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Inspection visit to Tartu Prison and the prisons psychiatric department

One of the duties of the Chancellor of Justice is to carry out regular supervision over places of detention (including prisons) (§ 1(7) and § 27 of the Chancellor of Justice Act and Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment). For this, the Chancellor carries out inspection visits at a time agreed with an institution in advance as well as without prior notice.

On 26−28 November 2020, the Chancellor's advisers inspected Tartu Prison at short notice. The prison's readiness in terms of cooperation, smooth dealings and provision of competent explanations during and after the inspection is commendable.

The inspection focused on the situation of people in solitary confinement. During the visit, the Chancellor's advisers spoke with convicted and remand prisoners in solitary confinement; communicated with prison officers and staff; and carried out a tour of the prison territory and rooms. A selection of documents was also examined. A psychiatrist and a general practitioner were involved in the inspection as healthcare experts. The Chancellor last inspected Tartu Prison in 2016.

A point worth acknowledging is the prison's efforts to ensure a prisoner with special needs an opportunity to exercise the right of contact with their family and next of kin as laid down by § 23 of the Imprisonment Act (Imprisonment Act). The prison organised a video meeting with next of kin of the prisoner who – due to their special need and restrictions imposed on visits – had no other option to communicate with their next of kin. The prison director affirmed that a video call could be securely arranged via the Skype for Business program used in the prison and that such a meeting did not require particular preparation, expense or upgrading of technical possibilities.

It is also commendable how Tartu Prison has changed its earlier practice[1] and enables convicted and remand prisoners to observe dietary habits characteristic of their religion and worldview as long as this does not require considerable effort or expense from the prison. According to the senior prison chaplain, under § 47(3) of the Imprisonment Act, the possibility of people receiving special food to buy foodstuffs (e.g. meat) at the prison shop is not restricted.

Outdoor exercise conditions at the prisons psychiatric department have also improved. The department now has a spacious walking area with training equipment, surrounded by a chain link fence.

Unfortunately, not everything in Tartu Prison complies with the laws and international requirements.

To date, no solution has been found to the very long-standing issue of expanding remand prisoners' opportunities for movement and communication. More attention should be paid to assessing the health of people in solitary confinement and providing them an opportunity for meaningful contact. Another problem is that prisoners often have to serve an excessively long disciplinary confinement punishment. More clarity is needed in assessing the need to impose confinement in an isolated locked cell. Medication prescribed for a prisoner should only be given by healthcare professionals. Overall living conditions and conditions in the disciplinary cell need improvement. Problems exist with applying and documenting immediate coercion.

Inter alia, the living arrangements and conditions in prison must serve the aim of rehabilitation of inmates. Study opportunities, maintaining family relationships and keeping abreast of developments in society significantly increase the possibility that upon release a person will start or continue leading a law-abiding life. Thus, prison plays a major role in making society safer, reducing recidivism, and at the same time reducing the cost of imprisonment.

Remand and convicted prisoners should be able to communicate with their family and children through video calls in addition to other means of communication; otherwise disruption would occur to relationships outside the prison that would help to lead a law-abiding life upon release. Conditions that do not contribute to contact by convicted and remand prisoners with their next of kin must be reviewed and the automatic ban on visits associated with disciplinary confinement must be abolished. After the library reform, the possibility to read books was reduced, so that possibilities should be considered to make books better available for people in prison once again.

The situation in the prisons psychiatric department has remained the same for years. Several of the Chancellor's previous recommendations have also not been implemented.

Several requirements regulating the appearance of prison officers are also excessive, in particular considering that prisons are already faced with constant shortage of staff and it is difficult to find competent, reliable and motivated people with the best qualifications.

Since problems found are complex and many of the solutions presume a change of legislation, the recommendations are intended both for the prison and the Ministry of Justice under whose area of administration Tartu Prison belongs and whose competence also includes preparing legislation related to imprisonment law.

[1] See the Chancellor of Justice opinion of 13 January 2016 No 7-4/151096/1600194.

1. Solitary confinement

1.1. Definition

According to the positions expressed in Rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Rule 60.6(a) of the Council of Europe Committee of Ministers recommendation Rec(2006)2 on the European Prison Rules (EPR), paragraph 25 of the report by the UN Special Rapporteur on Torture, a vision by the European Committee against Torture and Inhuman or Degrading Treatment or Punishment[2] and the Istanbul Statement and legal literature,[3] solitary confinement is defined as confinement of a person for 22 hours or more a day in isolation from other people in prison and without having an opportunity for meaningful contact. Holding two or three people in a cell in this way for a prolonged period also amounts to solitary confinement. This has been found by the CPT in its Standards (para. 54) as well as by the European Court of Human Rights e.g. in the judgment of 2 June 2020 in the case of *N.T. v. Russia* (para. 44).

In Tartu Prison, solitary confinement is imposed on prisoners serving a disciplinary punishment in a disciplinary cell under § 63(1) of the Imprisonment Act, as well as those staying in an isolated locked cell on security considerations under § 69(2) clause 4 of the Imprisonment Act. In practice, essentially all remand prisoners and inmates held under the reception regime under § 8(4) of the Internal Prison Rules are also in solitary confinement. The majority of inmates subject to the reception regime stayed in a locked cell for approximately three months, which is also the longest period admissible under § 14(4) of the Imprisonment Act.

Under those regimes, people are socially isolated, there is little or no activity outside the cell, and their physical environment is poorer in comparison to other inmates.

In 2014, the Chancellor of Justice proposed to the Riigikogu to amend § 90(3) (first sentence) and § 90(5) of the Imprisonment Act concerning remand prisoners' freedom of movement and possibilities of communication. The Vice-President of the Riigikogu tasked the Riigikogu Legal Affairs Committee with initiating a Draft Act to bring the Imprisonment Act into line with the Constitution of the Republic of Estonia. It is extremely regrettable that even after seven years the Imprisonment Act has not been amended based on the Chancellor's proposal and the guidance by the Riigikogu.

The Ministry of Justice should immediately prepare and submit to the Riigikogu a Draft Act amending § 90(3) (first sentence) and § 90(5) of the Imprisonment Act.

1.2. Impact and its assessment

Several studies have found that solitary confinement has little or no effect on people or that such detention has even positive effect in some cases.[4] The authors of studies reaching such conclusions

[2] Similarly e.g. in the CPT 2020 report to Moldova, the 2020 report to Portugal, the 2020 report to the United Kingdom, the 2019 report to Estonia, etc.

[3] See e.g. J. Lobel, P. Scharff Smith (Eds.), Solitary Confinement: Effects, Practices, and Pathways Towards Reform, Oxford University Press, 2020 and the references therein.

[4] E.g. M. L. O'Keefe *et al*., One Year Longitudinal Study of the Psychological Effects of Administrative Segregation, Colorado Department of Corrections, 2010; R. D. Morgan *et al*., Quantitative Syntheses of the Effects of Administrative Segregation on Inmates' Well-Being. Psychology Public Policy and Law, 22(4), 2016; P. Gendreau,

have been criticised for lack of competence, inadequate source materials as well as substandard study methodology.[5]

It has also been pointed out that limited or no effect of solitary confinement on a person should not be interpreted as justification for solitary confinement. In comparison to rehabilitation and medical treatment programmes, solitary confinement is a primitive and short-sighted way to direct a person's behaviour.[6] Even where no proof was found for a harmful effect of solitary confinement, researchers expressed the opinion that solitary confinement may nevertheless be dangerous for a person's mental health and deprives a person in solitary confinement of the possibility to improve their behaviour and rehabilitate themselves similarly to other inmates.[7]

A considerable number of results of scientific studies in different countries have consistently demonstrated that isolating a human being as a social being from others, a harsh physical environment and scarcity or deprivation of positive stimulation is dangerous for a person's mind and body, degrades human dignity and, in more serious cases, amounts to torture.[8]

The results of a meta-analysis published in 2020 also demonstrate a significant link between solitary confinement and deterioration of mental and physical health, increased self-harming and mortality (especially suicides). The meta-analysis points out that solitary confinement is not an

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R. M. Labrecque, The effects of administrative segregation: A lesson in knowledge cumulation, in J. Wooldredge, P. Smith (Eds.), Oxford handbook on prisons and imprisonment, Oxford University Press, 2016; See also L. Glaase, Üksikvangistus õigusteaduses ja teistes teadustes (Solitary confinement in law and other sciences), Juridica, 2021/1, pp 71–80.

[5] E.g. P. S. Smith, The Effects of Solitary Confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation, Corrections and Mental Health, 2011; S. Shalev, M. Lloyd, Though this be method, yet there is madness in't: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation, Corrections and Mental Health, 2016; C. Haney, The Psychological Effects of Solitary Confinement: A Systematic Critique, Crime and Justice, 47(1), 2018, pp 365–416.

[6] P. Gendreau, R. M. Labrecque, The Effects of Administrative Segregation: A Lesson in Knowledge Cumulation in J. Wooldredge, P. Smith (Eds.), Oxford Handbook on Prisons and Imprisonment, Oxford University Press, 2016, p 14; R. D. Morgan *et al*., Quantitative Syntheses of the Effects of Administrative Segregation on Inmates' Well-Being, Psychology Public Policy and Law, 22(4), 2016, p 19.

[7] C. D. Chadick *et al*., The Psychological Impact of Solitary: A Longitudinal Comparison of General Population and Long-Term Administratively Segregated Male Inmates, Legal and Criminological Psychology 23(1), 2018, pp 101–115.

[8] See e.g. Lobel, P. S. Smith (Eds.), Solitary Confinement: Effects, Practices, and Pathways Towards Reform, Oxford University Press, 2020, pp 129−243; H. S. Andersen *et al*., A longitudinal study of prisoners on remand: psychiatric prevalence, incidence and psychopathology in solitary vs. non-solitary confinement, International Journal of Law and Psychiatry, 26, pp 165-177, 2000; H. S. Andersen, A longitudinal study of prisoners on remand: repeated measures of psychopathology in the initial phase of solitary versus non-solitary confinement, International Journal of Law and Psychiatry, 26(2), 2003, pp 165−177; D. Lovell, Patterns of Disturbed Behavior in a Supermax Population, Criminal Justice and Behavior, 35(8), 2008, pp 985–1004; K. Cloyes *et al*., Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample, Criminal Justice and Behavior, 33(6), 2006, pp 760−781; 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, pp 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(1), pp 441−528; D. M. Sestoft, Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody, International Journal of Law and Psychiatry, 21(1), 1998, pp 99–108. S. Hodgins, G. Côté, The Mental Health of Penitentiary Inmates in Isolation, Canadian Journal of Criminology, 1991, pp 175−182; D. Lowell *et al*., Recidivism of Supermax Inmates in Washington State, Crime & Deliquency, Vol. 53/4, 2007, pp 633−656; J. D. Strong *et al*., The body in isolation: The physical health impacts of incarceration in solitary confinement, PloS one, Vol. 15, 2020 etc.

effective tool for ensuring security and may actually increase the number of violations, including after release.[9]

By relying on the relevant scientific literature and assessments of international experts, the Chancellor in a memorandum sent to the Ministry of Justice also drew attention to the negative effect of solitary confinement.

The negative effect of solitary confinement is expressed not only in damage to a person's health but it also endangers prison security as a whole and increases the risk of recidivism. The latter, however, has a direct impact on society as a whole.[10] Thus solitary confinement is also counterproductive to the objectives of imprisonment.

The European Court of Human Rights has consistently noted that solitary confinement without an opportunity to study, get used to law-abiding patterns of communication, or maintain healthy physical fitness is in the long term damaging to an inmate's mental faculties and social abilities.[11] The Supreme Court has found that long-term solitary confinement may damage even a mentally and physically healthy person.

1.2.1. The role of healthcare professionals

In order to assess the effect of solitary confinement on someone, it is also necessary to regularly monitor their health.

The general practitioner who was involved in the inspection visit as an expert ascertained that the prison had not designated a specific staff member nor laid down a procedure for monitoring those in solitary confinement.

The experts involved in the inspection (a psychiatrist and general practitioner) noted that people held in solitary confinement are definitely at greater risk in terms of primarily psychological adverse health effects. According to experts, the emergence of negative effects (e.g. sleeping problems, depression, anxiety, phobias, emotional dependence, state of confusion, memory problems, reduced concentration capacity, aggression, feeling of cold, increased blood pressure) and deterioration of previous health problems as a result of solitary confinement should be monitored daily. Examination of a convicted or remand prisoner held in solitary confinement must be substantive. That is, a prison healthcare professional must visit people in solitary confinement in their cells and speak with them. A medical practitioner should immediately notify the prison of any deterioration in health of a convicted or remand prisoner and recommend alleviation of the regime or discontinuation of solitary confinement (Rule 46.2-3 of the Mandela Rules, Rule 43.3 of the European Prison Rules).

The ECtHR has repeatedly (including in the case of *Ramirez Sanchez v. France* (para. 139) and *Razvyazkin v. Russia*, para. 101) said that examination of an inmate in solitary confinement must be regular and constant. According to Rule 46.1 of the Mandela Rules, an opinion by the UN Special Rapporteur on Torture, Rule 43.2 of the European Prison Rules, the CPT Standards and

[9] M. Luigi *et al*., Shedding Light on "the Hole": A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings, Frontiers in Psychiatry, 2020.
[10] See the sources cited in the Chancellor's memorandum of 5 October 2016 No 6-1/161019/1604041.
[11] See e.g. *Gorbulya v. Russia*, para. 78; *Razvyakin v. Russia*, para. 104; *Csüllög v. Hungary*, para. 30, *Khoroshenko v. Russia*, para. 140.

recommendations (including the 2014 and 2019 report to Estonia), regularity means that a healthcare professional examines a person in solitary confinement every day.

A prison healthcare professional should assess the condition of everyone in solitary confinement on a daily basis

1.3. Meaningful contact

Under Rule 53.A(a) of the European Prison Rules, a prisoner separated from others as a security measure must be offered at least two hours of meaningful human contact a day. Meaningful contact should enable a person to create and maintain relationships, experience a sense of belonging, and receive support and feedback from others. Guidance on implementation of the Mandela Rules also explains that meaningful interaction should not be incidental. It must take place face to face without any physical barriers (e.g. through a food hatch, or the like) and enable empathetic human contact. Such interaction may take place in the course of out-of-cell activities or during daily meetings with officers, as well as with other inmates and a person's next of kin.

The inspection revealed that prisoners' daily contacts with officers, first and foremost with guards, were mostly limited to meetings during roll-call, food serving, reception of applications, and the like. Regrettably, little attention in prison is paid to everyday interaction with inmates in solitary confinement, the development and maintenance of such relationships, and prevention of problem situations through communication. The psychiatrist participating in the inspection as a healthcare expert recommended that training of guards should lay more emphasis on teaching communication that helps to prevent problems, and guards should be directed to make daily use of those skills.

Meaningful contact for prisoners in solitary confinement can be ensured by implementing the principles of dynamic security in officers' everyday work.[12] Rule 76(c) of the Mandela Rules and Rule 51.2 of the European Prison Rules see dynamic security as an inseparable part of ensuring safety and emphasise its importance in the training of prison staff.

According to the principles of dynamic security, friendship should not be forged with inmates but the attitude to them must be professional. Such an attitude is substantive and well-intentioned. Alongside the skill of applying immediate coercion, the ability to directly interact with inmates as positively as possible is considered even more important. This means that prison staff are in constant contact with a prisoner and know what is happening to them, anticipate possible escalation of a conflict situation and, through good contact achieved with a prisoner, prevent behaviour endangering prison security.[13] Otherwise, prisoners seek attention and contact in other ways, including through defiant behaviour and violations.[14] The result of that would be even greater isolation of a prisoner, a stricter regime and more limited possibilities for their successful return among other inmates and for a law-abiding life.

The prison should ensure at least two hours of meaningful interaction a day for convicted and remand prisoners held in solitary confinement. For this, all staff, in particular guards who have the closest contact with prisoners, must apply the principles of dynamic security

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[12] See also EPTA, Dynamic Security Training Handbook, 2021.
[13] See e.g. UNODC, Handbook on the Management of High-Risk Prisoners, 2016, pp 71–73; EPTA, Managing Difficult Inmates Training Handbook, 2021.
[14] L. A. Bassett. The Constitutionality of Solitary Confinement: Insights from Maslow's Hierarchy of Needs. Health Matrix: The Journal of Law-Medicine, 2016 Vol. 26/1.

in their everyday work. The prison management should organise the necessary training for staff and provide them the relevant instructions for work.

1.4. Disciplinary cell

1.4.1. Duration of punishment

During the inspection it was confirmed that, in addition to punishments lasting a few days, on several occasions prisoners have also served a longer disciplinary confinement punishment: for instance up to 21, 35, 41, 43, 56, 75, 85 or even 130 days without interruption. Consecutive service of several disciplinary confinement punishments exceeds by several times the maximum threshold of 14 days set in international penitentiary standards and recommendations by international organisations. Several disciplinary confinement punishments served in Tartu Prison also exceed the 45-day limit laid down by § 63(1) of the Imprisonment Act nor are they in line with the opinion of the Supreme Court according to which, where necessary, between serving several disciplinary confinement punishments a prisoner should be enabled to spend some time in ordinary prison conditions.

As far back as 2016 the Chancellor drew the attention of the Ministry of Justice to the fact that the maximum duration of a disciplinary confinement punishment laid down by the Imprisonment Act exceeds by several times the level justified under Rules 43–44 of the Mandela Rules and the assessment by the UN Special Rapporteur on Torture and the CPT. In reports sent to Estonia in 2014 (para. 95) as well as 2019 (paras 67–70) the CPT criticised both the statutorily established maximum duration of disciplinary confinement as well as consecutive enforcement of several punishments. The CPT has asked Estonia to make immediate preparations, including legislative amendments.

Despite repeated recommendations and a promise given by the Ministry of Justice in 2017 to resolve the problem, this has not been done to date. The provisions of the Imprisonment Act regulating the duration of disciplinary confinement still provide a favourable environment for ill-treatment of people.

The Ministry of Justice should immediately prepare and submit to the Riigikogu a Draft Act to amend § 63 subsection (1) clause 4 and subsection (2) of the Imprisonment Act as well as § 100 subsection (1) clause 3 and subsection (2) of the Imprisonment Act by which these provisions are brought into line with international penitentiary standards and opinions expressed by international experts, including the CPT. A prison may impose disciplinary confinement only in most serious cases, as a measure of last resort, and for as short a period as possible. The duration of disciplinary confinement imposed on an adult may not exceed 14 days. A 14-day period spent in a disciplinary cell must be followed by a reasonable period under the ordinary regime.

1.4.2. Use of a bed and reading possibilities

The bed in disciplinary cell No 1003 had been attached to the wall. The prisoner in the cell had made a place on the floor from a towel and a newspaper and used this for rest. Prisoners said that under § 60(1) of the Internal Prison Rules those placed in a disciplinary cell may only borrow study or religious literature. Several prisoners noted that they neither study nor are religious, so that their reading material is limited only to a newspaper brought to a cell once in a while.

The psychiatrist involved in the inspection as a healthcare expert pointed out that a ban on use of a bedding and very limited reading options are excessive. In the 2020 report to Moldova (para. 100), the CPT reached the opinion that beds in a disciplinary cell should not be folded up and attached to the wall during the daytime. The CPT has consistently informed Estonia (including in the reports of 2005, 2011, 2014 and 2019) that reading possibilities for prisoners in a disciplinary cell should not be restricted. The ECtHR has also expressed an opinion in the case of *Csüllög v. Hungary* (para. 34) that a restriction on the number of books allowed for a prisoner in a disciplinary cell under the solitary confinement regime cannot be reasonably justified.

Section 7(4) of the Internal Prison Rules sets out the furnishings of a disciplinary cell. Inter alia, a disciplinary cell must have a bed which can be folded up and attached to the wall for the daytime. The norm describes the functionality of the bed in a disciplinary cell but does not specify how folding beds should be used. The Internal Prison Rules do not prescribe prohibition of a mattress and bedding during the daytime.

The Ministry of Justice should amend § 60(1) of the Internal Prison Rules so that it does not restrict the choice of reading material for prisoners in a disciplinary cell. The prison should change the practice of interpreting § 7(4) clause 1 of the Internal Prison Rules and also allow a prisoner to use the bedding in a disciplinary cell during the daytime.

1.4.3. Alternatives

So as to allow the prison other tools at its disposal for sanctioning prisoners apart from causing them physical discomfort (ban on using a bedding during the daytime) and boredom (restricting the choice of reading material), it is necessary to create an individualised motivational system and revise the list of privileges. If a person has no privileges to lose, they also have less reason to make efforts to change their behaviour.[15]

According to information available to the Chancellor, a motivational system based on benefits has been in use for several years, for example, in the juvenile department of Viru Prison, where it has provided good results. In other countries, prisoners are motivated, for instance, with additional physical exercise possibilities (e.g. use of a gym), the possibility to earn higher remuneration for work, make purchases from a broader selection of goods in the prison shop, additional food, or the possibility to wear their own clothes. Other incentives offered include a certain number of free phone calls and letters a month, more frequent visits with family and children, a possibility to receive certain items (such as a television set, a watch/clock, and the like) from the prison, as well as the possibility to reduce the sentence by each day worked in prison.[16]

According to entries in the prison's 2019–2020 disciplinary cell register, it was the same inmates who stayed in a disciplinary cell again and again. As a rule, the locked cell regime and alternately the disciplinary confinement regime were imposed on the same people. Thus, it should be concluded that generally the disciplinary confinement regime has not brought the expected results and it does not have the desired effect on people's behaviour.

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[15] UNODC, Handbook on the Management of High-Risk Prisoners, 2016, pp 83–84.

[16] See e.g. Incentives Policy Framework, Ministry of Justice, HM Prison and Probation Service, 8 July 2020; Penitentiary policy and system in the Republic of Bulgaria, Center for the Study of Democracy, 2011, pp 28–29.

People ending up in a disciplinary cell again and again (so-called frequent flyers) are mostly those with behavioural and mental health problems. In other countries, intensive intervention programmes are also used alongside a motivational system to cope with difficult prisoners. Instead of isolating people and keeping them under harsh conditions, such prisoners are placed in a unit with a crisis team consisting of several specialists and dealing with prisoners on a constant basis.[17] The CPT in its 2020 report noted that, in Ireland, such people are dealt with in a so-called challenging behaviour unit.

The prison should look for alternatives to disciplinary confinement, e.g. by creating an incentive system, units specialised in resolving behavioural and mental health problems, or the like. Where necessary, the Ministry of Justice should prepare the required legislative amendments.

1.5. Isolated locked cell

The inspection revealed that under § 69(2) clause 4 of the Imprisonment Act an isolated locked cell was used for placement of prisoners who either systematically violated prison order, posed a danger to others with their behaviour, were prone to self-harm, were suicidal, or were held under the locked regime due to mental disorder.

The decision on committal to an isolated locked cell is made by the head of a unit. The underlying reasons for placement in a locked cell were mostly described in detail in the relevant directives. However, the duration of the measure and assessment of continuation of its use was explained differently in different directives.

As a rule, directives on applying security measures noted that the measure would be used until the circumstances necessitating its use cease to exist, and the need for continuation of its use would be assessed at least once a month. At the same time, there were also some directives that contained no information about assessing continuation of applying the measure (e.g. directive No 2-20/1-2/345 of 24 September 2020). In some cases, it was explained that the directive would be reviewed on an ongoing basis (e.g. directive No 2-20/1-2/324 of 12 September 2020) or not before one month has passed (e.g. directive No 6-1/1369 of 6 November 2019). In some cases, it had been decided in advance that a measure would be applied for three months (e.g. directive No 2-20/1-2/327 of 12 September 2020). There were also cases where no information was available concerning assessment of continuation of applying the measure, and it was decided that the measure would be used until the relevant circumstances cease to exist or the person is released from prison (e.g. directive No 2-20/1-2/339 of 21 September 2020).

Interviews with prisoners in an isolated locked cell revealed that they did not know whether, when and with whose participation continuation of applying the measure would be decided. However, they were convinced that a prisoner usually has to be in an isolated locked cell for at least a month.

The information collected did not indicate that the prison had any well-considered and uniform practice for assessing the necessity of placement in an isolated locked cell. In some cases, doubts arose that the prison did not proceed from the principle laid down in § 69(3) of the Imprisonment Act to discontinue using a measure as soon as the circumstances justifying it have ceased to exist

[17] See e.g. Vera Institute of Justice, Segregation Reduction Project Findings and Recommendations, 30 January 2015; S. Zyvoloski, Impacts of and Alternatives to Solitary Confinement in Adult Correctional Facilities, Social Work Master's Clinical Research Papers, 2018.

but has, instead, decided in advance that applying a measure would not be discontinued before a certain period (e.g. after a month or three months).

In one of the cases inspected (directive No 2-20/1-2/383 of 21 October 2020), it was questionable whether isolating a prisoner for such a long time was justified. The prisoner was placed in an isolated locked cell because they were suspected of self-harm and a suicide wish, and, in order to prevent the risk of self-harming with a string or a ribbon, they were prohibited to use personal clothing, including footwear with laces. At the same time, the prisoner noted that they had been mistakenly left sneakers with strings which they had been wearing for several weeks and which they could use to injure themselves if they so wished. Interviews with the prisoner and officers revealed that the prisoner had not injured themselves during the period of almost one month spent in an isolated locked cell. Thus, there is reason to believe that the circumstances justifying the measure had ceased to exist earlier than the one month decided in advance.

In terms of assessment of applying the measure, the directives contained a stereotyped explanation that security measures are applied until the prison is convinced that a prisoner is able to behave in a law-abiding manner without additional security measures and does not pose a threat to the life and health of themselves and others. Only some occasional directives (e.g. directive No 2-20/1-2/338 of 18 September 2020) contained evaluations by staff who were in contact with the prisoner. Those staying in an isolated locked cell were unable to explain what exactly the prison was expecting from them in order to reach such a conviction.

The ECtHR has repeatedly emphasised (including in *A.L. (X.W.) v. Russia*, para. 76) that the longer a person's solitary confinement, the more detailed the justification given for this should be. The same was found by the CPT in its 2020 report to the United Kingdom (para. 91).

Interventions aimed at discontinuing the isolated locked cell regime and preparing for a prisoner's return to the ordinary regime should start immediately when the isolated locked cell regime is imposed on a person. The CPT in its 2020 report to the United Kingdom emphasised (para. 91) that for each segregated inmate a plan should be established for their return to the ordinary prison regime. Thus, prisoners placed in an isolated locked cell must know what expectations and objectives have been set for them and what they must do to convince the prison that the risk has passed.

The prison should draw up detailed guidelines to assess the need for placement in an isolated locked cell. This also concerns guidance as to how to assess the circumstances leading to a person's segregation and whether those circumstances have ceased to exist. Directives on applying a measure must clearly indicate that the measure is terminated immediately when the underlying circumstances for it have ceased to exist, but in any case the necessity to continue the measure is reviewed after a specific period.

The prison should draw up an individual plan for each person in an isolated locked cell to discontinue their solitary confinement and also notify the plan to the prisoner. A directive on deciding to commit a person to an isolated locked cell for some time must also set out the events taking place during the assessment period, including any interventions by the prison and their results. Justifiability for continuing the measure cannot be assessed based merely on a description of a single incident (e.g. a prisoner was impolite to an officer or destroyed property) and the conclusion that the prison is not convinced that the prisoner would behave in a law-abiding manner.

1.5.1. Alternatives

The expert psychiatrist involved in the inspection stressed that, in order to assess the condition and possible mental problems of a person who is suicidal or prone to self-harm, a specialist opinion (by a doctor, nurse, psychologist, psychiatrist) must be obtained at the first opportunity (and not days or weeks later). If such a person is segregated from others and is placed in an isolated locked cell then, according to the expert's opinion, this rather leads to the risk that the person's mental health problems are likely to deteriorate even further.

The expert found that in the event of suicide risk a person's health should be monitored in the psychiatric department, which does exist in Tartu Prison. According to the expert, prisoners with mental disorders or who are otherwise vulnerable (e.g. those not getting along well with fellow inmates) should be placed in a separate unit where they could be provided an environment which is more suitable and better adjusted to their needs, as well as relevant programmes and regime.

The CPT in its 2020 report to Italy (para. 70-71) stressed that segregating an inmate prone to suicide and replacing visual supervision with video surveillance, banning interaction with other prisoners and restricting out-of-cell activities is the polar opposite of the care required for prisoners in such a vulnerable situation. Prisoners identified as being at risk of committing suicide should never be placed in a situation of *de facto* isolation. As far as possible, they should be offered the opportunity to spend time outside their cell and engage in purposeful and varied activities. For instance, in the 2019 report to the United Kingdom (para. 117) the CPT praised the "Talk to Me" programme implemented to assist prisoners at risk of committing suicide and the work done by a multidisciplinary team.

The isolated locked cell regime is also not suitable for a person who due to their mental disorder is unable to cope well among other inmates in the general prison community. To segregate such prisoners, some countries have established a so-called mental health unit whose environment and team meet the needs of these prisoners. In those units, a person is not isolated but they are offered activities and possibilities for interaction.[18]

In some countries, prisoners held in an isolated locked cell are enabled to be outside the cell during a specific period and also associate in smaller groups, if necessary with prisoners carefully selected by the prison.[19] This was also recommended in the CPT 2019 report to Denmark (p 49). Such contacts can be safely organised so that, where necessary, a guard is present in the community room together with prisoners and, by applying the principles of dynamic security, also participates in interaction.

The prison should seek alternatives to using an isolated locked cell. In particular, this concerns detention of prisoners who are self-harming, suicidal or suffering from a mental disorder. Where necessary, the Ministry of Justice must prepare the required legislative amendments.

2. Living conditions

2.1. Cells

[18] See e.g. S. Zyvoloski, Impacts of and Alternatives to Solitary Confinement in Adult Correctional Facilities, Social Work Master's Clinical Research Papers, 2018.
[19] See e.g. the CPT 2020 report to Italy (para. 48).

During the tour of unit E8, the Chancellor's advisers found that several cells (e.g. cell 2134) were in a poor condition. Paint and plaster was peeling from the walls; there was mould on the floor, walls and ceiling of the sanitary facility, and broken tiles with sharp edges were loose from the wall. Prisoners in several units complained that cell windows did not close properly. In a strong wind, cells are cool and rainwater leaks in through the window frame even when the window is closed.

While touring the units, the Chancellor's advisers indeed found that windows did not close fully, so it is plausible that cold air and rainwater might reach the cells. The credibility of claims by prisoners was also affirmed by the fact that an additional seal had been placed on a window frame in some cells (e.g. cell No 1069).

Under § 45(1) of the Imprisonment Act, a cell must meet the general requirements established for dwellings on the basis of the Building Code. The regulation "Requirements for dwellings" lays down, inter alia, that a cell must have the air temperature required for dwelling and a safe and healthy living environment. The air temperature required for dwelling as well as maintenance and cleanliness of the rooms has been emphasised in both Rules 13 and 17 of the Mandela Rules and Rule 19 of the European Prison Rules. The good condition of rooms and proper temperature is also considered extremely important by the World Health Organisation (WHO) and the CPT.

Section 64^1(1) of the Internal Prison Rules prohibits a prisoner from owning items which can be used to cause injury. By placing a prisoner in a cell with loose tiles with sharp edges, the prison enables a prisoner to obtain prohibited items and harm themselves or others with them.

The prison should ensure maintenance of prisoners' living space. This may mean that repairs need to be carried out in cell No 2134 and other cells in a similar condition. No rainwater should leak into a room through a window frame.

2.2. Lighting

Under § 45(1) of the Imprisonment Act, a cell (including a locked cell and a disciplinary cell − § 65^1(1) Imprisonment Act) must have a window and artificial lighting. Section 3(3) of the regulation on "Requirements for dwellings" lays down that a window must ensure sufficient natural light in a room. The regulation does not set out in detail and based on objective indicators (e.g. specific luminous intensity) the precise quality of natural lighting in a cell. Regardless, sufficient natural light in a living space can be assessed in terms of needs for everyday living.

While touring units E1-E2, the Chancellor's advisers found that the window in cell No 1002 was covered with dense metal mesh, so that insufficient light reached the cell. The situation was resolved much better in cell No 1004 where mesh was replaced with impact-resistant glass.

Specialist literature proves that natural light reduces stress and anxiety and increases the ability to concentrate. It also has a direct effect on the human nervous system.[20] The Chancellor also emphasised the importance of natural light, for instance, in the 2014 recommendation to Tallinn Prison and the 2019 recommendation to Viru Prison. The CPT has also often drawn attention to

[20] See e.g. R. Wener, The environmental psychology of prisons and jails: creating humane spaces in secure settings, Cambridge University Press, pp 203-240, (2012); L. Edwards, P. Torcellini, A Literature Review of the Effects of Natural Light on Building Occupants. Technical report, (2002).

the need for natural light (e.g. the 2019 report to Greece and the 2019 report to Estonia). In the 2018 report to Croatia (para. 32) and the 2020 report to Italy, the CPT asked for metal grilles to be removed from windows (para. 57).

In order to prevent a person with aggressive behaviour from breaking cell furnishings (including windows), in some situations additional security measures need to be taken to protect windows. At the same time, alternative means (e.g. impact-resistant glass) are available which the prison uses even now and which do not prevent natural light from reaching the cell to the same extent as metal mesh.

The prison should remove dense metal mesh from cell windows (including in cell No 1002) and ensure security by other means. For instance, impact-resistant glass may be put in a window similarly to cell No 1004.

2.3. Cell terminal

Through a cell terminal, prisoners can communicate with guards and signal their needs if necessary (e.g. in the event of a health problem). This is one of the safeguards for protecting the life and health of prisoners covered by the general need to ensure prison security laid down under § 66 of the Imprisonment Act. Through the terminal, prisoners listen to the radio to be informed of what is happening in the outside world. The radio helps to spend a day meaningfully.

An additional grating separating the cell door and the cell has been installed in isolated locked cell No 1002 used as a security measure under § 69(2) clause 4 of the Imprisonment Act. The cell terminal is located between the cell door and the additional grating. A sanitary corner is located next to the terminal, immediately on the other side of the grating. Thus, in order to use the terminal a prisoner has to reach over the toilet pot through the grating.

During the tour, cell No 1002 housed a person who used a cane for movement and it was very difficult for them to use the cell terminal. A better place for the terminal had been found in cell No 1004 where it had been placed in a security casing and extended to the cell from behind the intervening grating.

Article 9 of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol (CRPD) and Article 15(3) of the Euroopa Social Charter oblige States Parties to take appropriate measures also to ensure access to persons with disabilities, on an equal basis with others, to the physical environment. For this, obstacles and barriers to accessibility need to be identified and eliminated. According to General Comment No 2 of the UN Committee on the Rights of Persons with Disabilities, such measures also have to be taken in prisons.

The prison should find a location for the cell terminal in cell No 1002 which enables the terminal to be easily used by all prisoners, including people with disabilities. An appropriate solution might be the one used in cell No 1004.

2.4. Exercise area

The majority of prisoners in closed units who spoke with the Chancellor’s advisers did not use the right to go for a walk outdoors. According to the prisoners, there is nothing to do in the empty

exercise yard, so that walking in the exercise yard rather causes the feeling of a caged animal and, instead of alleviating stress, rather increases it. According to officers, only 10% of prisoners in unit E1-E2 went for a walk outdoors during the inspection visit.

The exercise yards in units E1, E2 and E8 seen during the inspection visit had a call button, a bench for resting and a roof protecting against inclement weather. Apart from this, the exercise yards were empty, gloomy, concrete boxes with roof covered in gratings and only offering a limited view of the sky. The exercise yards lacked any training opportunities.

Sections 55(2) and 93(5) of the Imprisonment Act lay down the right of a prisoner to spend time in the open air. The Chancellor has repeatedly stressed the importance of this opportunity in ensuring both physical and mental well-being (e.g. in the 2017 recommendation to Tallinn Prison, the 2016 recommendation to Tartu Prison and the 2014 recommendation to Viru Prison). Also Rule 23 of the Mandela Rules, Article 47 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (the so-called Havana Rules) and Rule 27.1 of the European Prison Rules stipulate that a prisoner is entitled to spend time and train in the open air.

The CPT has consistently been of the opinion that an exercise yard should be located on the ground, it should not have an oppressive environment and the right to spend time in the open air does not mean only a possibility to walk in a concrete box but it also means the right to train, see the sky and the horizon and use the possibility to rest during a walk and take cover from precipitation. Most recently, the CPT reiterated this opinion in the 2019 report to Estonia (para. 50), as well as the 2019 report to the Czech Republic (para. 43) and the 2019 report to Slovakia (para. 47).

The CPT criticised exercise areas similar to exercise yards in units E1, E2 and E8 in Tartu Prison in the 2017 report to Spain (para. 60) and in the 2020 report to Italy (paras 50–57). Inter alia, the CPT asked to remove grating covering the exercise yard, to create training possibilities in these facilities, and to add visual stimuli to exercise yards, such as mural paintings. In the 2019 report to the Czech Republic, the CPT recommended installing windows in the concrete walls of exercise yards to create a horizontal view from them. In the 2016 report to Slovakia, the CPT suggested that prisoners held under a segregated regime should be offered the possibility at least occasionally to have access to an outdoor yard which allows a horizontal view.

When establishing a violation of Article 3 of the Convention on Human Rights and Fundamental Freedoms (ECHR) the European Court of Human Rights has paid particular attention to exercise yards and their fittings (see e.g. *Ananyev and Others v. Russia*, para. 150; *Gladkiy v. Russia*, para. 69; *Tunis v. Estonia*, para. 46; *Moiseyev v. Russia*, para. 125), and in doing so has also referred to CPT standards and opinions.

Specialist literature and studies have affirmed that prison architecture affects a person's physical and mental well-being, it can contribute to building a person's positive identity, ensure prison security, and directing a person to law-abiding behaviour.[21] Prison premises, including the exercise area, can be improved in several ways. Training equipment could be fitted in exercise yards, and

[21] See e.g. EuroPris, Designing for rehabilitation, (2019); UNOPS, Technical guidance for prison planning, (2016); E. Fransson, F. Giofré, B. Johnsen (Eds.), Prison architecture and humans, (2018); R. Karthaus, L. Block, A. Hu, Redesigning prison: the architecture and ethics of rehabilitation, The Journal of Architecture, 24:2, pp 193−222, (2019); K. Beijersbergen *et al.*, A social building? Prison architecture and staff-prisoner relationships, Crime and Delinquency, vol. 62(7), pp 60−85, (2016); A. Fikfak *et al.*, The contemporary model of prison architecture: Spatial response to the re-socialization programme, Spatium 1(34), pp 27–34, (2016); T. Brun Petersen, Material matters – the social choreography of the state prison of Eastern Jutland, *RASK*, 39, pp 37–66, (2013).

windows offering a horizontal view could be installed where this is possible in terms of engineering and without endangering prison security. Prisoners participating in art groups could help to improve exercise yards, cooperation with art and design students could also be envisaged.[22] Prisoners in closed units could be allowed at least occasionally to walk in a courtyard that offers a view to the horizon and experience the benefits of being in the open air (e.g. natural elements).

The prison should make efforts so that the exercise areas for prisoners in closed departments meet international detention standards and recommendations of international organisations.

3. Distribution of medication

Medicines are distributed into medicine boxes by a medical nurse. The prisoner's name, the name of the medicine and instructions for its administration are marked on each box. Medicines, except psychotropic medicines (i.e. soporifics and sedatives under the Medicinal Products Act), are dispensed and their administration is checked by a guard.

The psychiatrist participating in the inspection visit as a healthcare expert emphasised that all medicines, and in particular psychiatric and neurological medicines, should be administered by a medical professional. This ensures compliance with pharmacovigilance requirements and confidentiality of patient data.

The CPT criticised Estonia for the practice of distribution of medication as long ago as the 2014 report (para. 82) and most recently Tartu Prison in the 2019 report (para. 60) .

When communicating with prisoners, prison medical staff must observe the same professional ethics requirements that are mandatory for their colleagues in their work outside the prison. This has been underlined in the preamble to the Mandela Rules as well as in the UN Principles of medical ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.

Respect for the duty of confidentiality is one of the underlying principles in the Code of Medical Ethics of the World Medical Association. This requirement is also set out in Rule 32(c) of the Mandela Rules, Rule 8 of the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the so-called Bangkok Rules) and Rule 42.3(a) of the European Prison Rules.[23]

Where medicines prescribed by a doctor are distributed to prisoners by a healthcare professional, medical staff visit units several times a day. This enables medical staff to better comply with the requirement of constant monitoring of prisoners' health as laid down by § 52(2) of the Imprisonment Act. This also enables prisoners to directly address a medical nurse with their questions concerning health, and guards no longer need to register people for a doctor's appointment. The UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the so-called Istanbul Protocol) emphasises that medical staff play an important role in effective detection of instances of ill-

[22] See e.g. the Estonian Academy of Arts, Department of Architecture and Urban Planning, 48 h kong. Interdistsiplinaarne töötuba. 2019 (48 h cell. Interdisciplinary workshop, 22 January 2020).
[23] See also UNODC, WHO/Europe, Good governance for prison health in the 21st century, (2013); WHO/Europe, Prisons and health, (2014).

treatment. It would significantly contribute to detecting these instances if a medical practitioner visits a unit several times a day and directly communicates with prisoners.

The prison should reorganise dispensing of medication prescribed by a doctor to convicted and remand prisoners so that medicines are distributed only by healthcare professionals.

4. Calming-down cells

The so-called calming-down cell No 1992 has no window, and the cell has a metal bed with sharp edges fixed to the floor, a table, chair and a sanitary corner. According to the psychiatrist participating in the inspection, the furnishings of the cell fail to take into account the purpose of this room; in its current condition the room is not suitable for an agitated person who may harm themselves. The expert noted that since the cell lacks a window a person may lose their perception of time, so that such a cell may only be used in utmost necessity and only short-term. Use of a calming-down cell must be documented as precisely as possible.

The register on use of cell No 1992 showed that in some cases the start-time and/or end-time for using the calming-down cell had not been recorded (e.g. entries No 129, 133, 154), in one case the name of the prisoner was absent (e.g. entry No 150) and in several cases a prisoner was held in the cell for some five hours or more (e.g. entries No 139, 140, 143, 151, 162). In several cases, the descriptions of the condition of the prisoner were too general: for instance "nervous, to continue" (e.g. entry No 23) or "aggressively minded" (e.g. entry No 146). Entry No 143 seems to indicate that the prisoner was naked in the calming-down cell and was given underwear only three hours after having been placed in the cell.

The CPT has consistently emphasised that a calming-down cell (also called a padded/rubber/smooth cell) must be secure and safe for an aggressive, agitated person who may pose a danger to themselves and/or others. This means that the cell furnishings must be of a kind that do not allow a person to harm themselves or others. The cell's environment must facilitate calming down. For example, the CPT in a 2020 report praised Turkey (para. 116) in that the walls and floor of the calming-down cell were covered in soft material which reduces the possibility of injury.

The CPT has consistently found (including in the 2019 report to Denmark, para. 97) that a prisoner may be placed in a calming-down cell only as a last resort when all other intervention measures (e.g. talking to the prisoner) have failed, and only until the person has recovered behavioural control. In the 2020 report to Turkey (para. 116), the CPT noted that a prison healthcare professional must immediately be notified of use of the calming-down cell. In the 2018 report to Croatia (para. 60), the CPT stressed that the duration of stay in a calming-down cell should be minutes rather than hours. A healthcare professional who decides on the need for hospitalisation must immediately examine a prisoner taken to a calming-down cell. A prisoner posing a danger to themselves may be taken to a calming-down cell only with the permission of a healthcare professional. Similarly, a prison healthcare professional decides whether a person's clothes should be replaced with safe (e.g. rip-proof) clothing. This was emphasised by the CPT in the 2014 report (para. 58) and the 2018 report (para. 60) to Croatia.

The prison should turn the calming-down cell into a room which is safe and facilitates calming down. A person may be held in the cell only as long as this is unavoidably necessary. The use of a calming-down cell must be documented in detail. A prison healthcare

professional must be notified if a prisoner is taken to a calming-down cell so that they can examine that person. A decision on placing in a calming-down cell of a person who is a danger to themselves must be made by a prison healthcare professional. If a healthcare professional finds that the person to be placed in a calming-down cell should be relieved of their clothing for security reasons, those clothes must immediately be replaced with safe clothing.

5. Application of immediate coercion

5.1. Documentation

During the inspection visit, the Chancellor's advisers examined reports from 2020 which record the use of physical force, a service weapon, special equipment or restraint measures in respect of convicted and remand prisoners, and checking the health of a violator.

In most cases, the application of immediate coercion and the situations preceding and following it had been described in detail, but some deficiencies still existed in documenting a person's health status. In several cases, the date and/or time of checking health was imprecise (e.g. the reports of 17 March 2020, 18 April 2020, 9 July 2020, 23 July 2020, 17 August 2020, 30 September 2020, 29 August 2020). In several cases, a suspicion arose that the health check had taken place before removal of handcuffs (e.g. report No 6-16/7 of 30 January 2020, report No 6-16/29 of 8 July 2020, report No 6-16/47 of 10 October 2020).

The Chancellor has repeatedly drawn the attention of prisons (including in the 2013 recommendation and the 2016 recommendation to Tartu Prison) to the fact that application of immediate coercion must be carefully documented. No complete overview of the situation can be obtained if the time of checking a person's health status is not clear or there is no information as to the health status of the person under immediate coercion after coercion was disapplied.

The prison should also check a person's health status after applying immediate coercion (e.g. removal of handcuffs) and this should always be documented in detail.

5.2. Means of restraint

Report No 6-16/29 of 8 July 2020 described that in placing a prisoner into a calming-down cell (No 1192) a spit-hood was put over their head, partly to prevent spitting. Case-law indicates that Tartu Prison was already using these hoods in 2015.[24]

The list of special equipment set out in § 70^1(1) clause 1 of the Imprisonment Act is exhaustive but does not mention hooding a person as a means of restraint. Nor is any legal basis provided for applying this means of restraint by § 4^1(2) of the Imprisonment Act, which allows application of other restrictions not mentioned by the law for security considerations.

Applying § 4^1(2) of the Imprisonment Act is relevant primarily in an extraordinary situation for which the Riigikogu has not established precise rules but where applying those measures is unavoidably necessary for overriding reasons (e.g. protecting the life and health of many people).

[24] See e.g. Tartu Court of Appeal order of 22 April 2015, No 1-15-2877; and Tartu Court of Appeal judgment of 1 November 2016, No 3-15-863.

Such a situation, for instance, would be application of measures to combat the spread of Covid-19.

In the event of misuse of this legal basis, the Imprisonment Act loses its purpose and substance since in that case basically any restriction laid down by the Imprisonment Act could probably be justified under § 4^1(2) of the Imprisonment Act. It cannot be considered unforeseen that someone in prison may behave aggressively and pose a danger to themselves and/or others. However, a prison cannot acquire special equipment not mentioned in § 70^1(1) clause 1 of the Imprisonment Act and apply it for years without a legal basis for doing so and without requirements established for applying it similarly to other means of restraint. This concerns both detailed documentation of the use of a means of restraint as well as checking a person's health status during and after using the measure.

Hooding a person may cause disorientation and loss of control and a feeling of suffocation. The consequences may be especially serious for a person suffering from psychosis, anxiety and phobias.[25] It should be noted that almost half of prisoners in Estonia suffer from a mental health problem.[26] Application of this measure is particularly questionable in respect of a person who has been taken to calm down.

The danger posed by these kinds of means of restraint is also pointed out in Regulation 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

In connection with removal operations, the CPT said (in the 2019 report to Germany, para. 51) that applying means of immediate coercion that cause a feeling of asphyxia must be stopped. In the 2015 report to Ukraine (para. 20), the CPT criticised hooding a detainee. The CPT stressed that such an oppressive measure may easily amount to psychological ill-treatment.

Under § 71(2) of the Imprisonment Act, a prison service officer may use self-defence equipment and physical force while performing service duties or to ensure their own safety. Under § 71^1(1) of the Imprisonment Act, self-defence equipment is defined as means used for ensuring the physical safety of a prison service officer in exercising supervision. Self-defence equipment includes means whose main purpose is to protect prison officers from different types of assault and whose use does not involve immediate physical impact on a prisoner. Prisons use protective glasses, helmets, shields, and the like, as self-defence equipment. These measures help to ensure officers' safety and avoid creating a situation conducive to ill-treatment such as pulling an spit-hood or other similar bag over a prisoner's head to restrain them.

The prison should stop using means of restraint not mentioned in the Imprisonment Act.

5.3. Application of immediate coercion

Report No 6-16/3 of 20 January 2020 on applying immediate coercion describes that while two male guards used physical force towards a male prisoner – by placing the prisoner on the floor and

[25] See e.g. International Forensic Expert Group, Statement on Hooding, Journal on Rehabilitation of Torture Victims and Prevention of Torture, 2011.
[26] K. Iverson, M-L. Sööt, L. Haring, K. Tamm, Õigusrikkujate vaimse tervise uuring [Study on mental health of offenders], 21 February 2020.

fixing his hands and arms – a female guard helped to undress the prisoner and brought him a single-use uniform.

A person may only be searched by an officer of the same sex (Imprisonment Act § 14(1), § 27(1), § 68(1) and (3)). This is important to ensure the privacy and dignity of a person subjected to search.

When undressing a prisoner, the officer sees the person's naked body. If a person offers resistance, undressing without bodily contact is impossible. This is unacceptable if done by an officer of a different sex than the prisoner.

The prison should ensure that even if a prisoner needs to be undressed against their will, this is always done only by an officer of the same sex.

6. Communication outside the prison

6.1. Meetings via video link

Meetings with family and children help a prisoner to cope better with imprisonment. They alleviate stress, raise motivation, and are thus in the interests of a prisoner's health and well-being. Meetings are also important for a prisoner's family and in particular children.

As far back as 2015, the Chancellor recommended to the Ministry of Justice that video calls should be added among the possibilities for communicating with the world outside the prison (via Skype or other similar programs). Video calls would help the prison to better direct a person to a law-abiding life, including through communication with the world outside the prison. Currently, when visits in prisons are severely limited due to the spread of Covid-19, creating this channel of communication would be particularly important for prisoners and their families, and especially children.

Communicating via video calls is not in form essentially different from the current short-term visits which, as a rule, take place through a glass partition. Video calls would enable virtual visits both during the restrictions imposed due to the spread of Covid-19 as well as in the future. For example, this would allow meetings between prisoners and their families and children who cannot physically (e.g. because the family lives far from the prison or even abroad) or due to other circumstances go to the prison for a visit at all or not sufficiently often. People might also not have enough money to visit their next of kin in prison. It is in any case difficult for elderly next of kin or parents with small children to travel a long distance for a visit. Next of kin may also be busy with work, school, or other activities.

Through a video call, a prisoner could enjoy greater contact with the environment outside the prison, such as home; or if a prisoner's child is in a substitute home or their elderly parent in a care home, then with their living environment, etc. This, in turn, facilitates maintenance of good relationships between a prisoner and their next of kin or contributes to the emergence of such relationships. During such a visit, a prisoner could also communicate simultaneously with more family members than provided for under § 31(3) of the Internal Prison Rules and enabled by premises used for short-term visits in prisons. This kind of communication would ease the burden of the prison related to reception, escorting, control, etc, of visitors.

The importance of video calls was also emphasised in the WHO guidance of 15 March 2020, the CPT principles of 20 March 2020, and advice published by the UN Subcommittee on Prevention of Torture (SPT) on 25 March 2020. The CPT stressed that, if necessary, legislation should be amended to create this channel of communication (e.g. the 2019 report to Romania (para. 144), the 2019 report to Norway (para. 102), the 2020 report to Italy (para. 80) and the 2020 report to Greece, (para 74)).

In many European countries (e.g. Moldova, Bulgaria, Spain, Kosovo, Finland, Great Britain, Latvia, Cyprus, Malta, Norway, Albania, Iceland, Italy, Austria, Belarus, Belgium, Croatia, Hungary, and others) communicating with family and children via video calls was customary even before – or this possibility was established during – the Covid-19 crisis.[27] In Estonia, a prisoner's possibilities for communication are still limited to old-fashioned technical solutions (telephone, letter).

The example of other countries shows that safe organisation of video visits is feasible. This is also proved by a previously mentioned video visit organised by Tartu Prison, the extremely limited access to the internet imposed in Estonian prisons for accessing legislation and court decisions, and the possibility to communicate via a video conference with the court. It is incomprehensible why a country which otherwise so eagerly uses means of information technology has been unable to improve prisoners' means of communication with their next of kin.

The Ministry of Justice should take steps to allow prisoners and their families and children to communicate via video visits. This is necessary both during the restrictions imposed due to the spread of Covid-19 as well as afterwards. The Ministry of Justice should analyse whether the current law enables video visits to be organised, and if not, then quickly prepare the necessary legislative amendments.

6.2. Prohibition on visits as a disciplinary measure

The Imprisonment Act § 24(4) and § 25(3) automatically ban short-term and long-term visits, including with family and children, for prisoners committed to a disciplinary cell to serve a disciplinary punishment. The purpose of banning visits is to influence a prisoner under the disciplinary cell regime to comply with order in prison. Protection of prison security, in turn, is aimed at ensuring public order and the rights and freedoms of others.

Participation in activities aimed at re-socialisation, such as involvement in social programmes or studying in a general education or vocational school, is not prohibited for a prisoner in a disciplinary cell. However, visits from family and children − which also play an important role in guiding a prisoner to law-abiding behaviour − are treated not as a right but as a privilege granted to those prisoners who behave well. However, under the Imprisonment Act, visits are not privileges within the meaning of § 22 of the Act but a prisoner's right arising from the law.

In the case of a prisoner whose behaviour that necessitated their committal to a disciplinary cell had a direct link to contacts with their next of kin (e.g. a violent incident during a visit, or the like), a ban on visits while committed to the disciplinary cell is probably justified. However, an automatic ban on visits with family and children for all prisoners in a disciplinary cell excessively

[27] See e.g. https://www.prison-insider.com.

restricts the right of a family life of those prisoners whose violation is not related to their family relationships, as well as the corresponding right of their next of kin.

Often the reason for committing a prisoner to a disciplinary cell is not their behaviour with family and children. Mostly, a disciplinary offence does not endanger next of kin nor does it have a negative influence on them. On the contrary, cancellation of a long-awaited visit may hurt family members, cause anguish, push them away from their close one in prison, and endanger mutual relationships. Cancellation of a visit may also have a traumatising effect on a prisoner's children and endanger their mental and physical health. Prohibiting a visit from next of kin may further deepen a prisoner's defiance towards the prison and destroy their motivation to cooperate with the prison and participate in rehabilitation activities.

Prohibiting a visit is a harsh punishment for a prisoner and may also affect their behaviour. At the same time, such an automatic ban on visits also counteracts the objectives laid down in § 23 of the Imprisonment Act and thus also the objectives in § 6 of the Act to promote a prisoner's contact with the outside world and, in doing so, direct a prisoner to lead a law-abiding life. Banning visits with family and children is something which has a particularly negative effect.

An automatic ban fails to take into account that a prisoner's family and children are also entitled to be in contact with their next of kin and a parent in prison. Thus, this ban also punishes the family, and a prisoner's children are thereby deprived of the possibility to exercise their right of regular contact with their parent in prison (see Article 9(3) of the (Convention on the Rights of the Child) and § 143(1) of the (Family Law Act).

This interpretation is supported by Rule 43(3) of the Mandela Rules, Rule 23 of the Bangkok Rules, Rule 67 of the Havana Rules and Rule 60.4 of the European Prison Rules[28]. The same has been emphasised by both the SPT[29] and the CPT[30]. The CPT in its 2018 report to Portugal found that prisoners undergoing a disciplinary sanction must be permitted visits from their next of kin (para. 75) and in the 2018 report to Slovakia noted that, if necessary, the relevant legislation should be amended accordingly (para. 90). In the CPT's opinion, banning contact with the family may be used as punishment only if a violation is directly related to such contacts (the 2019 report to Estonia and the 2020 report to Moldova).

Although the cited international documents and expert opinions are non-binding by nature, they should be seen as constituting objectives and principles defining the substance of agreements and corresponding requirements whose implementation is mandatory for countries (including Estonia). For instance, the CPT's opinions cited above served as a basis for the finding of a violation of Article 3 of the ECHR in the judgment of the European Court of Human Rights in the case of *Onoufriou v. Cyprus* (para. 42, paras 78−80) and were reflected in the Court's judgment in *A.L. (X.W.) v. Russia* (para. 55).

The Ministry of Justice should prepare an amendment to § 24(4) and § 25(3) of the Imprisonment Act so that these provisions do not automatically prohibit visits for all prisoners committed to a disciplinary cell.

6.3. Charges for visits

[28] See also the commentary on Rule 60.4 of the European Prison Rules, p 46.
[29] See para. 225.
[30] See CPT Standards, para. 61(b), para. 127.

Several convicted and remand prisoners said that, among all the possibilities for communication, long-term visits offer the most intimacy. However, these are not affordable for convicted and remand prisoners and their families and children since the rental of rooms for long-term visits in Tartu Prison may amount to up to 42.03 euros a day under § 41[1] of the Internal Prison Rules. In addition to rent, visitors must also pay for hygiene articles and food. So the daily cost of a long-term visit may amount to 50 euros or even more. Additional to that is the cost of travel by the family and children to the prison, which might not be insignificant at all.

Section 23 of the Imprisonment Act obliges prisons to facilitate contact by prisoners with their family and next of kin, and under § 6 of the Act the prison must direct prisoners to lead a law-abiding life. To achieve this, prisons must make contacts and activities facilitating a person's reintegration to society as easy as possible, where a conducive factor would include communication with family and children. Charging a fee for long-term visits unavoidably imposes conditions not conducive to long-term visits taking place. In particular, this affects families with limited financial resources.

Other reintegration activities, such as social programmes, hobby groups, and the like, are free of charge for prisoners. In some cases, a prisoner receives remuneration (e.g. for participating in language training). Such costs have been justifiably been left for the state to bear, but for some reason obstacles to long-term visits have been created by imposing a fee for using rooms for these visits.

The prison does have rooms for visits. Officers are occupied with long-term visits similarly to arrangements related to other types of contact – e.g. handling of letters, arranging short-term visits, enabling phone calls. Maintenance of rooms for long-term visits is usually taken care of by prisoners engaged in prison maintenance work, and visitors are offered the same food as prisoners, whose daily food costs, according to the director of Tartu Prison, amount to 1.20 euros. The cost of electricity (e.g. from watching television) and washing the bedclothes is certainly not so high as to outweigh the benefit obtained from long-term visits.

The prison should facilitate prisoners' contact with their family and children and, in cooperation with the Ministry of Justice, review the fee charged for long-term visits. The Ministry of Justice should assess the compatibility of § 41[1] of the Internal Prison Rules with § 23 of the Imprisonment Act.

7. Library

To the end of 2019, prisoners in open units could go to the prison library and examine the choice of available items on the spot, obtain recommendations from the librarian, select books from the general list, put forward wishes and proposals for supplementing library stocks, participate in book groups, attend meetings with writers organised by the librarian, engage in meaningful work in sorting and repairing books and bringing them to closed units.[31] By decision of the Ministry of Justice, in 2019 all prison libraries were closed down. The decision was justified, inter alia, with the argument that a library does not play a significant role in terms of a person's reintegration to

[31] See e.g. "Uudiskirjandus läheb vanglas sooja saiana" [Recently published books hugely popular in prisons], *Sirp* 4 May 2018.

society. Books were distributed between different units and the tasks of the librarian were transferred to the prison activity supervisor.

The majority of convicted and remand prisoners interviewed during the tour of the prison thought that the choice of available books in their unit was poor. People said that they had read books available in their unit several times, some books were uninteresting for them or were in a foreign language, and the selection of books had not been renewed for several months. Convicted and remand prisoners found that, after the reorganisation of the library, books were no longer as easily accessible as before. A choice can be made only among books available in a particular unit and it is not possible to borrow books or other publications from other units. Nor can convicted and remand prisoners take books that they are currently reading along with them to another unit in case of transfer, so that they cannot finish reading a book in hand.

Under Rule 64 of the Mandela Rules, every prison must have a library for the use of all prisoners, and prisoners must be encouraged to make full use of it. Under Rule 28.5 of the European Prison Rules, every prison must have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

The Chancellor recommended in 2011 to Tallinn Prison and in 2014 to Viru Prison that use of the library be made more effective for prisoners. Inter alia, the Chancellor recommended that prisons should prepare a general list of all items in library stocks, making that list available to all prisoners and allowing them to choose and borrow suitable publications on the basis of the list.

A prison library and reading plays an extremely important role in directing a person to a law-abiding path. Unlike other activities (e.g. social programmes, hobby groups) in which the number of participants is often limited, and which have also been found to be unnecessary for some prisoners, books can offer an equal opportunity for everyone to fill their time and reflect about themselves and the surrounding world through books.

A person who spends time reading develops their mental abilities through appropriate reading material, broadens their horizons and knowledge, develops their linguistic and expressive ability, practices concentration, and experiences the joy of achievement when finishing a book. Reading arouses and increases empathy, teaches to see different aspects of situations, facilitates building a positive and pro-social identity, helps to maintain a mental connection with the outside world, nourishes hope, and alleviates stress caused by the prison environment.[32] A library is an expression of normal life and a reminder of pre-prison life. It creates a mental bridge with the outside world and is an antidote to boredom and prison routine, which often numb the senses.[33]

Reorganising the work of a prison library is justified if this improves accessibility of books for people. Bringing books into units, closer to readers, would have been a good idea if prisons had also maintained the possibility for prisoners to easily borrow books not presently available on the shelves in their unit, and participate in activities which the library offered in a physical form as hobby activities or other activities aimed at rehabilitation.

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[32] See e.g. J. Billington, „Reading for Life": Prison Reading Groups in Practice and Theory. Critical Survey, Vol. 23, No. 3, pp 67−85, (2011); P. Canning, World Theory and real world readers: From literature to life in a Belfast prison, Language and Literature, 26(2), pp 172−187, (2017); J. Billington, E. Longden, J. Robinson, A literature-based intervention for women prisoners: Preliminary findings, International Journal of Prisoner Health, 12(4), pp 230−243, (2016); J. Garner, Australian Prison Libraries: A Study of Existing Knowledge and Recent Findings, Journal of the Australian Library and Information Association, 66(8), pp 1−13, (2017).

[33] See e.g. L. Krolak, Books beyond bars: the transformative potential of prison libraries, UNESCO Institute for Lifelong Learning, (2019).

However, the library reorganisation led to a situation where the choice of books is more limited; eliminating general integrated library stocks means less variety for prisoners, smaller incentives, loss of an environment promoting interest and development, and is counterproductive to achieving the objective of imprisonment under § 6 of the Imprisonment Act.

The prison, in cooperation with the Ministry of Justice, should consider the possibility of restoring the prison library in its previous form or at least offering a library service on the same level as it was to the end of 2019.

8. Working environment

While touring the prison, it could be seen that officers had visible tattoos, male officers were wearing a beard and longer braided hair. These are means of self-expression which are part of a person's physical inviolability and identity.

However, in several interviews with officers it transpired that the prison insisted that female officers should change their appearance, in particular hair colour, if women had chosen a brighter tone (e.g. a more intense red). A prison officer's uniform is regulated by § 62(8) of the Minister of Justice regulation, according to which an officer's hair may only be coloured in natural tone.

According to clause 1.6 of the "Code of ethics of prison service staff" approved by the Minister of Justice directive No 176, and § 62(12) of the Minister of Justice regulation laying down requirements for a prison officer's uniform, it is appropriate to require an officer to properly wear uniform and behave reputably. However, in today's world a person must be able to choose for themselves what they look like if this does not affect the quality of their knowledge and skills, or security in the prison context (e.g. large jewellery which may injure the officer or a prisoner in a conflict situation). The possibility to wear a natural coloured wig at work cannot be considered a dignified solution (see the explanatory memorandum to the regulation).

Some time ago, visible tattoos were also not considered appropriate with a uniform because that way an officer did not look sufficiently official and representative (§ 62(10^1) of the regulation). This provision was invalidated by the Minister of Justice regulation No 4 of 21 February 2019. The change was reasoned, inter alia, with the argument that other institutions no longer seem to impose regulatory provisions clearly prohibiting tattoos. Nor do similar regulations laying down requirements for a police officer's and military serviceman's uniform mention (unlike the requirements established for prison officers) hair colour, the length of a fringe, intensity of perfume, make-up or manicure (see § 62(8), (9), (11) of the regulation).

The requirement laid down in § 62(8) of the regulation may seriously interfere with a person's fundamental right to free self-realisation, freedom of expression, and human dignity. Such regulation of hair colour is excessive and reduces officers' motivation and dedication. If complaints exist regarding a person's work, this is probably due to insufficient knowledge or skills (e.g. assertiveness), but not hair colour. The necessity and justifiability of regulating hair colour is particularly questionable in a situation where prisons are already faced with a constant shortage of staff and it is difficult to find competent, reliable and motivated people with the best qualifications.

The prison should refrain from activities which may excessively interfere with officers' fundamental rights. The Ministry of Justice should consider amending § 62(8) of regulation

No 14 of 14 April 2014 and also assess the necessity and justifiability of other requirements laid down by § 62 of the regulation.

9. Prisons psychiatric department

The prisons psychiatric department has treatment capacity for 18 patients, of which 6 places are in single-occupancy and 12 in double-occupancy wards. The living conditions in the department are the same as during the inspection visit carried out in 2016. The only positive change is that a more spacious walking area has been created for patients where they can also engage in sport. At the same time, narrow concrete boxes are also still used for walking outdoors.

During the inspection, eight patients were in the department, of whom five were undergoing voluntary treatment and three had been subjected to forensic assessment. All the patients were accommodated one per ward. One medical nurse is present in the department round the clock, Nurses work in 24-hour shifts (from 8 to 8) The prison has two psychiatrists, one of them part-time. The psychiatrists deal with patients in the psychiatric department as well as with all other convicted and remand prisoners who have developed mental problems. Patients in the department can also have an appointment with a clinical psychologist.

According to the head of the department, committing a convicted or remand prisoner to the prison psychiatric department is a medical decision made by the attending doctor. The head of the department affirmed that doctors did not feel any pressure from prison officers to admit to the department prisoners whom they wanted to segregate from others but who might not be in need of psychiatric care. It is good to note that the prison system understands that the aim of the psychiatric department is treatment of a convicted or remand prisoner who has fallen ill and enabling them an environment contributing to their recovery. Certainly, the psychiatric department is also part of the prison and officers are involved in ensuring security.

9.1. Living conditions and therapeutic possibilities

Living conditions and the daily schedule of patients in the psychiatric department have not significantly changed in five years (compared to the time of the Chancellor's previous inspection visit in 2016). Communication between the medical staff and patients is just as scarce. Patients are constantly in locked cells and go for a walk either alone or together with a ward mate. There are no rooms for joint activities.

Walking conditions have improved: besides concrete boxes, the department now has a spacious walking area with training equipment, surrounded by a chain link fence. Interviews with patients in the department revealed that not many went for a walk. Some patients said that the reason was that they did not want to walk in a concrete box. This may mean that patients are not aware that the department now also has a spacious walking area with sports equipment.

The Chancellor compliments the prison for creating a more spacious walking area and asks to be assured that patients in the department are also informed of the better walking conditions.

Still no therapeutic activities are offered to patients in the psychiatric department. This means that treatment is based only on administering medication. The psychiatrist participating in the inspection as a healthcare expert noted that medicines used in the department were modern and

corresponded to patients' needs. However, a patient's rehabilitation process should also include a variety of therapeutic options and more human contact both with medical staff and other patients. The department lacks suitable rooms to organise therapy and there is also a shortage of therapists.

The CPT has on several occasions stressed that modern psychiatric care (including in prison) includes, besides effective medication, several therapeutic interventions supporting rehabilitation which also need to be written into the patient's treatment plan. Treatment and therapy must be organised by specialists from the relevant field (CPT 2019 report to Lithuania; 2019 report to Greece; 2020 report to Spain; 2020 report to Ireland; 2020 report to Portugal). The CPT criticised the department's scarce therapeutic options and complete isolation of patients (essentially solitary confinement) in the 2017 report on the visit to Estonia.

I repeat the previous recommendation to find more varied possibilities for spending free time and therapeutic activities for patients in the department. A room for joint activities should be created, so that patients would not be forced to be constantly alone in a locked ward.

9.2. Video surveillance

Video surveillance in the department is implemented in the same way as in 2016 at the time of the Chancellor's previous inspection visit. All patients are subjected to constant video surveillance both in the ward and in the toilet and washroom. Each patient's file also contained the doctor's decision on the necessity for video surveillance. Reasoning for the decisions was mostly scarce and contained similar language.

The lens of a video camera installed in the toilet in one of the wards had been blurred. According to the staff, the camera image had been blurred by the patient themselves. Since this was not a person prone to self-harm, the staff did not see a problem in blurring of the camera image. At the same time, the decision to apply video surveillance in respect of that patient did not differ from other decisions on video surveillance, so that the underlying reason for this exception remained unclear. A suspicion remained that extensive video surveillance of patients was an established practice and a scant decision drawn up in respect of each patient was merely a formality and not based on actual considerations regarding the need for surveillance based on a particular patient's condition.

The Chancellor understands that video surveillance helps the staff to obtain a better overview of what is happening in the department and enables swift intervention if necessary. Yet, when ensuring security the patients' right to privacy must also be taken into account and, as a rule, video surveillance in wards, toilets and washrooms should be avoided.

The Chancellor has expressed the opinion that video surveillance is only an additional measure which cannot replace the presence and attention of medical staff. The same has been stressed by the CPT (see CPT 2020 report to Moldova). Based on data collected during the inspection, it may be concluded that video surveillance is intended to replace staff in the department. If only one nurse is on duty, it is extremely difficult for them to offer support, activities and supervision to all patients in the department.

The Chancellor has previously said that use of video surveillance in the toilet of the department seriously interferes with a patient's right to privacy. The Chancellor has also repeatedly[34] drawn the attention of hospitals to the fact that use of video surveillance must proceed from the principles of the European Union General Data Protection Regulation and has emphasised that a decision to carry out surveillance of a person during hygiene procedures must be based on a specific case. Committing a person to a psychiatric department cannot automatically involve video surveillance of the toilet; video surveillance must be applied based on the condition of a particular patient committed to the department. The need to maintain video surveillance of the washroom and toilet must also be reassessed after a reasonable interval. Such serious interference with a person's privacy must be as brief as possible in view of the patient's condition.

The healthcare expert participating in the inspection noted that use of video surveillance in a toilet is an extremely strong measure and the department should find a technical possibility to blur a patient's private procedures on the screen. The same has been recommended by the CPT in its reports (see e.g. CPT 2017 report to Germany; the 2017 report to the Netherlands; the 2019 report to Norway; the 2019 report to Greece).

I repeat the previous recommendation to use video surveillance of patients in wards only if other measures for ensuring the safety of a patient are insufficient. If video surveillance of a patient's toilet is unavoidably necessary, a technical possibility should be found to blur the area of hygiene procedures on the screen.

9.3. Applying means of restraint in the psychiatric department

All patients in the department at the time of the inspection visit were formally receiving voluntary treatment. According to the staff, for several years the department has not provided involuntary treatment, nor do they have the need to apply means of restraint laid down by the Mental Health Act.

Patients are not obliged to take medication. If a prisoner committed to the psychiatric department refuses to take medication then they may be taken back to the prison accommodation unit or left in the psychiatric department under a doctor's monitoring for a while.

If the behaviour of a convicted or remand prisoner receiving treatment in the psychiatric department becomes dangerous, prison officers escort them out of the department and, if necessary, means of restraint laid down by the Imprisonment Act are applied in respect of the prisoner. The prison also has a calming-down cell (see section 4 of the summary) located in the vicinity of the psychiatric department, and – by a decision of prison officers – patients in the psychiatric department who have become aggressive or are self-harming are also placed there.

In section 4 of the summary of the inspection visit, reasons are given why the currently used calming-down cell is not suitable for this purpose. These conditions are even more unsuitable for holding a person in respect of whom it has been decided that they need medical care and who are undergoing examination/treatment in the psychiatric department.

[34] See e.g. the Chancellor's inspection visit of 9 November 2019 to the psychiatric clinic of Pärnu Hospital Foundation; the Chancellor's inspection visit of 5 May 2018 to the department of children and young people of the Psychiatric Clinic of Tartu University Hospital Foundation.

Documents in the department showed that there had been cases where the doctors had provided consent in advance to commit a patient to the calming-down cell if necessary. In provision of psychiatric care, decisions made in advance on application of means of restraint are reprehensible because a doctor must make a decision in respect of each patient based on the specific circumstances (see e.g. CPT 2013 report to Portugal; the 2019 report to Montenegro; the 2019 report to Slovakia).

The CPT has also noted that when providing psychiatric care in prison, the primary consideration must be patients' needs for treatment and therapy. Where prison officers need to restrain a patient behaving dangerously to ensure security, they should avoid using excessive force or deterrence (e.g. entering a psychiatric department while wearing a full set of self-defence equipment, special equipment and weapons need not be always necessary and may excite already fragile patients). Prison officers who come into contact with patients with psychiatric problems should receive relevant training to deal with these people. The CPT has also recommended that imposing a disciplinary punishment on convicted and remand prisoners undergoing psychiatric treatment should be avoided because due to their condition they might not control their behaviour. In the CPT's opinion, a room for segregating dangerous patients could be located in the psychiatric department so that a patient does not have to be transferred from one prison unit to another (see e.g. CPT 2017 report to the Netherlands; the 2018 report to Portugal).

If a patient in a psychiatric department behaves dangerously, means of restraint may be applied to them based on a decision of a medical professional (Mental Health Act § 14). During application of means of restraint, a patient must be under constant supervision of a medical professional (Mental Health Act § 14^1).

While providing psychiatric care outside the prison, doctors and other healthcare professionals have inevitably encountered dangerous behaviour by patients. Some hospital departments only provide treatment to patients with dangerous behaviour (e.g. the coercive treatment department of the psychiatric clinic of Viljandi Hospital). As a rule, the hospital team itself copes with a patient's aggression or self-harming activity and only rarely has there been a need to call for outside support (e.g. the police).

Information collected during the inspection visit gives reason to conclude that the medical staff in the psychiatric department have to work in conditions which do not enable them to proceed from legislation regulating psychiatric care while providing assistance to a patient behaving dangerously. Although formally Tartu Prison has been granted an operating licence for provision of in-patient psychiatric care, the conditions in the department do not comply with the requirements established for a psychiatric department. The department has insufficient medical staff and lacks the necessary rooms. If only one nurse is on duty in the department, it is impossible for them to decide on applying involuntary treatment, to restrain a patient if necessary and ensure required supervision over the condition of a patient under restraint. It is also not possible to commit a patient behaving dangerously to an isolation room adjusted for this if the department actually does not have such a room. This means that the security of doctors and nurses depends directly on prison officers. In this situation, the medical staff have no other choice than to agree with serious intervention by prison officers in the work of the department and allow a patient undergoing psychiatric treatment to be restrained in a manner and in conditions not compatible with the requirements and principles for provision of psychiatric care. This, in turn, may reduce the trust of patients towards medical staff, which again complicates treatment of patients.

If the prison has no possibility to treat a prisoner, the prisoner is referred for treatment at a relevant provider of specialised medical care (§ 53(2) Imprisonment Act). Thus, if it is impossible in prison conditions to safely restrain a patient undergoing in-patient psychiatric treatment and ensure required supervision of the patient by medical staff, the prison must transfer the patient to a suitable medical institution.[35] The CPT has noted that a prisoner in need of in-patient treatment should be transferred to a hospital if the prison is unable to provide care corresponding to the person's condition (see e.g. CPT 2019 report to Norway; 2020 report to the United Kingdom).

Conditions should be created in the prisons psychiatric department which enable, where necessary, safe restraint of patients in the psychiatric department and medical staff to supervise their condition. If the prison is not capable of providing psychiatric care in line with statutory requirements, a patient should be transferred to a suitable medical institution. Placing a person in need of psychiatric care in a calming-down cell in prison should be avoided.

I am expecting feedback from Tartu Prison and the Ministry of Justice to the recommendations by 30 September 2021.

Ülle Madise

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[35] See also the Chancellor's inspection visit of 1 February 2020 to psychiatric department of the South Estonian Hospital.