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Opinion in administrative case No 3-18-1895

The Supreme Court Administrative Law Chamber asked the Chancellor of Justice to assist in resolving administrative case No 3-18-1895 and answer the Chamber's questions concerning prisoners' solitary confinement and duty to work.

Based on relevant scientific literature and international requirements, as well as expert assessments, the Chancellor analysed the situation of people in solitary confinement (including under the disciplinary cell regime) in the [summary of an inspection visit](#) carried out at Tartu Prison in 2020. The Chancellor has also previously drawn attention to the possible negative effects of solitary confinement (e.g. in memorandum No [6-1/161019/1604041](#), recommendations No [7-4/200674/2003054](#) and No [7-7/200463/2001980](#)).

Without repeating these opinions in detail, it should be noted that a considerable number of results of scientific studies in different countries have consistently demonstrated that additional segregation of a prisoner in already isolated prison conditions, 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. Moreover, the effect of solitary confinement is linked to increased self-harming and mortality, in particular suicides.¹ This is also indicated by incidents of [death](#) in Estonian prisons from 1 September 2019 to 1 September 2020 – all the suicides during this period were committed in solitary confinement.

Studies which have not confirmed the harmful effect of solitary confinement still also reached the conclusion that, in comparison to rehabilitation and treatment programmes, this is a primitive and short-sighted method to direct a person's behaviour. It was found that solitary confinement may

¹ See e.g. the [summary of the inspection visit](#) of 2020 to Tartu Prison and the sources cited therein, section. 1.2.

nevertheless endanger a person's mental health and deprives a person of the possibility to rehabilitate themselves similarly to other prisoners. Since as a result of solitary confinement a prisoner often becomes even more unstable and more difficult to influence, this may endanger prison security as a whole and increase the risk of recidivism. This, however, has a direct and negative impact on society as a whole.²

To prevent the negative effects of disciplinary confinement, the maximum threshold of disciplinary punishment laid down by the [Imprisonment Act](#) should be brought into line with international detention standards and opinions of international experts. To assess and alleviate the negative effects of the disciplinary confinement regime, a healthcare professional should daily monitor the condition of a person in solitary confinement and the prison must ensure that a prisoner in solitary confinement is offered meaningful contact every day. For this, all the prison staff – in particular guards who have the closest contact with prisoners – must apply the principles of [dynamic security](#) in their everyday work. Contacts (including visits) with family and children of a prisoner in solitary confinement should not be restricted, except if a violation is directly related to such contacts. It is also excessive to prohibit a person in a disciplinary cell from using a bedding during the daytime and restrict access to reading.³

A certain period spent in the ordinary regime must remain between serving disciplinary punishments imposed for different violations. When deciding on the length of this period, a person's health, including mental health, must be taken into account, both during and after solitary confinement. A prisoner should spend most of their sentence under the ordinary regime and be offered a possibility to prepare for a law-abiding life at liberty.

The Chancellor's inspection visits, as well as petitions received, have shown that it is usually the same prisoners who end up in a disciplinary cell again and again. There are prisoners with behavioural and mental health problems on whom disciplinary confinement is imposed for defiant and dangerous behaviour. However, there are also those who must stay in a disciplinary cell because they peacefully refuse to work. Alternately the locked cell regime and the disciplinary confinement regime were imposed on the same prisoners. Thus, generally the disciplinary confinement regime does not bring the expected results and it does not have the desired effect on people's behaviour (including motivating them to work).

Rule 45.1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners ([the Mandela Rules](#)), Rule 60.6(c) of the Council of Europe Committee of Ministers recommendation Rec(2006)2 on the European Prison Rules ([European Prison Rules](#)), and para. 56(b) of the [general report](#) of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT) state that disciplinary confinement may be imposed only in the most serious cases, as a measure of last resort, and for as short a period as possible.

In the 2020 [report](#) to Hungary (paras 107 and 116) the CPT noted that security grounds justifying imposition of solitary confinement include, for example, the risk of escape and protection of/from other inmates. The CPT criticised use of solitary confinement until a prisoner agrees to attend work or until the maximum time-limit for the punishment measure is reached. According to the CPT assessment, prisoners' refusal to work cannot be considered a security problem that may justify detaining a person in conditions similar to solitary confinement. In the CPT's opinion, the reasons for imposing solitary confinement must be strictly limited to security concerns.

² Ibid.

³ Ibid, sections 1.2.1, 1.3., 1.4., 1.4.1., 6.2.

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 European Court of Human Rights (ECtHR) has referred to the [Mandela Rules](#), the [European Prison Rules](#), and relied on CPT standards and opinions when finding a violation of Article 3 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#). For example, in the case of *Khodorkovskiy and Lebedev v. Russia* (para. 470) the Court has cited, inter alia, the CPT's opinions and noted that peaceful refusal to comply with the prison's instruction (e.g. to go for a walk, to a washroom) does not constitute such a serious violation as to require imposing solitary confinement. Estonian prisons and courts (including Supreme Court Administrative Law Chamber judgments No [3-3-2-2-15](#) and No [3-15-3133/29](#)) have so far interpreted persistent refusal to work as systematic disobedience and a serious violation, in response to which imposing disciplinary confinement has been considered justified.

The ECtHR has emphasised that the central aim of states' penal policy must be reintegration of a person in society.⁴ This involves a positive duty for the state, i.e. creating opportunities for a person so that they could reconstruct their approach to themselves and the world, acquire new knowledge and learn new skills, improve their occupational qualification, improve their efficiency, assume social responsibility, improve communication skills, etc.

The state has a positive duty to create such possibilities, i.e. a prisoner is entitled to participate in rehabilitation activities.⁵ However, a positive duty does not stipulate that a prisoner is forced to use these possibilities in a manner that may endanger their mental and physical health and prison security. This has also been the wish of the Riigikogu, since § 6(1) of the [Imprisonment Act](#) says that a person must be directed, and not forced, to law-abiding behaviour.

Rule 4 of the [Mandela Rules](#) also stipulates that the prison must offer education, vocational training, work, and the like, to prisoners. Under the previously applicable [Rules](#) (Rule 71(2)), a prisoner was obliged to work, but Rule 96.1 of the [version](#) of the Rules adopted in 2015 states that a sentenced prisoner must have the opportunity to work and/or participate in rehabilitation. Rule 26.1 of the [European Prison Rules](#) is explained in the [EPR Commentary](#) as constituting an important change and departure from the previous approach treating a prisoner's work as an obligation. Work is seen as a positive opportunity which a prisoner can choose (Rule 26.6 of the [European Prison Rules](#)). Based on information collected by the Chancellor, many European countries have also understood it this way.⁶ The concern is, rather, that prisons do not have enough work to offer to everyone wishing to work.

Estonian prisons also do not have enough full-time work (including maintenance work) for everyone interested. A system of rotation or a system similar to the gig economy is used, which helps to ensure that every prisoner is engaged in work for some time and that the [overall percentage](#) of employment looks sufficiently high. In actuality, a person in prison works a couple of months a year at best.

⁴ See e.g. ECtHR Grand Chamber judgment in *Dickson v. the United Kingdom*, 4 December 2007, para. 75; ECtHR Grand Chamber judgment in *Vinter and Others v. the United Kingdom*, 9 July 2013, para. 115; ECtHR judgment in *Harachiev and Tohumov v. Bulgaria*, 8 July 2014, para. 245; ECtHR Grand Chamber judgment in *Murray v. the Netherlands*, 26 April 2016, paras 101–104.

⁵ See e.g. S. Meijer, [Rehabilitation as a Positive Obligation](#), *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 25, 2017, pp 145–162.

⁶ See the appendix to this letter.

In interviews with hundreds of prisoners during the Chancellor's inspection visits and in petitions received by the Chancellor over many years, people have described that, with a view to achieving a higher rate of employment, prisons employ several prisoners in maintenance work in one and the same segment of work: for instance, the floor is washed by several inmates at a time even though in the case of full-time employment the same work could be done by one prisoner. This means that one person does only a couple of hours of work a week or even a month – in essence this is part-time work. Therefore, employment and remuneration are very low in actuality. Often, a violation of prison internal rules also results in a prisoner wishing to work being removed from work.

Forcing prisoners to work through disciplinary confinement sanctions leaves an impression of excessive demonstration of power in a situation where prisons do not have enough work for everyone and where there are prisoners in prison who are motivated and wish to be engaged even in episodic work (including maintenance work) and also do it on an ongoing basis. Such coercion is not conducive to a prisoner's law-abiding behaviour either in prison or after release. Exertion of pressure on people through the duty to work is also characterised by a longstanding practice in prisons where a prisoner was not allowed to study before they had worked in prison for a certain period.⁷

These kinds of methods may seemingly provide the desired results but a person's inner motivation and readiness to cooperate is instead increased by meaningful and benevolent communication and motivational management. Implementation of the principles of so-called dynamic security in officers' everyday work and its inseparable role in ensuring security is also enshrined in Rule 76(c) of the [Mandela Rules](#), Rule 51.2 of the [European Prison Rules](#), as well as CPT opinions.⁸

The objective of imprisonment nowadays is to create a prison environment which is as close to normal life as possible. It is inconceivable that if a person refuses to work while at liberty then someone would try to influence them or change their mind through coercion, let alone by isolating that person from others. With people at liberty, we try to [activate](#) and encourage them to participate in the labour market through benefits, providing opportunities to learn new skills, counselling, and other methods.

In Estonia, a prisoner's employment primarily affects their outlook on serving their sentence in the open prison unit and being released on parole. However, for many, these objectives remain too distant to motivate them to direct their everyday behaviour in a positive direction.⁹ Instead of sanctions based on punishment and coercion, prisons should 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.¹⁰

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 unit of Viru Prison, where it has provided good results. In other countries, for instance, a [graduated](#) system of privileges is applied, and prisoners are motivated 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

⁷ E.g. Tartu Court of Appeal judgment of 30 April 2020 No [3-18-260](#); Tartu Administrative Court judgment of 31 March 2021 No [3-20-114](#).

⁸ See also e.g. EPTA, [Dynamic Security Training Handbook](#), 2021; CPT 2021 [report](#) to Finland (para. 37); CPT 2021 [report](#) to North Macedonia (para. 47); 2020 [report](#) to Ireland (para. 36).

⁹ It should be noted that almost half of prisoners in Estonia suffer from a mental health problem. K. Iverson, M-L. Sööt, L. Haring, K. Tamm, [Õigusrikkujate vaimse tervise uuring](#) [Study on mental health of offenders], 21 February 2020.

¹⁰ UNODC, [Handbook on the Management of High-Risk Prisoners](#), 2016, pp 83–84.

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, the 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 their sentence by each day worked in prison.¹¹

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Appendix: results of the questionnaire carried out by officials in the Office of the Chancellor of Justice in June 2021 among the national preventive mechanisms in European countries.

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¹¹ 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; see also appendix 1.