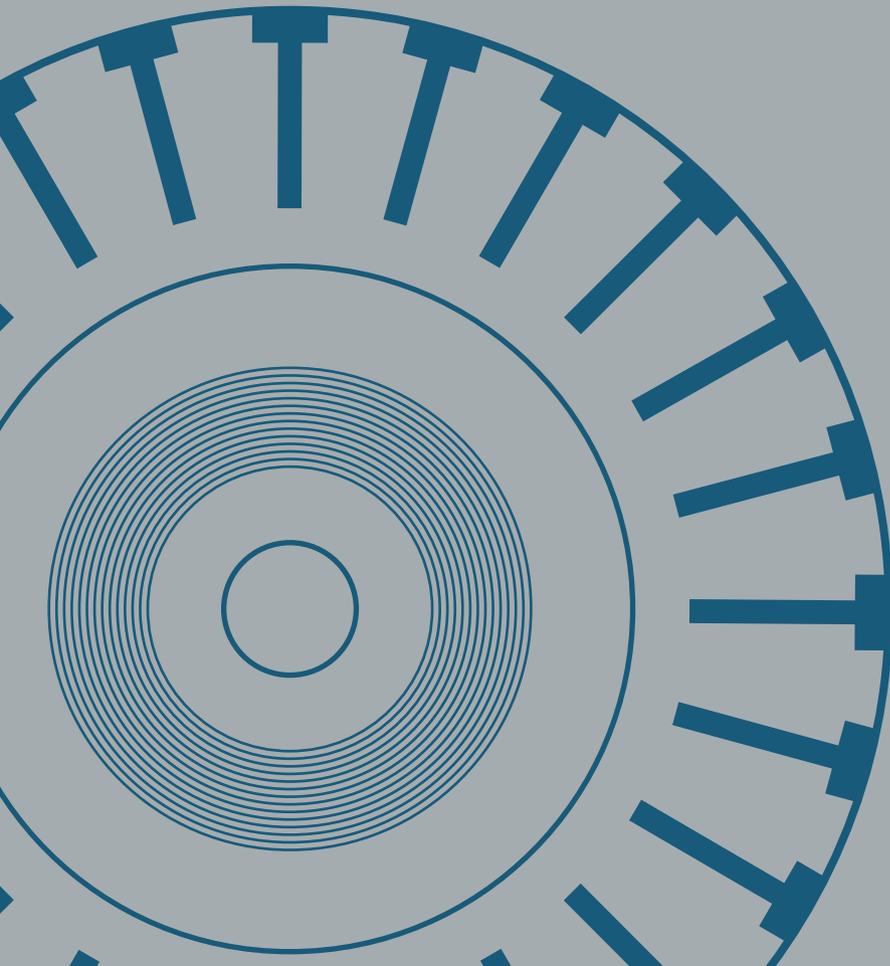


THEMATIC REPORT FROM THE OPCAT UNIT 2020

# Isolation of inmates in remand prisons



As from 1 July 2011 the Parliamentary Ombudsmen have a special unit – the OPCAT unit – which task is to monitor that individuals deprived of their liberty are not exposed to cruel, inhumane or other degrading treatment or punishment. The unit's work is based on the Optional Protocol of the United Nations Convention against Torture of 2002 (OPCAT). This protocol requires states to have a national system, a National Preventive Mechanism, NPM, to monitor this area.

On behalf of the ombudsmen the OPCAT unit regularly inspects places in Sweden where individuals deprived of their liberty are being held, reports on its visits and takes part in international cooperation in this area.

Thematic report from the Opcat unit 2020

# Isolation of inmates in remand prisons

**Pictures:** Page 15 – Cell in restriction department of remand prison  
Page 23 – Segregation room in remand prison  
Page 25 – Double-occupancy cell in remand prison  
Page 33 – Exercise yard in restriction department of remand prison  
Page 40 – Exercise yard in high-security remand prison  
Page 47 – Restraint bed in remand prison  
Page 51 – Cell in restriction department of remand prison  
All photos are taken by employees of the Parliamentary Ombudsmen.

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Cover: Part of a sketch of a panopticon, a prison where all cells can be monitored from one point. A design launched by the British philosopher Jeremy Bentham in the late 18th century.

## Foreword

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FOR ALMOST 30 YEARS, Sweden has repeatedly received international criticism for the long periods which individuals are held on remand and the widespread use of restrictions. Restrictions pose the risk of inmates being isolated. In turn, isolation can lead to individuals suffering from both mental and physical illness.

Through inspections, the Parliamentary Ombudsmen has repeatedly noted and raised awareness of the situation for inmates in the care of the Prison and Probation Service. Upon my request, a series of Opcat inspections were performed in 2017 to investigate how the Prison and Probation Service works with issues such as reducing isolation for inmates held in Swedish remand prisons. Following the inspections, I requested that the Prison and Probation Service report back on the measures taken by the agency to ensure the ability to follow the isolation-breaking work over time.

Based on the information received in the Prison and Probation Service's reporting back, I decided to continue the review in the form of an own-initiative inquiry. In March 2019, I had a dialogue meeting with representatives of the Prison and Probation Service. The overall purpose of the meeting was to obtain details of which measures the Prison and Probation Service is taking to reduce the isolation of inmates in remand prisons. In February 2020, I arrived at my decision in the matter.

In addition to details of the decision in the own-initiative inquiry, this report additionally contains a description of the Prison and Probation Service's work with isolation-breaking measures, as well as observations from the Parliamentary Ombudsmen's inspections of remand prisons in the period 2015–2019. Unfortunately, it is with regret that I must state that the extensive international criticism directed at Sweden does not seem to have had any significant impact on the degree of isolation of inmates. The Prison and Probation Service's analysis and measuring of isolation-breaking measures from 2018 shows that 83 per cent of those held with restrictions were deemed to be

isolated. Given the risks even short-term isolation can entail for inmates, this is very serious.

Even more remarkable is that the Prison and Probation Service's surveys show that 33 per cent of inmates who were held on remand without any restrictions imposed by a prosecutor, nor had any decision on segregation, were held in isolation, in conditions amounting to solitary confinement. These are inmates who have the right to associate with one another, and the Prison and Probation Service has no legal right to deny inmates such an opportunity.

In my decision in February 2020, I demand a number of measures that, in my opinion, are necessary to rectify the unsustainable situation that currently prevails in Swedish remand prisons. Some of these measures have already been proposed in the Report from the Remand Prison and Restrictions Government Inquiry in August 2016. These proposals include that the Prison and Probation Service's remand prisons must be provided with premises that are designed to be able to satisfy the needs for both the inmates' rights of association with one another and isolation-breaking measures, and that legislation needs to be supplemented with provisions which ensure inmates in remand prisons the right to isolation-breaking measures.

Additionally, I highlight the need for the legislation to be supplemented with provisions that both define the concept of association, and state the extent to which an inmate should have the right to associate with other inmates. In my opinion, this is a necessary measure to depart from the arbitrariness that characterises the application of the provisions today. Finally, I am of the opinion that the Prison and Probation Service must introduce a support system that enables the agency to work systematically with, inter alia, isolation-breaking measures.

My hope is that this report can contribute to changing the situation in Swedish remand prisons for the better.



Elisabeth Rynning  
Chief Parliamentary Ombudsman

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## Specific abbreviations

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CAT	UN Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
FARK Fängelse	Prison The Prison and Probation Service's regulations and guidelines on prisons (KVFS 2011:1)
FäL	The Prisons Act (2010:610)
HäF	The Remand Prisons Ordinance (2010:2010)
HäL	häkteslagen (2010:611)
ICCPR	UN International Covenant on Civil and Political Rights
LUL	Act (1964:167) with special provisions for young offenders
NPM	National Preventive Mechanism according to Opcat
Opcat	UN Optional Protocol to the Convention against Torture
RB	Code of Judicial Procedure
SOU	Swedish Government Official Report
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

# 1 Summary

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Since 2017, the Parliamentary Ombudsmen's work under Opcat have had a special focus on the situation for inmates in the Prison and Probation Service's remand prisons. In addition to conducting a number of inspections of remand prisons, the Chief Parliamentary Ombudsman has held a dialogue meeting with representatives of the Prison and Probation Service. At the meeting, the Chief Parliamentary Ombudsman addressed issues concerning inmates' rights of association with other inmates and the Prison and Probation Service's work with the use of isolation-breaking measures. The Chief Parliamentary Ombudsman commented upon these issues in a decision on 5 February 2020.

## **Inmates in remand prisons have a right of association with others**

An inmate has the right to associate with other inmates during the day. In the Chief Parliamentary Ombudsman's opinion, this means that an inmate has the right to associate with several other inmates. This fundamental right can be limited by both prosecutors' restrictions and/or a decision to segregate an inmate. A denied right of association with other inmates may result in the inmate being isolated, or as often referred to in international standards, held in conditions amounting to solitary confinement. Isolation can lead to both mental and physical problems.

Solitary confinement is defined as the confinement of an inmate for more than 22 hours a day without meaningful human contact. An inmate is considered as being the subject of prolonged solitary confinement if he or she has been isolated for a period exceeding 15 days.

## **The majority of inmates in Swedish remand prisons are held in conditions amounting to solitary confinement**

The Prison and Probation Service has great difficulty in achieving its own objective that inmates with restrictions should have the opportunity for two hours of isolation-breaking measures per day. In addition, the agency does not fully achieve this objective in relation to inmates without restrictions who have a right of association with other inmates during the day. The Prison and

Probation Service's objective in this part is modest in comparison with the European Committee for the Prevention of Torture (CPT) standard. The CPT holds the view that all inmates in prisons and remand prisons must be provided with the opportunity to spend at least eight hours outside their cell every day.

The Prison and Probation Service's annual report for 2018 states that the agency did not succeed in reaching the objective of at least two hours of human contact per inmate per day in relation to 83 per cent of the inmates who were held on remand with restrictions imposed. The agency did not reach this target in relation to 76 per cent of young inmates who were held on remand with restrictions imposed. The corresponding figure for adult inmates who were held without restrictions imposed nor had any decisions on segregation imposed upon them – and who have a legal right of association during the day – was 33 per cent. These inmates are isolated and at risk of mental and physical illness.

In her decision in February 2020, the Chief Parliamentary Ombudsman states that the international investigations of Swedish remand prisons have primarily focused on the widespread use of restrictions. The review that the Chief Parliamentary Ombudsman has performed shows that the problem of isolation in remand prisons is not limited to those inmates who the Prison and Probation Service has the right to keep in isolation. Isolation also risks affecting inmates who have a legal right of association.

The Chief Parliamentary Ombudsman states that this situation has not suddenly arisen as Sweden has received international criticism for keeping inmates isolated for several decades. In addition, these shortcomings have been highlighted by the Chief Parliamentary Ombudsman on several occasions. For this reason, it is – in the opinion of the Chief Parliamentary Ombudsman – very serious that the Prison and Probation Service has not progressed further in its work in reaching its objectives on the use of isolation-breaking measures. This entails the risk of serious consequences for those held in the Prison and Probation Service's remand prisons.

### **The Prison and Probation Service lacks appropriate premises**

One of the reasons why the Prison and Probation Service has great difficulty in achieving its objectives regarding the use of isolation-breaking measures is that the agency's remand prisons lack sufficient premises where inmates can associate with one another. A further reason is that the staff tasked with working with, inter alia, isolation-breaking measures are deployed for other purposes and functions.

In her decision in February 2020, the Chief Parliamentary Ombudsman states that the Prison and Probation Service must take a comprehensive approach to both the premises and staffing issues. The agency must ensure that both existing, as well as newly established remand prisons, have sufficient premises for inmates' association and isolation-breaking measures, and that the staffing is sufficient for the remand prisons to be able to provide inmates with the opportunity to associate as well as isolation-breaking measures.

In the opinion of the Chief Parliamentary Ombudsman, the Prison and Probation Service's difficulties are caused by, inter alia, that several of the agency's remand prisons being designed to ensure that inmates are kept apart as opposed to being in association with one another. Another reason is the lack of staff designated to work in the communal spaces. In the opinion of the Chief Parliamentary Ombudsman, the Prison and Probation Service deserves very serious criticism for its continued shortcomings in these respects, shortcomings that lead to restrictions of a fundamental right for inmates.

### **Isolation-breaking measures**

Today, the Prison and Probation Service measures its work with isolation-breaking measures seven times a year. The Prison and Probation Service implements isolation-breaking measures for all inmates in remand prison, including inmates who already have a legal right of association. In her decision in February 2020, the Chief Parliamentary Ombudsman emphasises that, if the Prison and Probation Service satisfies these inmates' rights of association with other inmates then there is no risk that these inmates will be isolated. To discuss isolation-breaking measures in such a context is therefore wrong. Such measures need only be implemented in relation to inmates who are segregated. In the opinion of the Chief Parliamentary Ombudsman, it must be consi-

dered a serious failure that the Prison and Probation Service offers inmates isolation-breaking measures instead of associating with other inmates.

The Prison and Probation Service's report on isolation-breaking measures includes activities that entail inmates meeting other people as well as being alone outside their cells. The latter category of activities includes inmates being alone in an exercise yard or gym. For a measure to be effective and isolation-breaking in the truest sense of the word, it must – in the opinion of the Chief Parliamentary Ombudsman – mean that an inmate has meaningful human contact. This can include, for example, receiving visits or spending time with another inmate. In the opinion of the Chief Parliamentary Ombudsman, measures that do not involve such human contact should be reported as various changes in the inmate's physical environment.

### **The Prison and Probation Service's surveys of isolation-breaking measures**

The Prison and Probation Service's surveys of isolation-breaking measures are associated with a number of shortcomings. This has resulted in a level of uncertainty concerning the figures presented by the agency. According to the Prison and Probation Service, the low number of surveys taken suggests that year-on-year differences can be caused by chance and that comparing different years should therefore be made with great caution. Furthermore, there is a risk that information is not included as remand prisons fail to respond to the survey or do not record certain activities.

In December 2017, the Chief Parliamentary Ombudsman called on the Prison and Probation Service to introduce a system which provides the opportunity to follow and monitor isolation-breaking work over time. In a 2018 report, the Prison and Probation Service assessed that the data provided by the current surveys is sufficient to provide an approximate picture of the extent of the use of isolation-breaking measures at the national level.

At the dialogue meeting in March 2019, the Chief Parliamentary Ombudsman raised the issue of having a planning and follow-up tool with representatives of the Prison and Probation Service. According to the representatives of the Prison and Probation Service, the agency wants to develop and introduce a central support system for the use of isolation-breaking measures. A reasona-

ble estimate is that it will be approximately five years before a fully functioning system is in place.

In the February 2020 decision, the Chief Parliamentary Ombudsman states that the shortcomings in the Prison and Probation Service's surveys of the use of isolation-breaking measures make it difficult for the agency to follow the work that takes place at the local level in breaking the isolation of inmates. Additionally, the surveys cannot be applied on a general level. As a result, the surveys become almost useless.

In the opinion of the Chief Parliamentary Ombudsman, a continuous recording of the extent to which inmates are provided with isolation-breaking measures is necessary for the Prison and Probation Service to be able to follow this work over time, and to enable the agency's staff to identify inmates who are at risk of being isolated. For this reason, it is very important that the Prison and Probation Service gets a support system in place and that such a system is used correctly. In the opinion of the Chief Parliamentary Ombudsman, as the need to be able to follow the work on the use of isolation-breaking measures is so great, the estimated time of five years for producing a support system appears to be unacceptably long.

### **Need for legislative amendments to, inter alia, the Remand Prisons Act**

In the opinion of the Chief Parliamentary Ombudsman, there needs to be a review of, inter alia, the Remand Prisons Act in order to clarify inmates' rights of association with others and counteract isolation. In the opinion of the Chief Parliamentary Ombudsman, a first necessary measure is the introduction of a definition of association with other inmates in both the Remand Prisons Act and the Prisons Act. A reasonable premise is that association is understood to mean that an inmate spends time with several other inmates

In order for the right of association with other inmates to be meaningful, the legislation needs to state the extent to which an inmate has the right to associate with other inmates on a daily basis. As it is a question of a fundamental right, in the opinion of the Chief Parliamentary Ombudsman it is not sufficient that a more detailed meaning is only found in the Prison and Probation Service's own regulations, which is currently the case with regard to inmates in

prison. In addition, it is not acceptable that there are no such provisions at all regarding remand prisons. As such, this has led to inmates being completely denied this right in some cases, or that inmates receive significantly inferior access to association with other inmates in remand prisons in comparison with inmates in regular prisons.

*The Remand Prison and Restrictions Government Inquiry* has submitted a proposal that a provision should be introduced in the Remand Prisons Act which states that adults held with restrictions should always be entitled to at least two hours' association with another person every day. The Chief Parliamentary Ombudsman shares the inquiry's view of the need for such a provision, but emphasises that inmates who are placed in segregation should also be provided with this right.

Bearing in mind the UN Standard Minimum Rules for the Treatment of Prisoners, two hours of isolation-breaking measures constitutes precisely the limit to where an inmate is considered as being held in solitary confinement. In order to reduce such risks for inmates, the Chief Parliamentary Ombudsman states that the minimum requirements for the Swedish Prison and Probation Service should be set higher. In the opinion of the CPT, the objective should be for all inmates to be provided with the opportunity to spend at least eight hours a day outside their cells and, in connection with this, be provided with the opportunity to participate in purposeful activities of a varied nature. This opinion should – in the Chief Parliamentary Ombudsman's view – be taken into account in the preparation of future legislation.

### **The Chief Parliamentary Ombudsman's statement in short**

The Chief Parliamentary Ombudsman's statements can be summarised by the following points:

- In 2018, 83 per cent of inmates with restrictions and 76 per cent of young inmates with restrictions were held in conditions amounting to solitary confinement. The corresponding figure for inmates who did not have restrictions was 33 per cent.
- Isolation risks affecting not only inmates who have restrictions imposed upon them, but also inmates who have a legal right of association with other inmates.

- In the opinion of the Chief Parliamentary Ombudsman, the Prison and Probation Service must take a comprehensive approach to both the issues of premises and staffing. It is necessary for the agency to be able to offer inmates the ability to associate with one another and measures to break isolation.
- The Prison and Probation Service should ensure that the reporting of isolation-breaking measures only includes time spent where inmates have meaningful human contact.
- In the opinion of the Chief Parliamentary Ombudsman, it is very important that the Prison and Probation Service develops a support system on site that makes it possible to follow the work with isolation-breaking measures over time.
- There needs to be a review of, inter alia, the Remand Prisons Act in order to strengthen inmates' rights of association with one another and counteract isolation.



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## 2 Remand

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A prosecutor may, under certain circumstances, request a court to detain a person on remand who is suspected of a crime or has received a custodial sentence. This section begins with a brief description of the regulations governing remand prisons. This is followed by a description of the Prison and Probation Service's remand prison operations. Finally, the section contains a description of certain fundamental rights that an inmate has, such as the right to associate with other inmates during the day and in which situations this right can be limited.

### 2.1 Preconditions to being held on remand

A person can be held on remand if he or she is suspected with probable cause of a crime for which a custodial sentence exceeding one year is prescribed. For a remand request to be permitted by a court, there must – with regard to the nature of the crime, the suspect's particular circumstances or any other relevant circumstances – be a risk that the suspect

1. avoids or in any other way evades legal proceedings or punishment,
2. destroys or tampers with evidence or in any other way complicates the investigation of the case, or
3. continues their criminal activities.

Furthermore, there is a provision regarding being held on remand for more serious crimes. The provision states that a person must be held on remand if he or she is suspected on probable cause of a crime for which no lesser punish-

ment than a custodial sentence of two years is prescribed. However, the suspect should not be held on remand if it is obvious that the requirements for being held on remand are lacking (the two-year rule). In considering a remand request, a court must additionally determine that the reasons for holding a person on remand outweigh the intrusion the measure entails for the suspect or for any other opposing interest. If this is not the case, a request for remand must not be permitted by a court. Nor may remand be imposed if it can be presumed the suspect will only be sentenced to a fine (chap. 24 § 1 RB).

It is also possible to hold a suspect on remand – regardless of the crime – if he or she does not wish to be identified or if the suspect is not resident in Sweden and there is a risk of flight. Furthermore, it is possible in certain cases to hold a person on remand who is suspected on reasonable grounds of a crime (chap. 24, §§ 2 and 3 RB).

When considering a request for remand, a court must also take into account, *inter alia*, the suspect's age and state of health. If, with regard to old age for example, there is a risk that remand prison would result in serious harm to the suspect, remand is then only appropriate if it is clear that satisfactory surveillance or monitoring of the suspect outside of a remand prison cannot be arranged. The same applies to a woman who has given birth so soon before a request for remand that remand may then risk causing serious harm to the child (chap. 24, § 4 RB). A suspect under the age of 18 can only be held on remand on special grounds (§ 23 LUL).

If a court decides to permit a request for remand, the court must – if a prosecution has not yet been brought – decide a timeframe within which prosecution is to be brought before a court. The timeframe may not be set beyond that which is absolutely necessary. If the period of time to bring a prosecution to court is insufficient, a court may issue an extension upon a prosecutor’s request. If a prosecution is not then brought within two weeks, a court must hold a new remand hearing at intervals of no more than two weeks (chap. 24, § 18 RB). If a suspect who is held on remand is then sentenced for the crime, the court must consider whether he or she is to remain in remand until the judgement comes into effect (chap. 24 § 21, first paragraph RB).

## 2.2 The Prison and Probation Service’s remand prison operation

As a main rule, a person subject to remand must be transferred to a remand prison without delay (chap. 24, § 22, first paragraph RB). The Prison and Probation Service is responsible for operating remand prisons (§ 1 of the Regulation [2007:1172] instructions for the Prison and Probation Service). As of December 2019, Sweden had 32 remand prisons with a total of 2,276 places available. The three largest remand prisons – in terms of number of places – are Göteborg Remand Prison (344 places), Kronoberg Remand Prison (280 places) and Sollentuna Remand Prison (244 places). The three smallest remand prisons are Östersund Remand Prison (9 places), Visby Remand Prison (19 places) and Karlskrona Remand Prison (23 places).<sup>1</sup>

<sup>1</sup> Information retrieved from the Prison and Probation Service’s website on 18 December 2019.

The Prison and Probation Service’s remand prisons can be divided into three broad categories, namely

1. remand prisons which only admit inmates with restrictions (for example the remand prisons in Falun and Gävle),
2. remand prisons which admit inmates with or without restrictions (for example the remand prisons in Luleå and Växjö), and
3. remand prisons which only admit inmates without restrictions (for example the remand prisons in Salberga and Ystad).

Five of the remand prisons are high-security remand prisons (*Gothenburg, Huddinge, Kronoberg, Malmö and Sollentuna*). Some of the high-security remand prisons admit both inmates with and without restrictions. The remand prisons which only admit inmates without restrictions (referred to as association remand prisons) are located in buildings previously used as prisons or are co-located with an existing prison. The association remand prisons in Sweden are *Bomhus, Helsingborg (Berga Remand Prison Branch), Salberga, Storboda and Ystad* remand prisons with a total of 214 places. The design of these remand prisons enables inmates to freely associate with one another during the daytime. The remand prisons which admit inmates with and without restrictions have association departments where inmates can freely associate with one another during the daytime.

The Prison and Probation Service also has association places that are not located within an association department. These places can be used for placement of both inmates with or without restrictions. Inmates who are placed in an association place must be provided with the

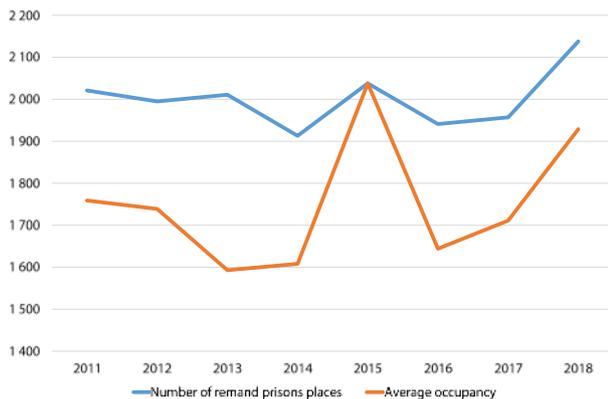
possibility of associating with other inmates for a number of hours per day in a communal space. The Prison and Probation Service has stated to the Parliamentary Ombudsmen that 42 per cent of all remand prison places consist of association places.<sup>2</sup> At a meeting between the Parliamentary Ombudsmen and representatives of the Prison and Probation Service in March 2019, the agency stated that this figure should only be seen as a guide to how many association places should exist. The need for such places varies over time. It is, therefore, not possible to state an exact figure regarding how many association places the agency has at its disposal. A remand prison with relatively few places has flexible places, which can be adapted based on which categories of inmates the remand prison admits. The same cell can be used for placing an inmate with restrictions one day and for placing

an inmate allowed to associate with others the next day.<sup>3</sup> Graph 1 shows the number of regular remand prison places in Swedish remand prisons on average for the period 2011–2018 and the average occupancy during the same period. Between 2011–2017, the number of places was relatively constant. There was an increase of 181 places from 2017 to 2018 (9 per cent). In 2019, the Prison and Probation Service added an additional 138 places (an increase of around 6 per cent).

The Prison and Probation Service has submitted a number of proposals for measures to enable the agency to handle the increased flow of clients. Among the measures proposed is a continued increase in the number of places within remand prisons. If such proposals are implemented in accordance with the Prison and Probation Service's forecast, the number of remand prison places will increase by approximately 130 by 2022.

Graph 2 shows the capacity increase that will occur through time-based projects. The increase will occur via new remand prisons in Borås (capacity increase of 9 places by 2023), Kristianstad (capacity increase of 30–70 places by 2022) and Östersund (capacity increase of 5 places by 2020) and an expansion of the Salberga remand prison (capacity increase of approximately 44 places by 2022). In addition, there are plans for new remand prisons in Halmstad (capacity increase of approximately 55 places) and Västerås (capacity increase of 30–50 places) and an expansion of the remand prisons Bomhus (capacity increase of 10–15 places) and Kalmar (capacity increase of 25–35 places). These four projects are not time-based and are not recorded in Graph 2. Once the projects are completed, the Prison and Probation Service will have a maximum of 2,559 remand prison places.<sup>4</sup>

**Graph 1. Number of remand prison places and average occupancy 2011–2018**

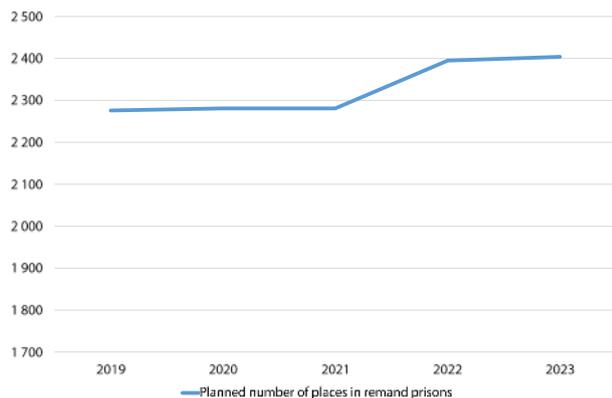


The above information is from the Prison and Probation Service's annual reports.

<sup>2</sup> See the Prison and Probation Service's report back p. 2, the Parliamentary Ombudsmen's report dnr 5969-2015.

<sup>3</sup> See the Parliamentary Ombudsmen's report p. 4, dnr O 7-2018.

<sup>4</sup> See the Prison and Probation Service's report Increased client flow – The Pri-

**Graph 2. Number of places in remand prisons 2019–**

The information is taken from the Prison and Probation Service's report Increased Client Flow - The Prison and Probation Service's Overall Assessment and Proposed Measures (2019-02-27).

### 2.3 An inmate has the right to associate with other inmates during the day

As a main rule, an inmate in a remand prison has the right to be placed in his or her own cell. However, two or more inmates may be placed in the same cell if it is necessary due to lack of space or for other special reasons (chap. 2, § 1 HäL). A further premise is that inmates of different sexes should not be placed together. It is possible to deviate from this rule if the inmates agree and it is deemed appropriate (chap. 2, § 2 HäL). An inmate who is under 18 years of age may not be placed with inmates over 18 years of age, unless it is considered to be in his or her best interests (chap. 2, § 3, first paragraph HäL).

As a main rule, an inmate in a remand prison must be

provided with the opportunity to associate with other inmates during the day (chap. 2, § 5, first paragraph HäL). Likewise, inmates in regular prisons have, as a main rule, the right to associate with others during the daytime (chap. 6, §§ 1 and 2 FäL).

Neither the Prisons Act nor the Remand Prisons Act clearly define the meaning of the term “association.” Nevertheless the Parliamentary Ombudsmen has stated the term “association” is based on the premise of inmates spending time together with several other inmates. This means, for example, co-sitting (two inmates sitting together) does not mean they are associating with others. If an inmate does not associate with other inmates during the day, then he or she is considered segregated. In the opinion of the Parliamentary Ombudsmen, this means that a department must consist of at least three cells for the basic requirements in the legislation that inmates must have the right to associate with other inmates are met.<sup>5</sup>

With regard to inmates in prisons, there are provisions regulating the times of day inmates are to be locked in their cells and times when they can associate. In a security class 1 or 2 prison, inmates can be locked in their cells from 19:00 to 8:00. In addition to the times for locking and unlocking a prison department, an inmate may not be locked up for more than twelve hours per day. The regulations for a security class 3 prison allow for inmates to be locked up within the department between 21:00 and 8:00. An inmate may not be locked up for more than ten hours per day (chap. 6, §§ 1 and 2 of FARK Prison). There are no corresponding regulations for remand prisons. An inmate's right to associate with other inmates in a re-

son and Probation Service's overall assessment and proposals for measures (2019), p. 27.

<sup>5</sup> See the Parliamentary Ombudsmen's decision on 3 September 2018 dnr 583-2017.

mand prison can be limited in four situations, namely:

1. via prosecutor's restrictions (chap. 6 § 2, 1 and 2 HÄL),
2. an inmate is placed in a different custodial facility than a remand prison and the physical design of the facility does not allow for association between inmates (chap. 2 § 5, 1 HÄL),
3. for security reasons it is necessary to keep an inmate segregated from other inmates (chap. 2 § 5, 2 HÄL), or
4. it is necessary to carry out a body search (chap. 2 § 5, 3 HÄL).

## 2.4 The right of association with other inmates can be limited by restrictions imposed by a prosecutor

In connection with a decision to hold a person on remand at the request of a prosecutor, a court must additionally consider whether an inmate's contacts with the outside world are to be restricted (referred to as restrictions). Restrictions may only be issued if there is a risk that a suspect will tamper or destroy evidence or otherwise complicate or adversely affect the investigation of a case (chap. 24, § 5 a, first paragraph RB).

A decision to impose restrictions may restrict an inmate's right to (chap. 6, § 2 HÄL):

1. be placed with other inmates,
2. associate with other inmates,
3. follow what is happening in the outside world,
4. be in the possession of magazines and newspapers,
5. receive visits,
6. be in contact with others through means of electronic communication, or
7. send and receive mail.

The above restrictions can only be imposed on an inmate if he or she is subject to restrictions in accordance with chap. 24, § 5 a RB (chap. 6, § 1, second paragraph HÄL).

In each individual case, a prosecutor must make a careful assessment of whether there is a risk that an inmate without restrictions could damage an investigation (risk of collusion). When deciding upon restrictions, a prosecutor must take a position regarding the need for each individual restriction and make a separate proportionality assessment. This means for each and every case, a prosecutor must weigh the risk of collusion and the seriousness of the crime against the degree of intrusion that the restrictions impose upon a suspect. In cases where a prosecutor has decided to use restrictions, there must be a continuous reassessment of the reasons

**A prosecutor needs a court's permission to impose restrictions upon an inmate**

for the various restrictions in place. Depending on how the case develops, the need for restrictions may change and there may be reasons to both remove and impose such restrictions.<sup>6</sup>

Statistics from the Prison and Probation Service show that, of the more than 9,700 inmates who left a remand prison in 2018, almost two thirds had some form of restriction imposed upon admission to the remand prison. The proportion was only slightly lower among those inmates who were still held on remand after a month. After six months, the share had more than halved to 27 per cent. However, the number of inmates was significantly lower after six months (634 inmates) compared with after the first month (5,306 inmates).<sup>7</sup>

<sup>6</sup> See the Prosecutor General's guidelines (RÄR 2015:1) regarding restrictions and long remand prison times.

<sup>7</sup> See Prison and Probation Service and Statistics (KOS) pp. 24 and 25.

## Remand Prisons in Sweden

### High-security remand prisons

- Göteborg (344 places)
- Huddinge (137 places)
- Kronoberg (Stockholm) (280 places)
- Malmö (117 places)
- Sollentuna (244 places)

### Remand prisons with restrictions

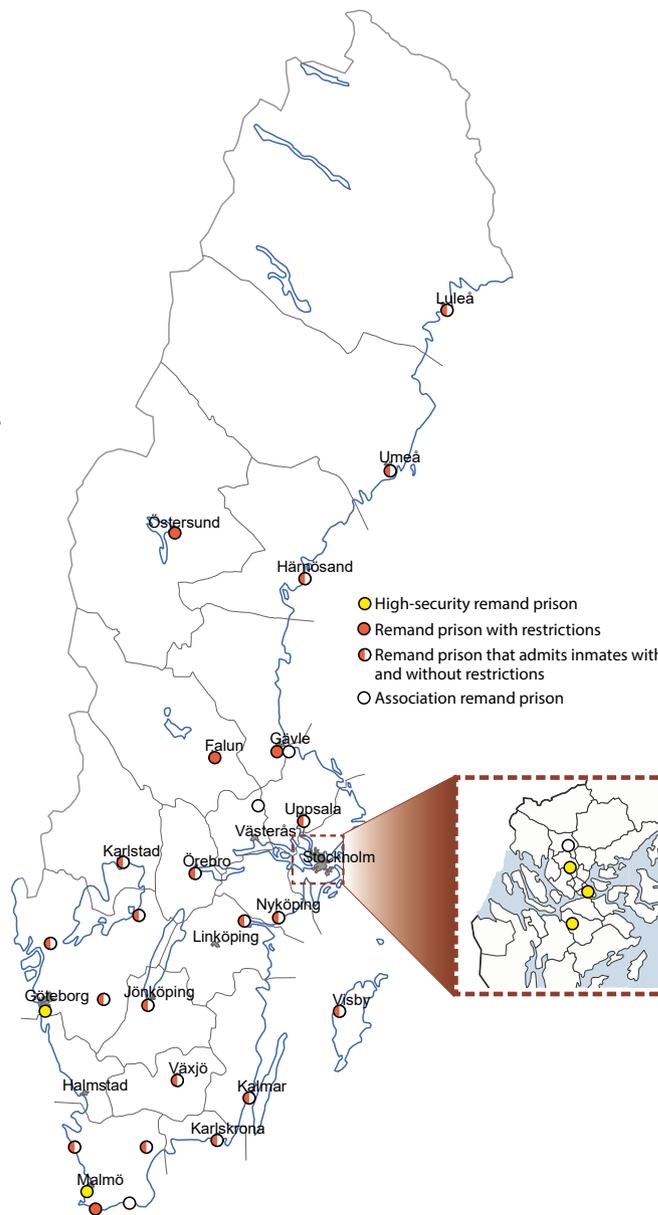
- Falun (34 places)
- Gävle (38 places)
- Trelleborg (33 places)
- Östersund (9 places)

### Remand prisons that admit inmates with and without restrictions

- Borås (44 places)
- Helsingborg, including the Berga Remand Prison Branch (164 places)
- Jönköping (53 places)
- Kalmar (35 places)
- Karlskrona (23 places)
- Karlstad (89 places)
- Kristianstad (29 places)
- Luleå (30 places)
- Mariestad (31 places)
- Norrköping (50 places)
- Nyköping (34 places)
- Saltvik (Härnösand) (61 places)
- Uddevalla (44 places)
- Umeå (30 places)
- Uppsala (66 places)
- Visby (19 places)
- Växjö (26 places)
- Örebro (57 places)

### Association remand prison

- Bomhus (Gävle) (40 places)
- Salberga (Sala) (72 places)
- Storboda (Stockholm) (24 places)
- Ystad (34 places)



This information is from the Prison and Probation Service's website on 18 December 2019.

Prior to the meeting the Parliamentary Ombudsmen had with representatives of the Prison and Probation Service in March 2019, the Parliamentary Ombudsmen requested that the Prison and Probation Service provide information on how many of the inmates in the country's remand prisons on 7 February 2019 were subject to restrictions. According to the Prison and Probation Service, there were – based on preliminary statistics – 2,215 inmates in remand prisons on that date. Of these, 1,914 were held on remand and a total of 1,068 inmates had some form of restriction imposed. This means that 56 per cent of inmates held on remand, or 48 per cent of all inmates, had restrictions imposed upon them.<sup>8</sup>

## 2.5 The Prison and Probation Service can deny an inmate the right of association with other inmates

As stated above, an inmate – except when a prosecutor has imposed restrictions – can also be denied association rights if he or she is to undergo a body search or is placed in a different custodial room or facility than in a remand prison and, as such, there are no practical conditions allowing for association (chap. 2, § 5 1 and 3 HåL). A court is able, in certain cases and upon a prosecutor's request, to decide that an inmate should be placed in a facility which is not a remand prison (chap. 24, § 22, second paragraph RB).

Finally, the Prison and Probation Service can decide to limit an inmate's right of association. Such a decision on segregation may be taken if deemed necessary due to safety and security reasons (chap. 2, § 5, 2 HåL). It can be necessary, for example, to keep an inmate segregated

from other inmates due to a risk of escape or if an inmate is violent or under the influence of drugs.<sup>9</sup> Similar provisions are found in the Prisons Act. Unlike the Remand Prisons Act, the Prisons Act stipulates that decisions on segregating an inmate must be reviewed with a degree of regularity.<sup>10</sup>

Prior to the meeting that the Parliamentary Ombudsmen had with representatives of the Prison and Pro-

bation Service in March 2019, the Parliamentary Ombudsmen requested that the Prison and Probation Service provide information on how many inmates in the country's remand prisons were placed in segregation on 7 February 2019. The Prison and Probation Service stated that it is not possible to obtain such information from the agency's digital system.<sup>11</sup>

**Segregation in accordance with the Remand Prisons Act needs not be reviewed within a specific time**

<sup>9</sup> See prop. 2009/10:135 p. 186.

<sup>10</sup> See chap. 6, § 7 of the Prisons Act, which states that a decision to keep an inmate in segregation due to the risk of escape must be reviewed as often as there is reason to do so, but at least every ten days. Furthermore, it follows from the same law that an inmate who is violent or drunk can only be kept in segregation temporarily.

<sup>11</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 pp. 2 and 3.

<sup>8</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 pp. 2 and 3.



### 3 What is isolation?

There is an obvious risk that inmates who have had restrictions imposed, or who are placed in segregation, will be isolated in a way that could lead to negative consequences. Swedish legislation lacks a definition of the term isolation. However, such a definition is contained in the UN Standard Minimum Rules for the Treatment of Prisoners (referred to as *the Nelson Mandela Rules*). The rules were adopted by the UN General Assembly in December 2015. According to the Nelson Mandela Rules, an inmate is in solitary confinement if he or she is confined for more than 22 hours per day without meaningful human contact. An inmate is considered to be in pro-longed solitary confinement if he or she has stayed in solitary confinement for a period exceeding 15 days.<sup>1</sup>

*The Istanbul Statement* – adopted at the International Psychological Trauma Symposium in Istanbul in 2007 – states, in addition to the above, that solitary confinement typically involves both a quantitative and qualitative reduction of stimuli. This means that the available stimuli and occasional social contacts are seldom freely chosen, and are generally monotonous and often not empathetic.<sup>2</sup>

**Solitary confinement means that a person is alone for more than 22 hours per day without meaningful human contact**

*The Remand Prison and Restriction Government Inquiry* has defined “isolation” as follows:

“A person deprived of his or her liberty is isolated if he or she is locked up in his or her cell and deprived of all meaningful human contact for 22–24 hours a day. In order for an inmate not to be considered isolated, it is required that he or she is offered the opportunity to associate with another person for a total period of at least two hours per day. This association must take place outside their own cell, with the exception of co-sitting, which is isolation-breaking even if it takes place in an inmate’s own cell.”<sup>3</sup>

The Prison and Probation Service is working to reduce the isolation of inmates. The agency’s objective is to ensure inmates must receive at least two hours of isolation-breaking measures per day.<sup>4</sup>

<sup>1</sup> See *The United Nations Standard Minimum Rules for the Treatment of Prisoners* rule 44.

<sup>2</sup> See *The Istanbul statement on the use and effects of solitary confinement* (adopted on 9 December 2007) p. 1.

<sup>3</sup> See SOU 2016:52 p. 69.

<sup>4</sup> See the Prison and Probation Service’s annual report 2018 p. 31.



## 4 What are the risks with isolation?

The above-mentioned Istanbul Statement says that it is well-documented that solitary confinement of an inmate risks causing serious psychological damage, and even physical injury. This includes, for example, insomnia, confusion, hallucinations and psychosis. Negative health effects can already occur after a couple of days of isolation and the risks increase with each day of further solitary confinement. The most damaging element of solitary confinement is the reduction of social contact, in terms of social and psychological stimuli, to such a low level that many will experience as insufficient to sustain a sense of health and well-being.<sup>1</sup>

**Even a short period in isolation can cause a person both psychological damage and physical injury**

There are studies showing that the psychological stress that solitary confinement can cause can, in turn, cause physical discomfort. The lack of fresh air and sunlight as well as long periods of inactivity can also cause physiological problems. These include, for example, gastrointestinal problems, migraines and severe fatigue. Other physiological ailments observed during isolation are deterioration of eyesight, back and joint pain and lethargy. The most common problem, however, is that solitary confinement gives rise to psychological effects. These vary from person to person and are dependent on, for

example, how long the isolation lasts. In addition to the above, inmates who are held in solitary confinement can also suffer from panic attacks and depression. Solitary confinement can also affect cognitive ability and give rise to difficulties concentrating, as well as memory problems and disorientation.<sup>2</sup>

A review of studies investigating the effects of isolation on inmates indicates that inmates who are isolated have significantly more mental health problems than inmates who are not. However, the picture is somewhat ambiguous as there are studies which show some inmates' moods improved when placed in isolation. Factors such as whether isolation is voluntary or not and an individual's particular circumstances as well as the ability to adapt to difficult situations can be important in terms of the effect isolation has on an inmate. As such, it is important whether an inmate feels that he or she has some degree of control over the situation. With regard to acts of self-harm, the author of the study states that:

“People punished with solitary confinement were around seven times more likely to self-harm (and around six times more likely to potentially fatal self-harm).”<sup>3</sup>

In connection with a study of isolation of inmates in prisons in England and Wales, interviews were conduc-

<sup>1</sup> See *The Istanbul statement on the use and effects of solitary confinement* (adopted on 9 December 2007), p. 2.

<sup>2</sup> See Sharon Shalev, *A Sourcebook on Solitary Confinement*, 2008, pp. 15–17.

<sup>3</sup> See Flora Fitzalan Howard, *The Effect of Segregation*, *Prison Service Journal*, No. 236, pp. 5 and 6.

ted with 63 inmates who were isolated. Over half of the inmates stated that they had problems with anger, sleep and concentration difficulties or anxiety.<sup>4</sup>

Amongst the information submitted to the Parliamentary Ombudsmen, a noteworthy example is that the Parliamentary Ombudsmen's employees, during an inspection of Göteborg Remand Prison in February 2019, spoke with two young persons under the age of 18 who were held on remand. They had been held on remand with restrictions for several months. Previously, they had been placed in other remand prisons and stated that they spent large parts of the day in their cells without meaningful human contact. They felt that it had affected them negatively and made them feel sad. Furthermore, they described that they had become withdrawn and that their ability to talk and participate in social interaction had deteriorated. They also stated that their vision had been negatively affected, for example with difficulty in seeing or fixing upon an object from a distance.<sup>5</sup>

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4 Sharon Shalev and Kimmet Edgar, *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*, 2015, pp. 93 and 94.

5 See the Parliamentary Ombudsmen's report dnr O 7-2019 p. 5.

## 5 Sweden has received international criticism of the conditions for inmates held on remand

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For many years, Sweden has received international criticism for both long remand prison periods and the extent of the use of restrictions. This criticism comes from, inter alia, the UN Committee Against Torture (CAT) and Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT).

### 5.1 Sweden is being monitored by a variety of international bodies

Since 1987, the UN Convention Against Torture has been in force in Sweden. States parties to the convention are reviewed by the UN Committee Against Torture, CAT, and states must regularly report on how they fulfil the requirements of the convention. The Convention Against Torture does not give the CAT a mandate to perform inspections of the states parties. A special protocol, Opcat, was adopted in 2002 to enable such visits. An additional protocol entered into force in 2006 and has the stated objective of preventing the occurrence of torture and other cruel, inhuman or degrading treatment. Through Opcat, the SPT was also established.

The SPT has 25 independent members who are all experts in areas that are relevant to preventing torture. The members are appointed by the states parties to the Protocol. The SPT conducts visits to acceding states based on a yearly schedule. Sweden was visited by the SPT in 2008.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

entered into force in 1989. In connection with this, the CPT was also established with the main task of regularly visiting institutions holding individuals deprived of their liberty in Europe. Sweden has been visited by the CPT six times (1991, 1994, 1998, 2003, 2009 and 2015). The next periodic visit is scheduled to take place in 2020.

### 5.2 Criticism from the UN

In 2008, the SPT visited Sweden with inspections of, inter alia, *Kronoberg* and *Uppsala Remand Prisons* (Blankahuset and Salagatan). The SPT noted in its report that, of the inmates in Kronoberg Remand Prison, 47 per cent were subject to restrictions, while 50 per cent of the inmates in Uppsala (Salagatan) Remand Prison and 30 per cent of the inmates in Uppsala (Blankagatan) Remand Prison had some form of restriction imposed. After the visit, the SPT emphasised that restrictions must not be used routinely. Furthermore, the SPT recommended that Sweden review its legislation regarding the use of restrictions.

This includes, inter alia, **Sweden was recommended to take measures to prevent the negative effects of isolation** that the grounds for imposing each individual restriction should be clearly described in law and for a court should be obliged to examine the necessity for each specific restriction. The SPT noted that the lack of a systematic collection of data

on the use of restrictions makes it impossible to conduct proper oversight of the use of restrictions.<sup>1</sup>

The SPT additionally recommended that Sweden takes measures to prevent the negative effects which can occur from prolonged isolation. In the opinion of Subcommittee, all staff working with inmates in remand prisons must be trained to be able to recognise the stress symptoms due to isolation. Furthermore, inmates must be provided with greater opportunities for work, exercise and other activities.

Inmates' right to one hour of daily outdoor exercise (chap. 2, § 7 Häl) must be regarded as a minimum amount of time that all inmates are guaranteed. Finally, the SPT recommended Sweden takes measures to increase the opportunities for inmates to receive visits from voluntary groups.<sup>2</sup>

In the most recent review of Sweden's compliance with its commitments under the Convention against Torture in 2014, the CAT expressed concern regarding the high percentage of inmates subject to restrictions in Swedish remand prisons. The Committee also expressed concern regarding the widespread and – in some cases – prolonged use of solitary confinement of inmates. For this reason, Sweden was urged to use restrictions only as an exceptional measure and only when strictly necessary for investigative reasons. Furthermore, Sweden was urged to abolish the solitary confinement of minors.<sup>3</sup>

Other UN committees have also made statements regarding the conditions for inmates and the risks with isolation. In 2015, the UN Committee on the Rights of the Child called on Sweden to ensure that all children are removed from solitary confinement and to review its

legislation in order to end solitary confinement of minors.<sup>4</sup> The UN Human Rights Committee – which monitors the UN Convention on Civil and Political Rights (ICCPR) – called on Sweden in 2016 to ensure that all restrictions on inmates held on remand are timebound and are necessary and proportionate. The Committee also called on Sweden to take appropriate measures to mitigate isolation, in particular for young inmates.<sup>5</sup>

### 5.3 Criticism from the Council of Europe

The CPT visited Sweden in 2009 with inspections of the remand prisons Gävle, Göteborg and Kronoberg. During the visit, the Committee noted that there were shortcomings in the work performed with the use of isolation-breaking measures. Following the visit, the Committee stated, *inter alia*, the following:

”The CPT calls upon the Swedish authorities to redouble their efforts in developing activities for remand prisoners with a view to ensuring that all prisoners, including those under restrictions, are able to spend reasonable part of the day outside their cells, engaged in purposeful activities of a varied nature. The target of association time should be reviewed accordingly. The Committee would like to stress that a lack of physical activity and intellectual stimulation can be especially harmful for young prisoners. The CPT recommends that the Swedish authorities develop programmes of activities designed specifically to meet the needs of young prisoners.”<sup>6</sup>

<sup>1</sup> See CAT/OP / SWE1 para 112 and 121–123.

<sup>2</sup> See CAT/OP / SWE1 para 127.

<sup>3</sup> See CAT/C/SWE/CO/6–7 para 8.

<sup>4</sup> See CRC/C / SWE / CO / 5 para 26.

<sup>5</sup> See CCPR/C / SWE / CO / 7 para 29.

<sup>6</sup> See CPT/Inf (2009) 34 para 54

In May 2015, the CPT visited, inter alia, the remand prisons *Falun*, *Kronoberg*, *Malmö*, *Saltvik*, *Sollentuna* and *Växjö*. In the report following the visit, the Committee stated that, since its first visit to Sweden in 1991, it had criticised Sweden for the widespread use of restrictions. Despite this, the Committee noted that the number of inmates held with restrictions imposed has only decreased by two per cent over a five-year period. The Committee then stated the following:

”The fact that this practice [the use of restrictions] continues almost unabated after 24 years of ongoing dialogue between the CPT and the Swedish authorities and that there are no real signs of progress is most regrettable for the Committee. Moreover, the newly adopted Instructions and Guidelines [RåR 2015: 1] do not seem to be able to bring about the desirable change since they limit themselves to providing clarification necessary to ensure consistency in the application of the existing legislation.”<sup>7</sup>

During the 2015 visit, inmates whom the Committee spoke with disclosed that being held on remand for long

**In the CPT’s view, in 24 years there has been no change for the better**

periods had a serious impact on their mental health. The CPT noted that these problems were exacerbated by the high level of security in the three high-security re-

mand prisons visited by the Committee (*Kronoberg*, *Malmö* and *Sollentuna*). The Committee then stated that there must be a fundamental change to the Swedish approach on the use of restrictions. According to the CPT’s standard, all inmates in prisons and remand prisons

should, as a rule, be able to spend at least eight hours a day outside their cells. In connection with this, inmates must be given the opportunity to engage in constructive activities of a varied nature (work, education, vocational training, sports, etc.).<sup>8</sup> The CPT again recommended that the Swedish authorities:

”[T]ake swift and decisive action, including if necessary legislative changes, to ensure that restrictions on remand prisoners are only imposed in exceptional circumstances which are strictly limited to the actual requirements of the case and last no longer than is absolutely necessary. Furthermore, the Committee calls upon the Swedish authorities to radically improve the offer of activities for remand prisoners. The aim should be to ensure that all such prisoners are able to spend at least 8 hours per day outside their cells, engaged in purposeful activities of a varied nature: work, preferably with vocational value; education; sport, recreation / association [...]. This may require changes to the physical infrastructure of prisons.”<sup>9</sup>

Following the submission of the CPT’s report of its 2015 visit, high-level talks between the CPT and the Government of Sweden took place. The most important purpose of the discussions was the implementation of the long-standing recommendation from the CPT that Sweden must sharply reduce both the time during which it is possible to hold individuals on remand with restrictions and the extent of such restrictions. This issue was followed up within the framework of the Parliamentary Ombudsman’s Opacat operations in 2017 (see section 8).

<sup>8</sup> See CPT / Inf (2016) 1 para 52 and 53.

<sup>9</sup> See CPT / Inf (2016) 1 para 53.

<sup>7</sup> See CPT / Inf (2016) 1 para 51.

## 5.4 Measures taken following international criticism

During the 1990s, Sweden took measures to try to address the problems that have attracted international attention. One change was that prosecutors now require a court's permission to impose restrictions upon an individual held on remand.<sup>10</sup> Furthermore, a provision was introduced requiring prosecutors to motivate to the court why he or she should be allowed to impose a certain restriction.<sup>11</sup>

During the 1990s, Sweden changed its rules and regulations on the use of restrictions

Concurrently, the possibility was also introduced for individuals on remand to request that a court assess whether a prosecutor's arguments for the use of restrictions are well-founded or not.<sup>12</sup> With the introduction of the current Remand Prisons Act, the possibility to appeal a court's decision on the use of restrictions was also introduced (chap. 6 § 4, third paragraph Häl).

Following the CPT's visit in May 2015, on 23 July of the same year the government decided to commission a special investigator tasked with submitting proposals aimed at reducing the use of both remand prison and restrictions. The inquiry took the name the *Remand Prison and Restrictions Government Inquiry* and it submitted its report *Fewer in remand prison and reduced isolation* (SOU 2016: 52) in August 2016.

<sup>10</sup> See chap. 24 § 5 a RB which was introduced by SFS 1993:1408. The provision entered into force on 1 January 1994.

<sup>11</sup> See chap. 24 § 14 second paragraph RB which was amended by SFS 1998: 601. The new provision entered into force on 1 January 1999.

<sup>12</sup> See § 17 of the repealed Act (1976: 371) on the treatment of inmates and inmates and others, which was introduced by SFS 1998: 602. The provision is now found in chap. 6 § 4 first and second paragraphs Häl.

The report proposes, inter alia, that alternatives to remand prison should be introduced in the form of house arrest and area arrest. The report also contains a proposal to introduce a limit on how long an individual can be held on remand. The restriction would mean that a suspect, until prosecution is brought, can be held on remand for a continuous period of six months. This time period can only be extended further if deemed absolutely necessary. The corresponding period for a person under the age of 18 is proposed in the report as three months. Again, this time period should only be extended if deemed absolutely necessary. Similarly, the report proposed that the rule regarding mandatory remand (two-year rule) should be removed (chap. 24 § 1, second paragraph RB). Finally, the report submitted proposals which obligates a court to consider whether a prosecutor should be granted permission to restrict an individual held on remand's contact with the outside world on the basis of four special restriction categories. If a prosecutor obtains such permission, a court is then obligated to state in its decision the reasons for providing such.

The Remand Prison and Restrictions Government Inquiry submitted its report in August 2016

At the beginning of 2020, there had been no changes to the legislation

With regard to the Prison and Probation Service's work with isolation-breaking measures, the report stated that there is a need to legislate to ensure an inmate over the age of 18 must always be entitled to at least two hours' association with another individual every day. For inmates under the age of 18, the time should be at least four hours every day. In the report, the investigator stated that:

“The way remand prisons are built today, there is basically no space for inmates spending time together. We therefore propose that the Prison and Probation Service review the premises of all remand prisons in order to enable at least one communal space per 15 inmates. However, since the conditions at the various remand prisons vary, the task of achieving at least two hours of human contact per day can be solved in different ways. Co-sitting and association with other inmates in a communal space are both relatively cost-effective solutions for breaking the isolation of inmates who are not in association departments. However, it is important to additionally offer isolation-breaking contacts with other people than just inmates. Not least, this applies to the relatively few women who are in remand prisons. Since the main rule is that an inmate should not associate with other inmates of the opposite sex, women’s opportunities for co-sitting and association with others are limited. We believe that, in departments that are not association departments, there must be one full-time member of staff per 15 inmates who is solely tasked with working with isolation-breaking measures. Each member of staff should then have access to a special area set up with equipment for different kinds of activities such as board games, video games and various materials for different kinds of creative activities.”<sup>13</sup>

The report was then circulated for formal consultation which expired on 30 November 2016. At the beginning of 2020, the matter was still being processed within the Government Offices.

<sup>13</sup> See SOU 2016: 2 pp. 142 and 143.



## 6 Report from the National Council for Crime Prevention

In 2015, the National Council for Crime Prevention was commissioned by the government to provide an overview of the situation in Swedish remand prisons. The assignment also included proposing measures to make remand prison more humane.

### 6.1 The National Council for Crime Prevention's findings in brief

In a report<sup>1</sup> from January 2017, the National Council for Crime Prevention stated, inter alia, that the number of people held in remand prisons had decreased gradually, from just over 11,200 people in 2010 to just over 9,000 people in 2015. The report states that in cases where a prosecutor had received permission from a court to impose restrictions, in most cases the individual on remand had restrictions imposed for most of the period spent in remand prison (three quarters of the time). For children with restrictions, the restrictions lasted for 90 per cent of the remand prison period. Inmates seldom exercised their right to have a court review the application of individual restrictions (chap. 6 § 4 HåL). Furthermore, prosecutors rarely reviewed and removed restrictions. This was due to a perception that the danger of collusion, which was the basis for the decision to initially hold an individual on remand, often remained throughout the period of investigation. In the opinion of the National Council for Crime Prevention, this indicated that the Prosecution Authority's guidelines (RåR 2015:1) had no

effect on the proportion of inmates who receive restrictions.

In the opinion of the National Council for Crime Prevention, the Prison and Probation Service's surveys show that in 2015 the agency was far from reaching its objective of at least two hours of isolation-breaking measures every day. Only 25 per cent of individuals with restrictions received isolation-breaking measures for such an amount of time. The most common isolation-breaking measures did not involve any human contact, for example inmates spend time alone in an exercise yard. The proportion who received measures that involved contact with others for at least two hours per day was even lower. The Prison and Probation Service reached its objective

in relation to only 12 per cent of those held on remand with restrictions. This means, according to the National Council for Crime Prevention, that almost nine out of ten inmates with restrictions were isolated on any given day.

In the report, the National Council for Crime Prevention identifies a number of obstacles to a "humane, efficient and safe remand prison operation". One obstacle is that it is unclear whether it is the Prison and Probation Service or the prosecutor who has the main responsibility

**Almost nine out of ten individuals held on remand with restrictions had been held in conditions amounting to solitary confinement in 2015**

<sup>1</sup> See Reducing isolation in remand prisons – Situation and proposals (Report 2017:6).

for taking the initiative to ease any restrictions imposed. Another obstacle is that employees within the Prison and Probation Service perceive prosecutors as too passive in reviewing the need for restrictions. In the opinion of the National Council for Crime Prevention, a lack of staff means that work with isolation-breaking measures competes with other tasks of a more “indispensable” nature, such as transporting inmates to trial. This lack of staff also means that some remand prisons have more limited visiting hours, as well as limited times when the inmates can make phone calls, compared with other remand prisons. Furthermore, language barriers make breaking isolation more difficult. Finally, it is not uncommon for inmates to refuse isolation-breaking measures. According to the National Council for Crime Prevention, this often happens when an inmate is asked whether or not he or she wants to sit together with another inmate.

## 6.2 The National Council for Crime Prevention’s proposed measures

In its proposed measures, the National Council for Crime Prevention supports the proposals offered in the *Remand Prison and Restriction Government Inquiry* report. This support includes proposals such as placing a limit on how long a remand period can last. However, the National Council for Crime Prevention notes that, since so few individuals are held on remand for more than six months, the proposed deadlines would probably only shorten the time spent on remand for a very limited proportion of individuals in remand prison. In the report, the National Council for Crime Prevention submits a proposal which entails specific prosecutor chambers being tasked with increasing the proportion of inmates at risk of collusion being allowed to associate with other

inmates (from today’s almost 0 per cent to, for example, 50 per cent). In the opinion of the National Council for Crime Prevention, this would mean that prosecutors would, to a greater extent than today, place restrictions on visits and telephone calls, but from day one allow, for example, a greater ability to associate with other inmates. This should then be followed up and evaluated in terms of effects on investigative work and the processing of cases.

To a larger extent prosecutors should allow association amongst inmates held on remand

The National Council for Crime Prevention also supports the *Remand Prison and Restriction Government Inquiry’s* proposal that children held on remand should have a statutory right to at least four hours of association with others every day, and that adults should have the right to at least two hours per day. It is preferable, in the National Council for Crime Prevention’s opinion, that individuals held with restrictions are able to associate with other inmates held with restrictions as opposed to co-sitting. Such “restriction association” means that inmates with restrictions can associate with one another. Work in this direction has already begun at the Prison and Probation Service, however, in the opinion of the National Council for Crime Prevention, it needs to be further developed and followed up.

Finally, the National Council for Crime Prevention states that many of the shortcomings in the remand prison environment identified in the survey affect all inmates – regardless of restrictions. This applies not least to the appropriateness of premises and staff resources. The National Council for Crime Prevention supports the *Remand Prison and Restriction Government Inquiry’s* pro-

posal for measures to facilitate inmates' contact with close relatives and friends. This involves making it possible to call mobile telephones and telephones connected to IP addresses. In the National Council for Crime Prevention's opinion, remand prisons' routines for visits and telephone calls should be more standardised. Furthermore, in the opinion of the National Council for Crime Prevention, consideration should be made to developing a systemic assessment process which staff can use and confirm with each inmate on a daily basis. This would reduce the risk of staff failing to notice someone who is unwell and may be in need of extra support.

## 7 How does the Prison and Probation Service work with isolation-breaking measures?

In its most recent annual reports, the Prison and Probation Service has reported on their work to reduce the isolation of inmates in remand prison. In the opinion of the Prison and Probation Service, it is important to reduce the amount of time inmates spend in isolation and to counteract the harmful effects of isolation. This applies not least to inmates who have been held on remand for a long time. According to statistics from the Prison and Probation Service, 9,700 remand orders were completed in 2018. The remand prison times are shown in Table 1.

**Table 1. Remand periods**

### Remand periods

47 per cent (4,559 inmates) had a remand period of less than one month

20 per cent (1,940 inmates) had a remand period of one to two months

10 per cent (970 inmates) had a remand period of two to three months

8 per cent (776 inmates) had a remand period of three to four months

15 per cent (1,455 inmates) had a remand period exceeding four months

The information is taken from KOS 2018, Prison and Probation Service and statistics p. 25.

According to the Prison and Probation Service, efforts to break the isolation of prisoners are an important aspect of the agency's work with human rights. For this reason, it is a continuous objective in the operation of remand prisons to increase the time inmates spend in associa-

tion and to work with isolation-breaking measures. The Prison and Probation Service measures isolation by conducting a survey seven times a year. In the opinion of the agency, conducting the survey so few times per year means that differences between years can be caused by chance. For this reason, comparisons between the years should be made with great caution. Women and young people are the smallest groups represented by number. This means that changes in these groups' numbers should be interpreted extra carefully. Furthermore, the Prison and Probation Service emphasises that there are two types of non-response in the survey; missing answers from inmates, and missing registrations for clients.<sup>1</sup>

The Prison and Probation Service's report makes a distinction between isolation-breaking measures and isolation-breaking measures that involve human contact. Measures involving human contact can, for example, involve inmates meeting other inmates, staff or visitors, phone time in a cell or trial. Isolation-breaking measures without human contact can, for example, involve inmates being provided with the opportunity to exercise in a gym or spend time in an exercise yard. Such a change in environment is reported as isolation-breaking even if an inmate is alone in an exercise yard or gym.<sup>2</sup> Of importance in this context is that an inmate held on remand, in accordance with the main rule, has the right to outdoor access for at least one hour every day (chap. 2 § 7 Häl).

<sup>1</sup> See the Prison and Probation Service's annual report 2018 pp. 30, 31 and 136.

<sup>2</sup> See SOU 2016:52 p. 69.

Table 2. Isolation-breaking measures for all inmates in in remand

All inmates in remand	With restrictions			Without restrictions		
	2016	2017	2018	2016	2017	2018
Total number of inmates	4,927	5,470	6,089	4,402	4,321	4,902
<b>All isolation-breaking measures</b>						
Inmates with measures of 2 hours or more	27 %	30 %	29 %	72 %	73 %	70 %
<b>Isolation-breaking measures with human contact</b>						
Inmates with measures of 2 hours or more	14 %	16 %	17 %	69 %	68 %	67 %

The information is taken from the Prison and Probation Service's annual report 2018 p. 136.

Table 2 shows that between 2016–2018 there was a marginal increase in the proportion of inmates with restrictions<sup>3</sup> who received isolation-breaking measures of two hours or more per day, from 27 per cent in 2016 to 29 per cent in 2018. In this context, it should be noted that during the same period there was an increase in the number of inmates held on remand; in 2016 there were 4,927 inmates with restrictions and the corresponding figure in 2018 was 6,089.

With regard to isolation-breaking measures involving human contact, the figures are significantly worse. In the years in question, there was a clear increase in the proportion of inmates with restrictions who received this type of isolation-breaking measure for two hours or more per day. The increase was from 14 per cent in 2016 to 17 per cent in 2018. The Prison and Probation Service's surveys show that in 2018, 83 per cent of inmates with restrictions did not receive isolation-breaking measures

to this extent and as such were – according to the international definition – held in conditions amounting to solitary confinement.

The Prison and Probation Service also reports isolation-breaking measures for inmates without restrictions, in other words the group of inmates who have the right to associate with other inmates during the day (see chap. 2 § 5 of HåL). Despite the fact that inmates without restrictions have such a right, it appears from the Prison and Probation Service's report that in 2018, 33 per cent of inmates did not receive isolation-breaking measures that involve human contact for two hours or more per day. In other words, they were held in conditions amounting to solitary confinement.

**According to surveys in 2018, 83 per cent of those held on remand with restrictions were held in conditions amounting to solitary confinement**

<sup>3</sup> The group includes, in addition to inmates with restrictions, also inmates who are segregated.

Table 3. Isolation-breaking measures for young people held on remand

Young inmates held on remand	With restrictions			Without restrictions		
	2016	2017	2018	2016	2017	2018
Total number of inmates	580	862	915	362	401	459
<b>All isolation-breaking measures</b>						
Inmates with measures of 2 hours or more	37 %	40 %	38 %	75 %	75 %	69 %
<b>Isolation-breaking measures with human contact</b>						
Inmates with measures of 2 hours or more	21 %	23 %	24 %	72 %	69 %	65 %

The information is taken from the Prison and Probation Service's annual report 2018 p. 136.

Table 3 shows the use of isolation-breaking measures in relation to young people held on remand.<sup>4</sup> The Prison and Probation Service's surveys show that in 2018, 38 per cent of young inmates with restrictions received some form of isolation-breaking measures for two hours or more per day. As with all inmates in remand prison, there were significantly fewer young people who received isolation-breaking measures that involve human contact for two hours or more per day. Based on the Prison and Probation Service's surveys, this proportion amounted to 24 per cent in 2018. This means that 76 per cent of young inmates were isolated. For young inmates without restrictions – who have the right to associate with other inmates during the day – the corresponding proportion was 35 per cent.

<sup>4</sup> By young people, the Prison and Probation Service means an individual enrolled before the day he or she turns 21 years old. An inmate is considered young until the day he or she turns 24 years old.



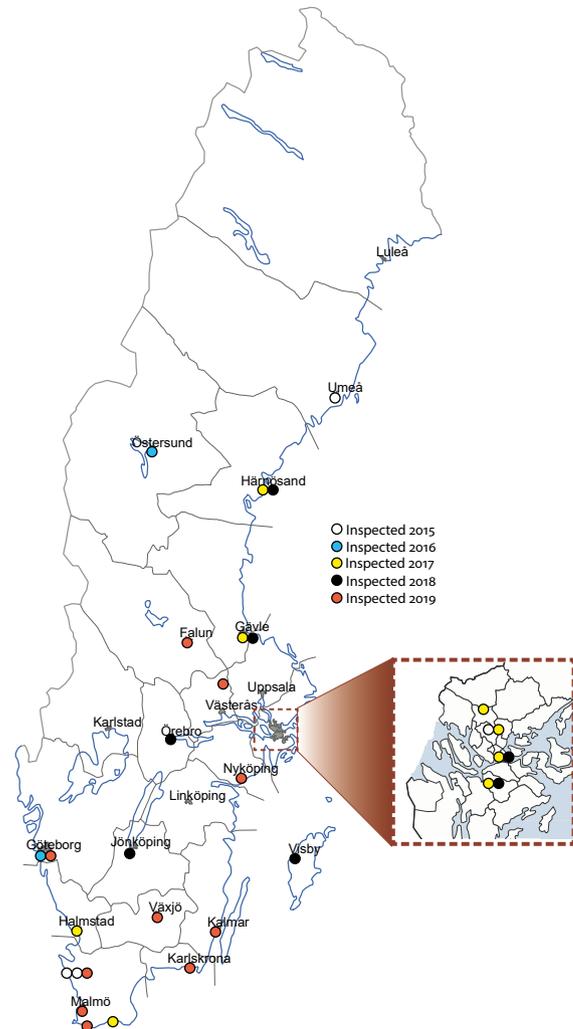
## 8 The Parliamentary Ombudsmen's inspections of remand prisons 2015–2019

Between 2015 and 2019, the Parliamentary Ombudsmen carried out 31 inspections of the Prison and Probation Service's remand prisons, of which around a half were unannounced (16). A number of remand prisons have been inspected on several occasions and during the current year, 23 of the Prison and Probation Service's remand prisons have been inspected.

During the inspections, issues such as the extent of isolation were raised. The investigation has had two main tracks. First, establishing to what extent is the Prison and Probation Service able to offer inmates without restrictions association time with others. Second, investigating what isolation-breaking measures the Prison and Probation Service is able to offer to inmates with restrictions or who are placed in segregation. In connection with Chief Parliamentary Ombudsman Elisabeth Rynning taking office in 2016, she started an own-initiative inquiry investigating the issue of isolation of inmates held on remand. As such, in early 2017 a series of seven remand prison inspections focusing on this issue were carried out.<sup>1</sup>

For a complete account of the inspections carried out, see Appendix A.

In this section, observations and statements from the Parliamentary Ombudsmen concerning the issue of iso-



<sup>1</sup> See the Parliamentary Ombudsmen's report dnr 416–419-2107 and 581–583-2017.

lation of inmates are presented. The section is divided into the following sections:

1. Inmates' right of association with other inmates
2. Work with isolation-breaking measures
3. The Prison and Probation Service's planning and the design of the remand prison facilities
4. Shortcomings in some remand prison facilities
5. The association remand prison in Helsingborg
6. Overcrowding in remand prisons
7. Placement of inmates in segregation

## 8.1 Inmates' right of association with other inmates

As stated in section 2.3, as a main rule, inmates have the right to associate with other inmates during the day. For inmates held on remand, this right can be limited via restrictions imposed by a prosecutor. Furthermore, the right of association with other inmates can be limited for all categories of inmates via decisions to place them in segregation. It is also possible to limit association with

other inmates if an inmate is placed in a facility located outside of a remand prison. During several inspections, it was noted that inmates without restrictions and who have not been placed in segregation had nevertheless been placed in restriction departments. As such, they were not provided with the opportunity to associate with other inmates. Table 4 shows how many inmates without restrictions were placed in restriction departments (R-dept) in connection with the Parliamentary Ombudsmen's inspection series in 2017.

In December 2017, the Chief Parliamentary Ombudsman stated the following:

“What has emerged from the inspections shows that inmates without restrictions are, in many cases, isolated in a way comparable to the conditions applicable to inmates held with restrictions. This is, of course, not acceptable and is in clear contravention of how the enforcement of a decision depriving a person of their liberty is intended to be implemented for these categories of inmates according to the Remand Prisons Act (2010:611). The Prison and Probation Service must therefore ensure that these inmates receive special attention. The premise must be that they must be provided with the opportunity to associate unless there is reason to place an inmate in segregation in accordance with chap. 2 Section 5 of the Remand Prisons Act.”<sup>2</sup>

In some cases, it was noted that a remand prison has routines which entail inmates who do not have restrictions are placed in restriction departments.

An inspection of *Sollentuna Remand Prison* in February 2017 revealed that, upon admission of a new

**Table 4 Inmates without restrictions in restriction departments**

Remand prison	Date	Inmates without restrictions in R-dept.
Gävle (38 places)	30–31 January 2017	17 inmates
Huddinge (137 places)	23–24 January 2017	31 inmates
Kronoberg (123 places)* <sup>1</sup>	26 January 2017	44 inmates
Sollentuna (240 places)	2–3 February 2017	35 inmates

\*<sup>1</sup>) During the inspection, more than half of the prison's places were closed due to renovation.

Information taken from the Parliamentary Ombudsmen's report dnr 416–419-2017.

<sup>2</sup> See the Parliamentary Ombudsmen's report dnr 416-2017 p. 12.

## The Parliamentary Ombudsmen have emphasised that inmates who do not have restrictions are entitled to associate with one another

inmate without restrictions, staff contacted the Prison and Probation Service's intelligence department (KUT) before the inmate was to be placed in an association

department. Whilst awaiting a decision from KUT, the inmate was placed in a restriction department. It was further revealed that the staff had been instructed that they had a number of days to deal with the issue of placing the inmate in an association department.

The same process was applied when an inmate had their restrictions removed whilst being held on remand.<sup>3</sup>

During an inspection of *Gothenburg Remand Prison* in February 2019, it emerged that inmates without restrictions were placed in restriction departments. According to the remand prison management, it is difficult to relocate inmates from restriction places to association places. This is because a threat analysis must first be made, followed by an individual assessment, in order for the inmate to be placed in the right department. Furthermore, the size of the remand prison causes inertia in the system.<sup>4</sup>

During an inspection of *Huddinge Remand Prison* in January 2017, it emerged that good behaviour by an inmate formed a prerequisite for access to association with other inmates.<sup>5</sup> In a statement provided to the Parliamentary Ombudsmen, the Prison and Probation Service stated that this practice is incorrect. The Chief Parliamentary Ombudsman has criticised this practice and stated that she expects the Prison and Probation Service

to retrain its staff and follow up on the measures implemented.<sup>6</sup>

## 8.2 Work with isolation-breaking measures

As detailed in section 7, the Prison and Probation Service works to try to break the isolation of inmates who are subject to restrictions as well as inmates who are segregated. Remand prisons do not report the use of isolation-breaking measures continuously, but measure the steps taken to break isolation at specific times per year. This means that, as also noted by the Prison and Probation Service, there is uncertainty regarding the figures reported. With regard to the remand prison inspections in 2017, it emerged that remand prisons do not define, measure nor follow up on the use of isolation-breaking measures in a standardised manner. As such, the Chief Parliamentary Ombudsman stated that the Prison and Probation Service should ensure that the amount of time an inmate associates with others is reported and documented in a standardised manner. A standardised system would make it possible to follow the situation over time. The Prison and Probation Service was requested to report back to the Parliamentary Ombudsmen on its work with this issue.<sup>7</sup>

In reporting back, the Prison and Probation Service stated in June 2018 that, whilst the system to follow up on the use of isolation-breaking methods is crude, it does provide an approximate national picture of the extent to which inmates associate with one another. The agency had also initiated a project with the objective of developing an appropriate support system to be able to follow the use of isolation-breaking measures. The project was

<sup>3</sup> See the Parliamentary Ombudsmen's report dnr 419-2017 p. 5.

<sup>4</sup> See the Parliamentary Ombudsmen's report dnr O 7-2019 pp. 6 and 13.

<sup>5</sup> See the Parliamentary Ombudsmen's report dnr 416-2017 p. 6.

<sup>6</sup> See the Parliamentary Ombudsmen 2018/19 p. 146, dnr 5969-2015.

<sup>7</sup> See the Parliamentary Ombudsmen's report dnr 416-2017 p. 13.

described as complex, and the Prison and Probation Service could therefore not provide any information at that time as to when the support system would be in operation. Based on the details which emerged in the Prison

### In the Parliamentary Ombudsmen's opinion, it must be possible to follow the use of isolation-breaking measures over time

and Probation Service's reporting back, on 27 December 2018, the Chief Parliamentary Ombudsman decided to continue investi-

gating the issue in the form of an own-initiative inquiry (see section 9).

It has also emerged during the Parliamentary Ombudsman's inspections that remand prisons have difficulty in achieving the Prison and Probation Service's own objective for isolation-breaking measures. An inspection of *Jönköping Remand Prison* in March 2018 revealed that the remand prison had made surveys of the use of isolation-breaking measures over a period of eight months. The survey showed that "not all inmates with restrictions" had two hours of activities outside their cells.<sup>8</sup>

During an inspection of Sweden's largest remand prison in Gothenburg (Göteborg) in February 2019, staff at its juvenile and women's department stated that they did not have the sufficient resources to carry out their work. In the opinion of the staff, the department needed three more full-time positions. The lack of resources made the staff feel an ethical stress as the inmates were isolated and the objective with isolation-breaking measures was not fulfilled. In the opinion of members of staff, it would be desirable to have a higher level of staffing on the weekends, but instead it is lower than on weekdays.

As a result, the conditions for being able to offer isolation-breaking measures are even worse on weekends.<sup>9</sup>

During the same inspection of *Göteborg Remand Prison*, it was also revealed that the restriction department did not have the sufficient level of staffing to be able to achieve the objective of at least two hours of isolation-breaking measures every day. In October 2018, a staff position was removed on the weekends so that the department would have an extra resource for isolation-breaking measures on weekdays. However, this resource is used by other departments when they lack staff. For this reason, the staff in the restriction department only have time for nothing more than holding intake interviews with new inmates and drawing up plans for the inmates for their time held on remand. It was further stated that "an external visit requires the supervision of two remand prison guards. This means that approximately four inmates can receive a visit on any weekday, that is just under seven per cent. The large scale of the operation at the remand prison has negative effects and the remand prison guards have difficulty 'serving' the inmates."<sup>10</sup>

An inspection of *Växjö Remand Prison* in March 2019 revealed that the remand prison did not have sufficient resources in terms of staffing and space to be able to arrange isolation-breaking measures for its inmates on a daily basis. All inmates with restrictions were offered isolation-breaking measures, but in order for this to function, it was, according to representatives of the remand prison, necessary that a number of inmates refused the offer.<sup>11</sup>

*Kalmar Remand Prison* was inspected in April 2019, whereby it emerged that the remand prison had initia-

<sup>8</sup> See the Parliamentary Ombudsmen's report dnr 1364-2018 p. 4.

<sup>9</sup> See the Parliamentary Ombudsmen's report dnr O 7-2019 p. 5.

<sup>10</sup> See the Parliamentary Ombudsmen's report dnr O 7-2019 p. 6.

<sup>11</sup> See the Parliamentary Ombudsmen's report dnr O 22-2019 p. 5.

ted a pilot project to increase the ability to offer inmates with restrictions isolation-breaking measures. Previously, inmates allowed to associate with others staffed the remand prison's work operations (packaging work), but for some time the operations were instead staffed by inmates with restrictions which provided them with the opportunity for some form of meaningful activity or employment. The inmates are taken two by two into the production room where they are allowed to work for two hours. They are separated from one another by a folding wall and can only talk to the staff. In the opinion of representatives of the remand prison, this pilot project means that the remand prison has greater opportunities to achieve the Prison and Probation Service's objectives for isolation-breaking measures. In a conversation with an inmate who was subject to restrictions, it emerged that he was very positive regarding working in the production facility. It was described as positive that, for example, inmates are allowed to move around the room and are able to lock the toilet door themselves.<sup>12</sup>

### 8.3 The Prison and Probation Service's planning and design of remand prison premises

Some of the Prison and Probation Service's remand prisons have *association departments* where inmates can associate with one other during the day. A association department in a remand prison is usually designed like a department in a prison. Other remand prisons have *association places*. An inmate who is placed there is provided with the opportunity to access a special *communal space* together with other inmates for a number of hours per day. A association place can, if necessary, also

function as a *restriction place*. This place can therefore be adapted based on the needs the remand prison has depending on how many inmates at any given time are subject to restrictions.

When reporting back in June 2018, the Prison and Probation Service stated that the single most decisive reason why inmates are not provided with the opportunity to associate together is that its remand prisons' premises are limited in their design. The number of remand prison places with access to appropriate communal spaces does not correspond to the needs. The consequence of this is that inmates cannot be offered periods of association with one another to the desired extent. Furthermore, the heavy remand prison population pressure has made it increasingly difficult for the agency to relocate inmates without restrictions to association places. In reporting back, the Prison and Probation Service outlined a number of maintenance projects for its premises, and, by the end of 2018, the Prison and Probation Service planned to have opened a total of 161 new places for inmates without restrictions. Of these, 88 places are located in units with special association departments.<sup>13</sup>

The fact that remand prison premises, in many cases, constitute a limitation in the Prison and Probation Service's ability to offer inmates appropriate association was also noted during the Parliamentary Ombudsmen's inspections. An inspection of *Kronoberg Remand Prison* in January 2017 revealed that the remand prison lacked any association departments. At the time, an extensive renovation of the remand prison was underway. The report contains the following description:

<sup>13</sup> See the Prison and Probation Service's statement on 14 June 2018, the Parliamentary Ombudsmen's report dnr 416-2017.

<sup>12</sup> See the Parliamentary Ombudsmen's report dnr O 26-2019 p. 5.

“There is no special association department, which results in new inmates being placed where there is a place and where it is appropriate for security reasons. When an inmate’s restrictions are lifted, he or she remains in [his or her cell] under the same conditions as before.”<sup>14</sup>

A similar situation was described during an inspection of *Gävle Remand Prison* in January 2017. The remand prison does not have an association department and, in the opinion of the remand prison’s management, there are too few association places in the Prison and Probation Service’s Region North. This means that inmates can remain in a remand prison even after a prosecutor has lifted restrictions. Even those who are held on remand for sexual offences can remain in the remand prisons because, in the view of the remand prison management, they cannot associate with other inmates. During the inspection, however, *Gävle Remand Prison* had been notified that inmates without restrictions could be moved to an association remand prison in the Prison and Probation Service’s Region West.<sup>15</sup>

During an inspection of *Huddinge Remand Prison* in January 2017, the remand prison management stated that adapted premises and increased staff density would probably mean that inmates could be outside their cells for longer periods.<sup>16</sup> During an inspection of *Sollentuna Remand Prison*, the management emphasised that the

prison was built as a high-security remand prison and, as such, there is too little space for association activities. Simultaneously, the management emphasised that the remand prison is trying to review how its premises are used in order to create more time for inmates to spend outside their cells. According to the management, over the past ten years, attention has been given to the issue of inmates’ rights of association with one another and, as a result, more inmates are allowed to co-sit.<sup>17</sup> In the Stockholm region, *Sollentuna Remand Prison* has the most association places and during the inspection the management stated there are many alternatives by relocating inmates. With this reasoning there are “many” inmates without restrictions who “end up” in restriction places around Stockholm.<sup>18</sup>

The lack of association departments has also given rise to problems in other parts of the country. During an inspection of *Göteborg Remand Prison* in February 2019, it emerged that the remand prison had converted 43 places in the association department into restriction places. At the time of the inspection, only 35 per cent of the places in the remand prison were intended for association with other inmates. As a result, inmates without restrictions were placed in restriction departments.<sup>19</sup>

On a number of occasions, the Parliamentary Ombudsmen has commented on the issue of inmates’ rights

It is extremely unsatisfactory that inmates are not given the opportunity to associate with one another due to organisational failures

14 See the Parliamentary Ombudsmen’s report dnr 417-2017 p. 5.

15 See the Parliamentary Ombudsmen’s report dnr 418-2017 p. 6.

16 See the Parliamentary Ombudsmen’s report dnr 416-2017 p. 9.

17 See the Parliamentary Ombudsmen’s report dnr 419-2017 p. 8.

18 See the Parliamentary Ombudsmen’s report dnr 419-2017 p. 9.

19 See the Parliamentary Ombudsmen’s report dnr O 7-2019 p. 16.



of association with one another being limited due to a lack of resources. In the Parliamentary Ombudsmen's opinion, this lack of resources is of a more general nature and it is clear that legislating on the issue of inmates' right of association would be toothless if the necessary resources were lacking. A lack of places in remand prisons cannot be used to justify not applying, insofar as is possible, the rules on the application of association rights.<sup>20</sup> The Parliamentary Ombudsmen has further stated that the legislative rules regarding the conditions of inmates can be seen as a minimum level regarding the rights of each inmate, and that it is not acceptable for the possibility to associate with others being restricted or even withdrawn totally due to a lack of resources.<sup>21</sup> Finally, the Parliamentary Ombudsmen stated that neither a lack of resources nor the inability to differentiate inmates internally are acceptable reasons for keeping an inmate segregated from other inmates.<sup>22</sup> The Chief Parliamentary Ombudsman stated the following regarding this issue:

“I share the opinion that the Parliamentary Ombudsmen first expressed a little over 15 years ago. The Prison and Probation Service does not seem to have taken the Parliamentary Ombudsmen's opinions fully into account, and I note in this context that the prison population rate in the country's remand prisons is lower now than just over 15 years ago. In my opinion, it is deeply unsatisfactory that an inmate is not provided with the opportunity to associate for organisational reasons or other reasons that an inmate cannot influence. I question the Prison and Probation Service's opinion that it is not an issue of

segregation when an inmate, in such cases, cannot associate with other inmates. Considering that chap. 1 Section 6 of the Remand Prisons Act refers to less intrusive restrictions of an inmate's liberty, I am not of the opinion that an inmate can be placed in isolation on the basis of this legislative provision due to current circumstances and practical considerations. The prevailing situation implies actual segregation, and inmates are subject to a degree of isolation that exists for those inmates who have restrictions. Additionally, an inmate does not have the opportunity to have his or her isolation reviewed or tested by a court of law. From the perspective of the inmate, this is extremely unsatisfactory.”<sup>23</sup>

#### 8.4 Shortcomings in some remand prisons

The Parliamentary Ombudsmen has additionally had a particular focus on the fact that the Prison and Probation Service uses premises that are not fully adapted for remand prison operations. As such, the Parliamentary Ombudsmen has, above all, been critical of the fact that the shortcomings, for example the lack of communal spaces makes it impossible to conduct appropriate operations on the premises. This criticism is with regard to the *remand prisons in Halmstad, Visby and Östersund*.

Both *Halmstad Remand Prison* and *Östersund Remand Prison* were using police custody facilities during the inspections. The remand prisons have been established in premises which were never intended for such operations. During the inspections, the remand prisons were described as “temporary”. The temporary operation in Halmstad had, at the time of inspection in February 2017, la-

20 See the Parliamentary Ombudsmen 2001/02 p. 155, dnr 801-2001.

21 See the Parliamentary Ombudsmen 2006/07 p. 139, dnr 2273-2005.

22 See the Parliamentary Ombudsmen 2015/16 p. 191, dnr 1277-2014.

23 See the Parliamentary Ombudsmen 2018/19 p. 157, dnr 5969-2015

sted for almost four years. The remand prison was closed on 1 April 2018. During the inspection of Östersund Remand Prison, this temporary operation had lasted for ten years. Subsequent to a follow-up by the Parliamentary Ombudsmen, the Prison and Probation Service decided to build a new remand prison. Despite the Parliamentary Ombudsmen's criticism, however, the temporary remand prison was still in operation in 2019. The new remand prison will be completed in 2020. Finally, the Prison and Probation Service has closed *Visby Prison* and this means that *Visby Remand Prison* will have more appropriate premises.<sup>24</sup>

### Police custody facilities are not suitable for use as a remand prison

During an inspection of *Ystad Remand Prison* in February 2017, it was noted that the remand prison has a small unit with only two cells (*the KV department*). The department is set apart from the main facility and anyone who wishes to access the cells must pass two locked doors. In conversations with inmates who were placed in the department, they compared their stay there to being subject to restrictions.<sup>25</sup> In reporting back to the Parliamentary Ombudsmen, the Prison and Probation Service stated that a placement in the KV department does not restrict the inmates' ability to associate. The department is used partly for the placement of inmates with special needs, and partly as a "halfway station" for inmates who have had restrictions for a long time and who subsequently need a certain amount of time to adapt to being in association.

<sup>24</sup> See the Parliamentary Ombudsmen's decision on 30 August 2018 in dnr 1387-2018 (Östersund Remand Prison), the Parliamentary Ombudsmen's report, dnr 4139-2018 and the decision on 10 June 2019 dnr O 40-2019 (Visby Remand Prison) and the Parliamentary Ombudsmen's report and decision on 28 November 2018, dnr 582-2017 (Halmstad Remand Prison).

<sup>25</sup> See the Parliamentary Ombudsmen's report dnr 583-2017.

In a decision, the Chief Parliamentary Ombudsman stated that the Prison and Probation Service's statement that the places are used as a halfway station between segregation and association with other inmates cannot be understood in any other way than that a placement there gives undermines the inmate's right to associate with other inmates to a higher extent than in the rest of the remand prison. As there are no other placement alternatives for the Prison and Probation Service than segregation or association with other inmates, in the opinion of the Chief Parliamentary Ombudsman it is worrying that the agency establishes places that are in some form of "middle ground". She then added the following:

The operations of a remand prison cannot be conducted in a grey area between segregation and association

"I understand that it may be necessary to establish departments that can meet the inmates' needs to associate in smaller groups of inmates. However, such departments must be formed in such a way that they do not restrict the inmates' rights of association during the day. This is necessary to prevent that the operation is conducted in a grey area between segregation and association."<sup>26</sup>

During an inspection of *Helsingborg Remand Prison, Berga Remand Prison Branch* in May 2019, it emerged that one of the remand prison's departments (department 1:5) lacks a communal space. For this reason, the inmates associating with one other in the department

<sup>26</sup> See the Parliamentary Ombudsmen's decision on 3 September 2018, dnr 583-2017.

corridor during the day (10 to 12 meters long and approximately 2 meters wide). In the corridor there is a small, wall-mounted table intended for two people and a TV with video games. At most, seven inmates could associate with one another in the area during the day. Following the inspection, the Chief Parliamentary Ombudsman questioned that the space can be described as a department and that the Prison and Probation Service should consider whether the cells in question should constitute ordinary places. She then stated the following:

“If the Prison and Probation Service nevertheless considers that there are such compelling reasons that the cells should continue to be used as ordinary places, the agency should immediately review inmates’ opportunities to associate with others. In my opinion, it is disgraceful for inmates to associate with one another in a corridor, and it is remarkable that the Prison and Probation Service expects inmates to eat their meals in this very confined space. I would like to reiterate once again that the Prison and Probation Service’s basic task includes conducting an operation by such means that the negative consequences of being deprived of one’s liberty are counteracted (chap. 1 § 5 of the Remand Prisons Act). For this reason, the authority should take the necessary measures to enable the inmates in Department 1: 5 to be allowed to associate with one another in the same way as the inmates in the other departments of the remand prison branch.”<sup>27</sup>

<sup>27</sup> See the Parliamentary Ombudsmen’s report dnr O 39-2019 pp. 11 and 12.

## 8.5 The association remand prison in Helsingborg

The *Helsingborg Remand Prison, Berga Remand Prison Branch* is an association remand prison established in a former prison. This means that the inmates are provided with the opportunity to associate with one another for a large part of the day. Following the inspection,

**A remand prison located in a former prison gives significantly better opportunities for association**

the Chief Parliamentary Ombudsman stated that there is a shortage of association departments in the Prison and Probation Service’s remand prison operations. This instead leads to the agency offering isolation-breaking measures to inmates who do not have restrictions. If they had been placed in association departments, there would not be the need for such measures.

She stated the following:

“In this context, the operations in the Berga Remand Prison Branch are a positive example of how the Prison and Probation Service can organise its operations to provide inmates with the opportunity to associate with one another. By establishing the association remand prison in premises that were previously used as a prison, inmates without restrictions are given significantly better conditions to associate with other inmates, compared with being placed in an association place or a restriction place. An inmate in the Berga Prison Branch has the opportunity to associate with other inmates for seven hours a day on weekdays. The experience from the Berga Prison



Branch and other association remand prisons (for example, Salberga, Storboda and Ystad) shows, in my opinion, the need for remand prisons that receive inmates without restrictions to have premises intended for association between inmates.<sup>28</sup>

### Inspections of remand prisons in spring 2019

Due to the strained situation regarding occupancy, the Parliamentary Ombudsmen carried out a series of ten inspections. These were carried out at Kumla Prison (National Assessment Unit), Karlskrona police custody facility as well as remand prisons in Falun, Helsingborg (Berga Prison Branch), Kalmar, Karlskrona, Malmö, Nyköping, Trelleborg and Växjö.

## 8.6 Overcrowding in remand prisons

In the Prison and Probation Service's reporting back to the Parliamentary Ombudsmen in June 2018, it emerged that, at that time, there was a strained situation regarding available space in the country's remand prisons. According to the Prison and Probation Service, this meant that the agency had continuous difficulties in meeting the demand for association places.<sup>29</sup> The situation soon worsened and, during the winter and early spring 2019, se-

veral remand prisons had an occupancy rate of over 100 per cent.<sup>30</sup> In spring 2019, the Parliamentary Ombudsmen conducted a series of ten inspections. The majority of the inspections concerned the Prison and Probation Service's remand prisons, which, in connection with the inspections, were asked to provide details regarding the occupancy rate on a number of dates. The data are shown in Table 5.

Table 5 Occupancy rates at specific remand prisons in spring 2019

Remand prison	8 March	15 March	22 March	29 March	5 April	12 April	19 April
Falun	100 % <sup>*)</sup>	97 %	88 %	97 %	N.A.	N.A.	N.A.
Helsingborg <sup>**)</sup>	N.A.	N.A.	N.A.	N.A.	113 %	116 %	109 %
Kalmar	108 %	94 %	97 %	88 %	N.A.	N.A.	N.A.
Karlskrona	104 %	109 %	104 %	100 %	N.A.	N.A.	N.A.
Malmö	97 %	90 %	100 %	99 %	N.A.	N.A.	N.A.
Nyköping	100 %	106 %	103 %	97 %	N.A.	N.A.	N.A.
Trelleborg	97 %	112 %	100 %	91 %	N.A.	N.A.	N.A.
Växjö	100 %	100 %	104 %	N.A.	N.A.	N.A.	N.A.

\*) The occupancy rate is stated as a percentage. At 100 per cent, all the remand prison's regular places are fully occupied. At a figure that exceeds 100 per cent, inmates either share a cell or are placed in rooms other than a regular cell.

\*\*) Berga Remand Prison Branch.

Information taken from the Parliamentary Ombudsmen's report, dnr O 19-2019.

28 See the Parliamentary Ombudsmen's Report dnr O 39-2019 p. 11.

29 See the Parliamentary Ombudsmen 2018/19 p. 41.

30 See the Parliamentary Ombudsmen's dnr O 19-2019.

The occupancy situation in the Prison and Probation Service's remand prisons improved during the spring and summer 2019. As of July, the occupancy rate was 90 per cent or less. On 25 August 2019, the occupancy rate in remand prisons was 82.58 per cent. According to the Prison and Probation Service, however, the occupancy rate was higher in comparison with 2018.<sup>31</sup>

In December 2019, the pressure on remand prisons had increased again, and the occupancy rate in the high-security remand prisons was 95.07 per cent whilst in normal remand prisons it was 99.82 per cent. The occupancy rate in total was 97.51 per cent.<sup>32</sup>

According to the Prison and Probation Service, the strained occupancy situation has had a negative impact on remand prison staff's ability to work with isolation-breaking measures. The reasons for this are several. In the event of overcrowding, it is not uncommon for the areas used for isolation-breaking activities to be used for accommodating inmates and, as such, these areas cannot be used for the purpose for which they are actually intended.

More inmates means that staff have less time per inmate for isolation-breaking measures. Eventually, the strained situation forced staff tasked with working with reducing isolation to work with other matters, for example the transportation of inmates.

During an inspection of *Göteborg Remand Prison* in February 2019, the remand prison's management stated that the objective for isolation-breaking measures had not been reached for any group held on remand (adult and juvenile). The increased occupancy rate has not hel-

ped the situation. An increase in staff resources would enable the objective to be reached.<sup>33</sup> Similar details emerged from inspections of *remand prisons in Karlskrona, Malmö, Nyköping* and *Trelleborg* in April 2019. In the report from the inspection of *Nyköping Remand Prison* in April 2019, the following was noted:

“Two and a half full-time positions are tasked with working with isolation-breaking measures on weekdays. This means that approximately four inmates with restrictions per day receive such measures. The staff prioritises those who appear to be feeling bad. Overcrowding affects the operation as there is more work for those who plan the operations and draw up remand prison plans. Furthermore, more inmates must share the time available for isolation-breaking measures.”<sup>34</sup>

In the report from the inspection of *Malmö Remand Prison* in April 2019, the following was noted:

“According to representatives of the remand prison, staffing based on a 90 per cent occupancy rate means that staff resources, even at normal staffing levels, are not sufficient to meet the national targets for isolation-breaking measures. During normal occupancy periods, each working team has scheduled isolation-breaking tasks. At best, there is room for approximately four and a half hours of isolation-breaking measures per day. That time must be distributed over a relatively large number of inmates. Based on the current occupancy situation [an occupancy rate of 100 per cent], the staff resources are, in principle, only sufficient for outdoor exercise

<sup>31</sup> Information retrieved from the Prison and Probation Service's website on 23 August 2019.

<sup>32</sup> Information retrieved from the Prison and Probation Service's website on 18 December 2019.

<sup>33</sup> See the Parliamentary Ombudsmen's report dnr O 7-2019 p. 14.

<sup>34</sup> See the Parliamentary Ombudsmen's report dnr O 29-2019 p. 4.

and administering meals. [...] Previously, staffing was increased to enable isolation-breaking work. However, this no longer happens because it is considered more important that the prison stays within its budget. This creates frustration amongst staff who feel they cannot work with isolation-breaking measures to a sufficient extent.<sup>35</sup>

During an inspection of *Jönköping Remand Prison* in March 2018, the remand prison management stated that staff have little time for working with isolation-breaking measures. This is because the number of transportation stopovers has increased at the remand prison and staff have to spend more working time on this task.<sup>36</sup>

The strained occupancy situation has meant that *Kalmar Remand Prison* has used “restriction rooms” for the placement of inmates. The rooms are normally used for isolation-breaking measures. When used for the placement of inmates, they cannot be used for the purpose for which they are actually intended.<sup>37</sup>

## 8.7 Placing inmates in segregation

In section 2.5, it states that there are no requirements for the Prison and Probation Service to regularly review decisions to place an inmate in segregation. During the inspection of *Huddinge Remand Prison* in January 2017, it emerged that the remand prison had a routine every Friday to review the decisions regarding inmates who had been placed in segregation. This involved making an assessment as to whether the decision could be revoked and the inmate placed in association. In making this assessment, the remand prison took into account

factors such as vacant cells and the composition of the group of inmates. If an inmate could not be offered such a place in the remand prison, then the placement section or a coordination function in the Stockholm region was contacted to arrange a place in an association department in another remand prison.<sup>38</sup> Similar routines were also applied at the remand prisons *Helsingborg* and *Kronoberg*.<sup>39</sup> During an inspection of *Sollentuna Remand Prison* in February 2017, it emerged that segregation decisions made for security reasons were not reviewed regularly.<sup>40</sup>

Based on the findings which emerged from an inspection of *Helsingborg Remand Prison* in September 2015, the Chief Parliamentary Ombudsman decided to investigate, inter alia, the Prison and Probation Service’s routines for reviewing decisions on segregation in an own-initiative inquiry. The investigation in this case showed that the Prison and Probation Service lacks standardised routines in this matter and, as a result, each remand prison has introduced local routines. The Chief Parliamentary Ombudsman stated the following:

“The existence of local routines on an issue such as this jeopardises the predictability of the different remand prisons’ assessments in such a way that similar cases risk not being assessed equally. This is also shown in the Prison and Probation Service’s reporting, for example, of an inmate demonstrating good behaviour as a prerequisite for being placed in association with other inmates. In my opinion, this situation is deeply unsatisfactory. [...] In summary, I believe that it is important that all restrictions to

35 See the Parliamentary Ombudsmen’s report dnr O-27-2019 p. 5.

36 See the Parliamentary Ombudsmen’s report dnr 1364-2018 p. 10.

37 See the Parliamentary Ombudsmen’s report dnr O 26-2019 p. 5.

38 See the Parliamentary Ombudsmen’s report dnr 416-2017 p. 6.

39 See the Parliamentary Ombudsmen’s report dnr 4632-2015 p. 16 and report dnr 417-2017 p. 6.

40 See the Parliamentary Ombudsmen’s report dnr 419-2017 p. 9.

an inmate's opportunity to associate with other inmates are made through decisions that have explicit legal support. The regulation should, for example, state how long such a placement can last. There should additionally be an obligation to review decisions at specific time intervals. In my opinion, the Remand Prisons Act and the system now applied by the Prison and Probation Service have obvious shortcomings, and it is therefore important that the law is amended.<sup>41</sup>

During the inspection of the *Helsingborg Remand Prison*, it was also revealed that the remand prison did not make any segregation decisions when inmates with restrictions were placed in the remand prison's observation department. The reason for the placement was instead simply noted down.<sup>42</sup>

### All limitations to the right of association with other inmates must be explicitly provided for in legislation

In the above-mentioned decision, the Chief Parliamentary Ombudsman stated that there may be situations where the Prison and Probation Service is obliged to make a decision to segregate inmates who are subject to restrictions. The agency must make a decision on segregation if the restrictions set by a prosecutor are not deemed sufficient to maintain security. In the opinion of the Chief Parliamentary Ombudsman, this arrangement, whereby different remand prisons have different routines for if and when a segregation decision is made, constitutes a serious shortcoming. For this reason, legislation needs to

be clarified on how the prerequisites for the Prison and Probation Service's decisions on placing inmates in segregation relate to the restrictions set by a prosecutor.<sup>43</sup>

There can, for example, be reasons to take a decision to segregate for security reasons as it is deemed necessary to restrict the amount of equipment in an inmate's cell. This is only possible by placing the inmate in segregation.<sup>44</sup>

During the inspection of the *Helsingborg Remand Prison*, it emerged that a female inmate – who was undergoing methadone treatment – had been placed in the remand prison's restriction department initially due to the fact that she had been given restrictions. When the restrictions were lifted, she was still placed in the same department. The remand prison had informed her that she was not allowed association with other inmates due to her ongoing treatment. During the inspection, she had been placed in the restriction department without restrictions for two months. The reason for this was that the remand prison had a policy which meant that inmates undergoing methadone or substitution treatment should not associate with others. Based on this finding, the Chief Parliamentary Ombudsman stated, inter alia, the following:

“At the time when the restrictions were lifted, the inmate [...] should have been given the opportunity to associate with other inmates during the day, provided that it had not been judged necessary for security reasons for the inmate to be segregated. In such a case, the remand prison would have made a decision on this. The Remand Prisons Act provides

41 See the Parliamentary Ombudsmen 2018/19 p. 146, dnr 5969-2015.

42 See the Parliamentary Ombudsmen's report dnr 4632-2015 p. 15.

43 See the Parliamentary Ombudsmen 2018/19 p. 146, dnr 5969-2015.

44 See chap. 1 § 17 FARK Prison and the Parliamentary Ombudsmen 2013/14 p. 287, dnr 4507-2012.

no other alternatives. However, no such decision was ever made. Instead, the inmate was informed of the remand prison's policy that she would not be provided with the possibility to associate with others during her period of treatment. In response, the Prison and Probation Service stated that there is no such policy within the agency. In short, the inmate has been segregated without any legal support from the time when the prosecutor's restrictions ceased. The prison deserves serious criticism for what has happened."<sup>45</sup>

<sup>45</sup> See the Parliamentary Ombudsmen 2018/19 p. 146, dnr 5969-2015.

## 9 The Parliamentary Ombudsmen's own-initiative inquiry on the isolation of inmates in remand prison

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Section 8.2 states that, at the end of 2017, the Parliamentary Ombudsmen requested the Prison and Probation Service to report back on its work in following up on the amount of time inmates spend in association and the use of isolation-breaking measures. What emerged in the reporting back meant that *Chief Parliamentary Ombudsman Elisabeth Rynning* decided to open an own-initiative inquiry to follow up on the issues of placement of inmates in association and the use of isolation-breaking measures.<sup>1</sup>

In March 2019, the Prison and Probation Service's Director of Prisons and Remand Prisons was called to a dialogue meeting at the Parliamentary Ombudsmen. At the meeting, the Chief Parliamentary Ombudsman addressed a number of issues concerning the situation for inmates under the care of the Prison and Probation Service. The meeting was recorded in minutes and the Prison and Probation Service was given the opportunity to comment on the minutes.

Prior to the dialogue meeting, the Prison and Probation Service received details of a number of issues that the Chief Parliamentary Ombudsman wanted to address at the meeting. The meeting addressed the following overarching issues:

1. Inmates' rights of association with other inmates.
2. Measures to break the isolation of inmates.
3. The possibility to follow the work with isolation-breaking measures.

Following the meeting, the Chief Parliamentary Ombudsman decided to initiate an own-initiative inquiry. The minutes of the meeting and the Chief Parliamentary Ombudsman's decision can be found in Appendices B and C.

### 9.1 Inmates' right of association with other inmates

Section 2.3 states that, as a main rule, an inmate held on remand has the right to associate with other inmates during the day. Unlike in prisons, there is no minimum amount of time specifying the extent to which an inmate must be able to exercise this right.

At the dialogue meeting, the Chief Parliamentary Ombudsman raised the issue of inmates' right of association with one another. According to the representatives of the Prison and Probation Service, the premise is that inmates in remand prison should spend a large part of the day in association with other inmates. However, according to the Prison and Probation Service, it is difficult to set a minimum amount of time for daily association as the agency is so far from reaching its objective that inmates with restrictions should not be isolated, i.e. receive a measure for two hours or more per day that involves meaningful human contact.

In her decision, the Chief Parliamentary Ombudsman states that she cannot interpret the situation in any other way than that the Prison and Probation Service's work with isolation-breaking measures for inmates with

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<sup>1</sup> See the Parliamentary Ombudsmen dnr O 7-2018.

### The Prison and Probation Service must be able to satisfy both inmates' right of association with other inmates and isolation-breaking measures

restrictions takes place at the expense of other inmates' rights to associate with each other during as much of the day as possible. The Prison and Probation Service must, of course, have an operation that can both satisfy inmates' right of association with other inmates and prevent inmates from being isolated.

At the meeting, the Chief Parliamentary Ombudsman also raised the issue of inmates who are denied associating with others, despite the fact that they are neither placed in segregation nor held with restrictions. According to the Prison and Probation Service, such situations can arise when, for example, an inmate cannot be placed in an association department due to lack of places. Another reason why inmates are placed in segregation is that there are no other inmates in the department who have the right to associate with other inmates. At the dialogue meeting, the representatives of the Prison and Probation Service stated that there should be no inmates held in such conditions, and that the agency is aware that it is breaking the law in these situations. An inmate who is denied the possibility of association with other inmates must, in accordance with the Prison and Probation Service's routines, receive an explanation as to why he or she cannot be offered an association place and how the agency is working to change the inmate's situation.<sup>2</sup>

Section 8.3 shows that the clearest reason why the Prison and Probation Service has difficulty providing inmates with the opportunity to associate is, according

to the agency, the "limitations of remand prisons' premises". The number of remand prison places with access to appropriate communal spaces does not correspond to the demand. The consequence of this is that the level of association offered, according to the Prison and Probation Service, is not to the desired extent. Furthermore, the heavy occupancy pressure due to an increasing remand prison population has made it more difficult for the agency to relocate inmates without restrictions to association places.

### According to the Prison and Probation Service, the agency lacks sufficient communal spaces

This is also confirmed by the agency's statistics reported in section 7. Table 2 in section 7 shows that, in 2018, the agency received 4,902 inmates without restrictions into remand prisons. The proportion of inmates in this group who received isolation-breaking measures that involve human contact of at least two hours per day was 67 per cent. This means that 33 per cent of inmates without restrictions were held in conditions amounting to solitary confinement and thus risked the associated negative consequences.

In the opinion of the Chief Parliamentary Ombudsman, the information that has emerged in this regard is remarkable. This is a group of inmates who, by law, have the right of association with other inmates. If this right is met, there is no risk of an inmate being isolated. To talk in this context of isolation-breaking measures, in the opinion of the Chief Parliamentary Ombudsman, is wrong. Such measures should only be considered in relation to inmates who are kept in segregation.

<sup>2</sup> See The Parliamentary Ombudsmen's report dnr O 7-2018 p. 7.

It suggests a serious failure when the Prison and Probation Service must offer isolation-breaking measures to inmates who already have rights of association. The Chief Parliamentary Ombudsman further emphasises that, in contrast to what has emerged from the international investigations, her review shows that the isolation of inmates is not a problem that is limited to inmates held on remand with restrictions. The lack of, inter alia, adequate premises means that this is a shortcoming that risks affecting all inmates held on remand. With a target-oriented operation, this situation would not have arisen.

**Both inmates with restrictions and inmates who have the right of association with other inmates are at risk of being isolated**

Section 8.3 shows that the Prison and Probation Service, in its reporting back to the Parliamentary Ombudsmen in June 2018, reported a number of renovation projects of its remand prison premises. This meant that the agency would have an additional 161 new places for inmates without restrictions by the end of 2018. Of these, 88 places are located in units with special association departments. In the opinion of the Chief Parliamentary Ombudsman, this is a welcome addition, but she fears that it is far from sufficient in meeting the real needs. She highlights that she has previously stated that local and practical conditions are not acceptable reasons for not satisfying inmates' statutory rights of association with other inmates. If, for example, the lack of communal space is accepted as a reason for refusing an inmate the right to associate with other inmates, it would completely dilute the right inmates held on remand are guaranteed by the Remand Prisons Act.

In addition to the availability of appropriate premises, the Chief Parliamentary Ombudsman also emphasises the importance of the Prison and Probation Service's remand prisons having sufficient staffing levels to be able to meet both the need for inmates' association with one another and isolation-breaking measures. This is detailed in section 8.6 with observations from the Opcat inspections on the consequences that the lack of staff can have on, for example, the possibility of satisfying inmates' right of association with one another. In the opinion of the Chief Parliamentary Ombudsman, the Prison and Probation Service must take a comprehensive approach to both the issues of premises and staffing levels. The Prison and Probation Service must ensure that existing, as well as newly produced prisons, have sufficient premises for association and the use of isolation-breaking measures, and that the staffing is sufficient for the remand prison to be able to offer inmates both sufficient levels of association with other inmates as well as isolation-breaking measures.

**The Prison and Probation Service must ensure that remand prisons have more communal spaces**

A similar opinion was also put forward by the *Remand Prison and Restrictions Government Inquiry* with the purpose of ensuring there exists a communal space per 15 inmates (see section 5.4). The Chief Parliamentary Ombudsman notes that the inquiry's proposal has not yet been implemented and that the Prison and Probation Service continues to have great difficulty in satisfying inmates' rights of association with one another. In the opinion of the Chief Parliamentary Ombudsman, these difficulties are caused by the fact that several of

the Prison and Probation Service's remand prisons are designed to keep inmates segregated, rather than in association with other inmates. In the opinion of the Chief Parliamentary Ombudsman, the Prison and Probation Service deserves very serious criticism for its continued shortcomings in this issue, which in turn lead to restrictions of a fundamental right.

## 9.2 Measures to break the isolation of inmates

As is clear from section 7, the Prison and Probation Service has an objective to ensure that inmates who are not allowed to associate with other inmates are offered isolation-breaking measures for at least two hours per day. The Prison and Probation Service conducts regular surveys of the extent to which inmates with restrictions or who are segregated receive isolation-breaking measures. Table 2 in section 7 shows that in 2018 the agency received 6,089 inmates with restrictions. The surveys show that only 17 per cent of inmates with restrictions received isolation-breaking measures involving human contact for two hours or more per day.

In her decision, the Chief Parliamentary Ombudsman states that it is very concerning that the Prison and Probation Service's own surveys show that in 2018, 83 per cent of those held on remand with restrictions were held in conditions amounting to solitary confinement and, as a result, at risk of suffering both damage to mental health and physical injuries.

In her decision, the Chief Parliamentary Ombudsman states that a variety of information has been provided regarding which inmates are included in the category in-

mates with restrictions. In the opinion of the Chief Parliamentary Ombudsman, it cannot be ruled out that this category – in addition to inmates with restrictions and inmates who are placed in segregation – also includes inmates who have the right to associate with others. This would therefore entail inmates being held in segregation without any legal support. If this were the case, there is a risk that they would be isolated, which, in the opinion of the Chief Parliamentary Ombudsman, is remarkable.

Although the Chief Parliamentary Ombudsman has not been able to clarify in which category these inmates belong when the Prison and Probation Service measures its use of isolation-breaking measures, she emphasises that this group has the right to associate with other inmates. Therefore, this group of inmates should be included in the category inmates without restrictions. The current uncertainty regarding the presentation of the measurement results means that it is not possible to clarify the extent to which the agency is able to satisfy the right of association with others for inmates.

The Chief Parliamentary Ombudsman states that Sweden has received international criticism for several decades for, inter alia, keeping inmates held on remand in isolation. This is therefore not an issue which has suddenly arisen. As detailed in section 6, the situation has also been highlighted by National Council for Crime Prevention. These shortcomings have been pointed out by the Parliamentary Ombudsmen on several occasions. In this context it is, in the opinion of the Chief Parliamentary Ombudsman, very serious that the Prison and Probation Service has not progressed further in its work in reaching its own objectives for the use of iso-

lation-breaking measures. This entails a risk of serious consequences for those who are placed in the Prison and Probation Service's remand prisons.

The international investigations of the Swedish remand prison system have primarily been aimed at that

### **It is very serious that the Prison and Probation Service has not progressed further in its work with breaking isolation**

highlighting the widespread use of restrictions and the risks involved therein. The Chief Parliamentary Ombudsman emphasises that her review

of the surveys of both categories – inmates without restrictions and inmates with restrictions – shows that the problem of isolation in remand prisons is not limited to those inmates that the Prison and Probation Service has the legal support to deny association rights. The lack of, inter alia, adequate premises means that isolation is something that also affects other inmates held in remand prisons. With an appropriately structured operation, this unacceptable situation would not arise.

In her decision, the Chief Parliamentary Ombudsman emphasises the Prison and Probation Service is responsible for planning and implementing remand orders from a court to ensure that the negative consequences of being deprived of one's liberty are counteracted (chap. 1 § 5 of the Remand Prisons Act). This includes a far-reaching responsibility to ensure that, for example, there are sufficient levels of staffing who can work with isolation-breaking measures and thus prevent inmates being isolated. The Chief Parliamentary Ombudsman is very critical of the fact that the Prison and Probation Service has not progressed further in its work.

The Chief Parliamentary Ombudsman fears that the measures that the Prison and Probation Service can and must take will not be sufficient in solving the problem of the high degree of isolation that currently prevails in the agency's remand prison system. The Chief Parliamentary Ombudsman also emphasises that the Prison and Probation Service, at the dialogue meeting in March 2019, stated that the agency unfortunately believes that the amount of time inmates receive isolation-breaking measures will not increase more than marginally, despite the fact that Sweden has a relatively high level of staffing when compared internationally. The CPT and the Remand Prison and Restrictions Government Inquiry have both deemed the need for a comprehensive change to the remand prison system. The details, which have emerged from the Chief Parliamentary Ombudsman's review, speak strongly in her opinion of the need for the government to now take a firm grip of these issues.

### **9.3 The ability to follow the work on the use of isolation-breaking measures**

Section 8.2 details how remand prisons have yet to define, measure and follow up on isolation-breaking measures in a standardised manner. This issue was raised partly in a request for reporting back, and partly at the dialogue meeting in March 2019.

In the reporting back, the Prison and Probation Service stated that a prestudy has been carried out to develop a standardised planning and follow-up tool that clearly supports the local operational isolation-breaking work, whilst at the national level provides a correct compilation of information. As the project is complex, in June 2018 the agency could not state if and when in the future

this system would be in operation nor how it will be designed.<sup>3</sup>

At the dialogue meeting, the representatives of the Prison and Probation Service stated that, from the prestudy carried out, it could be established that none of the surveys taken so far concerning the use of isolation-breaking measures are sufficient to be applied at a local level. Additionally, the surveys cannot be used to make national comparisons. For this reason, the agency wants to develop and introduce a central support system for isolation-breaking measures. A reasonable estimate, according to the Prison and Probation Service, is that it would take approximately five years from starting the project until there is a functioning support system in place.

Whilst awaiting such a support system, the Prison and Probation Service will produce an agency-wide Excel file into which the remand prisons must report their use of isolation-breaking measures. The Prison and Probation Service planned to bring this Excel file into use in spring 2019.<sup>4</sup> In a statement following the dialogue meeting, the Prison and Probation Service stated that the agency had not been able to keep to its schedule for introducing this centralised, agency-wide Excel file. The work was to be resumed after the summer in order to be completed before the end of 2019.<sup>5</sup>

At the dialogue meeting, the Chief Parliamentary Ombudsman emphasised it is very serious and deeply unsatisfactory that the Prison and Probation Service's national surveys of the use of isolation-breaking measures are not reliable.<sup>6</sup> It is partly because the measurements are only made seven times per year, and partly due to a lack

of central governance that remand prisons do not define, measure nor follow up on the use of isolation-breaking measures in a comprehensive manner. In her decision, the Chief Parliamentary Ombudsman emphasised that these shortcomings make it, above all, difficult for the Prison and Probation Service to follow the work that takes place at the local level in breaking the isolation of inmates held on remand.

**It is serious that the Prison and Probation Service's surveys are unreliable**

In addition, the risk of non-response from a remand prison and the fact that a remand prison does not record isolation-breaking measures means that the surveys are associated with such uncertainty that they cannot be used at a general level either. It is, for example, not possible to compare the results from different years, which means that the surveys – in the opinion of the Chief Parliamentary Ombudsman – become almost useless. This lack of reliable statistics means that it is not possible to say with any certainty which direction the development is going. Additionally – in the opinion of the Chief Parliamentary Ombudsman – the lack of a proper support system makes it difficult for the Prison and Probation Service to evaluate its own work with regard to the use of isolation-breaking measures.

The continuous recording of the extent to which inmates receive isolation-breaking measures is necessary for the Prison and Probation Service to be able to follow the work over time and for its staff to be able to attend to inmates who are at risk of being isolated. For this reason, it is very important that the Prison and Probation Service has such a system in place and that it is used correctly. The Chief Parliamentary Ombudsman states that the Prison and Probation Service's work to develop a new support

<sup>3</sup> See the Prison and Probation Service's reporting back on 14 June 2018 dnr 416-2017 p. 4.

<sup>4</sup> See The Parliamentary Ombudsmen's report dnr O 7-2018 pp. 10 and 11.

<sup>5</sup> See the Prison and Probation Service's statement on 30 August 2019, dnr O 7-2018.

<sup>6</sup> See The Parliamentary Ombudsmen's report dnr O 7-2018 p. 10.

system – as far as she knows – has not yet begun as of February 2020. As the need to be able to follow the work with isolation-breaking measures is so great, the estimated production time of five years is unacceptably long.

The Chief Parliamentary Ombudsman again emphasises that the Prison and Probation Service, in its statistics on the use of isolation-breaking measures, also reports the time that inmates placed in an association department and association places spend outside their cell.<sup>7</sup> In the opinion of the Chief Parliamentary Ombudsman, it is wrong to discuss isolation-breaking measures in relation to this group of inmates and, in addition, the statistics are misleading. In the opinion of the Chief Parliamentary Ombudsman, reporting isolation-breaking measures should only be required in relation to inmates with restrictions or who are segregated. As long as the Prison and Probation Service, due to structural shortcomings, finds it difficult to satisfy inmates' rights of association with other inmates, there is – in the opinion of Chief Parliamentary Ombudsman – also a need for the Prison and Probation Service to report on the extent to which the agency satisfies these rights.

#### 9.4 Need for legislative changes

In the opinion of the Chief Parliamentary Ombudsman, there is a need to review the legislation in order to deal with the unacceptable situation that currently prevails within the Prison and Probation Service's operations.

In the opinion of the Chief Parliamentary Ombudsman, the following measures should be taken:

- The meaning of association must be defined in both the Prisons Act and the Remand Prisons Act. It is

necessary for this right not to be given an arbitrary meaning. A reasonable premise is that association means that an inmate spends time with several other inmates.

- In order for the concept of association between inmates not to become meaningless, the legislation must state the extent to which inmates have the right to associate with other inmates on a daily basis. It is not sufficient that it is only stated in the Prison and Probation Service's own regulations for prisons, and it is not acceptable that such regulations are completely absent in the case of remand prisons. In the opinion of the Chief Parliamentary Ombudsman, there should be no difference as regards the meaning of association within one agency.
- A provision should be introduced that guarantees inmates isolation-breaking measures for a certain period of time per day. In the opinion of the Chief Parliamentary Ombudsman, the minimum time should be set higher than the two hours proposed by the Remand Prison and Restriction Government Inquiry. Furthermore, this right should not only cover inmates with restrictions, but all inmates who are placed in segregation.
- There is a continued need for statutory regulation with specific times for review of segregation decisions in remand prisons.
- There is a continued need to clarify the legislation with regard to how the basis upon which the Prison and Probation Service decides on placing inmates in segregation relates to restrictions imposed by a prosecutor with regard to an inmate's right of association.

<sup>7</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 p. 9.

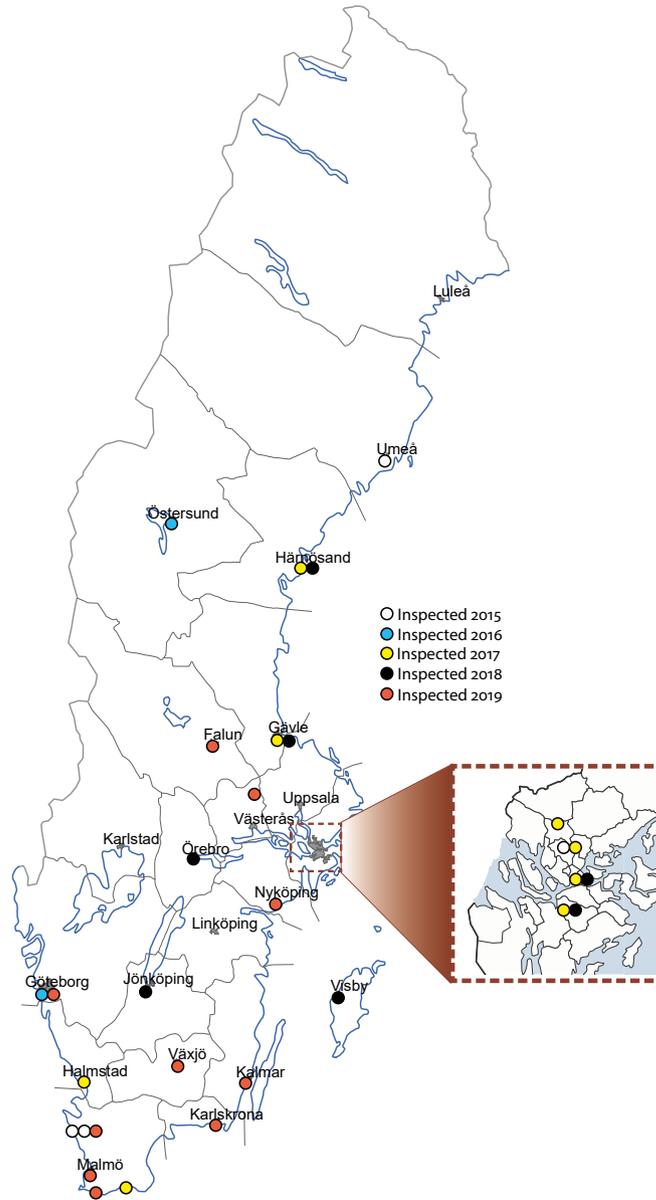
# Appendices

- A. Inspections of the Prison and Probation Service's remand prisons performed 2015–2019
- B. Report from dialogue meeting on 9 March 2019
- C. The Parliamentary Ombudsmen's decision on 5 February 2020  
dnr O 7-2018

## Inspections of the Prison and Probation Service's remand prisons performed 2015–2019

Unannounced inspections		
Remand prison	Date	Dnr
Huddinge	23–24 January 2017	416-2017
Kronoberg	26 January 2017	417-2017
Gävle	30–31 January 2017	418-2017
Sollentuna	2–3 February 2017	419-2017
Storboda	7–8 February 2017	581-2017
Halmstad	14–15 February 2017	582-2017
Ystad	15–16 February 2017	583-2017
Jönköping	7–8 March 2018	1364-2018
Växjö	26 March 2019	0 22-2019
Karlskrona	4 April 2019	0 25-2019
Malmö	4 April 2019	0 27-2019
Nyköping	4 April 2019	0 29-2019
Kalmar	5 April 2019	0 26-2019
Trelleborg	5 April 2019	0 28-2019
Falun	9 April 2019	0 30-2019
Helsingborg (Berga Remand Prison Branch)	13–14 May 2019	0 39-2019
<b>Total 16 inspections</b>		

Announced inspections		
Remand prison	Date	Dnr
Helsingborg's Remand Prison Branch in Helsingborg Prison	15 April 2015	2000-2015
Helsingborg	8–9 September 2015	4632-2015
Sollentuna	22–23 September 2015	4969-2017
Umeå	11–12 November 2015	6106-2015
Göteborg	3–4 February 2016	389-2016
Östersund	16–17 February 2016	872-2016
Saltvik	21–23 November 2017	7573-2017
Örebro	12–13 February 2018	750-2018
Kronoberg	2–4 May 2018	2643-2018
Visby	27–28 June 2018	4139-2018
Gävle	8 August 2018	4675-2018
Saltvik	14 August 2018	5266-2018
Huddinge	23 August 2018	5563-2018
Göteborg	6–7 February 2019	0 7-2019
Salberga	12–14 February 2019	605-2019
<b>Total 15 inspections</b>		



### Dialogue meeting with the Prison and Probation Service on 12 March 2019

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#### Own-initiative inquiry on the Prison and Probation Service's work with isolation-breaking measures

On 12 March 2019, the *Chief Parliamentary Ombudsman Elisabeth Rynning* held a dialogue meeting with *representatives of the Prison and Probation Service*. The dialogue meeting forms part of the investigation in an own-initiative inquiry regarding the Prison and Probation Service's work with isolation-breaking measures. The own-initiative inquiry is based on responses received from the agency upon request of the Parliamentary Ombudsmen.

#### Reports back from the Prison and Probation Service

Following a series of Opcat inspections of remand prisons in spring 2017, the *Chief Parliamentary Ombudsman* stated that the Prison and Probation Service should ensure that the amount of time inmates spend in association is reported and documented in a standard way so as to monitor conditions over time. She further stated that for inmates who, for various reasons, do not associate with other inmates, isolation-breaking measures should be reported and documented. The documentation should state to which category (held on remand with restrictions, held on remand without restrictions or held in custody) an inmate belongs. Finally, the *Chief Parliamentary Ombudsman* requested that the Prison and Probation Service report back on how the agency follows up on the amount of time inmates spend in association and the use of isolation-breaking measures.<sup>1</sup> The response was received by the Parliamentary Ombudsmen on 13 June 2018.

Based on the details which emerged from the reporting back, the *Chief Parliamentary Ombudsman* decided to initiate an own-initiative inquiry to

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<sup>1</sup> See the Parliamentary Ombudsmen's inspection report from e.g. Huddinge Remand Prison (dnr 416-2017, etc.).

follow up on the issues of placement of inmates in association and the use of isolation-breaking measures. In an official letter dated 28 December 2018, *representatives of the Prison and Probation Service* were called to a dialogue meeting.

On 31 January 2019, the Prison and Probation Service submitted another report following a request from the *Chief Parliamentary Ombudsman* in an own-initiative inquiry regarding the placement of inmates in segregation.<sup>2</sup> This response was also included in the dialogue meeting.

#### Meeting participants

In addition to the *Chief Parliamentary Ombudsman*, Head of Office Jörgen Buhre, Head of Unit Gunilla Bergerén, Deputy Head of Unit Karl Lorentzon and legal advisors Eva Fridén (report author) and Simon Törnvall were also present at the dialogue meeting.

From the Prison and Probation Service, the Director of Prisons and Remand Prisons AA, Head of Legal BB and Head of Security CC were present.

#### Purpose of the meeting

The meeting began with the *Chief Parliamentary Ombudsman* informing that she had decided to follow up the issues of placement of inmates in association and the use of isolation-breaking measures in an own-initiative inquiry. Prior to the meeting, an official letter dated 18 February 2019 with questions had been sent to the Prison and Probation Service. The *Chief Parliamentary Ombudsman* stated that these were the issues she wished to discuss at the meeting.

#### What emerged from the dialogue meeting

At the dialogue meeting, the following emerged:

##### Association between inmates

This section addressed the following issues:

- a) How many inmates were there in the country's remand prisons on 7 February 2019 and how many of these were subject to restrictions or were placed in segregation?
- b) What proportion of the inmates were placed in an association place that was not within an association department?
- c) Is there a difference between the association places that are not located within an association department and restriction places regarding the amount of time spent in association with other inmates?

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<sup>2</sup> See the Parliamentary Ombudsmen 2018/19 p. 146.

- d) What possibility does the Prison and Probation Service have to offer association with others for inmates who are placed in an association place that is not within an association department?
- e) Why has the Prison and Probation Service not set a minimum time for how long an inmate should have the right to associate together with other inmates per day?

In the official letter sent to the Prison and Probation Service prior to the meeting, the agency was asked to submit documentation no later than 4 March 2019 concerning questions a) and b). In the documentation submitted, the agency stated that, according to the preliminary statistics, the total number of people in remand prisons on 7 February 2019 was 2,215. Of these, 1,914 were held on remand, of which 1,068 had restrictions imposed in accordance with chap. 24 § 5 a of the Code of Judicial Procedure, which corresponds to 56 per cent of the number of inmates or 48 per cent of all inmates held on remand.

There were a total of 301 inmates who belonged to a category other than held on remand. This category includes, inter alia, enforcement of sentence cases, that is to say convicted inmates waiting for a prison placement, inmates detained under the Aliens Act (2005:716), inmates taken into custody by a parole board and other inmates admitted to a remand prison but temporarily placed in another facility.

The Prison and Probation Service also stated that it is not possible to obtain statistics from its digital system on how many inmates in remand prison had a decision regarding placement in segregation.

At the meeting, the *Chief Parliamentary Ombudsman* asked why it is not possible to obtain the number of inmates who were placed in segregation, i.e. question a) above.

*The representatives of the Prison and Probation Service* stated that it is possible to obtain information on how many inmates in prisons are placed in segregation, but that it is not possible to obtain such information for remand prisons. The reason for this is that the agency's system lacks such a function. In the opinion of the *representatives of the Prison and Probation Service*, it is deeply regrettable as such a function would make it easier for the management and governance of the remand prison operations. An order has been placed for its system to be supplemented with this function. However, it is unclear when this feature will be available. When asked, the *representatives of the Prison and Probation Service* stated that it is possible to produce the information manually. The agency's head office had not understood the Parliamentary Ombudsmen's request as meaning they should have obtained the information from each and every remand prison. The agency has now introduced a requirement for segregation decisions to be reviewed, and this is stated in the Prison and Probation Service's handbook.

The *Chief Parliamentary Ombudsman* stated that, according to the details provided by the Prison and Probation Service on 7 February 2019, there were approximately 300 inmates in remand prisons who were not held on remand and asked if the reason for this was that there was a shortage of prison places.

According to the *representatives of the Prison and Probation Service*, several administrative steps must be performed before a convicted individual can be placed in a prison. The Parliamentary Ombudsmen has previously stated that a transfer to a prison must take place within seven days of a sentence being passed. The Prison and Probation Service has found it difficult to meet this requirement and this is mainly due to a lack of places in prisons, but also due to problems with transportation. On 11 March 2019, there were a total of 149 enforcement of sentence cases in remand prisons and of these, 70 cases were being processed. The remaining cases were individuals awaiting a prison place. There are long queues to the National Assessment Unit at Kumla Prison, and therefore the unit will be expanded by 30 places. This will be done via double-occupancy of cells and by placing inmates in one of the institution's high-security departments (Fenix).

The *Chief Parliamentary Ombudsman* asked the representatives of the Prison and Probation Service to expand upon the agency's response as to why it is not possible to produce information on the proportion of inmates placed in association places which are not located within a association department, i.e. question b) above.

The *representatives of the Prison and Probation Service* stated that this is because the agency does not use such terminology in the same way that the Parliamentary Ombudsmen does in forming the question. Which places are used for association placement depends on the current occupancy of each remand prison. Furthermore, the *representatives of the Prison and Probation Service* stated that the agency does not record and report any statistics on the number of inmates in association.

*Chief Parliamentary Ombudsman* referred to the response submitted by the Prison and Probation Service which stated some 42 per cent of all remand prison places consist of association places.<sup>3</sup> The *representatives of the Prison and Probation Service* were asked how – with regard to their answer to question b) – it was possible to provide this information.

In the opinion of the *representatives of the Prison and Probation Service*, the figure of 42 per cent should only be seen as an indication of how many association places there should be in the remand prison system. This need varies

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<sup>3</sup> See the Prison and Probation Service's reporting back in dnr 5969-2015 p. 2.

over time. It is therefore not possible to provide an exact number of association places at any one time. Remand prisons with relatively few places have flexible places that can be adapted based on which categories of inmates the remand prison receives. A cell can be a restriction place one day and an association place the next. In order to obtain information on how many clients are in association or de facto segregated, the agency must make a manual review every given day. The information requested by the Parliamentary Ombudsmen required such a manual collection of data, which the agency had not done before the meeting.

The *Chief Parliamentary Ombudsman* pointed out that there is no minimum time for association in remand prison and asked what association actually means, in the Prison and Probation Service's opinion, when an inmate is placed in an association place.

According to the *representatives of the Prison and Probation Service*, inmates placed in association places are taken out in groups for association for a specific amount of time of the day. Unlike the case in an association department, inmates in association places are not released in the morning for association until being locked up in the evening.

The *Chief Parliamentary Ombudsman* stated that the Prison and Probation Service's way of using the concepts of association department and association place means that the work performed with these issues becomes unclear to an external investigator. What is described as association places is more similar to isolation-breaking measures as it consists of spending a certain amount of time in a group per day.

The *representatives of the Prison and Probation Service* agreed with the *Chief Parliamentary Ombudsman's* description and stated that this is not how association is intended to function. The premise in the correctional regime is that inmates should be given the opportunity to associate during the day and the term 'association' means spending time with more than one inmate, that is to say in the plural (chap. 2 § 5 of the Remand Prisons Act [2010: 611]). This presupposes that an association department has at least three places. However, there is an ongoing discussion within the agency regarding the purpose of the provision. It may be that the provision aims to give an inmate the possibility to spend time with another person. In such a case, there should be no major difference between having contact with only one inmate or with two. Today, two inmates co-sitting is an isolation-breaking measure. In the future, one could imagine a position whereby association means two inmates spending time together in a cell. The Prison and Probation Service has not progressed so far in its discussions to take into account the international regulations nor the recommendations from international bodies on the issue. The agency has also not made any request to the Ministry of Justice for guidance on the matter.

According to the *representatives of the Prison and Probation Service*, the term association place began to be used in 2005 when isolation-breaking measures became an objective set by the agency for remand prison operations. However, there has been no change to the actual places themselves. An inmate who is placed in an association department shall spend time in association with other inmates throughout the day, i.e. from the time the cell is unlocked every morning until being locked again every evening. For an inmate who is placed in an association department, his or her time in the remand prison therefore greatly resembles being held in a regular prison. Association places, which are not located in association departments, are places that can also be used as restriction places. Inmates who are placed there must be able to associate with other inmates in groups during certain parts of the day, but they are locked in their cells for parts of the day. There is no definition of when a period in association is considered as fulfilled. There is also no fixed time period for how long during a day a lock-in in period in a cell can last, which is the case in a prison.<sup>4</sup> The premise, however, is that inmates in an association place should spend a large part of the day together with others. It is difficult to set a minimum amount of time for association because the agency is so far from reaching the objective that an inmate with restrictions should not be isolated, i.e. receive two hours or more per day of association involving human contact.

Regarding this, the *Chief Parliamentary Ombudsman* stated that the difference between associating and co-sitting does not then appear to be particularly clear. Being in an association place rather resembles an isolation-breaking measure. The *representatives of the Prison and Probation Service* confirmed that to be placed in association is not intended to be like that.

The *representatives of the Prison and Probation Service* stated that the agency does not record nor report the number of inmates who are placed in association. The Prison and Probation Service's national statistics on the use of isolation-breaking measures include the group of inmates in association places which are not located within an association department, in the statistics for inmates in restriction places. As a result, the measures where inmates are taken out in groups for association are reported as an isolation-breaking measure for each inmate. In this way, the statistics on measures taken for the category inmates with restrictions are improved. Another consequence is that measures are reported for many more inmates than for those who belong to the category inmates with restrictions. As such, the reported number of inmates who belong to this category will also be more than the actual number.

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<sup>4</sup> See the Prison and Probation Service's regulations and general advice on institutions, chap. 6 §§ 1 and 2 (KVFS 2011:1).

### Segregation with no basis in law

This section addressed the following issues:

- a) How many times in 2018 did situations arise where the Prison and Probation Service kept inmates in segregation with no basis in law?
- b) What measures does the Prison and Probation Service take when such situations arise?
- c) How does the Prison and Probation Service measure association and follow up on measures for this category of client?

The *representatives of the Prison and Probation Service* stated that, even though the premise in the correctional regime is that inmates should associate with other inmates, the agency also has an overall responsibility for the safety and security of inmates. The Prison and Probation Service has an effective intelligence department that monitors any problems that may arise due to gang membership, etc. The agency's assessment of suitability and security prior to placing an individual into association focuses on groups who cannot be placed in association, e.g. men and women together, migration detainees who are placed in the Prison and Probation Service without a decision on deportation. Gang membership is also taken into account. On the other hand, the behaviour of an inmate should not be a prerequisite for placement in association.<sup>5</sup> Previously, this was included in the Prison and Probation Service's handbook, however it has since been removed. Cooperation with other authorities in the judicial system – which means that an inmate should be located geographically close to investigating authorities – limits the Prison and Probation Service's ability to move an inmate without restrictions to another remand prison so as to be placed in association. Therefore, there is segregation with no basis in law. The possibilities for transfer increase when an inmate is further on in the judicial process.

Prior to the meeting, the Prison and Probation Service had stated that it could not provide information regarding question a) above. According to the *representatives of the Prison and Probation Service*, the agency does not make decisions in these cases. Therefore, it is not possible to extract such statistics from the system. There is now a requirement that these situations must be documented in the remand prison plan. The documentation must state for what reason an inmate cannot be offered association.<sup>6</sup> This information is required to

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<sup>5</sup> See the Prison and Probation Service's handbook on association and segregation in remand prison (2018:13) p. 6.

<sup>6</sup> See the Prison and Probation Service's handbook on association and segregation in remand prisons, p. 6.

collected manually in each individual case, which the agency has not understood to be what the Parliamentary Ombudsmen requested.

The *representatives of the Prison and Probation Service* stated that inmates who have neither restrictions nor decisions on placement in segregation should freely associate with other inmates. There should be no inmates segregated with no basis in law. Despite this, there is segregation with no basis in law within the Prison and Probation Service and, as such, the agency violates Swedish law. Following the *Chief Parliamentary Ombudsman's* statements in the own-initiative inquiry regarding the placement of inmates in segregation<sup>7</sup>, the issue has received clearer attention within the agency. Today, each inmate must receive an explanation as to why he or she cannot be offered an association place and how the agency is working to change the inmate's situation. The current requirements for providing information and preparing documentation mean that inmates become aware of their rights. This approach is part of making the situation visible to clients as well as to staff.

In response to a question from the *Chief Parliamentary Ombudsman*, the *representatives of the Prison and Probation Service* stated that written information regarding which laws and rules apply needs to be provided to inmates. The agency has not yet planned to make changes to the information sheet so that it informs inmates of their rights of association with other inmates.

In the opinion of the *representatives of the Prison and Probation Service*, being segregated with no basis in law for a prolonged period may, in certain circumstances, constitute inhuman treatment and constitute a violation of the inmate's human rights. The Prison and Probation Service has described this situation in an agency handbook.<sup>8</sup> When drafting that statement, the agency has only considered the objective that an inmate should receive at least two hours of isolation-breaking measures that involve human contact per day. The objective is in line with the recommendation made by the UN Special Rapporteur [on torture and other cruel, inhuman or degrading treatment of punishment]. The *representatives of the Prison and Probation Service* stated that they have not reflected on whether its staff need support to be able to determine when a prolonged period in segregation with no basis in law constitutes inhuman treatment.

The *representatives of the Prison and Probation Service* stated that there are no statistics kept on inmates in segregation with no basis in law support because this group should not exist. They are included in the category inmates with

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<sup>7</sup> See the Parliamentary Ombudsmen 2018/19 p. 146.

<sup>8</sup> See the Prison and Probation Service's handbook on association and segregation in remand prisons, p. 17.

restrictions together with inmates placed in association places that are not in association departments (see pp. 3–4). There should be a support system to be able to follow this category. Based on experience, it takes five years' work before such a support system can be in use.

The *Chief Parliamentary Ombudsman* stated that it is extremely serious that statistics are reported in this way. She further emphasised the importance of the Prison and Probation Service's staff understanding the difference between an inmate whose right to associate is not met by the Prison and Probation Service and as a consequence is isolated with no basis in law, and an inmate who is isolated due to restrictions or decisions on placement in association in accordance with the Remand Prisons Act. In all these situations, the Prison and Probation Service offers inmates isolation-breaking measures. The fact that the staff record and report isolation-breaking measures for all these categories of inmates means that confusion arises and, as such, an incorrect picture is presented concerning how many inmates have restrictions. In addition, the agency does not fulfil its commitment but keeps inmates in conditions which lack a legal basis.

#### **Inmates with restrictions and inmates placed in segregation**

This section addressed the following issue:

- a) The conditions for implementing isolation-breaking measures should increase when the occupancy rate in remand prisons decreases. Despite the fact that the occupancy rate on some of the occasions surveys were taken was as low as 79 per cent, there has been no increase in the use of isolation-breaking measures. What is the reason for this?

The *representatives of the Prison and Probation Service* stated that the premise is that inmates with restrictions and inmates placed in segregation should be offered isolation-breaking measures. Other inmates must be in association with other inmates. The results of the surveys of the use of isolation-breaking measures should be better at lower levels of occupancy. It is somewhat misleading to focus only on the average occupancy, as there are some remand prisons with an occupancy rate of 60 per cent and other remand prisons with an occupancy rate of over 90 per cent. The *representatives of the Prison and Probation Service* stated that they unfortunately believe that the amount of time inmates receive isolation-breaking measures will not increase more than marginally, despite the fact that Sweden has a relatively high staff rate per inmate when compared internationally. The agency will only be able to achieve 'marginally' better results unless something drastic happens regarding the occupancy rates. Furthermore, the agency needs better premises. The result for 2018 is however good, as occupancy increased whilst the results of the surveys of the average time that inmates received isolation-breaking measures were largely unchanged.

When asked, the *representatives of the Prison and Probation Service* stated that all those registered as held in a remand prison (including those placed in an external facility, those detained by the order a prosecutor and detainees on transportation stopovers) are included in the occupancy statistics. At the same time, not all cells in remand prisons are counted as ordinary places, for example the transportation cells in the remand prisons in Göteborg, Jönköping, Sollentuna and Örebro. If you look at the total number of places, however, there are relatively few places that are not included but that can be occupied and included in the occupancy statistics.

The *Chief Parliamentary Ombudsman* emphasised that the Prison and Probation Service's method of reporting the numbers of registered admissions, inmates and places means that transparency is extremely limited and that there is a risk that the Prison and Probation Service will highlight different figures based on what it is they want to present.

The *representatives of the Prison and Probation Service* shared this opinion and one result, inter alia, is that it complicates the information presented in the annual report. There are four different ways to define places. Occupancy can be calculated in different ways by taking into account different factors. One way is to calculate the average occupancy and this information is used in the Prison and Probation Service's annual statistics and submitted to the government. This calculation includes, for example, police custody cells [that the Prison and Probation Service operate on the basis of agreements with the Police Authority]. Another way is to base the calculation on the current occupancy rate on any given day which would not include, for example, police custody cells. The Prison and Probation Service is reworking the way in which it presents its statistics so that the outside world can better understand the occupancy figures.

#### Surveys on the use of isolation-breaking measures and time spent in association

This section addressed the following issues:

- a) For which categories are isolation-breaking measures measured?
- b) Does the Prison and Probation Service measure the use of isolation-breaking measures for inmates without restrictions, and if so, for what reason?
- c) Is the amount of time in association measured for inmates in an association place?
- d) Why is it not possible to follow different categories, for example individuals detained in custody?
- e) Are there categories that the Prison and Probation Service does not consider to need association with other inmates or for which isolation-breaking measures do not need to be taken, and if so, which and why?
- f) Why does the Prison and Probation Service only use manual systems for measuring the use of these measures instead of central and digital systems?

The *representatives of the Prison and Probation Service* stated that the national surveys of the use of isolation-breaking measures in remand prisons carried out by the agency include all inmates. Inmates placed in an association place within an association department are reported in the category inmates without restrictions.

The category inmates with restrictions, in addition to inmates with restrictions, also includes inmates with a decision to be placed in segregation, inmates placed in an association place not located within an association department as well as inmates segregated with no basis in law. "Generalisable surveys" means that the result refers to the total, however there are no surveys for specific details, for example what the result may mean for a specific remand prison. The surveys carried out in 2015–2017 are based on the same criteria and are comparable. The surveys carried out in 2014 and earlier are based on other criteria and are therefore not comparable in the same way. However, a preliminary study has found that none of the surveys are sufficiently adequate to be used at the local level, nor to make comparisons nationally. The Prison and Probation Service wants to change this and it has an ongoing project to develop and introduce a central support system for the use of isolation-breaking measures.

The *Chief Parliamentary Ombudsman* emphasised that the basis for the Prison and Probation Service's 2020 budget states that work on the use of isolation-breaking measures will not be prioritised, and she then asked if this also means that this issue will not be prioritised during 2019.

The *representatives of the Prison and Probation Service* stated that within the agency, priority is currently given to projects relating to the support system for the calculation of sentences and the number of inmates. Previous experience of developing such support systems shows that, as a reasonable estimate, it will take approximately five years from the start of the work until there is support system in place that makes it possible to measure the use of isolation-breaking measures. Unfortunately, there are no synergy effects regarding other ongoing support system projects, as the Prison and Probation Service's registration system (KVR) is a complicated system. The cooperation that exists with the Prosecution Authority to try to develop the statistics regarding remand orders and restrictions is based on already existing statistical data, and there is therefore no need to build any new support system. This means that the deprioritising of isolation-breaking measures leads to a delay in the work of starting to develop a support system for this issue.

The *Chief Parliamentary Ombudsman* stated that it is extremely serious and very unsatisfactory that the Prison and Probation Service's existing national surveys of the use of isolation-breaking measures are unreliable, and are made in such a way that it is not possible to see in which direction the development is going. It must be difficult to use the surveys in one's own operation, but is also

difficult for clients and for supervisory authorities. It is also not possible to follow the development of the agency's use of isolation-breaking measures and see what is cost driven when the Prison and Probation Service records and reports inmates segregated with no basis in law in the same category as inmates with restrictions (category inmates with restrictions). In addition, the agency measures the use of isolation-breaking measures for inmates who are in an association place in an association department (category inmates without restrictions). The Prison and Probation Service's way of reporting on the use of isolation-breaking measures means that a higher proportion are reported as held on remand with restrictions than is actually the case. In addition, it is incorrect to measure the use of isolation-breaking measures for inmates who associate in an association department. In addition, the surveys of group activities for inmates who are in an association place not located within an association department results in an improvement in the reported amount of time isolation-breaking measures are used for inmates in the category inmates with restrictions.

The *representatives of the Prison and Probation Service* agreed with these observations and stated that it is deeply regrettable. The *Chief Parliamentary Ombudsman* stated that it is desirable that the criteria and measurement methods are made clearer and more appropriate in order to increase the credibility and reliability of the Prison and Probation Service's surveys.

Furthermore, the *representatives of the Prison and Probation Service* stated that, in the absence of a support system for collecting statistics, the Prison and Probation Service is preparing a central Excel file. The agency has collected good examples from different regions and, from this, has prepared a shared Excel file which all remand prisons will have to report isolation-breaking measures in.

Since it is ongoing work, there are opportunities to consider different categories of inmates, e.g. migration detainees. The Prison and Probation Service plans for the central Excel file to be in use by spring 2019.

It emerged that systematic follow-ups and operational analyses regarding the use of isolation-breaking measures, in addition to the national surveys, take place on the basis of operational dialogues. The use of isolation-breaking measures are one of eight points that the regional managers must report to the head office. The data is based on what each remand prison head has reported to their regional manager. The national information that the Prison and Probation Service then reports to the Ministry of Justice is based on this information.

The *representatives of the Prison and Probation Service* stated the reasons why the agency did not prioritise the need for clearer statistics are, inter alia, as follows:

Working with the use of isolation-breaking measures became relevant in 2004 and 2005 as a one-off issue due to the high occupancy. It was not until around 2010 that it became a central issue for the entire agency and more systematic work began. However, no follow-up tools were developed. When developing a support system for the use of isolation-breaking measures, the agency needs to review definitions, for example of association place in relation to restriction places and new forms of isolation-breaking measures such as restriction groups. In addition, the agency needs to review what is to be measured. Furthermore, everyone, internally and externally, and not least the inmates, must understand what is being measured. The report Fewer people in remand prison and reduced isolation (SOU 2016:52) did not consider the problem of the situation for inmates segregated with no basis in law, and the Prison and Probation Service does not fulfil the requirements of the Remand Prisons Act in such cases.

#### Other

This section addressed the following issues:

- a) Has the Prison and Probation Service considered introducing security classes in remand prisons which correspond to the classes used in prisons?
- b) What needs are there for association departments for inmates without restrictions and when does the Prison and Probation Service plan to meet any such needs?

The *representatives of the Prison and Probation Service* stated that it is not relevant to introduce security classes in remand prisons corresponding to those in prisons. Such a system would further complicate the placement of inmates and risk leading to the increased isolation of inmates. More association places are needed. In the ongoing construction of new remand prisons, restriction places are built in corridors that can be divided (sectioned) and converted into association places. There are areas where inmates can associate. No association departments are being built.

The *Chief Parliamentary Ombudsman* stated that information had been received that the Prison and Probation Service was reducing the transportation organisation that began to be developed following the change in legislation on 1 April 2017. The *representatives of the Prison and Probation Service* were asked whether this will lead to the agency no longer performing emergency transportations in accordance with, inter alia, LVM [Care of Abusers Act (1988:870)], LVU [Care of Young Persons Act (1990:52)] and LPT [Compulsory Psychiatric Care Act (1991:1128)].

According to the *representatives of the Prison and Probation Service*, the agency will return to the organisation of transportation that the agency received funding for in 2017, that is phase one. The handover of transportation for the purposes of judicial assistance would take place in three phases, of which phase two was finished in 2018 and approximately 200 prison guards were employed for the organisation of the transportation. These employees will not be

dismissed but will be offered other employment within the agency. Phase three, which concerns urgent transportation, will thus not be implemented within the current budget. However, the Prison and Probation Service performs some urgent transportations, but it is not financially justifiable for the agency to be able to carry out urgent transportations on a 24 hour basis.

*The representatives of the Prison and Probation Service* asked to be allowed to return with information regarding the claims that the agency does not accept orders for urgent transportations and, as such, no longer performs them.

*The Chief Parliamentary Ombudsman* stated that she is aware of reports of the strained occupancy situation within the Prison and Probation Service. She is concerned regarding reports which have appeared in the media and observations made during the recent Opcat inspections of Göteborg Remand Prison and the police custody facilities in Borlänge. Due to this, *the Chief Parliamentary Ombudsman* announced that she will initiate an own-initiative inquiry which will focus on the situation of those deprived of their liberty. The intention is that the own-initiative inquiry will include a survey of the occupancy situation, targeted inspections and possibly a dialogue with the Prison and Probation Service.

*The representatives of the Prison and Probation Service* stated that the inmate occupancy rate in remand prisons on 11 March 2019 was 102 per cent and that 21 remand prison had over 100 per cent occupancy. All inmates are included, including those inmates awaiting enforcement of their sentences. When the situation was at its worst in autumn 2018, the Prison and Probation Service had more than 200 inmates waiting for a placement in prison. On 11 March 2019, there were 149 inmates in remand prison waiting for placement in a prison, of which 70 inmates had ongoing placement cases. A placement case must be completed within seven days. Within that time, documentation must be produced, decisions made and thereafter a vacant place must be found and transport to the prison must be ordered. The Prison and Probation Service has not been able to maintain normal processing times, mainly due to the lack of places in prisons. There are also long queues at the National Assessment Unit at Kumla Prison. In addition, 68 migration detainees were placed in the care of the Prison and Probation Service under the Aliens Act. The agency has doubled the number of cells in remand prisons and in the National Assessment Unit, and uses security places at the Prison and Probation Service's high-security units for placing inmates held on remand.

*The representatives of the Prison and Probation Service* stated that the remand prisons with the highest occupancy are in southern Sweden, and also include the remand prisons Kronoberg, Huddinge, Saltvik and Falun. The forecast is that the flow of inmates will increase by 7–8 per cent up to June 2019 and then level off, but it could continue to increase. Working groups have been established with representatives from the Police Authority, the Migration Agency and the

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Prison and Probation Service to work on measures to handle the high occupancy rate in remand prisons. The Prison and Probation Service reports weekly to the Government Offices on the occupancy situation.

#### Conclusion

The *representatives of the Prison and Probation Service* handed over the Prison and Probation Service's document Increased client flow, the Prison and Probation Service's overall assessment and proposals for measures (27 February 2019).

#### Additional information from the Prison and Probation Service following the dialogue meeting

Following the meeting, the Prison and Probation Service has submitted the following information:

The National Transport Unit (NTE) registers orders for transportations that require collection within four hours of receiving an order. Urgent transportations are carried out all over the country, but the NTE cannot ensure staffing on a 24 hour basis that enables such transportation to collect an individual deprived of their liberty within four hours from receiving an order. In such cases, the NTE immediately contacts the requesting agency, who can then choose to wait until the NTE can arrive or solve the transportation by alternative means.

#### Report by

Eva Fridén

Approved on 2 July 2019

Elisabeth Rynning

### Very serious criticism directed at the Prison and Probation Service for the isolation of inmates

**The Chief Parliamentary Ombudsman's statement in brief:** For many years, Sweden has received international criticism for the conditions in which inmates are held in Swedish remand prisons. The criticism is, primarily, that inmates with restrictions become isolated and, as such, risk suffering from mental and physical ill health. Since 2017, the Chief Parliamentary Ombudsman has investigated the issue of isolation of inmates held in remand prisons. In this decision, the Chief Parliamentary Ombudsman states that isolation risks affecting not only inmates with restrictions, but also inmates held in remand prisons who have a legal right to associate with other inmates during the day. Based on the Prison and Probation Service's own surveys for 2018, 83 per cent of those held on remand with restrictions and 33 per cent of those detained who had the right to associate were held in conditions amounting to solitary confinement.

In this decision, the Chief Parliamentary Ombudsman states

- that the Prison and Probation Service's remand prisons lack sufficient facilities for the purposes of association as well as sufficient staff to be able to satisfy inmates' statutory rights of association with other inmates, and that the agency deserves very serious criticism for its continued shortcomings in this regard
- that she is very critical of the fact that the Prison and Probation Service has not progressed further in its work with the use of isolation-breaking measures
- that it is very important the Prison and Probation Service introduces a support system to enable continuous following up of the work with breaking the isolation of inmates.

In the decision, the Chief Parliamentary Ombudsman also raises the question of the need for a review of, inter alia, the Remand Prisons Act (2010:611) in order to clarify inmates' rights and counteract isolation and its negative effects.

**The own-initiative inquiry**

After a series of Opcat inspections<sup>1</sup> of remand prisons in spring 2017, I stated that the Prison and Probation Service should ensure the amount of time inmates spend in association is reported and documented in a standardised manner. The reason is that it should be possible to follow the conditions for inmates over time. Furthermore, I stated that the use of isolation-breaking measures should be reported and documented for inmates who, for various reasons, do not associate with other inmates. The documentation should state the category – held with restrictions, held without restrictions or migration detainees– to which an inmate belongs. Finally, I requested that the Prison and Probation Service report back on how the agency monitors the time that inmates spend in association and the use of isolation-breaking measures.<sup>2</sup> The response was received by the Parliamentary Ombudsmen on 14 June 2018.

The details which emerged in the response to the request led me to decide to open an own-initiative inquiry to follow up on the issues of placing inmates in association and the use of isolation-breaking measures. On 31 January 2019, the Prison and Probation Service submitted another report that I had requested in a previous own-initiative inquiry concerning the placement of inmates in segregation.<sup>3</sup> This reporting back is also covered by this own-initiative inquiry.

On 12 March 2019, I had a dialogue meeting with, amongst others, the Prison and Probation Service's Director of Prisons and Remand Prisons. At the meeting, I raised a number of issues such as concerns regarding the agency's work with isolation-breaking measures. The meeting was recorded in minutes and the Prison and Probation Service was given the opportunity to comment on the report of the meeting that followed. The agency has provided some additional information.

**Background**

This decision marks the conclusion of work which began in 2017. For three years, my staff and I have, in various ways, shed light on issues concerning the situation of inmates in remand prisons. Before I go into more detail on these issues, I will initially touch upon certain fundamental principles and concepts, the risks that isolation can entail for an inmate, the international criticism that

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<sup>1</sup> Opcat is the English abbreviation for the Optional Protocol to the Convention against Torture. States Parties to the Protocol have committed themselves to establishing a national preventive mechanism that regularly visits places where individuals can be deprived of their liberty. In Sweden, the Parliamentary Ombudsmen has been assigned this task.

<sup>2</sup> See the Parliamentary Ombudsmen's inspection report from e.g. Huddinge Remand Prison (dnr 416-2017 and others).

<sup>3</sup> See the Parliamentary Ombudsmen 2018/19 p. 146.

has been directed at Sweden for the isolation of inmates and previous statements from the Parliamentary Ombudsmen.

#### Some basic principles and concepts

Inmates held on remand have – just like inmates in a prison – the right *to associate* with other inmates during the day (chap. 2 § 5 of the Remand Prisons Act [2010:611] and chap. 6 § 1 of the Prisons Act [2010:610]). The Prison and Probation Service is able to limit this right in certain situations specified in the two pieces of legislation. The agency is not able to further restrict or limit the right of association.<sup>4</sup> The legislation lacks a definition of the concept of association. However, I have previously stated that association can be considered to presuppose that one inmate spends time with several other inmates. This means that, for example, co-sitting (when two inmates spend time together) cannot be seen as association.<sup>5</sup>

The Prison and Probation Service can, in accordance with chap. 2 § 5 of the Remand Prisons Act, refuse an inmate the right to associate with other inmates in three situations, namely if

1. an inmate is placed in a different custodial facility than a remand prison and the physical design of the facility do not allow for association between inmates,
2. for security reasons it is necessary to keep an inmate segregated from other inmates, or
3. it is necessary to carry out a body search.

Furthermore, a prosecutor can request a court's permission to set restrictions upon an inmate (chap. 24 § 5 a, first paragraph of the Code of Judicial Procedure). These restrictions may include, inter alia, restrictions on an inmate's right to associate with other inmates (chap. 6 § 2 of the Remand Prisons Act). An inmate who is not given this opportunity to associate with other inmates is considered *segregated*.

In order to satisfy the right of association with one another for inmates who are not segregated, the Prison and Probation Service has a number of *association remand prisons*. These remand prisons are usually established in former prisons. The situation for inmates in an association remand prison is very similar to the conditions in a prison, and this means, inter alia, that inmates can associate for large parts of the day in an *association department* or, for example, in a production area.<sup>6</sup> Some other remand prisons also have association

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<sup>4</sup> See the Parliamentary Ombudsmen 2018/19 p. 146 and especially pp. 157 and 158.

<sup>5</sup> See for example JO 2018/19 p. 146.

<sup>6</sup> Cf. the observations during the inspection of Helsingborg Remand Prison, Berga Remand Prison Branch (The Parliamentary Ombudsmen's report dnr O 39-2019).

departments. As a rule, the Prison and Probation Service does not have any difficulty in satisfying the rights of association of inmates who are placed in an association department or in an association remand prison.

Since the proportion of inmates with restrictions varies over time, the Prison and Probation Service also has a need for more flexible cells that can be used for the placement of both inmates with restrictions and inmates without restrictions. This flexibility means that such a cell can be transformed from one day to another, from being a *restriction place* to becoming a *place for inmates who are allowed association with other inmates*. In order for this transformation to have any significance for the inmate who is placed in the cell, a remand prison must have access to communal spaces as well as sufficient staffing levels required for inmates to be able to associate with one another outside their cells during the day.

Segregation can lead to an inmate being *isolated*. According to the UN minimum rules for the treatment of prisoners (the so-called Nelson Mandela rules), an inmate is considered to be in solitary confinement if he or she is alone for more than 22 hours per day, without meaningful human contact. An inmate is considered being pro-longed solitary confinement if he or she has stayed in such conditions for a period exceeding 15 days.<sup>7</sup>

I would like to emphasise that *isolation* is therefore not a synonym for *segregation*. When I continue to use the term isolation, I mean the far-reaching limitations of inmates' ability to socialise with other people which can lead to mental health problems or physical illness, and which therefore are regarded as forbidden. Isolation can affect all categories of inmates, regardless of whether they are formally segregated or have a legal right of association with other inmates.

#### Isolation can have serious consequences for inmates

Isolation can lead to an inmate being affected by, for example, insomnia, confusion, hallucinations and psychosis. Isolation need not last for a long time for an inmate to risk such consequences. Negative health effects can occur after just a few days in isolation, and the risks increase with each and every passing day. The most harmful element of isolation is that it reduces social contacts to a level of social and psychological stimulus that many perceive as being insufficient in maintaining their health and well-being. How different inmates

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<sup>7</sup> See Rule 44 in the UN Standard Minimum Rules for the Treatment of Prisoners.

react to isolation depends on their personal circumstances, for example, if he or she has previous experience of being deprived of their liberty.<sup>8</sup>

One way to counteract the negative consequences of isolation is to offer an inmate isolation-breaking measures. A central aspect of these harmful effects is that the inmate is deprived of meaningful human contact. In order for a measure to, therefore, have some positive effect and break isolation in the true sense of the word, it must involve an inmate having meaningful human contact. This can involve, for example, an inmate being allowed to receive visits, spending time with another inmate (co-sitting) or participate in activities together with remand prison staff.

#### International criticism of the conditions in Swedish remand prisons

The UN Committee against Torture (CAT), the UN Subcommittee on Prevention of Torture (SPT) and the European Committee for the Prevention of Torture (CPT) have, for many years, criticised Sweden for the conditions for inmates in Swedish remand prisons.

#### *European Committee for the Prevention of Torture*

The CPT is an expert committee appointed by the members of the Council of Europe. The main task of the committee is to visit places where people are deprived of their liberty. Following the CPT's visit to Sweden in 2009, the Committee emphasised that it supported the recommendations made by the SPT that Sweden, inter alia, must take measures to prevent the negative effects prolonged isolation can have. The CPT highlighted that, since 1991, the Committee had had a dialogue with Sweden on the use of restrictions and that much work remained to ensure that such restrictions were used only in exceptional cases. In addition, the Committee called on the Swedish authorities to intensify their efforts in ensuring all inmates are able to spend a reasonable part of the day outside their cell and are able to engage in purposeful activities of a varied nature. The Committee emphasised that the lack of physical activity and intellectual stimulation can be particularly harmful for young inmates. For this reason, the Swedish authorities were recommended to develop programmes of activities designed specifically to meet the needs of young inmates.<sup>9</sup>

The CPT visited Sweden again in 2015. Following the visit, the Committee stated that it was highly regrettable that the use of restrictions continued almost unchanged and without any real signs of improvement – despite the dialogue the Committee had had with Sweden for 24 years. In the opinion of the CPT, the approach to the use of restrictions and the overall regime for inmates must

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<sup>8</sup> See The Istanbul Statement on the Use and Effects of Solitary Confinement (adopted December 9, 2007) p. 2.

<sup>9</sup> See CPT/Inf (2009) 34 paragraphs 35–38 and 54.

be fundamentally changed. The Committee recommended that the Swedish authorities take decisive action swiftly – including legislative changes – to ensure that restrictions are used only if there are exceptional reasons for doing so. In addition, the Swedish authorities were urged to radically improve the range of activities for inmates. In the opinion of the Committee, the aim should be that all inmates are provided with the opportunity to spend at least eight hours a day outside their cells and, in connection with this, provided with the opportunity to participate in purposeful activities of a varied nature.<sup>10</sup>

#### *UN Committees*

The CAT is an expert committee tasked with monitoring compliance with the UN Convention against Torture. During the periodic review of Sweden's report on the implementation of its Convention commitments in 2014, the CAT expressed concern regarding the high percentage of inmates who were subject to restrictions in Swedish remand prisons. The Committee also expressed concern at the widespread and, in some cases, prolonged use of solitary confinement of inmates. For this reason, Sweden was urged to use restrictions only in exceptional cases and only when necessary for investigative reasons. Furthermore, Sweden was urged to abolish the solitary confinement of minors.<sup>11</sup>

The SPT is an expert committee under Opeat which, inter alia, can visit places where individuals are deprived of their liberty. The Subcommittee visited Sweden in 2008 and, following the visit, emphasised that restrictions must not be used routinely. The SPT noted that the current lack of systematically collected data on the use of restrictions and their impact makes it impossible to conduct a proper oversight of the practice. Furthermore, the Subcommittee recommended, inter alia, that Sweden takes measures to prevent the negative effects which can occur from prolonged isolation. In the opinion of the SPT, all staff working with inmates in remand prisons must be trained to be able to recognise the stress symptoms associated with isolation. In addition, the Subcommittee took the view that inmates must be given greater opportunities for work, exercise and other activities.<sup>12</sup>

Likewise, other UN committees have voiced concern on the conditions of remand prisons and the risks of isolation. In 2015, the UN Committee on the Rights of the Child called on Sweden to ensure that all children are removed from solitary confinement and to review its legislation in order to prohibit the solitary confinement of children.<sup>13</sup> In 2016, the UN Human Rights Committee, which monitors compliance with the UN Convention on Civil and Political

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<sup>10</sup> See CPT/Inf (2016) 1 paragraph 53.

<sup>11</sup> See CAT/C/SWE/CO6-7 paragraph 8.

<sup>12</sup> See CAT/OP/SWE1 paragraphs 112, 122, 123 and 127.

<sup>13</sup> See CRC/C/SWE/CO/5 paragraph 26.

Rights, called on Sweden to ensure that, inter alia, all restrictions are timebound, necessary and proportionate, and that appropriate measures are taken to mitigate isolation, especially for young inmates.<sup>14</sup>

#### Previous statements from the Parliamentary Ombudsmen

The Parliamentary Ombudsmen has also previously stated its views regarding the Prison and Probation Service restricting inmates' rights of association with other inmates. At the end of the 1990s, there was a shortage of places in the Prison and Probation Service resulting in overcrowding, etc. The then Parliamentary Ombudsman Jan Pennlöv noted that the reference to a lack of resources as a justification for this was commonplace and that it is obvious that the legislation regarding association between inmates is null and void if there are insufficient resources. He emphasised that he was aware that, for other reasons such as the composition of the group of inmates, it may sometimes be difficult to allow inmates to spend time with one another. In the opinion of the Parliamentary Ombudsman Jan Pennlöv, however, such difficulties – which are partly due to a lack of places – cannot be a reason not to, as far as it is possible, to apply the rules allowing for association between inmates.<sup>15</sup>

In a later decision, the then Parliamentary Ombudsman Cecilia Nordenfelt stated that the legislative provisions on the conditions for inmates in the now repealed Act (1976:371) on the treatment of inmates in prisons and remand prisons can be seen as a minimum regulation of the rights of each inmate. It is not acceptable that the ability to associate with other inmates is reduced or even eliminated for reasons of a lack of resources.<sup>16</sup>

The Parliamentary Ombudsmen has, thereafter, returned to the issue of insufficient resources within the Prison and Probation Service. The then Chief Parliamentary Ombudsman Elisabet Fura stated that a lack of resources or a lack of opportunity for internal differentiation of inmates are not acceptable reasons for keeping an inmate segregated from other inmates.<sup>17</sup>

In a decision in June 2018, I emphasised that I share the opinion expressed by, inter alia, the former Parliamentary Ombudsman Jan Pennlöv. I observed that the Prison and Probation Service did not seem to have taken the Parliamentary Ombudsmen's opinions fully into account, and, in this context, I noted that the occupancy rate in the country's remand prisons at the time of my decision was lower than when the Parliamentary Ombudsman Jan Pennlöv made his statement. In my opinion, it is deeply unsatisfactory that an inmate is not given

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<sup>14</sup> See CCPR/C/SWE/CO/7 paragraph 29.

<sup>15</sup> See the Parliamentary Ombudsmen 2001/02 p. 155.

<sup>16</sup> See the Parliamentary Ombudsmen 2006/07 p. 139.

<sup>17</sup> See the Parliamentary Ombudsmen 2015/16 p. 191.

the chance to associate with other inmates due to organisational reasons or for reasons an inmate cannot influence.<sup>18</sup>

### **Assessment**

In my work with this own-initiative inquiry, three main issues have taken shape. I raised, inter alia, these issues at the dialogue meeting with the representatives of the Prison and Probation Service. The three issues are

1. inmates' right of association with other inmates
2. measures to break the isolation of inmates
3. the opportunity to follow the work on the use of isolation-breaking measures

#### **Inmates' right of association with other inmates**

##### *The current situation*

Although inmates in remand prisons and prisons have the same basic rights to associate with other inmates, there is a very significant difference in the regimes between these two types of operations. For prisons, the Prison and Probation Service has adopted rules that clearly govern how long an inmate can be segregated from other inmates during night-time outs. An inmate in a prison with security class 1 or 2 can be locked in his cell during the period 19.00–8.00. In addition to the time for locking up and unlocking a cell block, an inmate cannot be locked up for more than twelve hours per day. Different rules apply for an inmate in a prison with security class 3, as he or she can be locked up in his or her cell block during the period 21.00–8.00. In addition to the times for locking and unlocking a cell block, an inmate cannot be locked up for more than ten hours per day (chap. 6 §§ 1 and 2 of the Prison and Probation Service's regulations and guidelines on prisons [KVFS 2011:1]). Corresponding provisions are lacking in the regulations governing remand prison operations.

At the dialogue meeting in March 2019 with representatives of the Prison and Probation Service, I raised the issue of association in remand prisons. As mentioned above, the situation in an association department in a remand prison is "prison-like", which means that inmates usually associate for large parts of the day. On the other hand, in the case of inmates placed in an association place, the representatives of the Prison and Probation Service stated at the meeting that they are only given the chance to associate for parts of the day. The term association place began to be used by the Prison and Probation Service in 2005 in connection with the agency setting an objective for the use of isolation-breaking measures. However, there was no change to the actual places themselves, just a change in terminology. There is no minimum time specified

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<sup>18</sup> See the Parliamentary Ombudsmen 2015/16 p. 191.

for how long an inmate who is placed in an association place shall have the right to associate with other inmates on a daily basis. The premise, however, is that inmates should spend a large part of the day together, but the agency does not record or report any statistics on the amount of time inmates spend in association.<sup>19</sup> I cannot interpret the situation in any other way than that the right to associate with other inmates can have completely different meanings depending on whether the inmate is placed in an association department or in an association place.

According to the representatives of the Prison and Probation Service, it is difficult to set a minimum time for inmates' right to daily association. The reason for this is that the Prison and Probation Service is so far from reaching its objective that an inmate with restrictions should not be isolated, that is to say the Prison and Probation Service does not succeed in providing these inmates at least two hours per day of association which involves human contact.<sup>20</sup> I perceive this information as the Prison and Probation Service prioritising its work with isolation-breaking measures for inmates with restrictions at the expense of other inmates' rights to associate for as much of the day as possible. The Prison and Probation Service must, of course, have an operation that is able to satisfy both inmates' rights of association with other inmates and prevent inmates from being isolated.

*The Prison and Probation Service does not satisfy inmates' right of association with other inmates*

On occasion, inmates are completely denied their right to associate with other inmates. At the dialogue meeting, the representatives of the Prison and Probation Service stated that such situations can arise, for example when an inmate cannot be placed in an association department due to lack of places. Another reason why inmates are denied association with other inmates can be that there are no other inmates in the department with whom the inmate can associate with. According to the representatives of the Prison and Probation Service, there should not be any inmates held in such conditions, and the agency is aware that it is in violation of the law in these situations. An inmate denied the chance to associate with other inmates must, based on the Prison and Probation Service's routines, receive an explanation as to why he or she cannot be offered an association place and details regarding how the agency is working to change the inmate's situation.<sup>21</sup>

The fact that the Prison and Probation Service has problems satisfying inmates' right of association with other inmates is also apparent from the agency's own

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<sup>19</sup> See the Parliamentary Ombudsmen's meeting report dnr O 7-2018 pp. 4 and 5.

<sup>20</sup> See the Parliamentary Ombudsmen's meeting report dnr O 7-2018 p. 5.

<sup>21</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 p. 7.

statistics. The agency conducts surveys of the use of isolation-breaking measures seven times a year. On these occasions, the Prison and Probation Service also performs surveys of, and reports on, measures taken that does not involve inmates having any human contact. This is time inmates spend outside their cells, for example in an exercise yard or in a gym. If an inmate is alone in an exercise yard, this is, in my opinion, not an isolation-breaking measure and it should therefore not be reported as such. This type of measure should instead be reported as some form of change of environment for an inmate.

The Prison and Probation Service divides the results of its surveys into two categories of inmates: *inmates with restrictions* and *inmates without restrictions*. According to the Prison and Probation Service's annual report, the first category – in addition to inmates with restrictions imposed by a prosecutor – also includes inmates who have limited opportunities to associate with other inmates due to decisions by the Prison and Probation Service.<sup>22</sup> I have understood the wording as referring to inmates with a decision on placement in segregation imposed upon them. At the dialogue meeting in March 2019, however, the representatives of the Prison and Probation Service provided information of a partly different meaning. At the meeting, the Prison and Probation Service stated that the category of *inmates with restrictions* also includes inmates segregated with no basis in law and inmates placed in association places that are not located in association departments.<sup>23</sup> Considering that the category of *inmates without restrictions* in the 2018 annual report consists of almost 5,000 inmates, it does not however seem likely that the category only refers to inmates who are placed in an association department.<sup>24</sup> Although it, therefore, seems most likely that the category *inmates without restrictions* includes inmates both in association places and in association departments, I have not succeeded in clarifying which inmates are actually included in the two categories. Regardless of this, I am able to note that all inmates who are included in the category *inmates without restrictions* have a legal right to associate with other inmates during the day. However, it cannot be ruled out that the category *inmates with restrictions* also includes inmates who have such a right. In such cases, this would be inmates who are segregated with no basis in law.

According to the Prison and Probation Service, there are uncertainties in the agency's own surveys of the use of isolation-breaking measures. The results are based on surveys conducted on relatively few occasions, and for this reason comparisons between years should be made with great caution. There are also

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<sup>22</sup> See the Prison and Probation Service's annual report 2018 p. 31, footnote 23.

<sup>23</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 p. 7.

<sup>24</sup> See the Prison and Probation Service's annual report 2018 p. 136.

two types of omission: non-response from the remand prison, and non-recording of client data.<sup>25</sup> This means that there are shortcomings in the survey results, which has consequences that I will return to later in this decision. At the same time, I must note that these surveys are the only information available for those who want to try to understand the Prison and Probation Service's work with the use of isolation-breaking measures and how well the agency is able to fulfil to the requirements of the Remand Prisons Act.

In 2018, the Prison and Probation Service had 4,902 *inmates without restrictions* in its remand prisons. The agency's report states that 67 per cent of the inmates in this category received isolation-breaking measures which involved human contact for at least two hours a day.<sup>26</sup> This would mean that 33 per cent of the inmates without restrictions or with decisions on segregation must be described as being held in conditions amounting to solitary confinement and, as such, at risk of adverse effects.

I would like to reiterate that this applies to a group of inmates who, according to the Remand Prisons Act, have the right to daily association with other inmates. For this reason, the information contained in the annual report is remarkable. Simultaneously, I would like to emphasise that if the Prison and Probation Service satisfies inmates' right of association with other inmates, there should be no risk of these inmates then being isolated. As such, to talk in these contexts of isolation-breaking measures is therefore wrong. In my opinion, such measures should only need to be used on inmates who are placed in segregation. It must be regarded as a serious failure that the Prison and Probation Service offers inmates isolation-breaking measures instead of association with other inmates.

*The significance of shortcomings in the design of remand prison facilities and a lack of staff*

In my opinion, the details reported above are very serious. According to the agency, the single most decisive reason why the Prison and Probation Service finds it difficult to satisfy inmates' right of association with one another is "the limitations of remand prison premises".<sup>27</sup> The number of remand prison places with access to suitable communal spaces does not meet the need. The consequence of this is that association, according to the Prison and Probation Service, cannot take place to the desired extent. Furthermore, the heavy occupancy pressure has made it more difficult for the agency to relocate inmates without restrictions to association places. In order for the system of association

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<sup>25</sup> See the Prison and Probation Service's annual report 2018 p. 136.

<sup>26</sup> See the Prison and Probation Service's annual report 2018 p. 136.

<sup>27</sup> See the Prison and Probation Service's reporting back on 14 June 2018 p. 2, the Parliamentary Ombudsmen's dnr 416-2017.

places to work, the Prison and Probation Service must, in my opinion, ensure that there is sufficient space for association purposes so that the right of association with other inmates for large parts of the day can be met even for those placed there. It seems unreasonable that an inmate should have poorer opportunities to associate with other inmates simply because he or she has been placed in an association place instead of in an association department.

Within the Prison and Probation Service, work is underway in an attempt to address the lack of association places. In its reporting back to the Parliamentary Ombudsmen in June 2018, the agency reported a number of renovation projects to its premises which means that, by the end of 2018, there would be 161 additional places in remand prisons for inmates without restrictions. Of these, 88 places are located in units with special association departments.<sup>28</sup> This is, of course, a welcome addition, but I fear it is far from sufficient in meeting the real need. As stated above, the Parliamentary Ombudsmen has previously stated that the state of the premises and practical conditions are not acceptable reasons for not satisfying inmates' statutory rights of association with other inmates. If, for example, the lack of communal spaces is accepted as a reason for refusing an inmate association with other inmates, it would completely dilute the right that inmates are guaranteed by the Remand Prisons Act.

In connection to the above, I would additionally like to emphasise the importance of the Prison and Probation Service's remand prisons having sufficient staffing levels to be able to satisfy both inmates' basic rights of association with others and the need for isolation-breaking measures for inmates placed in segregation. During a number of Opcat inspections in 2019, the Prison and Probation Service expressed the view that there are insufficient staffing levels for them to be able to achieve the Prison and Probation Service's objectives for isolation-breaking measures.

During an inspection of Malmö Remand Prison in April 2019, representatives of the remand prison stated its staffing level is based on an occupancy rate of 90 per cent. As the remand prison usually has a higher occupancy rate, it is not possible for the remand prison to achieve its objectives for isolation-breaking measures even with normal occupancy rates.<sup>29</sup> Similar information emerged during an inspection of Göteborg Remand Prison in February 2019, where the remand prison's restriction department did not have the sufficient level of staffing to achieve the national targets for the use of isolation-breaking measures.<sup>30</sup> The department had 58 places and an additional position had been

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<sup>28</sup> See the Prison and Probation Service's reporting back on 14 June 2018 p. 3, the Parliamentary Ombudsmen's dnr 416-2017.

<sup>29</sup> See the Parliamentary Ombudsmen's report dnr O 27-2019 p. 5.

<sup>30</sup> See the Parliamentary Ombudsmen's report dnr O 7-2019 p. 6.

added to the department to work with isolation-breaking efforts. However, this position was used by other departments when they lacked staff. In the opinion of the staff at the restriction department, they essentially only managed to hold have time for nothing more than holding intake interviews with new inmates and drawing up plans for the inmates for their time held on remand. Other inspections have also revealed that staff working in association departments and with isolation-breaking measures are used for other tasks, and that the general level of staffing is insufficient in achieving the national targets for isolation-breaking measures.<sup>31</sup>

*The Prison and Probation Service needs to comprehensively deal with the issues of premises and staffing*

In my opinion, the Prison and Probation Service needs to comprehensively solve the problems with its premises and staffing levels. The agency must ensure that existing, as well as newly produced, remand prisons have sufficient premises for association and the use of isolation-breaking measures, and that staffing levels are sufficient for the remand prisons to be able to offer inmates association and isolation-breaking measures. Similar opinions were also expressed by the Remand Prison and Restriction Government Inquiry. In its report *Fewer in remand prison and reduced isolation*, the inquiry proposes that the Prison and Probation Service should review the premises at all of the agency's remand prisons in order to ensure one communal space per 15 inmates.<sup>32</sup> Furthermore, proposals were also made that, at departments which are not association departments, there should be one full-time member of staff per 15 inmates tasked with working with isolation-breaking measures. The inquiry's proposals are yet to be implemented.

I have stated above that the Prison and Probation Service has continued to have great difficulty in satisfying inmates' right of association with other inmates. These difficulties are caused by the fact that several of the Prison and Probation Service's remand prisons are designed to keep inmates segregated instead of in association, and by the fact that there is an insufficient level of staff tasked with working in communal spaces. In my opinion, the Prison and Probation Service deserves very serious criticism for the continued shortcomings in these respects. These are shortcomings which lead to restrictions of a fundamental right for inmates.

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<sup>31</sup> Such information emerged during the inspections of Karlskrona and Trelleborg remand prisons. See the Parliamentary Ombudsmen's reports dnr O 25-2019 p. 4 and dnr O 28-2019 p. 4.

<sup>32</sup> SOU 2016:52 pp. 140–142.

#### Measures to break the isolation of inmates

The Prison and Probation Service's objective is that inmates who are not allowed to associate with other inmates should be offered isolation-breaking measures for at least two hours per day. In meeting this objective, the agency includes activities that do not mean that an inmate has human contact, for example when an inmate is alone in an exercise yard or in a gym.<sup>33</sup>

I have stated above that such changes in environment should not be described as isolation-breaking measures. What matters, instead, is the extent to which the Prison and Probation Service is able to meet inmates' daily needs for meaningful human contact. As already mentioned, the Prison and Probation Service measures its work with isolation-breaking measures seven times a year. The agency states that there exist inherent uncertainties within the surveys and that comparisons between years should be made with great caution. I have stated that these surveys are the only statistics that currently exist to describe the Prison and Probation Service's work on this issue. As previously mentioned, the category inmates with restrictions not only includes the results for isolation-breaking measures in relation to inmates with restrictions, but it also includes inmates with decisions to place them in segregation. I have stated above that it cannot be ruled out that this category also includes inmates who are placed in segregation with no basis in law.<sup>34</sup> This latter group of inmates has a legal right to associate with other inmates during the day.

The surveys that the Prison and Probation Service carried out on the use of isolation-breaking measures in the period 2016–2018 for the *category inmates with restrictions* can be summarised as follows:

In 2018, the Prison and Probation Service received 6,089 inmates with restrictions. The surveys from that year show that only 17 per cent of these inmates received isolation-breaking measures that involve human contact for two hours or more per day. In 2017, the Prison and Probation Service received 5,470 inmates with restrictions, and in 2016 the corresponding figure was 4,927. The proportion of inmates with two hours or more per day of measures involving human contact was, for these years, 16 and 14 per cent respectively.

In 2018, the group inmates with restrictions was significantly larger than in 2016, which should have meant a strain on the Prison and Probation Service. The surveys show that the agency nevertheless succeeded marginally better in relation to its objective in 2018 compared to 2016. At the same time, a very troublesome fact remains, namely that in 2018, 83 per cent of the inmates in the

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<sup>33</sup> See SOU 2016:52 p. 69.

<sup>34</sup> See the Prison and Probation Service's annual report 2018 p. 31, footnote 23 cf. the Parliamentary Ombudsmen's report dnr O 7-2018 p. 7.

group did not receive isolation-breaking measures involving human contact for at least two hours per day. This large number of inmates can, therefore, be regarded as being held in conditions amounting to solitary confinement and at risk of suffering from both mental and physical ill-health.

As mentioned, it cannot be ruled out that this category also includes inmates who have a legal right of association with others, that is inmates who are placed in segregation with no basis in law. If this is the case, there is a risk that they will be isolated. I have not received clarification as to which category these inmates belong when the Prison and Probation Service measures the use of isolation-breaking measures. I would like to reiterate that this group of inmates has the right to associate with others and should, therefore, be included in the category *inmates without restrictions*. The current uncertainty regarding the reporting of measurement results means that it is currently not possible to clarify the extent to which the agency is able to satisfy inmates' right of association with other inmates.

For several decades, Sweden has received international criticism for, inter alia, holding inmates in the remand prison system in isolation. Therefore, this is not an issue which has suddenly arisen from nowhere. The issue was also raised by the National Council for Crime Prevention in a report in 2017. In this report, the National Council for Crime Prevention states, inter alia, that the Prison and Probation Service's surveys from 2015 showed that almost nine out of ten inmates with restrictions were isolated on any given day.<sup>35</sup> The shortcomings have also been highlighted by the Parliamentary Ombudsmen on several occasions. Against this background, it is very serious that the Prison and Probation Service has not progressed further in its work in achieving its own objectives for isolation-breaking measures. This entails a risk of serious consequences for those who are in the Prison and Probation Service's remand prisons.

The Prison and Probation Service's opportunities to work with isolation-breaking measures are affected by how many, and for how long, inmates are subject to restrictions. As previously mentioned, the Remand Prison and Restriction Government Inquiry raised this issue in its report and expressed, inter alia, the opinion that there is a culture of fairly widespread acceptance that inmates are subject to restrictions for a long time:

Our opinion is that a radical change is needed to the perspective within the remand prison system and the culture that surrounds this issue. This culture is characterised by a certain naivety in its view of the state and its representatives as well-meaning in all aspects and that there was, therefore, no need for clear

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<sup>35</sup> See National Council for Crime Prevention's report 2017:6 Reducing segregation in prisons – Situation and proposals, pp. 11 and 12.

limits for remand prison periods. In practice, this has meant a culture in which the responsibility for not prolonging the period in remand prison unnecessarily has rested with the individual prosecutor and where the courts have generally been passive in checking that preliminary investigations are conducted in a timely manner. A culture and set of regulations that, in most cases, have certainly worked well with responsible and professional prosecutors, but which also leaves room for periods spent in remand prison to be extended too often and where the principle of proportionality is seldom put to the test and tried by the courts.<sup>36</sup>

For this reason, the inquiry submitted a proposal which would entail a suspect, as a main rule, being held on remand for a continuous period of no more than six months until charges have been brought. According to the proposal, a period spent in remand prison can only be extended further if there are special reasons. For a suspect who is under 18 years of age when he or she is placed in custody, the corresponding time limit should be three months. In order for remand to continue thereafter, it must be absolutely necessary.<sup>37</sup> This proposal has not yet led to any change in legislation.

The international scrutiny of the Swedish remand prison system has primarily been aimed at the widespread use of restrictions and the risks that this entails. My examination of surveys for the two categories, inmates without restrictions and inmates with restrictions, shows that the problem of isolation in remand prisons is not limited to those inmates who the Prison and Probation Service has a legal basis for refusing association with others. The lack of adequate premises, for example, means that isolation is something that also affects other inmates held on remand. With an appropriately structured operation, this unacceptable situation need not arise.

I would like to emphasise that the Prison and Probation Service is responsible for shaping the enforcement of remand prison decisions to ensure the negative consequences for an individual being deprived of their liberty are counteracted (chap. 1 § 5 of the Remand Prisons Act). This is a far-reaching responsibility to ensure that, for example, there are sufficient staffing levels to work with isolation-breaking measures and, as such, can prevent inmates becoming isolated. I am very critical of the fact that the Prison and Probation Service has not progressed further in its work in this respect.

As such, the Prison and Probation Service has had difficulty breaking the isolation of inmates for a long time. I fear that the measures that the Prison and Probation Service can and must take will be insufficient in resolving the problem of the high degree of isolation that currently prevails within the agency's remand prison system. At the dialogue meeting in March 2019, the

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<sup>36</sup> See SOU 2016:52 p. 114.

<sup>37</sup> See SOU 2016:52 pp. 116–120.

representatives of the Prison and Probation Service stated that they, unfortunately, believe that the amount of time that inmates receive isolation-breaking measures will not increase more than marginally, despite the fact that Sweden has relatively high staffing levels when compared internationally.<sup>38</sup> The CPT and the Remand Prison and Restrictions Government Inquiry have assessed that there needs to be a radical change in the remand prison system. What has emerged from my review strongly suggests that the government now needs to take a comprehensive approach to these issues.

#### The ability to follow the work on the use of isolation-breaking measures

The Opeat inspections of a number of the Prison and Probation Service's remand prisons in 2017 revealed that the remand prisons did not define, measure and follow up on the use of isolation-breaking measures in a standardised manner.<sup>39</sup> I found it remarkable that there was a lack of central control from the Prison and Probation Service on this important issue. For this reason, I urged the Prison and Probation Service to consider amending its regulations concerning what can be considered to constitute isolation-breaking measures. I further stated that it is of interest to both the Parliamentary Ombudsmen and international investigative bodies (for example, the CPT) to be able to follow this issue. I therefore considered that the Prison and Probation Service should ensure that the use of isolation-breaking measures are reported and documented. The agency was asked to report back on its work with this issue to the Parliamentary Ombudsmen in 2018.

In reporting back, the Prison and Probation Service made the assessment that the data provided by the current surveys (seven measurement occasions per year) is sufficient in providing an approximate picture of the extent of the use of isolation-breaking measures at a national level.<sup>40</sup> However, they are not designed to support follow-up work at the local level and are insufficient as tools in the day-to-day work. The remand prisons instead apply various manual systems for the daily planning and follow-up on the use of isolation-breaking measures. The agency emphasised that there is a need to develop a standardised and appropriate planning and follow-up tool that clearly supports the implementation of isolation-breaking work at the local level, whilst at the national level provides correct information on an overall basis. A prestudy had been carried out, but since the project is complex, the Prison and Probation Service could not state at the 2018 reporting back if and when any future system could be in operation nor how it could be designed.

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<sup>38</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 p. 8.

<sup>39</sup> See the Parliamentary Ombudsmen's report pp. 13, dnr 416-2017.

<sup>40</sup> See the Prison and Probation Service's reporting back on 14 June 2018 p. 4, the Parliamentary Ombudsmen's dnr 416-2017.

I raised the issue of a planning and follow-up tool at the dialogue meeting in March 2019. The representatives of the Prison and Probation Service stated that, in the completed prestudy, it could be stated that none of the surveys performed so far on the use of isolation-breaking measures are sufficiently adequate to be used at the local level. Additionally, the surveys cannot be used to make national comparisons. For this reason, the Prison and Probation Service wants to develop and introduce a central support system for isolation-breaking measures. In the opinion of the representatives of the Prison and Probation Service, it is a reasonable estimate that it will take approximately five years from the start of the project until there is a functioning support system in place. While awaiting this system support, the Prison and Probation Service will produce a shared Excel file for the whole agency into which the remand prisons must report their use of isolation-breaking measures. The Prison and Probation Service planned to have this central Excel file in use by spring 2019.<sup>41</sup> In a statement following the dialogue meeting, the Prison and Probation Service stated that it has not been able to meet the schedule for introducing this central and shared Excel file. Work would resume after the summer to be completed before the 2019 year end.<sup>42</sup>

At the dialogue meeting in March 2019 with the representatives of the Prison and Probation Service, I emphasised that it is very serious and deeply unsatisfactory that the Prison and Probation Service's national surveys of the use of isolation-breaking measures are not reliable. This is partly due to the surveys being made only seven times a year, and partly – as I mentioned above – the lack of central control which means that the remand prisons do not define, measure and follow up on the use of isolation-breaking measures in a standardised manner. These shortcomings make it, above all, difficult for the Prison and Probation Service to follow the work that takes place at the local level in breaking the isolation of inmates in remand prisons. In addition, the risk of non-response from remand prisons and the fact that remand prisons do not record the use of isolation-breaking measures means that the surveys are associated with such uncertainty that they additionally cannot be used at the national level. It is, for example, not possible to compare the results from different years, which makes the surveys almost useless.

This lack of reliable statistics means that it is not possible to say with any degree of certainty which direction the development is going. In addition, the lack of a proper support system makes it difficult for the Prison and Probation Service to evaluate its own work with regard to the use of isolation-breaking

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<sup>41</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 pp. 10 and 11.

<sup>42</sup> See the Prison and Probation Service's statement on 30 August 2019, the Parliamentary Ombudsmen's dnr O 7-2018.

measures. A continuous recording of the extent to which inmates receive isolation-breaking measures is necessary for the Prison and Probation Service to be able to follow the work over time and for its staff to be able to identify inmates who are at risk of being isolated. For this reason, it is very important that the Prison and Probation Service has such a system in place and that it is used correctly. This opinion is now shared by the Prison and Probation Service, but the work of developing the new support system has, as far as I know, not yet begun. As the need to be able to follow the work with the use of isolation-breaking measures is so great, the estimated production time of five years appears to be unacceptably long.

In this context, I would like to highlight the fact that the Prison and Probation Service, in its statistics on the use of isolation-breaking measures, also reports the amount of time that inmates placed in an association department and association place spend outside their cell.<sup>43</sup> I have mentioned above that I think it is wrong to discuss the use of isolation-breaking measures in relation to this group of inmates, as they already have a statutory right to associate with other inmates. In addition, the statistics will be misleading. However, I have also found that the Prison and Probation Service, due to structural shortcomings, additionally finds it difficult to satisfy inmates' basic rights of association with one another. As long as these shortcomings remain, there is a need to additionally report to what extent the agency complies with this right.

#### **Need for legislative amendments**

The investigation in this case shows that the Prison and Probation Service does not satisfy inmates' statutory rights of association and that inmates are kept isolated. In order to rectify this unacceptable situation, efforts for change need to be initiated immediately. An important step in this work is, in my opinion, a review of both the Prisons Act and the Remand Prisons Act's provisions on association. Measures must be taken to ensure that inmates' rights to daily association with one another become entrenched in practice as the norm within the operations of the Prison and Probation Service.

Firstly, a definition of the concept of association with other inmates should be introduced into both the Remand Prisons Act and the Prisons Act. In my opinion, this is necessary to ensure this right is not given an arbitrary meaning. I think a reasonable premise is that association means that one inmate spends time with several other inmates.

In order for the right of association with other inmates to be meaningful, the legislation also needs to state the extent to which inmates have the right to associate with other inmates during the day. Since this is a fundamental right, in

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<sup>43</sup> See the Parliamentary Ombudsmen's report dnr O 7-2018 p. 9.

my opinion it is insufficient that a more detailed meaning is only stated in the Prison and Probation Service's own regulations, which is currently the case for inmates in prisons. Additionally, it is unacceptable that there are no such provisions at all for remand prisons. As such, this has led to inmates, in some cases, being denied this right altogether or receiving significantly less access to periods of association compared to inmates in other remand prisons or in a prison.

In addition, I would like to emphasise that the Remand Prison and Restriction Government Inquiry has also submitted proposals for changes to the Remand Prisons Act with regard to the use of isolation-breaking measures. In short, the proposal means that a provision is added to the Remand Prisons Act that states that an adult who is held on remand with restrictions must always have the right to at least two hours' association with another person every day. Young people are to have a corresponding right of four hours per day.<sup>44</sup> The purpose of the provision is to guarantee inmates a certain amount of isolation-breaking measures per day in order to prevent them from becoming isolated.

I share the inquiry's assessment that there is a need for such regulation. However, as the inquiry's proposal is formulated, this right will only include inmates who have had restrictions imposed upon them. Even inmates who are kept in segregation risk being isolated. For this reason, this group of inmates should also be entitled to isolation-breaking measures. I am also hesitant regarding a minimum time of only two hours. Based on the UN Standard Minimum Rules for the Treatment of Prisoners, two hours of isolation-breaking efforts constitute precisely the limit where an inmate is considered as being isolated in conditions amounting to solitary confinement. In order to reduce such risks for inmates, in my opinion the minimum requirements in the Swedish Prison and Probation Service should be set higher. I would also like to highlight that the objective, in the opinion of the CPT, should be that all inmates should be given the opportunity to spend at least eight hours a day outside their cells and be provided with the opportunity to participate in meaningful activities of various kinds.<sup>45</sup> In my opinion, these opinions should be taken into account in future legislative preparation.

Finally, there is reason to reiterate the representation on amending legislation I made to the Government in June 2018, which concerns the need for statutory regulation setting out specific times for reviewing decisions on the placement of inmates in remand prisons. Such specific times are found in the Prisons Act. As far as I understand, there are not any compelling reasons for applying different principles in the prison and remand prison systems in this respect. In the

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<sup>44</sup> See SOU 2016:52 p. 41.

<sup>45</sup> See CPT/Inf (2016) I para 53.

representation, I additionally stated that there is a need to clarify the legislation in terms of how the preconditions the Prison and Probation Service use for deciding to place inmates in segregation relate to the restrictions on association which may be imposed by a prosecutor.

As stated above, it is my opinion that the government needs to take a comprehensive approach to the issues addressed in this decision. There is a great need to review the remand prison legislation. Therefore, I find reason, with the support of Section 4 of the Act (1986:765) with Instructions for the Parliamentary Ombudsmen, to raise with the Government the question of reviewing the legislation regarding, first, the right of inmates to associate with one another and the use of isolation-breaking measures, and, second, the provisions on segregation of individuals in remand prisons. A copy of this decision is sent to the Government.

For many years, Sweden has received international criticism for the isolation of inmates on remand. The Government appointed the Remand Prison and Restriction Government Inquiry following the CPT's last visit in May 2015. The proposals for amendments to the Remand Prisons Act submitted by the inquiry have not been implemented. The situation with widespread isolation of inmates is, in my opinion, very serious and for this reason I am sending a copy of this decision to Parliament as well, for information.

The case is closed.





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