



Õiguskantsler

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A remand prisoner's out-of-cell activities

In order to balance the negative effects inherent in long-term custody pending trial – i.e. imprisonment prior to conviction or acquittal – it is important that a person who has been in custody for a long time should be offered meaningful activities outside their cell. Meaningful activity means acquiring education, work, participation in social programmes, sports, and the like. In Estonian prisons, custody pending trial also means solitary confinement. Thus, in terms of placement of remand prisoners, the prison must take into account the effects of solitary confinement and, where possible, avoid placing a long-term remand prisoner alone in a cell.

The longer the custody pending trial, the stronger its harmful effect. For example, after acquittal a person remanded in custody for a long time may need even more psychological and social support for return to ordinary life than someone who was convicted, including support in restoring their knowledge and work-related skills and rebuilding relationships that were broken because of custody pending trial.

The petitioner has been remanded in custody since 6 October 2015. He has still not been convicted by a court. In decision No 5-15/20/27-2 on an extra-judicial administrative challenge, Tallinn Prison reached the opinion that offering out-of-cell activities to the petitioner was not expedient or fit for purpose. In reply No 5-18/20/3136-2 the prison asserted that custody pending trial is not solitary confinement since solitary confinement only means placement in a disciplinary cell or an isolated locked cell. This opinion by the prison is incorrect.

In 2014, the Chancellor of Justice [proposed](#) to the Riigikogu to amend the provision of the Imprisonment Act concerning remand prisoners' freedom of movement and possibilities to communicate. The [Imprisonment Act](#) still remains unamended in this respect. According to the law, exceptionally all remand prisoners are kept in their cell unless they are working or studying. The prison has not enough work to offer even to convicted prisoners, and the requirements for

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segregation significantly restrict study. Remand prisoners are locked in their cells for 23 hours a day.

Therefore, detention of remand prisoners, including the applicant, in Estonia essentially amounts to solitary confinement in line with the opinions expressed in Rule 44 of the [Mandela Rules](#), paras 54, 56(a) and 57(a) of the [Standards](#) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), para. 25 of the [report by the UN Special Rapporteur on Torture](#), and legal literature.¹

The definition of solitary confinement does not depend on a specific legal construct but arises from the factual situation in which the person finds themselves. The substance of solitary confinement means that a person spends at least 22 hours a day segregated from others in prison, and they have no opportunity for everyday meaningful human contact. Holding two or three people in a cell in this way also amounts to solitary confinement. Meaningful contact should enable a person to create and maintain relationships, experience a sense of belonging, and receive support and feedback from others. Contact with prison staff merely during roll-call, food serving, reception of applications, and the like, does not constitute sufficient everyday meaningful contact.

The European Court of Human Rights (ECtHR) has found that solitary confinement does not automatically amount to violation of Article 3 of the European [Convention](#) for the Protection of Human Rights and Fundamental Freedoms.² However, solitary confinement without appropriate mental and physical stimulation does, in the long term, have damaging effects on a person's mental faculties and social abilities.³ The damaging effects of solitary confinement on health have also been proved by extensive scientific research.⁴

The main objective of custody pending trial is not a person's re-socialisation within the meaning of § 6(1) of the [Imprisonment Act](#). Prior to a person's conviction, the state cannot force a remand prisoner (unlike a convicted prisoner) to participate in different activities, to study or work with a view to directing them to law-abiding behaviour. Nevertheless, re-socialising activities also help to alleviate the harmful effects of custody pending trial. Harmful effects are further exacerbated by the fact that in Estonia custody pending trial essentially means solitary confinement.

The Chancellor drew attention to the need for out-of-cell activities for long-term remand prisoners in [recommendations issued in 2011](#) as well as [2019](#).

As far back as [2004](#) and most lately in its 2019 [report](#) the CPT noted that Estonia must begin to radically improve remand prisoners' opportunities for activity. According to the CPT assessment, remand prisoners must be able to spend part of the day (eight hours or even more) outside their cells, and they must be engaged in purposeful activities of a varied nature. Most lately, the CPT expressed the same position in the 2020 [recommendations](#) to Denmark (para. 48).

¹ See e.g. J. Lobel, P. Scharff Smith (Eds.) *Solitary Confinement: Effects, Practices, and Pathways Towards Reform*. Oxford University Press 2020.

² See e.g. [Ramirez Sanchez v. France](#); [Rhode v. Denmark](#).

³ See e.g. [Gorbulya v. Russia](#), para. 78; [Razvyakin v. Russia](#), para. 104; [Csüllög v. Hungary](#), para. 30; [Khoroshenko v. Russia](#), para. 140.

⁴ Reference 2, pp 129–243; C. Haney. [Restricting the Use of Solitary Confinement](#). *Annual Review of Criminology*, 2018, pp 285–310; S. Grassian. [Psychiatric Effects of Solitary Confinement](#). *Washington University Journal of Law & Policy*, Vol. 22, 2006, pp 332–333; F. Kaba et al. [Solitary Confinement and Risk of Self-Harm Among Jail Inmates](#). *American Journal of Public Health*, 2014, vol. 104, p 442–447; S. Shalev. [A sourcebook on solitary confinement](#). Mannheim Centre for Criminology, 2008, pp 17–23; S. Shalev. Solitary confinement as a prison health issue. [Prisons and Health](#). WHO Regional Office for Europe, 2014, pp 27–35; P. S. Smith. [The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature](#). *Crime and Justice*, 2006, Vol. 34, No. 1, pp 441–528.

When assessing the conditions of detention, the ECtHR has often relied on CPT standards and recommendations. Most recently, the ECtHR relied on the CPT's above-mentioned opinions when assessing the conditions of detention of remand prisoners in the case of [Sukachov v. Ukraine](#) on 30 January 2020 (paras 27–33). The ECtHR found a violation of Article 3 of the [Convention](#), while also taking into account that the applicant, who was a remand prisoner, was not ensured activities outside the cell.

Conclusion

The applicant has been remanded in custody for more than four years – this is a very long period of custody pending trial. In order to relieve the harmful effects inherent in long-term custody pending trial, which exacerbate in time, it is particularly important to offer a person, with their consent, meaningful and purposeful activities outside their cell. Purposeful activities should be understood as everyday active physical and intellectual activity, such as acquiring education, work, participation in social programmes, sports, and the like.

When deciding on placement of remand prisoners, the effects of custody pending trial – amounting to solitary confinement – must also be taken into account and, where possible, placing a long-term remand prisoner alone in a cell should be avoided.

As regards placement of the applicant and other long-term remand prisoners, and offering them out-of-cell activities, I ask you to take into account the Chancellor's recommendations, the opinions of the ECtHR, international documents, and expert assessments.

I expect the prison's feedback to the recommendation by 15 June 2020.

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