prisoner”, and emphasised that the point of the reporting duty was to enable a superior body to undertake an independent, objective assessment of the measure. The Ombudsman stated that these circumstances constituted a clear infringement of the prisoner’s due process rights. The Ombudsman also pointed out weaknesses in the reporting rules, as it was unclear whether the prisons had to report full exclusion beyond the 14-day limit in section 37(4) to the regions. Accordingly, the Ombudsman recommended to the Correctional Services that it should consider follow-up measures.¹⁵⁶

The Ombudsman has also uncovered cases where solitary confinement has been used as a cost-saving measure by certain prisons. Following a visit to Skien prison in 2007, the Ombudsman raised matters including the prison’s use of collective lock-up of

¹⁵⁶ See also case 2007/1589 (unpublished), which concerned, among other things, partial solitary confinement for nine months without prior notice.

prisoners to make up for large budgetary deficits.¹⁵⁷ The prison put the prisoners in solitary confinement at weekends because this reduced the need for on-duty staff. The Ombudsman stated that section 37(7) of the Act, which permits company to be limited if “urgent building or staff conditions necessitate it”, can only be used as a ground for exclusion when company is not justifiable from a security perspective as a result of extraordinary circumstances. The Ombudsman stated that “therefore, it cannot be permissible to limit the company of prisoners based on the need to make savings”, and that if such needs existed, they would have to be addressed through “organisational or budgetary steps”.

In another case from 2007, the complainant had in effect been excluded from the company of other prisoners entirely or partly for almost a year.¹⁵⁸ The prisoner had served a long line of sentences, had been transferred between four different prisons, and was considered a difficult prisoner. The Ombudsman expressed concern about the long-term solitary confinement of this prisoner, and pointed out that attempts must be made to meet the special needs of prisoners, particularly during periods of long-term solitary confinement. Accordingly, he asked the Correctional Services to ensure that imprisonment also has a meaningful content in the case of difficult prisoners. The Parliamentary Ombudsman encouraged the Correctional Services to continue their efforts to prevent undesirable behaviour by difficult prisoners, so that long-term solitary confinement could be avoided as far as possible.

Following a visit to Kongsvinger prison in the autumn of 2009, the Parliamentary Ombudsman considered, on his own initiative, a case involving the effective solitary confinement of a disabled prisoner.¹⁵⁹ The conditions experienced by the wheelchair-bound prisoner, who in reality was excluded from many of the activities of other prisoners, were raised with the Correctional Services. The Ombudsman concluded that there was reasonable doubt about whether the prisoner’s right to company was being met.

6.7 Other sources

According to a member of the board of directors of the prisoners’ organisation KROM, certain prisons regularly go to dubious lengths to hide the true extent to which solitary confinement is used.¹⁶⁰ Among other things, several prisoners reported that the solitary confinement unit at Ila prison was emptied shortly before the UN Committee against Torture visited the prison in 2007. According to prisoners who were present, the solitary confinement unit was filled again as soon as the visit ended. It is further claimed that the use of solitary confinement is extensively under-reported in the KOMPIS computer system. A third example is that prisoners report that “exclusion from leisure company” pursuant to section 40(2)(d) of the Act, which

¹⁵⁷ Case 2007/894.

¹⁵⁸ Case 2007/1493.

¹⁵⁹ Case 2011/873 (unpublished).

¹⁶⁰ Haugerud (2011), p. 45 et seq.

is a sanction for breaches of discipline, in reality takes the form of complete solitary confinement. According to the prisoners, this is effected by not offering prisoners daytime employment, thus leaving them in their cells for 23 hours per day. It has also been stated that, in practice, there is questionable coordination of court-ordered and prison-ordered solitary confinement. Among other things, it is claimed that the prosecuting authority, in cooperation with the prisons, uses the vague grounds in the Execution of Sentences Act to circumvent court orders to end solitary confinement.

Several criminal lawyers contacted by NI have stated that they recognise this problem. In the opinion of the experienced advocate John Christian Elden, prisons act as the proxies of the police, in that they use solitary confinement under the Execution of Sentences Act in cases where the court has not granted permission pursuant to section 186a of the Criminal Procedure Act.¹⁶¹ He also believes that, in some cases, prisons do this due to a lack of space. Elden states that, in general, ulterior grounds are used too frequently in cases concerning solitary confinement under the Execution of Sentences Act.

Juss-Buss legal aid clinic states that, during its prison visits, it sees that prisoners who are difficult to handle, but who do not commit breaches of the rules, are often placed in solitary confinement because this is considered to make them easier to deal with.¹⁶² Often, prisoners do not know why they are being placed in solitary confinement, or for how long. This applies particularly to foreign prisoners who do not understand Norwegian. According to Juss-Buss, these prisoners are particularly likely to be put in solitary confinement, because they often receive fewer visitors during their imprisonment and lack a social network in Norway. The organisation also has experience of cases involving the effective solitary confinement of disabled prisoners due to a lack of adapted facilities in prisons. Based on information from prisoners, Juss-Buss states that a practice has developed whereby solitary confinement is in reality used as a punishment, and that the Norwegian Correctional Services make extensive use of solitary confinement when reacting to deviant behaviour, despite no breach of the rules having been committed and there being no real risk to security. Juss-Buss believes that the time is ripe for a revision of the rules on solitary confinement, as the measure is very harsh and the discretionary grounds create divergent practice.

While preparing this report, NI has been in contact with the Correctional Services at the central, regional and local levels. The Correctional Services admit that they do not have a full overview of the extent of solitary confinement, and that this is undesirable. At the same time, the staff with whom NI has spoken have not conveyed the impression that the extent is particularly large. Most say that prisoners are seldom kept in long-term solitary confinement, and that active steps are being taken to find less invasive alternatives and to mitigate undesirable consequences in cases where

¹⁶¹ Email from Advocate Elden of 15 May 2012.

¹⁶² Letters to NI from Juss-Buss, 30 May 2012 and 12 June 2012; ref. MWN.

solitary confinement is regarded as absolutely necessary. The Correctional Services are of the view that the use of solitary confinement as a preventive measure is much less prevalent than under earlier legislation, and state that, as at June 2010, section 17(2) of the Execution of Sentences Act was only used for persons sentenced to preventive detention, as there were no prisoners in high risk units.¹⁶³

6.8 Is the use of solitary confinement a problem in Norway?

The review of practices above shows that Norway faces a number of challenges with relating to its human rights obligations.

The overall extent

The Norwegian authorities do not have a sufficient overview of the extent of prison-ordered solitary confinement. This is disquieting, given that solitary confinement is one of the most serious measures to which a prisoner can be subjected.

The statistics referred to above show that peace, order and security is clearly the most frequently invoked ground for solitary confinement in prisons, that there has been a marked increase in the last three years, and that use varies considerably between prisons. The figures may indicate that some prisons use solitary confinement to a disproportionately large degree.

Furthermore, it is dramatic that Norway appears to be so far above Denmark, which has received much negative international attention for its solitary confinement practices. The fact that the number of preventive solitary confinement measures in Norway is almost as high as the number of decisions made in Denmark to impose a solitary confinement penalty may indicate that a practice has developed in Norway whereby solitary confinement is in reality applied as a punishment, contrary to Norwegian law.

In NI's view, this is linked particularly to the fact that the legal requirements for the use of section 37 are so vaguely worded. As a result of this vagueness, local practice may easily develop in different directions, depending on a prison's institutional culture and the attitudes of the staff. On the other hand, it is positive that the use of solitary confinement based on building or staffing considerations, and voluntary solitary confinement, appear to be declining.

Long-term solitary confinement

In some cases, the European Court of Human Rights has accepted prolonged solitary confinement as long as this finds sufficient justification in dangerous behaviour and

¹⁶³ Danish Prison and Probation Service working group, *Begrænsning af udelukkelse fra fællesskab og enrumsanbringelse af indsatte* [Limitation of exclusion from company and solitary confinement of prisoners], 1 September 2010, pp. 22-23.

the prisoner is otherwise offered acceptable detention conditions. On the other hand, expert bodies like the UN Special Rapporteur have recommended a prohibition on all solitary confinement exceeding 15 days. Although the extent of long-term solitary confinement in Norway is somewhat unclear, it seems unlikely that long-term solitary confinement will *of itself* result in a finding of human rights breaches in a legal sense, as long as the national legislation is complied with. One possible exception is situations where prisoners are kept in solitary confinement in high risk units for very long periods of time. However, NI sees reason to express strong concern about the apparently high number of solitary confinement measures lasting more than 42 days.

Physical detention conditions and detention regime

Furthermore, both the ECtHR and the CPT have a focus on the physical detention conditions and the severity of the detention regime, including the degree of contact with the outside world. In Norway, the physical conditions or the severity of the detention regime during prison-ordered solitary confinement will not normally be problematic with regard to human rights standards. However, several CPT visits have revealed that prisoners in solitary confinement in high risk units have served their sentences under very harsh detention conditions. Depending on the circumstances, these may constitute violations of human rights.

Protecting due process rights and health

An additional matter is that long-term solitary confinement may, depending on the circumstances, infringe the EHCR because the measure does not protect the due process rights and health needs of the individual. Infringement of both Article 3 and Article 8 of the ECHR has been found in individual cases where solitary confinement did not accord with the purpose and was disproportionate, where alternatives to solitary confinement were not considered, or where the authorities did not do enough to reduce the damaging effects of solitary confinement by providing the prisoner with meaningful activities, social contact and health care.

Moreover, the Court imposes stricter requirements regarding the reasons for solitary confinement the longer such confinement lasts. Without a thorough investigation of a prison's reasons for a decision, it is difficult to assess to what extent this is a problem in practice. However, the statements of the Parliamentary Ombudsman show that solitary confinement has been imposed for very minor matters, and the Ombudsman has also uncovered serious due process deficiencies, something which is highly problematic in view of the requirements imposed by the Court. This must also be considered in conjunction with the fact that several of the grounds for imposing solitary confinement contain highly discretionary criteria, and with the fact that there is a wide power in Norway to withhold the reasons given for a decision.¹⁶⁴

Particularly vulnerable groups

¹⁶⁴ See the account given in chapters 4 and 5.

Both the Court and the other human rights bodies emphasise the individual effects of solitary confinement on prisoners. Several UN monitoring bodies have recommended a total ban on solitary confinement of minors and persons with mental illnesses. As shown above, the Court is also focusing more attention on the individual damaging effects of solitary confinement. Earlier surveys of Norwegian practice indicate that persons with mental illnesses are over-represented among prisoners in solitary confinement. In NI's opinion, prisoners in solitary confinement who are borderline compulsory mental health care cases probably constitute the group of prisoners most vulnerable to human rights violations. In such situations, human rights standards place great emphasis on whether the prisoners are regularly monitored by qualified health personnel. In Norway, problems have been uncovered on several occasions with regard to proper health supervision and the notification of harmful effects caused by solitary confinement. The demonstrated problematic aspects of placing prisoners with physical disabilities in *de facto* solitary confinement are another special problem area, which in combination with other serious matters is of clear relevance to the prohibition on inhuman and degrading treatment contained in Article 3 of the ECHR. Further, it is clear that solitary confinement of minors remains a problem in Norway, as most recently pointed out by the CPT in 2011. However, the new, stricter limitations on the use of solitary confinement for minors that have been adopted will probably limit the practice considerably. NI has shown that remand prisoners are often placed in solitary confinement as a preventive measure pursuant to section 37. This is particularly problematic because these prisoners are presumed innocent. There may also be reason to investigate in more detail the extent to which solitary confinement is applied to foreign nationals, given the high number of cases involving, and the special language challenges faced by, this group of prisoners.

Collective exclusion

There is also reason to expect that the Court will be particularly critical of the Norwegian practice of collective solitary confinement, and of solitary confinement based on staffing or building considerations. Rule 53.6 of the European Prison Rules states that solitary confinement "shall be applied to individuals and not to groups of prisoners". Moreover, the Parliamentary Ombudsman's discovery that certain prisons use collective exclusion as a cost-saving measure is an example of a highly dubious practice.

Under-reporting and *de facto* solitary confinement

NI also notes the cover-up allegations and the findings regarding under-reporting of solitary confinement measures, as well as the use of effective solitary confinement without a lawful decision having been made. To the extent that these things occur, they constitute contraventions of both human rights standards and Norwegian legislation. The authorities should therefore seek to clarify whether such practices exist. The same applies to claims of collusion between the prosecuting authority and prisons, whereby remand prisoners are subjected to prison-ordered solitary

confinement to circumvent the court's decision to end solitary confinement. NI emphasises that prison-ordered solitary confinement cannot be lawfully imposed to facilitate the police's investigation.

Based on this review, NI strongly urges the Norwegian authorities to conduct a thorough survey of practices at Norwegian prisons, to ensure that solitary confinement is used in accordance with human rights standards and national legislation.

7. CONTROL AND REVIEW MECHANISMS

7.1 The issue

The issue in this chapter is whether Norway's control and review mechanisms protect due process rights under human rights law.

Human rights instruments impose requirements regarding the quality of mechanisms for supervising and reviewing solitary confinement measures. Such requirements include effective internal inspections and control systems, satisfactory prison-specific and health supervision, both internal and independent complaint and appeal mechanisms, and an effective, real review by the courts. The human rights standards relating to control and review systems have been drawn up in accordance with Article 3, 6 and 13 of the ECHR, the recommendations of the CPT, and Rules 70.1 and 92 of the European Prison Rules. These standards are described in chapter 2 of the report.

Based on the human rights framework, chapter 7.2 discusses the rules in the Execution of Sentences Act on reporting and subsequent internal controls, the system of appeals to the superior administrative authority, judicial review, the regional supervisory boards and the Parliamentary Ombudsman. NI's conclusions are set out in chapter 7.3.

7.2 Control and review mechanisms in Norway

7.2.1 Reporting and subsequent internal controls

In connection with decisions concerning solitary confinement as a preventive measure pursuant to section 37 of the Execution of Sentences Act, special rules apply regarding subsequent review of long-term measures.

In cases where full exclusion exceeds 14 days, the regional level must "decide" whether the prisoner is to remain excluded.¹⁶⁵ According to the preparatory works, this means making a new decision, i.e. a new individual decision which can be

¹⁶⁵ Section 37(4) of the Execution of Sentences Act.

appealed in accordance with the ordinary rules. According to the Correctional Services Directorate guidelines, the regional director makes this decision.

Furthermore, the measure must be reported to the Correctional Services Directorate when the total period of exclusion exceeds 42 days, and must thereafter be reported at 14-day intervals. According to the guidelines, the report must describe the current exclusion situation, and provide an explanation of why continued exclusion from the company of other prisoners is necessary.¹⁶⁶ An account must also be provided of how the prisoner has been monitored by staff and health personnel, as well as a doctor's statement regarding the prisoner's state of health. According to the preparatory works, the Directorate must consider alternative solutions to continued exclusion.¹⁶⁷ However, the Parliamentary Ombudsman has pointed out that it is unclear from the wording of the provision whether the prison in question must report the case to the regional level again after 14 further days.¹⁶⁸

Section 37 (5) provides that, in the case of partial exclusion, the regional level must be notified when the duration exceeds 30 days. According to the guidelines, notice must thereafter be sent to the regional level every 14 days. The regional level must then consider alternatives to continued exclusion, including whether a transfer to another prison may be appropriate.¹⁶⁹

As regards prisoners in high risk units, it is unclear whether the rules for reporting pursuant to section 37 apply.¹⁷⁰ The preparatory works to the Act clearly appear to assume that section 17 (2) is an independent legal ground, and that detailed guidelines were to be developed for reporting in accordance with the provision.¹⁷¹ The guidelines contain no such rule, other than that the governor of the prison must make a monthly general report to the regional level on the situation of the prisoners.¹⁷²

NI considers it very important to have procedures in place for conducting subsequent internal controls of solitary confinement regardless of any complaint. This is particularly the case in connection with the use of preventive solitary confinement, due to the very wide, discretionary framework for such measures. The reporting rules presuppose subsequent controls on long-term solitary confinement that may help to prevent disproportionate interventions. These rules on controls appear to comply to some extent with the recommendations of the CPT. However NI considers it to be somewhat unclear how the system works in practice, given that the Correctional Services appear to lack an overview of the number of reports to both the regional and

¹⁶⁶ The Correctional Services Directorate's guidelines, section 3.40.

¹⁶⁷ Proposition to the Odelsting No. 5 (2000-2001), pp. 241-242.

¹⁶⁸ Case 2011/510, 29 May 2012 [the case is discussed in chapter 6.5 of the report].

¹⁶⁹ Ibid.

¹⁷⁰ Compare the Regulations of 5 March 2004 No. 481 concerning the implementation of the special measure of custody, section 13(3)-(4), which gives the reporting rules in section 37 corresponding application.

¹⁷¹ Proposition to the Odelsting No. 5 (2000-2001), pp. 154, 157 and 158.

¹⁷² The Correctional Services Directorate's guidelines, chapter 6.

the central level. In addition, the Parliamentary Ombudsman has recently uncovered a case involving serious deficiencies in the reporting procedures of a prison region.¹⁷³

It may also be necessary to assess whether Norway should introduce a statutory entitlement to a progression plan for cases in which solitary confinement continues for a long period, as recommended by the CPT. Denmark has recently introduced a regulatory requirement to prepare such a plan.¹⁷⁴

7.2.2 Appeals to the superior administrative authority

Decisions relating to solitary confinement pursuant to the Execution of Sentences Act may be appealed in accordance with the provisions of section 28 of the Public Administration Act.¹⁷⁵ The appeals body will be the body immediately superior to the body which has made the decision. In cases concerning solitary confinement, this normally means that the prison's decision is appealed to the regional level. Solitary confinement decisions which are first made at the regional level can be appealed to the Correctional Services Directorate.¹⁷⁶ All appeals must be prepared at the level at which the decision was made. If senior management finds that the decision was made on incorrect grounds, they can choose to grant the appeal.¹⁷⁷ If management finds no grounds for granting the appeal, the appeal and a cover letter are sent to the superior authority for consideration. Appeals which have been considered by the appeals body cannot be appealed further. In the case of individual decisions concerning solitary confinement, the appeals deadline is seven days after receipt of notice of the decision.¹⁷⁸

An effective appeal mechanism is a key measure for protecting prisoners' due process rights. It is uncertain how effectively the system of administrative appeals protects these rights. The Correctional Services have no published figures on the number of appeals heard at the regional or central level, or on how many appeals are successful. The findings in this report indicate that the Correctional Services currently lack a complete overview. In her survey, Hellevik (2001) found that the prisoner's committee had appealed against 13 per cent of solitary confinement decisions, and succeeded in only 3 percent of those cases. The low number of appeals was explained by reference to a very long processing time, and the low success rate was partly explained by the fact that the discretionary nature of the rules makes them difficult to review. Moreover, previous findings may indicate that prisoners often neglect to

¹⁷³ The case is discussed in chapter 6.6.

¹⁷⁴ Section 8 (2) of Executive Order No. 281 of 26 March 2012 on prisoners' right to the company, etc. of other prisoners in institutions of the Danish Prison and Probation Service.

¹⁷⁵ See section 2 (1) (b) of the Public Administration Act.

¹⁷⁶ See section 6 (2) of the Act.

¹⁷⁷ Storvik (2011), p. 87 et seq.

¹⁷⁸ Section 7 (e) of the Execution of Sentences Act.

appeal because they do not believe they will succeed, because they fear reprisals, or due to their general adaptation to prison routines.¹⁷⁹

In the area of administrative law, an appeal to a superior authority normally provides sufficient assurance that the state has exercised its authority in accordance with the applicable legislation. In view of the special due process considerations that apply in the prison sector, however, NI is of the opinion that there may be grounds for questioning whether the current appeal mechanism protects the interests of prisoners satisfactorily.

Several bodies have previously expressed scepticism about the system of administrative appeals. KROM has pointed out, among other things, that the individual prisons and regional offices have excessively strong ties with one another, and that it is unfortunate that the regions are responsible both for handling appeals from prisoners and for administering financial allocations.¹⁸⁰ Furthermore, the authorities themselves have pointed out that it is problematic that most appeals regarding measures affecting prisoners' rights are not heard centrally, as appeals are processed in six different prison regions.¹⁸¹ This makes it difficult to establish a uniform appeals practice, a situation that is worrying from the perspective of ensuring adequate legal safeguards. The Prisons Act Commission of 1988 took the view that in the interests of securing an impartial decision, the highest decision-making authority in individual cases concerning prisoners should not be assigned to the same body that has employer responsibility for staff.¹⁸² The Commission gave particular emphasis to prisoners' due process rights, and proposed the establishment of a freestanding, independent body to hear appeals. However, this recommendation was not adopted, partly for financial reasons.

The UN Working Group on Arbitrary Detention has made similar objections to the current appeal mechanism. Following a visit to Norway in 2007, the working group pointed out that it was difficult for prisoners to secure a review of decisions concerning prison-ordered solitary confinement.¹⁸³ The working group referred to the fact that the regions rarely amended local decisions, and that there was no independent control system to review solitary confinement decisions, other than ordinary judicial review. The working group stated that Norway lacked the effective external control mechanism that many other countries have. Accordingly, the working group recommended that the authorities should, "... consider establishing a new system for challenging decisions taken by the correctional services authorities on restrictions or partial or total isolation imposed upon prison inmates serving their sentences." In its reply to the working group, the Norwegian authorities stated that, "[w]e will consider to establish a central body independent of the Correctional

¹⁷⁹ Quoted in Haugerud (2011), p. 54.

¹⁸⁰ Ibid., pp. 53-54.

¹⁸¹ Proposition to the Odelsting No. 5 (2000-2001), p. 46.

¹⁸² Official Norwegian Report 1988, p. 91 et seq.

¹⁸³ A/HRC/7/4/Add.2.

Services to conduct surveillance, quality assurance and supervision”.¹⁸⁴ In connection with Norway’s seventh report to the UN Committee against Torture in 2011, questions were asked about the implementation of the working group’s recommendations.¹¹⁸ According to the Norwegian authorities, the question is still under consideration. NI therefore calls on the authorities to present updated information on the status of this work.

7.2.3 Judicial review

An alternative to an administrative appeal is review by the ordinary courts. As shown above, the use of such reviews is limited. This is probably due to the fact that court proceedings are often expensive, time-consuming and largely unsuited to resolving cases that require a rapid review of an ongoing measure.

Moreover, prisoners are only entitled to free legal aid in exceptional cases, and normally cannot afford to pay for the assistance of a lawyer. The ECHR does not confer an unconditional entitlement to free legal aid, although the ECtHR has held that an effective review by a court may, depending on the circumstances, require that the state provides the prisoner with a lawyer.¹⁸⁶ In its case law, the Court has emphasised the importance of the case for the prisoner, the complexity of the case and the complainant’s ability to present the case himself/herself.¹⁸⁷ The Prisons Act Commission proposed that prisoners should also be granted free legal aid in cases concerning the execution of a sentence. The Commission stated that this would give the individual prisoner, “a real opportunity to avail themselves of available due process guarantees, ensuring that they are not reduced to mere formalities”.¹⁸⁸ NI is of the opinion that, in proceedings concerning serious measures such as solitary confinement, due process considerations indicate that a statutory entitlement to free legal aid is required.¹⁸⁹

Furthermore, the discretionary criteria in the regulations make it difficult for the courts to conduct effective reviews, despite the fact that this is an area in which the courts should, in principle, conduct a thorough review.¹⁹⁰ The UN Working Group on Arbitrary Detention has pointed out that, in prison cases, the courts rarely review the solitary confinement decisions of the Correctional Services, precisely because the latter have been granted wide discretionary powers.¹⁹¹ As shown above, the procedural rules also substantially weaken the opportunities open to the courts to conduct a real review of the decisions by the Correctional Services, because the courts

¹⁸⁴ Norway’s reply to the working group, 10 March 2008.

¹¹⁸ CAT list of issues prior to reporting, 6 b).

¹⁸⁶ *Airey v. Ireland*, Application No. 6289/73, paragraph 26. See also Engbo & Smith (2012), p. 219.

¹⁸⁷ *Steel & Morris v. the UK*, Application No. 68416/01, paragraph 26.

¹⁸⁸ Official Norwegian Report 1988, p. 59.

¹⁸⁹ See also Rule 70.7 of the European Prison Rules.

¹⁹⁰ In contrast to administrative decisions pursuant to health and social legislation, the courts cannot review the discretion of the administrative sector fully. See chapter 30 of the Dispute Act, including section 36-5(3) regarding the duty of the court to review all aspects of the case.

¹⁹¹ UN Working Group on Arbitrary Detention, 11 October 2007, A/HRC/7/4/Add.2, paragraph 78.

can be refused access to internal prison information.¹⁹² There is reason to point out that the Court has found a violation of Article 13 of the ECHR in solitary confinement cases where an appeals body was not granted access to the prison's information.¹⁹³ Correspondingly, there may be reason to question whether the entitlement to an effective legal remedy is satisfied in cases concerning continued remand in custody, where the court is prevented from assessing prison-ordered solitary confinement pursuant to section 37 of the Execution of Sentences Act.¹⁹⁴

In view of these practical limitations on judicial review, NI is of the opinion that it can be questioned whether the minimum requirements established pursuant to Article 13 of the ECHR are met. Another question is whether Article 6 of the ECHR may apply in relation to a prisoner's right to the company of other prisoners under section 17 (1) of the Execution of Sentences Act.¹⁹⁵ If so, this would constitute a clear general rule that the courts can review all aspects of the case. In NI's opinion, in view of the requirements set out in Article 6 (1) of the ECHR, the Norwegian authorities should also give detailed consideration to the power of the courts to conduct complete, independent reviews of solitary confinement decisions.

7.2.4 The regional supervisory boards

Section 9 of the Act states that every prison region must have a supervisory board.¹⁹⁶ Through prison visits, the supervisory board is to control that the prisoners are treated in accordance with the regulations. During visits, the board members may speak to the prisoners, and are entitled to access all case documents. One or more board members must make at least one visit per month to one of the prisons in the region, or to a correctional service office. The supervision of long-term prisoners and prisoners serving sentences in high risk units must be given priority.

Supervisory board members are appointed by the Ministry of Justice following proposals by the county governor. At least one board member should be, or have previously been, a judge. Boards are appointed for a two-year period.

Supervisory boards have no authority to demand improvements if they discover censurable or unlawful matters. When a supervisory board is contacted by a prisoner, it must seek to resolve the conflict through dialogue with the prisoner and the prison administration. If a supervisory board discovers a problem, it must inform the prison director. If the director sees no reason to take action, the board can raise the matter with the regional director.

¹⁹² See Supreme Court Reports 2006, p. 1300; see chapter 6.5 above. See also section 22-3 of the new Dispute Act.

¹⁹³ See chapter 2.2.3 for further details.

¹⁹⁴ See chapter 6.5 for further details.

¹⁹⁵ See Proposition to the Odelsting No. 5 (2000-2001), p. 96, which states that "... access to the company of other prisoners [is] almost regarded as a right, where special reasons must be given for exceptions."

¹⁹⁶ See section 2-3 of the regulations and the Correctional Services Directorate's guidelines on the Execution of Sentences Act and section 2.5 of the regulations issued under the Act.

The question of whether the supervisory board system sufficiently protects prisoners' due process rights has been discussed for a long time.¹⁹⁷ As early as 1988, the Prisons Act Commission stated that the system did not appear to function in practice, and proposed replacing it with other control measures.¹⁹⁸ The Commission particularly emphasised the deficient composition of the boards, the fact that they undertook few visits, and the fact that they lacked authority. Although the authorities acknowledged the problems, it was decided to continue the system.¹⁹⁹ The supervisory boards were discussed again in the 2008 white paper on the Norwegian Correctional Services entitled "Penalties that work", in which it was stated that the supervisory system "should be reviewed by reference to the requirements to function as an active control body with sufficient expertise and resources to ensure adequate insight into the activities of the Correctional Services".²⁰⁰ In Norway's seventh report to the UN Committee against Torture in 2011, the authorities admitted that the supervisory boards did not function satisfactorily, and that the question was still under consideration.

In 2011, the Parliamentary Ombudsman decided to examine the functioning of the supervisory boards more closely. In a letter to the Correctional Services Directorate, the Ombudsman pointed out a number of weaknesses, including with regard to the appointment and training of board members, an unclear supervisory mandate in legislation, the different organisational models and modes of operation adopted by the supervisory boards, major differences with regard to reporting, and limited budgetary allocations.²⁰¹ The Ombudsman therefore asked the Directorate to comment on the current supervisory system in view of Rules 92 and 93 of the European Prison Rules. In its reply, the Directorate largely agreed with the identified weaknesses of the system, and described a number of concrete follow-up measures.²⁰² Among other things, the Directorate stated that it was considering the development of training materials to ensure better training of board members, and that the dialogue with the supervisory boards was to be stepped up to promote more uniform practice. As regards the European Prison Rules, the Directorate stated that the system had not yet been assessed by reference to these.

In NI's view, the supervisory board system in its current form has several weaknesses from a due process perspective. NI has particularly noted the following statement by a supervisory board in this connection: "The fact that supervisory board budgets are

¹⁹⁷ See i.a. Eskeland (1989), p. 449.

¹⁹⁸ Official Norwegian Report 1988:37, p. 95.

¹⁹⁹ Proposition to the Odelsting No. 5 (2000-2001), p. 60.

²⁰⁰ Report to the Storting No. 37 (2007-2008) *Straff som virker* [Penalties that work], p. 199.

²⁰¹ Letter of 2 October 2011 from the Parliamentary Ombudsman to the Correctional Services Directorate. Public ref. no. 2011/225.

²⁰² Letter of 12 January 2012 from the Correctional Services Directorate to the Parliamentary Ombudsman. Public ref. no.201107115 - / SEF.

set by the regions appears rather inconsistent with the independence which the Storting has intended the supervisory boards to have”.²⁰³

NI is of the opinion that the system must especially be reviewed in more detail in light of the requirements imposed with regard to “independent” supervision pursuant to Rules 9 and 92.1 of the European Prison Rules.²⁰⁴

The independence requirement can also be viewed as problematic in light of the fact that the supervisory boards are appointed by the Ministry of Justice (albeit following recommendations by the County governors), and in view of the deficient training of board members identified by the Parliamentary Ombudsman. In this context, NI points to the recommendations of the CPT that prison supervision bodies should not be appointed by the prison authorities themselves,²⁰⁵ and that sufficient training is important to ensure independent supervision.²⁰⁶

7.2.5 The Parliamentary Ombudsman

Complaints regarding the use of solitary confinement can also be submitted to the Parliamentary Ombudsman. The Ombudsman’s mandate is to conduct controls on the public administration, and to ensure that the administrative sector does not act unfairly towards individuals and respects and protects human rights.²⁰⁷

In general, the Ombudsman may not accept a complaint for consideration until a final administrative decision has been made.²⁰⁸ This means that the complainant must have exhausted the internal complaint mechanisms. The Ombudsman’s work primarily involves considering cases based on individual complaints, but he may also open cases on his own initiative. The Ombudsman may undertake investigations, and is entitled to state his opinion. The administrative sector is not legally bound by the Ombudsman’s statements, but normally complies with them.

Complaints to the Parliamentary Ombudsman constitute an important guarantee of due process and, as shown above, the Ombudsman has on several occasions issued statements critical of the use of solitary confinement in Norwegian prisons. However, the supervision of prisons is not the Ombudsman’s core activity, as his sphere of responsibility covers the administrative sector as a whole. According to the office of the Ombudsman, fewer than 100 complaints relating to the Correctional Services were registered in 2011, while the total number of complaints totalled almost

²⁰³ Letter of 16 February 2010 to the Correctional Services Directorate from the supervisory board for the north-eastern region. The same supervisory board also stated on p. 2 of its 2008 annual report that contact with prisoners had worsened, and that this was due to “the supervisory activities being reduced as a result of the region halving the supervisory board’s budget”. In its 2009 annual report, the board stated that it had “few opportunities to follow up on individual cases”.

²⁰⁴ See also the recommendation in Van Zyl Smit & Snacken (2009), p. 118.

²⁰⁵ CPT Bulgaria visit 1995 [CPT/Inf (97) 1 [Part 1]] § 175.

²⁰⁶ R. Morgan and M. Evans, *Combating Torture in Europe*, Council of Europe, Strasbourg 2011, p. 110.

²⁰⁷ Act relating to the Storting’s Ombudsman for Public Administration (The Parliamentary Ombudsman Act), section 3.

²⁰⁸ See the Regulations of 19 February 1980 No. 9862 *Instructions for the Parliamentary Ombudsman*, section 5.

3,000.²⁰⁹ The Ombudsman mechanism functions primarily as a “reactive” system that rarely opens cases on its own initiative.²¹⁰ Although it is natural for the Ombudsman to give priority to complaints, this means that the Ombudsman does not adopt a particularly preventive approach to problems in the prison sector. Despite his mandate, the Ombudsman plays a limited role in strengthening the due process rights of prisoners.

In view of the above, it is not natural to regard the Parliamentary Ombudsman as a body that on its own satisfies the requirement of independent monitoring contained in Rule 93.1 of the European Prison Rules. However, the Ombudsman constitutes an important supplement to supervision that is more prison-specific.

7.2.6 National preventive mechanism (NPM)

The imminent establishment of a dedicated national monitoring mechanism under the optional protocol to the UN Convention against Torture (OPCAT), may in the future contribute to stronger protection for persons deprived of their liberty. The task of this monitoring body, which is referred to as a national preventive mechanism (NPM), is to prevent torture and other serious violations of personal integrity through regular visits of inspection to all detention centres in Norway.

Norway signed the protocol in 2003, but has long delayed ratification under reference to the need for clarification of the structure of the national monitoring mechanism. A working group chaired by the Ministry of Justice was appointed in June 2011, and is currently examining which body or bodies should be given the NPM mandate.

NI has great hopes for this new monitoring mechanism, and believes that it can make an important contribution in the area of prison supervision. At the same time, NI has pointed out to the authorities that the OPCAT imposes very strict requirements. The new monitoring mechanism must be independent of the Norwegian authorities, have a clear mandate established in law, possess a high level of expertise, and be provided with sufficient financial resources.²¹¹ NI further believes that, to ensure that individuals are effectively protected against infringements, it is crucial that the monitoring mechanism is able to engage in preventive monitoring, act as a driving force vis-à-vis the authorities, and maintain a high public profile.²¹²

²⁰⁹ E-mail from head of department Eivind S. Brattgard at the Parliamentary Ombudsman, 30 May 2012. Of the cases relating to the correctional services, 39 were accepted and 53 were rejected, primarily because the administrative complaint mechanisms had not been used.

²¹⁰ Protecting and Promoting Human Rights in Norway, Review of the Norwegian Centre for Human Rights in its Capacity as Norway’s National Human Rights Institution, Oslo, March 2011, p. 62. In certain cases, the Parliamentary Ombudsman has opened cases concerning exclusion on its own initiative; see case 2011/873 described in chapter 6.6 above.

²¹¹ *Hvem skal vokte vokterne* [Who watches the watchers?] NI position paper no. 2/2011, published on 21 September 2011.

²¹² Yearbook on Human Rights in Norway 2011, p. 37 et seq.

7.3 Do the control and review mechanisms protect prisoners' due process rights?

The above account shows that various objections can be made to the Norwegian control and review mechanisms based on human rights standards.

The functioning of the reporting system

The rules on reporting and subsequent internal controls of solitary confinement decisions are an important guarantee of due process, and thus ensure automatic controls of the practices of local prisons. NI has no reason to criticise the functioning of the system in general, but points out that there are worrying findings regarding deficient reporting in individual cases. Further, NI calls on the authorities to prioritise efforts to make information about the number of prolonged stays in solitary confinement public. NI also recommends, in line with the CPT recommendations, that consideration be given to introducing a requirement for a progression plan to help ensure that necessary solitary confinement measures are applied for the shortest possible length of time.

Lack of an independent appeal mechanism

In NI's opinion, it can be questioned whether the *appeal mechanisms* as a whole provide effective protection against breaches of the convention in accordance with Article 13 of the ECHR. The existing mechanism of administrative appeals does not appear to ensure a sufficiently effective review, due to a lack of independence and the risk of differing practices in the different regions. Although the possibility of having administrative decisions reviewed by the courts is normally regarded as sufficient for the purposes of Article 13 of the ECHR, it is questionable whether the review is sufficiently effective in prison cases in practice. This is because the opportunity to secure an effective review is strongly limited by the discretionary criteria in the legislation, and by the fact that the courts may be refused access to internal prison information. Moreover, prisoners' real possibility of securing a judicial review is limited by strict legal aid rules. NI is also of the opinion that the limited possibilities of reviewing all aspects of administrative decisions as serious as solitary confinement should be assessed by reference to the civil rights aspects of ECHR Article 6(1). Accordingly, NI calls on the authorities to consider establishing an independent, central appeals body. A body of this kind, with solid prison-related expertise, will be able to address several of the said concerns.

Supervisory weaknesses from a due process perspective

NI also takes the view that the supervisory boards system has several weaknesses from a due process perspective. In NI's opinion, the boards, as they currently function, do not satisfy the requirements in the European Prison Rules regarding independent supervision. NI considers it particularly problematic that the

supervisory boards have not been given independence in terms of resources from the prison regions they are to supervise.

The Parliamentary Ombudsman has a strong, independent mandate, and his complaints and supervisory role constitutes an important guarantee of due process. However, the supervision of prisons is not the Ombudsman's core activity, and he conducts little preventive supervision in the sense envisaged in the European Prison Rules. The Ombudsman is an important supplement to supervision that is more prison-specific, but is currently not equipped to engage in extensive supervision of prisons.

In NI's view, the establishment of the new national monitoring mechanism under OPCAT can considerably strengthen the supervision of prisons. At the same time, NI emphasises that this monitoring mechanism must be independent of the Norwegian authorities, have a clear mandate established in law, possess high expertise, and be provided with sufficient financial resources. Furthermore, to ensure that individuals are effectively protected against infringements, it is crucial that the monitoring mechanism can engage in preventive monitoring, act as a driving force vis-à-vis the authorities, and maintain a high public profile.

8. OVERALL ASSESSMENT AND RECOMMENDATIONS

There is a need for a comprehensive review of legislation and practice

The report has revealed several problematic matters relating to prison-ordered solitary confinement. The problems relate to both current legislation and its application in practice.

The report shows that Norway lacks both clear limitations for the use of solitary confinement and satisfactory procedural rules. Moreover, despite the Norwegian Correctional Services' deficient overview, various problems have been identified with regard to the application of the rules. The report also shows that the control and review mechanisms in Norway do not enforce human rights standards relating to due process of law. NI considers the overall picture to be a worrying one, given the seriousness of solitary confinement and the well-documented damaging effects of the measure.

NI's overall impression is that the Execution of Sentences Act gives too much emphasis to prison-related considerations, at the expense of prisoners' legal safeguards. Accordingly, NI is of the opinion that the Norwegian authorities should consider conducting a broad review of legislation and practice, with an explicit focus on prisoners' due process rights.

Specific comments on the mandate for a review

NI recommends that such a review should be based on human rights standards. Below, NI wishes to present its comments on the main elements of such a mandate, including several concrete recommendations to which the authorities are encouraged to give particular consideration.

Legislation: *A critical review of the statutory grounds for solitary confinement, including the introduction of more precise legal requirements of use and stricter criteria for the exercise of discretion, and the introduction of strengthened rights for prisoners in administrative proceedings.*

- Amendment of the purpose clause in section 2(2) of the Execution of Sentences Act so that the Norwegian Correctional Services are expressly ordered to address negative effects of solitary confinement, including in the case of convicted prisoners. Introduce requirements in this regard, either by law or by regulation. The purpose clause should also expressly state that “solitary confinement shall only be used in extraordinary cases, as a final resort and for the shortest possible period of time”.
- Introduction of a clear right to the company of other prisoners as the general rule in section 17(1) of the Execution of Sentences Act, and the establishment by law or regulation of a national minimum standard for entitlement to the company of other prisoners, corresponding to Denmark’s recently adopted executive order on prisoners’ right to the company of other prisoners.²¹³
- Prepare new common regulations on the use of solitary confinement, containing detailed rules on the grounds for exclusion and the threshold for use, requirements concerning assessments of evidence and risk, prison-specific monitoring and monitoring of health, reporting procedures, and the procedural rights of prisoners and their entitlement to measures to mitigate the damaging effects of solitary confinement, in line with the model used in Denmark’s recently adopted executive order on *exclusion from company*.²¹⁴ The regulations should require the design of an individual progression plan in all cases where solitary confinement exceeds five days, as recommended by the CPT.
- Introduction of stricter and less discretionary legal requirements for the use of solitary confinement, which specify the concrete objective circumstances that can constitute grounds for solitary confinement, and the requirements that apply with regard to assessments of evidence and risk. This applies particularly to section 37 (1) (a) and (e), section 39 and section 17 (2).

²¹³ Executive Order No. 281 of 26 March 2012 on prisoners’ right to the company, etc. of other prisoners in institutions of the Danish Prison and Probation Service .

²¹⁴ Executive Order No. 283 of 26 March 2012 on the exclusion of prisoners from the company of other prisoners, including detention in observation cells, etc., in prisons and jails.

- Introduction of a more precise and strict basic legal requirement (see “necessary”), for the use of preventive solitary confinement under section 37 of the Execution of Sentences Act , if necessary supplemented by regulations.
- Consider introducing a time limit of 15 days on all forms of solitary confinement in accordance with the recommendations of the UN Special Rapporteur, as well as a requirement that the decision must be reviewed every five days. Alternatively, consider the new Danish system entailing a maximum period in solitary confinement of three months. In addition, consider introducing a total annual maximum period of 30 days for individual prisoners.
- Amendment of the procedural guarantees in the Execution of Sentences Act that strengthen and highlight prisoners’ rights in the decision-making process; see the recommendations of the CPT. This should include amending and restricting the power in section 7 of the Execution of Sentences Act to withhold information about the grounds for solitary confinement.

Practice: *A thorough review of practice where reported cases of solitary confinement are examined by reference to human rights standards and Norwegian legislation.*

- Give priority to the Norwegian Correctional Services’ ongoing efforts to produce detailed statistics on the total number of annual decisions, the number of extensions, and the duration of measures pursuant to sections 37, 39 and 17 (2) of the Execution of Sentences Act. The statistics should be retrospective, and measure developments from year to year, in total, by region and for each individual prison. Such statistics should differentiate between remand prisoners, convicted persons and special groups of prisoners such as persons sentenced to preventive detention and prisoners in high risk units.
- Scrutiny of the grounds for prolonged solitary confinement by reference to Norwegian legislation and human rights standards.
- Review of the way the rules on reporting and internal controls function in practice, in view of the Parliamentary Ombudsman’s findings.
- Targeted controls of individual prisons based on cases of solitary confinement recorded in prison log systems, available statistics and other sources.
- The survey of practice should particularly scrutinize the use of solitary confinement for vulnerable groups such as remand prisoners, minors, persons with serious mental illnesses, the disabled and foreigners.
- The survey should be made publicly available.

Control and review mechanisms: *A comprehensive review of the control and review mechanisms by reference to human rights standards.*

- Review the reporting rules in section 37 of the Execution of Sentences Act in the light of the Parliamentary Ombudsman's comments.
- Establish a central, independent complaints mechanism to replace the system of appeals to the superior administrative level, and ensure independence and uniform practice.
- Consider introducing free legal aid for prisoners subject to administrative measures such as solitary confinement, both at the administrative complaints stage and before the courts.
- Consider the question of whether the right of prisoners to review by the courts is real and effective in practice, by reference to Articles 6 and 13 of the European Convention on Human Rights. The problems to which special consideration should be given are cases where the courts do not have access to central case information, and cases where the courts are prevented from assessing the validity of prison-ordered solitary confinement in connection with decisions concerning continued remand in custody.
- Ensure that the regional supervisory boards have real independence, particularly by allocating funding for supervisory activities that is kept clearly separate from the other financial allocations to the prison regions.
- Ensure that the future new national preventive mechanism (NPM) is given sufficient financial resources to conduct effective supervision, not least in the prison sector.

Other measures:

- Evaluate the need of the Norwegian Correctional Services for increased financial allocations to ensure sufficient staffing levels and to meet building-related needs.
- Increased focus on other measures, including training and improved educational, work and leisure activities.
- Strengthened training in the correct use of journal systems and the registration of decisions.
- Inclusion of targets and performance requirements in prison directors' contracts, to limit the number of decisions and the duration of solitary confinement.

- Increased focus on the correct placement of new prisoners through surveys of admission departments.

NI's concluding comments

The Norwegian Execution of Sentences Act is about the same age as the corresponding Danish act, and there are clear similarities between several provisions. In Denmark, two reviews have been conducted in the past 10 years of the legislation governing prison-ordered solitary confinement to strengthen the due process rights of prisoners. The most recent review produced a number of proposals for statutory amendments, which were recently adopted by the Folketing (the Danish parliament).²¹⁵ There is much to suggest that the time is ripe for a corresponding review to be undertaken in Norway.

NI is in no doubt that different levels of the Norwegian Correctional Services are making targeted efforts to limit the use of solitary confinement, and to mitigate the damaging effects of the measure in cases where solitary confinement is deemed necessary. NI also recognises that the use of solitary confinement is linked to financial factors, staffing needs and building-related circumstances. NI's central message is that politicians bear the ultimate responsibility for remedying the due process deficiencies which have been identified. Solitary confinement is a serious measure that is damaging to health, and in our view the Norwegian authorities must provide clearer limitations for the use of solitary confinement so that less of the responsibility for assessments is placed on individuals in the administrative system.

NI encourages the Norwegian authorities to be inspired by the following wise words from Are Høidal, the director of Halden prison:

“We do not believe in solitary confinement as an instrument of rehabilitation... All research indicates that keeping prisoners locked up for 23 hours does not secure improvements. What kind of neighbour do you want to have? One who is bitter and angry, or one who is ready to face the future?”²¹⁶

²¹⁵ Act No. 435 of 15 May 2012 on the execution of sentences, etc.

²¹⁶ Quote from the documentary programme *Status Norge: Bak murene* [Behind the Walls] 1:3. Broadcast by NRK on 14 April 2012.

Appendix 1: Full text of the legal grounds for the use of solitary confinement

Act of 18 May 2001 No. 21 on the Execution of Sentences, etc. (Execution of Sentences Act).

Section 17. The company of other prisoners

As far as is practically possible, prisoners shall be allowed company during work, training, programmes or other measures, and in leisure periods. The Correctional Services may decide on complete or partial exclusion from company pursuant to the provisions of section 29, second paragraph and sections 37, 38, 39 and 40, second paragraph, (d). Prisoners shall be placed in a single room at night unless health conditions or lack of room prevents this.

Company for prisoners who are serving their sentences in a department such as is mentioned in section 10, second paragraph, may be wholly or partly restricted in the interests of peace, order and security, or if it is in the interests of the prisoners themselves or other prisoners, and does not appear to be a disproportionate interference.

Section 37. Exclusion from company as a preventive measure

The Correctional Services may decide that a prisoner shall be wholly or partly excluded from the company of other prisoners if this is necessary in order to

- a) prevent prisoners from continuing to influence the prison environment in a particularly negative manner in spite of a written warning,
- b) prevent prisoners from injuring themselves or acting violently or threatening others,
- c) prevent considerable material damage,
- d) prevent criminal acts, or
- e) maintain peace, order and security.

The Correctional Services shall decide on partial exclusion if this is sufficient in order to prevent acts pursuant to items a) to e) of the first paragraph.

Complete or partial exclusion pursuant to the first paragraph shall not be maintained longer than is necessary, and the Correctional Services shall constantly consider whether grounds for the exclusion continue to exist.

If complete exclusion from company exceeds 14 days, regional level shall decide whether the prisoner shall continue to be excluded. If the total period of exclusion exceeds 42 days, the measure shall be reported to the Correctional Services Directorate. After that reports shall be made to the Correctional Services Directorate, at 14-day intervals. Exclusion

pursuant to the first paragraph, (a) – (e), may only extend beyond one year if the prisoner himself or herself so wishes.

If partial exclusion from company exceeds a period of 30 days, this measure shall be reported to the regional level.

The staff shall see to prisoners who are completely excluded from company more than once a day. Notification of the exclusion shall be given to a medical practitioner without undue delay.

The Correctional Services may decide that all or some prisoners shall be wholly or partly excluded from company if it is probable that an unspecified number of prisoners have committed or are in the process of committing such acts as are mentioned in the first paragraph, or if urgent building or staff conditions necessitate this. Such exclusion may be maintained for up to three 24-hour periods. Regional level may extend the exclusion by up to three 24-hour periods if there are special reasons for doing so.

The Correctional Services may decide that a prisoner shall be wholly or partly excluded from company if building or staff conditions necessitate this, or if the prisoner himself or herself so wishes.

Section 17 second paragraph shall be applied in the event of exclusion from company in such departments as are mentioned in section 10, second paragraph.

Section 39. Immediate exclusion of prisoners as a consequence of breaches of execution of prison sentences, preventive detention and special criminal sanctions

If it is probable that a prisoner has committed an act that may result in a sanction pursuant to section 40, second paragraph, (c), (d) and (e), the Correctional Services may wholly or partly exclude the prisoner from company for up to 24 hours.

Section 40. Sanctions to be used in connection with breaches of the execution of prison sentences, preventive detention and special criminal sanctions

The Correctional Services may impose sanctions pursuant to this provision if prisoners wilfully or negligently breach the rules for peace, order and discipline or preconditions and conditions in or pursuant to this Act. This includes breaches committed during temporary absence from prison or during transportation to and from prison. A decision may also be made to impose sanctions on any person who has aided and abetted the breach.

Appendix 2: The damaging effects of solitary confinement

2.1 General comments

Negative health effects resulting from solitary confinement can arise after only a few days, and the health risk increases with each day the prisoner spends in such conditions. Research has identified three main elements which in combination make a solitary confinement regime particularly harmful to health: prisoners have minimal social contact with other persons, their access to activities and stimulation is reduced, and they lose control of most aspects of everyday life.²¹⁷

2.2 Acute symptoms

The most common damaging effects are psychological; research shows that solitary confinement regimes can cause psychotic disturbances, a syndrome that is often called “confinement psychosis”. Symptoms may include anxiety, depression, anger, disturbances of thought content and sensory disturbances, paranoia, psychosis and self-harm. The suicide rate has also been documented to be substantially higher for prisoners who are placed in solitary confinement. A variety of damaging physical effects, including constipation, urinary and cardiovascular problems, back pains, trembling, heart palpitations and sweating or migraine attacks have also been found.

At the same time, it must be emphasised that solitary confinement affects prisoners very differently depending on the prisoner’s state of health, personality and the context and duration of solitary confinement and conditions of detention. Some prisoners suffer few damaging effects. However, others can experience a significant deterioration of an existing mental illness, and some prisoners who have no prior symptoms suffer a psychotic breakdown.

2.3 Late damaging effects

Little research has been carried out on the long-term effect of solitary confinement. While the acute symptoms often abate after a period of solitary confinement is ended, in some cases the damaging effects can become chronic. Because of minimal stimulation, solitary confinement can lead to reduced brain activity after just seven days. A study found that reduced brain activity can be reversed if solitary confinement is terminated within a week, but that the symptoms can become chronic if such confinement lasts any longer. Studies have found that symptoms such as

²¹⁷ For a summary of research findings, see Sharon Shalev, A Sourcebook on Solitary Confinement, LSE / Mannheim Centre for Criminology 2008. Scandinavian research includes Peter Sharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, I: Michael Tonry, ed. Crime and Justice, 34, 441-528 ; Tor Gamman, *Om bruk av isolasjon under varetektfengsling*, Nordisk tidsskrift for Kriminalvidenskab 88: 42-50 ; Tor Gamman, *Uheldige konsekvenser av isolasjon. En klinisk studie av to grupper varetektsinnsatte*, Tidsskrift for den norske legeförening, 115:2243-46 ; Bengt Holmgren, Thomas Frisell, Bo Runeson, *Psykisk hälsa hos häktade med restriktioner*, Kriminalvården, projektnummer: 2007:1

sleeping problems, depression, anxiety, impaired memory and concentration in some cases persist long after the solitary confinement has ceased. Furthermore, studies show that solitary confinement often leads to social withdrawal and an inability to have meaningful social relationships. Such damaging effects limit the prisoner's ability to be reintegrated into an ordinary prison regime, and can become a serious obstacle to the prisoner's return to society upon release.

2.4 Experiences of Norwegian prisoners

In a study of the use of solitary confinement in Norwegian prisons that was conducted in 2001,²¹⁸ twelve prisoners were interviewed about their experience of solitary confinement. All of them stated that the solitary confinement had given them mental problems of varying nature and duration. The statements below were made by three of the prisoners:

“Solitary confinement makes you paranoid. My wife says that I've changed, that I've become paranoid, aggressive and more wary.”

“After five months in C1 things started happening in my head. It's just like I've got a rubber hood over my head. I said this to a prisoner who had spent seven months under a ban on correspondence and visitors, he recognised the sensation – the rubber hood. He'd had trouble with the rubber hood for a whole year afterwards. Help! I thought at the time.”

“It's downright hell in G, you sit and stare at a brick wall all day long. Or at the door, or at what other people have written on the wall. I am mentally strong, but it is absolutely horrible.”

²¹⁸ Hellevik (2001).

National Institution for Human Rights, currently linked to the Norwegian Centre for Human Rights, would appreciate comments on the thematic report to the following e-mail address: ni-info@nchr.uio.no

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