

FACTSHEET

Solitary Confinement



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Prisoners Abroad often receives reports that people detained overseas are being held in ‘solitary confinement’. This factsheet looks at solitary confinement and identifies situations under which it may violate international human rights standards. It is however only an overview, and should not replace legal representation and advice from a qualified lawyer.

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1 What is solitary confinement?

Solitary confinement generally refers to the situation where a prisoner is held separately from other prisoners with or without further restrictions. It can be used as a form of punishment; for security and order reasons; or to ensure ongoing court proceedings/investigations are not prejudiced. In some prisons all or certain categories of inmates may be held in solitary confinement (for example, in some ‘*supermax*’ prisons in the US). Whether the procedure amounts to a breach of international human rights standards or law will depend on a number of issues, and the specific facts of the case.

2 Solitary confinement and international standards.

Solitary confinement is not in itself a human rights violation, and the segregation of prisoners can be justified for a number of reasons¹. However, under certain circumstances it may amount to cruel, inhuman or degrading treatment which is prohibited by a number of international human rights treaties².

Rule 9 of The UN Standard Minimum Rules for the Treatment of Prisoners³ provides that: ‘*where sleeping accommodation is in individual cells or rooms, each prisoner*

¹ See European Court of Human Rights decisions: *Valašinas v. Lithuania*, no. 44558/98 ECHR 2001; *Peers v. Greece*, no. 28524/95 ECHR 2001.

² For example, The International Covenant on Civil and Political Rights (ICCPR); The European Convention on Human Rights (ECHR); The American Convention on Human Rights (AmCHR); The African Charter on Human and Peoples Rights (Banjul Charter).

³ Note that the Standard Minimum Rules are also not legally binding, but reflect the international minimum standards on prison conditions adopted by the United Nations. Rule 2 highlights the documents limitations: ‘*In view of the great variety of legal, social, economic and geographical*

shall occupy by night a cell or room by himself.' As such, merely holding a prisoner in a cell by themselves is desirable rather than a human rights concern.

However, if there are additional restrictions such as lack of access to family, lawyers, doctors, consular officials or other prisoners, this could amount to a human rights abuse. Even more serious would be if there is any mistreatment involved, such as physical and psychological abuse, or light and sound deprivation/excesses.

The UN Human Rights Committee (HRC) and the European Committee for the Prevention of Torture (CPT) have previously stated that prolonged solitary confinement itself *may* amount to cruel, inhuman and degrading treatment or punishment⁴. The European Commission on Human Rights has previously noted that prolonged solitary confinement is undesirable, especially when the individual is on remand. In addition, the European Committee for the Prevention of Torture claims that all forms of solitary confinement should be as short as possible. Whether solitary confinement amounts to a human rights breach will need to be determined on a case by case basis.

3 When might solitary confinement amount to a human rights violation?

A number of international human rights instruments protect prisoners' rights. Article 10 of The International Covenant on Civil and Political Rights (ICCPR) holds that people detained should be treated with humanity and dignity. The ICCPR also prohibits inhuman and degrading treatment/punishment and torture (Article 7), as do other international instruments⁵. The European Court of Human Rights has previously ruled that treatment must reach a '*minimum level of severity*' in order to amount to inhuman or degrading treatment or torture. Whether or not treatment reaches the minimum level will depend on all the circumstances of the case, e.g. the duration of the treatment, the physical and mental effects, and in some cases the sex, age and health of the victim. In cases of degrading treatment, consideration must also be given to whether the aim is to '*humiliate*' and '*debase*' the individual, and if their personality has been adversely affected as a result. More generally, the European Court of Human Rights has also held that in order for there to be a breach, the treatment must also exceed the '*unavoidable level of suffering inherent in detention*'⁶.

A number of international human rights bodies have considered the question of when solitary confinement may amount to cruel, inhuman and degrading treatment or punishment. Factors that have been taken into account include the particular conditions; the stringency of the measure; its duration; the objective pursued, and its effects on the person concerned⁷.

conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times'.

⁴ Report of the Human Rights Committee, Forty Forth Session, UN doc. A/47/40 (1992) General Comment 20, Para 6; Council of Europe, Second General Report of the Committee for the Prevention of Torture, CPT/Inf (92) 3 [EN], para. 56.

⁵ For example, see Article 3, European Convention on Human Rights (ECHR); Article 5, Universal Declaration of Human Rights (UDHR); Principle 6, UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Rule 31 of the Standard Minimum Rules on the Treatment of Prisoners (SMR).

⁶ Amongst others, see *Rohde v. Denmark*, no 69332/01 ECHR 2005.

⁷ See the European Commission on Human Rights' decision: *Hosie v. United Kingdom*, no. 27847/95, decision of 23 October 1997.

3.1 Purpose of solitary confinement

The purpose of solitary confinement is an important factor when determining whether it breaches an individual's human rights. Solitary confinement is often used where there is a risk the individual will obstruct judicial proceedings, for example, if there are co-accused at large who may be interfered with, or concerns that evidence may be destroyed. In such circumstances, the European Commission on Human Rights has held "*a balance must be struck between the requirements of the investigation and the effect which the isolation will have on the detained person. Where solitary confinement is applied, the authorities must therefore ensure that its duration does not become excessive.*"⁸

Similarly, solitary confinement may also be used on security grounds, not least to prevent a prisoner from escaping. Such facts are given significant weight when considering whether solitary confinement breaches an individual's human rights. For example, the European Commission on Human Rights previously found no breach where an individual was detained in solitary confinement for 5 years, not least because he tried to escape a number of times⁹. The Commission however pointed out that in those circumstances, the State needs to constantly review whether less restrictive measures are appropriate.

Punishment in prison may also include the use of solitary confinement. As a general rule, prisons are allowed to use a certain amount of discipline for the purposes of good order. The UN Standard Minimum Rules on the Treatment of Prisoners (SMR) suggest that punishments should be outlined by law or relevant regulations. In practice, this means that prisons should have written rules that specify what conduct a prisoner can be punished for, what punishment can be imposed for that conduct, and who can impose it. The SMR go on to say that prisoners can only be punished in accordance with these rules.

The SMR prohibit punishment '*by placing in a dark cell*' but allow for the use of '*close confinement*' providing a medical officer has examined the prisoner and certified in writing that they are fit enough to sustain it¹⁰. The United Nations has however noted that '*efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged*'¹¹.

3.2 Duration of solitary confinement

There is no set time limit after which the use of solitary confinement becomes inhuman and/or degrading. How long such a provision will be acceptable will depend on a number of factors, as mentioned above. The European Court of Human Rights has consistently upheld the use of solitary confinement for periods ranging from one month to six years. In the six year example, the prisoner was a convicted murderer who had killed two prisoners, and needed to be segregated for security reasons¹².

3.3 Type of solitary confinement

As outlined above, solitary confinement can take a number of forms, and will vary from prison to prison and country to country. Actions include restricting prisoners' correspondence; subjecting them to sensory and/or social isolation; and placing them

⁸ *Rasch v. Denmark*, no. 10263/83, decision of 11 March 1985.

⁹ *Dhoest v. Belgium*, no. 10448/83, decision of 14 May 1987.

¹⁰ See Rule 31 and 32 of the UN Standard Minimum Rules on the Treatment of Prisoners.

¹¹ Principle 7, The UN Basic Principles on the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111 (1990).

¹² See *M v. U.K.*, Application 9907/82, decision of 12 December 1982.

under 'total isolation' or austere material conditions of detention. The harsher the degree of solitary confinement, the more likely it may breach the individual's right not to be subjected to inhuman and degrading treatment.

In 1983 the European Commission on Human Rights considered whether two individuals who were suspected of terrorist activities had their human rights breached after being subjected to a particularly harsh solitary confinement regime¹³. The two applicants were locked up in two adjacent cells, and no other prisoners were on the same floor, or on the floors above and below. Lamps in their cells were continually switched on, their windows were blocked to prevent them from seeing outside, and they were placed under surveillance through closed circuit television. Both prisoners were continually monitored by doctors and psychiatrists, and the regime was consequently relaxed after two months. The Commission concluded that the prisoners' human rights had not been violated by the regime, perhaps largely because of the presence of medical help, and the limited time the initial regime lasted.

The Commission however has taken a different view where prisoners are subjected to a combination of complete sensory and social isolation. In those circumstances, the prisoner's right to be free from inhuman and degrading treatment will be breached, because such treatment can ultimately destroy the personality¹⁴. This view is mirrored by the European Committee for the Prevention of Torture which concluded in 1991 that maximum security prisoners held in Spain, '*subject to a regime of isolation*' in '*austere material conditions of detention with little or nothing by way of activity*' amounted to 'inhuman treatment'¹⁵.

3.4 Effects of solitary confinement

How the prisoner reacts to the solitary confinement regime is also an important factor. As outlined above, the European Commission on Human Rights has concluded that certain extreme forms of solitary confinement can destroy the individual's personality¹⁶. This however can also be the case under lesser forms of solitary confinement. For example, in one particular case a prisoner was subjected to a prison regime (which included solitary confinement) that fell short of complete sensory and social isolation. However, the regime caused him '*unusual*' distress, and amounted to inhuman treatment, not least because the prison should have done more to remedy this¹⁷.

For further information, please see the Prisoners Abroad factsheets 'Challenging Breaches of Human Rights' and 'Torture, cruel, inhuman and degrading treatment'.

¹³ *Krocher and Moller v. Switzerland*, no. 8463/78, decision of 9 July 1981.

¹⁴ *Ensslin, Baader and Raspe v. FRG*, no. 7572/76, 7586/76, and 7587/76, decision of 8 July 1978.

¹⁵ Report on Initial visit to Spain (1991). CPT/Inf(96)9, Part I, para. 113.

¹⁶ See note 14 above.

¹⁷ *Mathew v. The Netherlands* no. 24919/03 ECHR 2005.

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