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Abbreviations

Bangkok Rules: United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CoE: Council of Europe

CPT: European Committee for the Prevention of Torture

DAP: Department of the Penitentiary Administration

ECHR: European Convention on Human Rights

ECPT: European Convention for the Prevention of Torture

ECtHR: European Court of Human Rights

EEG: Electroencephalography

EPR: European Prison Rules

GIP: Judge of the preliminary investigations

HRComm: Human Rights Committee

ICCPR: International Covenant on Civil and Political Rights

IPM: Istituti Penali per Minori

LGBT: lesbian, gay, bisexual, transgender

Mandela Rules: United Nations Standard Minimum Rules for the Treatment of Prisoners

NPM: National Preventive Mechanism

OPCAT: Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PTSD: post-traumatic stress disorder

SRT: Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

SPT: Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN: United Nations

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Introduction

Solitary confinement is one of the harshest measures allowed in almost all prison systems around the world and Italy is no exception. The aim of this work is to establish the level of compliance of the Italian legislation and practice of solitary confinement to the international standards. For this reason, a review of the existing standards is necessary. As Italy is a member State to this regional international organization, the standards that will be analysed are those set by the United Nations and those set by the Council of Europe. The definitions used by the bodies of two organizations are strikingly different. In fact, the United Nations, which have as counterparts the totality of World's States, have to deal with extremely different penitentiary systems, cultural backgrounds, and State resources: to find a common standard in these conditions is not easy and in fact the road to the definition set by Rule 44 of the 2015 Mandela Rules has been anything but easy. On the other hand, the States of the Council of Europe gave to the European Human Rights bodies a significant amount of power and, notwithstanding the resistances of the National institutions, they are constantly reminding them of their obligations and raising the Human Rights standards. However, this work would not be complete without mentioning the harmful effects of solitary confinement. For this reason, the last chapter will explore the scientific works that explain the effects of the lack of social interaction and why solitary confinement should be used, mentioning the words that will be repeated many times in this work, in very exceptional cases, as a last resort, and for the shortest possible time.

Definition of solitary confinement

Solitary confinement is used and regulated in very different ways by each Country's criminal justice system and for this reason there are several definitions of the practice. Prior to the introduction of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2015, at the UN level only the Special Rapporteur on Torture (SRT) addressed the issue of a definition of this practice. As a guideline in order to draft a definition, he referred to the Istanbul Statement on the Use and Effects of Solitary Confinement. The Statement is the product of three days of "working sessions" of the most important experts in the penitentiary field, which was

presented on the last day of the International Psychological Trauma Symposium that took place in Istanbul at the end of 2007.[1] The Statement defines solitary confinement as "the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day" with some jurisdictions allowing prisoners out of their cells to exercise in solitary for one hour. The document also stresses that solitary confinement reduces stimuli both quantitatively and qualitatively, that contacts with other people are only occasional (i.e. only related to the prison routine) and reduced to a minimum, "are seldom freely chosen, are generally monotonous, and are often not empathetic".[2] This or similar definitions and the mentioned elements were present in many of the studies prior the writing of the Statement.[3] The 2008 Interim report of the SRT adopts the above definition and underlines that the reduction of contacts with other people to the minimum is "the key adverse factor of solitary confinement".[4] In the 2011 Interim report to the General Assembly, the SRT adds other names that refer to solitary confinement in different Countries and jurisdictions, which are: ' "segregation", "isolation", "separation", "cellular", "lockdown", "Supermax", "the hole" or "Secure Housing Unit (SHU)" '.[5]

In 2015, the definition of solitary confinement was included in the Mandela Rules as "the confinement of prisoners for 22 hours or more a day without meaningful human contact" while prolonged solitary confinement was defined the imposition of the measure for more than 15 consecutive days.[6]

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[1] P. S. Smith, 'Solitary confinement. An introduction to The Istanbul Statement on the Use and Effects of Solitary Confinement', *Torture: quarterly journal on rehabilitation of torture victims and prevention of torture*, 2008, Vol.18(1), p. 57.

[2] United Nations General Assembly, 'The Istanbul Statement on the Use and Effects of Solitary Confinement', annex to the *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/63/175, 28 July 2008, p. 22.

[3] For example:
P. S. Smith, 'The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature', *Crime and Justice*, 2006, Vol. 34, No. 1, pp. 448-449.
S. Grassian, 'Psychiatric effects of solitary confinement', *Journal of Law and Policy*, 2006, Vol. 22, p. 327.
Smith, *Torture*, 2008, p. 56.

[4] United Nations General Assembly*, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/63/175, 28 July 2008, §§77,82.

[5] United Nations General Assembly, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, A/66/268, 5 August 2011, §26.

[6] United Nations General Assembly, *Standard Minimum Rules for the Treatment of Prisoners (Revised*

At the regional level, the European Committee for the Prevention of Torture (CPT) gives a definition of solitary confinement that applies to several situations. The detainee can, for instance, "be held on his/her own", but the CPT underlined that its standards set for this measure also apply when the inmate is "accommodated together with one or two other prisoners". Moreover, the CPT adds that solitary confinement can be imposed "as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned".[7]

History of solitary confinement

The reasons that justify today's use of solitary confinement are very different from those that marked its beginning, which dates back to the birth of the modern prison system. According to historians, in Europe up to the second half of the 18th century, the vast majority of crimes were punished by torture, death, banishment or forced labour.[8] In fact, it was believed that by watching the atrocious spectacle of the punishments received by those who had infringed the law, the population would have been discouraged to engage in criminal activities.[9] At that time, imprisonment was not a common form of punishment and its use was limited to the punishment of minor offences or as a substitute for those who could not perform hard labour.[10] As this form of punishment was not the most common one, historians have looked for the reasons that can explain the spreading of its use.

The decline of punishment as a public spectacle and the consequent rise of the use of imprisonment are the results of several changes in the economy, society and mentality of

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Mandela Rules), Resolution 70/175, A/RES/70/175, 17 December 2015. Available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/175, (accessed 3 April 2017), Rule 44.

[7] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *21th General Report of the CPT. 2010-2011*, Strasbourg, available at: https://rm.coe.int/1680696a88, (accessed 14 July 2017), §54.

[8] M. Foucault, *Discipline and punish*. *The birth of the prison*, trans. A. Sheridan, New York, Random House, Inc., First Vintage Books Edition, 1979, pp. 33, 114-118.
M. Ignatieff, *A just measure of pain: the penitentiary in the industrial revolution, 1750 – 1850,* New York, Columbia University Press Morningside Edition, 1980, p. 24.

[9] Ignatieff, *A just measure of pain,* p. 20.
Foucault, *Discipline and punish*, p. 9.

[10] Ignatieff, p. 15.
Foucault, p. 118.

the second half of the 18th century. At that time, the population was growing and the standards of living were rising, commerce was beginning to assume a more relevant role and landlords started to exploit their estates in order to make more profit. Therefore, legislative measures were taken in order to turn many activities, that previously were not considered offenses, into crimes; also, punishments for already-existing offences were harshened up to the death penalty and the implementation of the law for minor offences was tightened.[11]

These changes in the law caused a general change in the perception of the punishments as being too harsh for the committed crimes and magistrates started to feel the need of a lighter punishment for these offenses rather than death or transportation.[12] Driven by the most different reasons, thinkers all around Europe started to discuss about crime and punishment from different perspectives and contributed to the creation of the modern prison systems, which started to take shape between the end of the 18th century and the first half of the 19th century.[13] Many, moved by the Enlightenment, formulated the idea that the State had to be legally limited in enforcing punishments on criminals.[14] Some were looking for a renovation of the penal systems in order to find better forms of punishments that could serve as an example to the whole society.[15] Others, moved by the most different moral and religious values, started to believe that criminals could be reformed through work, discipline and the preaching of religious and moral values.[16]

The preaching of moral and religious values played a central role in the new institutions that were built in order to reform the inmates, but it was also accompanied by a

[11] Ignatieff, pp. 16, 26.
Foucault, pp. 14-15, 76, 88.
[12] Foucault, pp. 9, 62.
Ignatieff, p. 45.
[13] Foucault, pp. 15, 293.
Smith, 2008, p. 57.
Smith, *Crime and Justice*, 2006, p. 456.
[14] Foucault, p. 74.
Ignatieff, p. 79.
[15] Foucault, pp. 81-82.
[16] Ignatieff, pp. 67, 71, 145-146.
Foucault, pp. 241-242.
P. S. Smith, 'A religious technology of the self. Rationality and religion in the rise of the modern penitentiary', *Punishment & Society-International Journal Of Penology*, 2004 Apr, Vol.6(2), pp.195-220.

combination of other elements such as work, solitary confinement, a fixed timetable, fixed meals and a particular care for hygiene.[17]

Work was a very important element of these new institutions because it had the purpose to accustom to it those who were believed to be lazy or unwilling to perform any job and to teach them its moral value. The habit to work was to be taught through carrying out low-skilled, long, boring and repetitive jobs. In some models, work was carried out in the same cells where the prisoners slept (or in an adjacent cell) and was, therefore, a part of solitary confinement, while in other models, work was carried out in common, at times, under the rule of silence. The debate on the performance of work in prison was very wide and touched a variety of related issues: some believed that at times of great poverty and unemployment, the work that a criminal was doing could have been performed by any other respectable person, who would not have fallen in poverty if given the chance to work. These critics were raised especially when prisoners' work was remunerated.[18]

The element of hygiene became part of the prison reform also with a moral intent. Hospital reformers were carrying out a hygienic reform in hospitals and in the houses for the poor; in fact, the poor's sickness and uncleanliness was regarded as a lack of discipline and morality, which had to be taught. In prisons the spreading of pestilence was associated to the spreading of immorality, and, therefore, of criminal values. Soon enough the hygienic measures of bathing, shaving and clothing the inmates with uniforms upon entering the prison were turned into a way to purposely humiliating them.[19]

Solitary confinement was an idea that derived from the isolation that monks underwent in the Christian monastic orders and served as a way to reform the criminal, who was supposed look into himself and reflect on the bad that had done in order to enable his soul to repent and convert spiritually. From a more practical point of view, solitary confinement also prevented the spreading of criminal values and associations within the

[17] Smith, 2004, *Punishment & Society-International Journal Of Penology*, pp.197, 214.
Ignatieff, p. 94.
[18] Foucault, pp. 121-123, 240-241, 243.
Ignatieff, pp. 93, 102, 112, 178.
[19] Ignatieff, pp. 60-61, 100-101.

prison and was a tool to exercise the greatest influence upon inmates, as they were completely submitted to the authority of the governor and the chaplain. Moreover, it was believed that the fear of solitary confinement would constitute a deterrent for the other criminals, hence serving the "double purpose" of "deterrence and rehabilitation".[20] However, the positions on solitary confinement were not homogeneous and some voices openly opposed it.[21]

The earliest institutions that served as a model to the spreading of prisons, were: the Rasp Houses of Amsterdam and Rotterdam, which had been instituted at the end of the 16th century and combined all the elements above mentioned; the prison of San Michele in the Vatican State, built in 1701 for the reformation of juvenile offenders, applied solitary confinement and silent penance; the Maison de Force in Ghent, which opened in 1771, was more oriented to performing work and the length of the imprisonment could be shortened depending on the good behaviour of the inmate.[22] At Gloucester penitentiary, which opened in 1792, the inmates were kept in solitary confinement at night as well as during the day, when they performed work in some cells next to those where they slept. Once per day, when they were granted two hours of exercise with other inmates. This prison offered a model to other English counties and, at times, the use of solitary confinement was also harshened.[23]

However, the two prisons that are most famous for their two different uses of solitary confinement as method to rehabilitate criminals opened in the 1820s in the United States: the Cherry Hill Prison, located in Philadelphia, which originated the so-called Pennsylvania model and the Auburn Prison, located in New York State, which originated the so-called Auburn model.[24]

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[20] Foucault, pp. 122-123, 236-237.
Ignatieff, pp. 53, 78, 62, 102, 197-198.
Smith, 2008, p. 57.
Smith, 2004, pp.197, 206.
[21] Ignatieff, pp. 101-102, 118, 123, 128-131.
[22] Foucault, p. 120, 124.
Ignatieff, p. 53.
[23] Ignatieff, pp.100-102.
[24] Smith, 2008, p. 57.
Smith, 2006, p. 456.

Under the Pennsylvania model prisoners were kept in total isolation for years: they worked in the same cell where they slept and exercised alone in small courts attached to their cells. When prisoners had to be moved from their cells, they had to wear masks so that they would not recognize any of the other inmates and even followed religious services from isolated booths to impede any form of communication between them. Under this model, the rehabilitation of the criminals that underwent strict solitary confinement took place through a constant inner reflection, which would enlighten their own conscience and bring to its surface a feeling of morality.[25]

The Auburn system entailed a lighter form of isolation for the inmates, which were held in individual cells during the night while eating and working in common during the day but under a strict rule of silence. When the inmates were not working, they were kept confined in their cells, where they were supposed to read the Bible, the only book allowed in the cell. In this way, it was thought that the prisoners would acquire discipline and learn to live in a society while keeping on reflecting of their bad deeds.[26]

The difference between the two systems is underlined by Michel Foucault with these striking words: "Auburn was society itself reduced to its bare essentials. Cherry Hill was life annihilated and begun again".[27] However, it is also very interesting to note their similarities, highlighted by Peter Scharff Smith. In his article *A religious technology of the self*, Smith explains that in both models all the components of imprisonment were scientifically studied (he gives as examples the size of the cells or the quantity of fresh air) and that "at the same time religion played a major role, both as end and means, in the reform of the criminal". This was true especially in the Philadelphia model, where the inmate, in complete isolation, had "to meet God and acknowledge Christian morality and the error of his ways". However, also in the Auburn system, even if the inmates had to

[25] Smith, 2008, p. 57.
Smith, 2006, p. 456-457.
Ignatieff, p. 194.
Foucault, p. 238.
[26] Foucault, p. 238.
Ignatieff, pp. 178, 194.
Smith, 2008, p. 57.
Smith, 2004, pp.197, 206.
Smith, 2006, p. 456.
[27] Foucault, p. 239.

work in common, when they were left alone in the solitude of their cells, they were supposed "to read the Bible and afterwards reflect in silence on the errors of their lives".[28]

The Auburn system was further replicated in the United States, while the Pennsylvania model was exported to the Old Continent (giving rise to many critics and scepticism towards the reformative power of total confinement) through prison visits carried out by delegations coming from many European Countries.[29] Among the Countries that adopted in different ways and with different scales the Pennsylvania model, Smith cites France, England, Germany, Holland, Belgium, Portugal, Norway, Sweden, and Denmark.[30]

In all prisons where solitary confinement was introduced, cases of mental problems and illnesses started to appear. The symptoms[31] were many and were very similar across the prisons where solitary confinement was applied. Several studies confirmed the harm caused by the practice of isolation and by the second half of the 19th century, solitary confinement had stopped to be a key element for reformation, but rather an instrument of terror; therefore, Countries gradually ceased to make use of it.[32] By the 1880s the United States and France had almost completely abandoned it, but in other Countries the system remained in place until the first half on the 20th century (e.g. Norway, Sweden and Denmark) and in a handful of others the isolation model was used up to the second half of the 20th century (e.g. Belgium). In the United Kingdom, the time spent in solitary confinement had already been reduced to nine months in 1921, but was abolished only between 1921 and 1939. In some Scandinavian Countries, pre-trial solitary confinement has been a very grave issue until very recently.[33]

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[28] Smith, 2004, p. 207.
[29] Smith, 2008, p. 57.
Smith, 2006, p. 457.
Smith, 2004, p. 207-209, 216.
Ignatieff, pp. 194-197.
[30] Smith, 2006, p. 458.
[31] See last chapter for further details on the effects of solitary confinement.
[32] Ignatieff, p. 200.
Smith, 2006, p. 462-463, 465-467.
[33] Smith, 2006, pp. 444-448, 465, 467-469.
Smith, 2008, p. 57-58, 60.

During the second half of the twentieth century, one particular use of solitary confinement was reported by the United States Department of Defence, as an imprisonment modality used by the Soviet KGB and by the Chinese during the war in Korea. However, aside from this singular employment of the measure, after the end of "the era of large-scale isolation", solitary confinement remained "typically as short-term punishment in most prisons" and prison systems "throughout the nineteenth and twentieth centuries".[34]

Current uses of solitary confinement

Penitentiary systems vary very much from continent to continent and from Country to ountry. The same is valid for solitary confinement, its uses, its conditions, and its regulations. A very recent research on various aspects of solitary confinement carried out in 26 Cies pointed out that "approaches to solitary confinement across the jurisdictions studied differ widely not only between Countries within the same region, such as Europe, but also within a single Country". The report further pointed out that at times law and practice differ very much and the available safeguards vary very much depending on the purpose of the imposition of the measure. The study also reported that, even though in some jurisdictions there are some positive developments aimed to reform the practice for the best, "this trend […] is by no means universal"; in fact, in one jurisdiction it was found that the proposals to the reform the practice were going in the opposite direction.[35]

Apart from these findings, it is possible to state that currently, in most prison systems, solitary confinement is used as a form of punishment for disciplinary offenses, as a protective measure for the most vulnerable detainees (e.g. sex offenders, LGBT detainees, juveniles), as an administrative tool to handle specific groups of inmates, to hold prisoners awaiting the death penalty, and it can be imposed by the judge as part of a prison sentence.

[34] Smith, 2006, pp. 442, 467, 469-471.
Grassian, *Journal of Law and Policy,* 2006, pp. 343-344, 380-383.
[35] J. E. Méndez et al., 'Seeing into Solitary. A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees', Weil, Gotshal & Manges LLP, Washington D.C., September 2016, available at: https://www.weil.com/~/media/files/pdfs/2016/un_special_report_solitary_confinement.pdf, (accessed 26 July 2017), pp. 21, 46, 49.

In the case of pre-trial detainees, it can be used to limit the contacts with the other inmates during the police investigation; however, it might also be used as a tool to extract information out of them using as a leverage their wish to terminate their placement in isolation.[36]

The war on terrorism also gave the opportunity to solitary confinement to come back in fashion as an interrogation technique in order to extract a confession (e.g. at Guantanamo or in Afghanistan)[37], "for national security" reasons and in other cases it is used as "an integral part of enforced disappearance or incommunicado detention" (e.g. in the case of political prisoners).[38]

In other cases, solitary confinement is also used as a "treatment or punishment" in place of "proper medical of psychiatric care for mentally disordered individuals" or people with disabilities.

The SRT also found cases of solitary confinement during administrative detention "as a method to fight organized crime, as well as in immigration detention".[39]

1. The case of supermax prisons in the United States

Of particular interest is the institution in the United States of the super-maximum security (so-called supermax) prisons. The regimes in these prisons differ in many ways; however, they all entail the use of solitary confinement for about 22 to 24 hours per day. The environment where the detainees live is barren and monotonous, the cells are, as the US Supreme Court said, "the size of a parking place" and where they exercise is usually a barren concrete yard not much bigger of the cell itself. Usually detainees don't have access to any recreational or communal activity nor to work or educational programs; depending on the regulations, they can keep only a restricted number of books and

[36] United Nations General Assembly, 2008, p. 22.
Smith, 2006, pp. 442, 467.
Smith, 2008, pp. 58-59.
United Nations General Assembly, *Interim report of the Special Rapporteur,* 2008, §79.
United Nations General Assembly, *Interim report of the Special Rapporteur,* 2011, §§40-42, 45.
[37] Smith, 2006, p. 442.
[38] United Nations General Assembly, 2008, p. 22.
United Nations General Assembly, 2011, §§41, 44, 57.
Smith, 2008, p. 59.
[39] United Nations General Assembly, 2008, §79, p. 22.
United Nations General Assembly, 2011, §§20, 43.

magazines and only at times they have access to a television or a radio. When they are escorted out of the cells, they are typically put in restraints and are never in presence of another person without being separated by a glass or by being placed in a cage (even mental health visits may take place in this way). Visits with family members or friends usually take place through a glass and a phone and other times via videoconference (even if both the inmate and the visitor are in the same facility); at times, even the medical visits take place in this way.[40] Those subjected to this regime are often mistaken by the general public as "the worst of the worst", but in reality, inmates to end up in supermax prisons for several reasons: because a court judgement labelled them as dangerous or members of a gang; because, as a result of a mental illness, they accumulate several infractions, which lead them to being placed in these facilities (many US courts have addressed this issue and have ordered the release of those having a mental illness); many others accumulated minor infractions (e.g. for "disruptive behaviour", "failure to obey an order" or "talking back"); finally, others are hosted in "protective custody" (e.g. LGBT inmates), which is a very similar environment to that of the supermax prisons.[41] The timespan that detainees spend in such conditions vary from days to months, years and even decades.[42]

2. European trends on solitary confinement

In comparison to the United States, European Countries use "solitary confinement on a much smaller scale" and supermax-like conditions are not very frequent; however,

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[40] C. Haney, 'The Dimensions of Suffering in Solitary Confinement', *Law & Neuroscience Conference 2017. A Question of Fit: Translating Neuroscience for Law, Clinical Care & Policy*, UCSF/UC Hastings Consortium on Law, Science and Health Policy, California, February 16-17, 2017, http://www.ucconsortium.org/events/law-neuroscience-conference-2017/, (accessed: 29 June 2017).C. C. C. Haney, 'Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement', *Crime and Delinquency*, 2003, Vol. 49, No. 1, pp. 126, 146-147.
Smith, 2008, p. 59.
S. Shalev, 'Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis', *Journal of Forensic Psychology Practice*, 23 March 2011, Vol.11(2-3), pp.153-154.
Smith, 2006, p. 467.

[41] Haney, *Crime and Delinquency*, 2003, pp. 126, 129, 146-148.
American Civil Liberties Union, *The Dangerous Overuse of Solitary Confinement in the United States*, New York, August 2014, p. 8.
A. Shames, J. Wilcox, R. Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, VERA Institute of Justice, New York, May 2015, pp. 12-14.

[42] Shames, Wilcox, Subramanian, *Solitary Confinement,* 2015, pp. 15-17.
Smith, 2008, p. 59.

isolation "is a common practice in Europe" too.[43] The CPT has found four main uses of solitary confinement in the area of the Council of Europe (CoE).

First of all, solitary confinement can be imposed by a court decision. This can happen either during pre-trial detention in order to protect the undergoing investigation, or it can be the result of a court judgement, which imposes solitary confinement as part of prison sentence.[44] The length of pre-trial solitary confinement varies greatly; however, studies have found prolonged pre-trial isolation (combined with other restrictions) very prevalent in Scandinavian Countries.[45]

Secondly, solitary confinement is used "as the most severe disciplinary punishment". The maximum duration of such confinement varies greatly from Country to Country from a few days to more than one month and many jurisdictions prohibit the practice of imposing several disciplinary sanctions of solitary confinement in a row. During the visits the CPT often encounters cells used for disciplinary confinement that do not meet the standards with regard to size, light, ventilation, and furniture. The same is also often valid for the outdoors areas. [46]

A third use of solitary confinement is "for preventive purposes". The aim of such confinement is either a reaction to a serious violent offence or a tool to manage those dangerous inmates "who present a very serious risk to the safety or security of the prison".[47] Also in this case "the depth and weight of confinement in these units differ from one European jurisdiction to another and they differ substantially from the typical American supermax".[48] Some European States began to use "small group isolation", which is a form of imprisonment used to manage particularly "dangerous or high-risk" inmates. Usually, detainees under this form of imprisonment are confined in solitary in their cells and during the outdoor time they are allowed to associate with one of two other

[43] S. Shalev, 'Solitary confinement: the view from Europe', *Canadian Journal of Human Rights*, 2015, No. 4, Vol. 1, p. 143.
[44] European Committee for the Prevention of Torture, *21th General Report of the CPT. 2010-2011*, p. 42.
[45] Shalev, *Canadian Journal of Human Rights*, 2015, p. 150.
[46] European Committee for the Prevention of Torture, 2011, pp. 43, 47.
[47] European Committee for the Prevention of Torture, 2011, p. 43.
[48] Shalev, 2015, p. 156.

inmates undergoing the same regime.[49]

Lastly, solitary confinement can also be used "for protection purposes" to protect some groups of prisoners who might be endangered because of the crime they committed, because of their collaboration with justice, or because of other vulnerabilities.[50]

United Nations standards on solitary confinement

1. The International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly in 1966 and entered into force in 1976. It is a binding treaty and one of the most important ones, along with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Article 28 establishes the Human Rights Committee (HRComm), which is a body of independent experts, that interprets and monitors the treaty. Article 40 requires all State parties to submit every four years a report to the in order to explain the implementation of each right present in the ICCPR; Articles 41 and 42 establish an inter-State complaints procedure. The treaty has also two optional protocols: by signing the first optional protocol, the State allows the HRComm to receive individual communications from its own citizens while the second optional protocol aims at the abolition of the death penalty.[51] The interpretation of the provisions of the treaty is done by the HRComm through the instrument of General Comments, but also when commenting State reports and individual communications.[52]

1.1 General principles

The ICCPR deals with the topic of the treatment of prisoners through Articles 7 and 10.[53] In fact, the first part of Article 7 states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" while paragraph one of Article 10

[49] S. Shalev, 'A sourcebook on solitary confinement', *London, Mannheim Centre for Criminology London School of Economics and Political Science*, October 2008, http://solitaryconfinement.org/uploads/sourcebook_web.pdf , (accessed 4 April 2017), p. 2.
[50] European Committee for the Prevention of Torture, 2011, p. 44.
[51] P. Gianniti, 'Il Sistema ONU di protezione dei diritti fondamentali', in P. Gianniti (ed.), *La CEDU e il ruolo delle Corti: globalizzazione e promozione delle libertà fondamentali*, Bologna, Zanichelli, 2015, pp. 70-74.
[52] M. Nowak, 'An Introduction to the UN Human Rights System', in M. Nowak, K. M. Januszewski, & Hofstätter (ed.), *All Human Rights for All*, Vienna – Graz, Neuer Wissenschaftlicher Verlag GmbH Nfg KG, 2012, pp. 72-73.
[53] Shalev, 2011, p. 169.

states that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"; moreover, the first part of the third paragraph states that: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".[54]

Through General Comment No. 20, the HRComm interprets Article 7 of the ICCPR and underlines that the aim of the Article is to protect both the "physical and mental integrity of the individual" and prohibits acts that cause not only "physical pain" but also "mental suffering". The General Comment directly deals with solitary confinement by stating that: "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7". In the second paragraph, the General Comment also creates a direct link with Article 10 stating that the first paragraph of said Article complements the prohibitions of Article 7. As in the Convention against Torture, Article 7 is not subjected to suspension in case of public emergency and no justification can be invoked for the breach of this Article, "including those based on an order from a superior officer or public authority".[55] The General Comment also requires the State to insert in their penal code a law to prohibit such behaviour; the provision should also prohibit the "admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment". Furthermore, it underlines that in places of detention there shouldn't be any equipment that might be used to inflict torture or ill-treatment, while, on the other hand, doctors and lawyers should be granted access in order to better guarantee the protection of detainees.[56]

The HRComm also expressed itself on the treatment of detainees stated in Article 10 through General Comment No. 21 of March 1992. As in the previous General Comment,

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[54] United Nations General Assembly, *International Covenant on Civil and Political Rights*, Resolution 2200A (XXI) of 16 December 1966. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx, (accessed 13 April 2017).
[55] Human Rights Committee, *General Comment No. 20. Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment),* General Comment 20/44, 3 April 1992, §§2, 3, 5, 6. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention*, A/HRC/13/39/Add.5, 5 February 2010, §§41-42.
[56] Human Rights Committee, *General Comment No. 20*, §§8, 11-12.

the HRComm strengthens the link between Article 10 and Article 7 of the ICCPR and further elaborates on the conditions in which people deprived of liberty should be held by stating that they should not "be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons". Moreover, it points out that the respect of the dignity of people deprived of liberty should not be dependent on the State resources, as it is a fundamental right which should be applied without any discrimination "of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[57]

During the years, the HRComm has repeatedly addressed the issue of solitary confinement in several comments to Countries' reports. The Committee affirms that "solitary confinement is a harsh penalty" which should be used "only in case of urgent need" and that "the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant".[58] In one concluding observations to a Country report, the Committee also affirms that the Country in question "should put to an end the sentence of solitary confinement", which might indicate the contrariety of the Committee with regard the use of solitary confinement as part of a prison sentence imposed by the judge.[59] Detainees should also have at disposal effective remedies "with suspensive effects, against all disciplinary measures of solitary confinement".[60] The medical staff should monitor daily those who

[57] Human Rights Committee, *General Comment No. 21. Article 10 (Humane treatment of persons deprived of their liberty),* General Comment 21/44, 10 March 1992, §§3, 4.
[58] Human Rights Committee, *Report of the Human Rights Committee,* 2001, §73(13).
[59] Human Rights Committee, *Report of the Human Rights Committee. Volume I*, A/64/40, New York, 2009, §88(14).
[60] Human Rights Committee, *Report of the Human Rights Committee. Volume I*, A/58/40, New York, 2003, §83(16).

are subjected to solitary confinement and examine the physical and mental conditions of detainees prior to their placement in confinement in protection cells[61].[62]

1.2 Conditions of the cell

With regard to the conditions of the cells reserved to solitary confinement, the HRComm expresses concerns on the existence of "solitary confinement cells without lights, windows or ventilation".[63] Such conditions were against the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1977[64], which prohibited "punishment by placing in a dark cell" and required all cells to "meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation".[65]

1.3 Specific groups

The HRComm also sets standards with regard to specific or vulnerable groups.
Regarding untried detainees, the Committee expresses concerns on the use of long-term solitary confinement during pre-trial detention and on the practices of reiterating solitary confinement orders on this specific group. Moreover, it affirms that, as all other inmates, pre-trial detainees should not be subjected to solitary confinement unless circumstances are of an exceptional nature and only for a limited period of time.[66]

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[61] The meaning of the term "protection cell" is to be understood in this case as "a solitary confinement cell with facilities and a design suitable for the pacification and protection of inmates" who are "likely to escape, become violent or commit suicide" or "repeatedly display abnormal behavior". Such cells are "designed with soundproofing and strength in structure, contain no equipment, tools or sharp objects that could easily be used to commit suicide and have walls and floors made of soft materials". Definition from: Human Rights Committee, *Consideration of reports submitted by States Parties under Article 40 of the Covenant. Fifth periodic reports of States parties due in 2002. Japan*, CCPR/C/JPN/5, 25 April 2007, §226.

[62] Human Rights Committee, *Report of the Human Rights Committee,* 2003, §83(16).
Human Rights Committee, *Report of the Human Rights Committee,* 2009, §85(21)

[63] Human Rights Committee*,* 2001, §78(14).

[64] The reference to the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1977 is necessary, as they were the minimum standards before the new set of rules (the so-called Mandela Rules) was adopted by the General Assembly in 2015.

[65] United Nations Economic and Social Council, *Standard Minimum Rules for the Treatment of Prisoners*, Rules 10, 31.

[66] Human Rights Committee, *Report of the Human Rights Committee. Volume I*, A/61/40, New York, 2006, §81(13).
Human Rights Committee, 2009, §83(11).

With regard to life sentenced and death row inmates, the Committee expresses concerns on the practice of subjecting them to long-term solitary confinement.[67] Moreover, it affirms that "life imprisonment in solitary confinement" constitutes a treatment "contrary to article 7 of the Covenant".[68]

In the case of children under the age of 18 and "prisoners with serious mental illness" the Committee declares that they should not be subjected to the practice of solitary confinement.[69]

Finally, the confinement in protection cells should also have a specific time limit.[70]

2. The Convention against Torture

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), another very important instrument with regard to solitary confinement, was adopted in 1984 and entered into force in 1987. It is one of the "core human rights treaties" and has one Optional Protocol (OPCAT), which was signed in 2002 and entered into force in 2006. Article 17 of the CAT establishes the Committee against Torture, which is a body of independent experts that monitors and interprets the Convention. The monitoring tools available to the Committee are several. Article 19 creates the reporting mechanism, under which each State party has to submit a report on the implementation of the Convention to the Committee. Article 20 introduces the inquiry procedure, the first of its kind, which allows the Committee against Torture to initiate an investigation on the basis of reliable information from the civil society that "gross and systematic" violations of the treaty are taking place. Articles 21 and 22 respectively establish the mechanisms of inter-State communications and individual complaints to the Committee. The OPCAT establishes with Article 2 a Subcommittee on Prevention of Torture (SPT), which has the task of carrying out preventive visits in all places of detention of member States. Moreover, under Article 17 of the OPCAT all Countries have

[67] Human Rights Committee, 2009, §§85(16), 85(21).
[68] Human Rights Committee, 2009, §88(14).
[69] Human Rights Committee, *Report of the Human Rights Committee. Volume I*, A/69/40, New York, 2014, §138(20).
[70] Human Rights Committee, 2009, §85(21)

to establish a National Preventive Mechanism (NPM), a body which has to satisfy some particular criteria of independence composition and clearance to all places of detention.[71]

2.1 Definitions

Article 1 of the CAT gives the definition of torture as:

> Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[72]

According to the former Special Rapporteur on Torture Manfred Nowak, in order to understand if an act falls under this definition of torture, four cumulative criteria have to be identified:

- infliction of *severe pain or suffering*, whether physical or mental,
- by or at the instigation of or with the consent or acquiescence of a *public official*,
- on a *powerless person* under the custody or direct control of the perpetrator,
- with the *intention* and for a *specific purpose*, such as extraction of a confession or information, intimidation, punishment, coercion or discrimination. [73]

When all these elements are present, the act falls under the definition of torture.

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[71] Nowak, 2012, pp. 70, 73-74.
Gianniti, *La CEDU e il ruolo delle Corti*, pp. 83-84.
[72] United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46 of 10 December 1984. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx (accessed 2 June 2017), Article 1.
[73] M. Nowak, 'Prohibition of torture', in M. Nowak, K. M. Januszewski, & Hofstätter (ed.), *All Human Rights for All*, Vienna – Graz, Neuer Wissenschaftlicher Verlag GmbH Nfg KG, 2012, p. 348.

Moreover, Article 16 of the CAT states that:

> Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.[74]

According to Nowak, if the element of severe pain or suffering is present along with that of the public official, but one of the other elements is missing, the act may fall under the definition of cruel or inhuman treatment or punishment: "the distinguishing criteria between torture on the one hand, and cruel or inhuman treatment on the other, is, according to most authors and monitoring bodies, not the severity of the pain, but the intention, the purpose, and the powerlessness of the victim". Finally, a degrading treatment or punishment does not reach "the same threshold of severe pain or suffering, but requires a particularly humiliating treatment".[75]

Moreover, the CAT also gives the duty to member States to criminalize torture (Article 4), to take all measures to prevent acts of torture and to establish the universal jurisdiction over of torture to try those who cannot be extradited (Articles 2, 10, 11), to ensure that the statements obtained through acts prohibited by the Convention are not used in court proceedings (Article 15), to provide victims of torture with effective remedies (Article 13), "adequate compensation" and "means for as full rehabilitation as possible" (Article 14). Furthermore, it affirms the absolute nature of the prohibition which cannot be justified in any case (Article 2) and the prohibition of *refoulement* to Countries where the person might be subjected to such treatments (Article 3).[76]

It is thanks to this framework that the Committee, the Subcommittee on Prevention of Torture (SPT) and the Special Rapporteur on Torture and other cruel, inhuman or

[74] United Nations General Assembly, *Convention against Torture,* Article 16.
[75] Nowak, *All Human Rights for All*, pp. 347-349.
[76] A. Scutellari, 'Trattamenti inumani e nuove schiavitù', in P. Gianniti (ed.), *La CEDU e il ruolo delle Corti: globalizzazione e promozione delle libertà fondamentali*, Bologna, Zanichelli, 2015, p. 726.

degrading treatment or punishment have addressed the conditions of detention and, in the case of this research, the restrictions which have to be applied to solitary confinement.

2.2 The Committee against Torture

2.2.1 General principles

In its concluding observations to the Country reports it is possible to deduce the positions taken by the Committee against Torture on solitary confinement. As a general rule solitary confinement should be used "as a measure of last resort, for as short a time as possible"[77] and "under strict supervision"[78]. The medical staff should regularly monitor the "physical and mental condition" of the detainee subjected to solitary confinement.[79] The Committee also underlines the character of exceptionality of the measure[80] and that it should be subjected to the "possibility of judicial review"[81] or "control"[82]. As a reaction to the practice of solitary confinement as an "informal punishment" or its application at "the discretion of the prison warden", the Committee affirmed the necessity of the establishment of "clear and specific criteria" for the use of solitary confinement.[83] Also, in one occasion the Committee specifies that renewing disciplinary sanctions of solitary confinement, which *de facto* prolong the time spent by the detainee under this measure,

[77] Among the others:
Committee against Torture, *Report of the Committee against Torture*, A/65/44, New York, 2010, §50(13)
Committee against Torture, *Concluding observations on the fifth periodic report of Israel*, CAT/C/ISR/CO/5, 3 June 2016, §25.
[78] Among the others:
Committee against Torture, *Report of the Committee against Torture*, A/68/44, New York, 2013, §71(14).
Committee against Torture, *Concluding observations on the third periodic report of Tunisia*, CAT/C/TUN/CO/3, 10 June 2016, §28.
[79] Committee against Torture, 2014, §61(12).
Committee against Torture, 2013, §71(14).
[80] Among the others:
Committee against Torture, *Report of the Committee against Torture*, A/66/44, New York, 2011, §61(18).
Committee against Torture, *Concluding observations on the second periodic report of Turkmenistan*, CAT/C/TKM/CO/2, 23 January 2017, §24.
[81] Among the others:
Committee against Torture, *Report of the Committee against Torture*, A/67/44, New York, 2012, §61(21), §62(19).
Committee against Torture, *Concluding observations on Tunisia*, §28.
[82] Committee against Torture, 2012, §58(19).
Committee against Torture, 2013, §62(10).
[83] For example:
Committee against Torture, 2013, §71(14).
Committee against Torture, *Report of the Committee against Torture*, A/69/44, New York, 2014, §61(12), §63(15).

should be prohibited.[84] As far as it concerns the conditions of solitary confinement, the Committee expresses concerns on the use of solitary confinement in "unhygienic conditions and with physical neglect […] as a mean of punishment"[85] and prohibits its use in "degrading" and "appalling" conditions[86].

2.2.2 Duration of solitary confinement

With regard to the length of the measure, before the introduction of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) in 2015, the Committee did not indicate a specific maximum number of days for the use of solitary confinement; however, at times, it indicated the period of time on which it expressed concerns[87] or it expressed concerns on the use of prolonged solitary confinement[88]. After 2015, the Committee often refers to the Mandela Rules as the international standards[89], which might mean that the maximum length of solitary confinement allowed by the Committee is of 15 days, otherwise a longer time would fall under the definition of prolonged solitary confinement, as indicated by Rules 43 and 44.

2.2.3 Specific groups

The Committee also takes a position with regard to vulnerable groups.

For instance, children younger than 18 should never be subjected to solitary confinement[90]; moreover, the Committee underlines that the abolition of this measure for

[84] Committee against Torture, 2014, §61(12).
[85] Committee against Torture, 2014, §69(23).
[86] Committee against Torture, 2012, §63(10).
[87] For example:
Committee against Torture, 2012, §53(24).
Committee against Torture, 2014, §61(12), §63(15), §69(23).
[88] For example:
Committee against Torture, 2010, §50(13), §51(21).
Committee against Torture, 2013, §61(11), §62(10), §71(14).
[89] For example:
Committee against Torture, *Concluding observations on the fourth periodic reports of Turkey*, CAT/C/TUR/CO/4, 2 June 2016, §32.
Committee against Torture, *Concluding observations on the second periodic reports of Honduras*, CAT/C/HND/CO/2, 26 August 2016, §22.
[90] Among the others:
Committee against Torture, 2014, §61(12), §63(15).
Committee against Torture, *Concluding observations on the seventh periodic report of Ecuador*, CAT/C/ECU/CO/7, 11 January 2017, §28.

juveniles should take place "both in law and in practice"[91]. In one case[92], the Committee refers to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990, which at paragraph 67 state that the "placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned" should be "strictly prohibited".[93] However, it is interesting to note that, even if the Rules for the Protection of Juveniles date back to 1990, the total prohibition of solitary confinement for children is quite recent; in fact, in documents redacted until 2013 it is possible to find a less strict prohibition, that allowed the imposition of the practice on minors in very exceptional cases and subjected to the same safeguards of adults.[94]

Regarding death-row inmates, the Committee expresses concerns in different occasions on their placement in solitary confinement[95], but only in 2016 it affirms that it should be ensured that they are "not subjected to solitary confinement and isolation"[96]. Also, detainees that suffer from mental health problems and with "intellectual" or "psychosocial disabilities"[97] and "asylum seekers"[98] should never undergo solitary confinement.

Detainees that are serving a life sentence are sometimes subjected to an initial period of solitary confinement. The Committee addresses this issue by referring[99] to the

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[91] Committee against Torture, *Concluding observations on the fourth periodic report of Armenia*, CAT/C/ARM/CO/4, 26 January 2017, §38.
[92] Committee against Torture, 2010, §54(12).
[93] United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, Resolution 45/113, A/RES/45/113, 14 December 1990. Available at: http://www.un.org/documents/ga/res/45/a45r113.htm (accessed 4 April 2017), §67.
[94] Committee against Torture, *Consideration of reports submitted by States parties under Article 19 of the Convention. Conclusions and recommendations of the Committee against Torture to Macao Special Administrative Region*, CAT/C/MAC/CO/4, 19 January 2009, §8.
Committee against Torture, 2012, §61(21).
Committee against Torture, 2013, §66(20).
[95] Committee against Torture, 2011, §52(16).
Committee against Torture, 2013, §71(14).
[96] Committee against Torture, *Concluding observations on the third periodic reports of Kuwait*, CAT/C/KWT/CO/3, 5 September 2016, §22.
[97] For example:
Committee against Torture, 2014, §§61(12), 63(15).
Committee against Torture, *Concluding observations on Israel*, §24.
[98] Committee against Torture, 2012, §53(24).
[99] Committee against Torture, 2012, §53(24).

recommendations of the Special Rapporteur on Torture, who urges States to avoid the imposition of solitary confinement as part of a sentence or a disciplinary measure.[100]

The Committee also expresses concerns on the use of solitary confinement as a form of psychological pressure and on its use in order to obtain information during the procedure of questioning. For this reason, the Committee reiterated that statements obtained in this way should be inadmissible and that "law enforcement officials, judges and lawyers [should] receive training in how to detect and investigate" cases of coerced confessions.[101]

2.2.4 Suicide in solitary confinement

The Committee also drew a connection between solitary confinement on one side, and the commission of suicides along with the rise mental health problems on the other.[102] In particular it stated that a lack of "mental health care in prisons" and the "extensive use of solitary confinement" on "mentally ill inmates" created a "subsequent increased risks of suicide attempts".[103]

2.3 The Subcommittee on Prevention of Torture

2.3.1 General principles

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), established by the OPCAT, also expressed some comments on the use of solitary confinement in the reports to the Country visits. Just as the Committee against Torture, the SPT states that the use of solitary confinement should be of last resort, for the shortest possible time and subjected to judicial control[104].

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[100] United Nations General Assembly, *Interim report of the Special Rapporteur*, 2011, §84.
[101] Committee against Torture, 2011, §61(18).
Committee against Torture, 2012, §62(22).
[102] Committee against Torture, 2011, §61(18).
Committee against Torture, *Concluding observations on Turkmenistan*, §23.
[103] Committee against Torture, 2013, §71(13).
[104] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Maldives*, CAT/OP/MDV/1, 26 February 2009, §198.
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Argentina*, CAT/OP/ARG/1, 27 November 2013, §67.

Moreover, it should not be imposed on arbitrary grounds[105], and, as a way to prevent abuses, the SPT urges that all disciplinary sanctions should be recorded indicating the reasons for the punishment, its type and duration[106].

2.3.2 Role of the medical staff

The role of the medical staff should be both of control over the health of the inmate who undergoes the measure of solitary confinement, but also of initial approval, meaning that the doctor should issue a certificate that states that the detainee is "able to bear this punishment".[107]

2.3.3 Conditions of the cells

With regard to the material conditions of the cells, the SPT states that "isolation cells should provide conditions that respect the physical integrity and dignity of the person deprived of liberty"[108] and in different occasions it adds that those who are kept in solitary confinement for "more than 12 hours" should be given access to an outdoors space for at least one hour per day.[109]

2.3.4 Duration of solitary confinement

The Subcommittee does not give any indication of the maximum allowed days, it only refers to prolonged solitary confinement generally stating that it "may amount to an act of torture and other cruel, inhuman or degrading treatment or punishment".[110]

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[105] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to the Republic of Paraguay from 13 to 15 September 2010*, CAT/OP/PRY/1, 7 June 2010, §198.

[106] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Benin*, CAT/OP/BEN/1, 15 March 2011, §§245, 246.
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Mali*, CAT/OP/MLI/1, 20 March 2014, §83.

[107] Subcommittee on Prevention of Torture, *Report on the visit to the Republic of Paraguay*, §§184, 294.
Subcommittee on Prevention of Torture, *Report on the visit to Benin*, §246.

[108] Subcommittee on Prevention of Torture, *Report on the visit to Argentina*, §67.

[109] Subcommittee on Prevention of Torture, 2010, §§184, 294.
Subcommittee on Prevention of Torture, 2011, §246.
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and other cruel, inhuman or degrading treatment or punishment to Sweden*, CAT/OP/SWE/1, 10 September 2008, §127.

[110] Subcommittee on Prevention of Torture, 2010, §184.

2.3.5 Specific groups

The SPT takes also in consideration particular groups or vulnerable detainees.

For instance, for those who are classified as being dangerous, and who are, therefore, held separated from the other inmates and in regime of solitary confinement, the SPT recommends the possibility of appeal against the placement in solitary confinement and a mechanism of review with the aim to move the inmates "progressively to less restrictive custody".[111]

The SPT also affirms that solitary confinement should not be used on children under 18 years of age and on detainees with mental disabilities[112].

With regard to prisoners on remand, the SPT recognizes that at times there might be reasons for imposing solitary confinement; however, in one case it notes that the mental health of detainees kept in isolation could be affected when there is lack of activities, and educational or work possibilities, along with limited information on the investigation, limitations on the time spent outside the cell and on the contacts with the outside world.[113]

It further adds that solitary confinement in such conditions may "even amount to inhuman and degrading treatment"[114].

Finally, very recently, the SPT expressed its contrariety on the use of solitary confinement as a form of protection (e.g. in the case of lesbian, gay, bisexual and transgender – LGBT – persons), as it could be harmful for their health.[115]

2.4 The Special Rapporteur on Torture

One of the earliest special procedures that the Commission on Human Rights created, is the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SRT). It was created in 1985 with Resolution 1985/33 of the Commission

[111] Subcommittee on Prevention of Torture, *Report on the visit to Maldives*, §§197-198.
[112] Subcommittee on Prevention of Torture, 2010, §§185, 295.
Subcommittee on Prevention of Torture, 2011, §246.
[113] Subcommittee on Prevention of Torture, *Report on the visit to Sweden*, §§125, 127.
[114] Subcommittee on Prevention of Torture, 2008, §127.
[115] Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C/57/4, 22 March 2016, §§64,78.
Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visita a Chile: recomendaciones y observaciones dirigidas al Estado parte (4 – 13 de abril de 2016). Informe del Subcomité*, CAT/OP/CHL/1, 27 June 2016, §126.

on Human Rights. In 2014, the Human Rights Council (which took the place of the Commission thanks to UN General Assembly Resolution 60/251 of 15 March 2006) extended its mandate for three more years with Resolution 25/13.[116] The main tasks of the SRT are three: to collect information from the States and the civil society on issues regarding torture or allegations of torture cases, to carry out Country visits upon the invitation of Governments, and to report to the Human Rights Council and to the UN General Assembly all "activities, observations, conclusions and recommendations".[117] The mandate of the SRT is not limited to the State parties to the CAT and does not require the exhaustion of domestic remedies in the reception of individual complaints.[118]

Solitary confinement, as it is part of the conditions of detention as well as a torture technique, falls under the mandate of the SRT; however, this topic has been addressed in an extensive way only relatively recently. The year that could be considered as a real divide between the "before" tackling this subject and the "after" is 2008. In fact, before 2008, solitary confinement is evaluated by the SRT as part of the issues related to conditions of detention and to torture cases, but not extensively like after 2008.

2.4.1 The reports of the Special Rapporteur on Torture before 2008

Before 2008, many of the reports to the Commission on Human Rights or to the UN General Assembly generally contain the indication that prolonged solitary confinement may in some circumstances amount to torture and should, therefore, be banned. At times the SRT recalls the Standard Minimum Rules for the Treatment of Prisoners (already mentioned above), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles on the Treatment of Prisoners and General Comment No. 20 of the HRComm (already mentioned above).[119]

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[116] Nowak, 2012, p. 76, 346.
Office of the High Commissioner for Human Rights, 'Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', in *United Nations Human Rights. Office of the High Commissioner*, [website], http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx, (accessed 8 June 2017).

[117] Human Rights Council, Resolution adopted by the Human Rights Council 25/13. *Torture and other cruel, inhuman or degrading treatment or punishment: mandate of the Special Rapporteur*, A/HRC/RES/25/13, 15 April 2014, §1.

[118] Office of the High Commissioner for Human Rights, 'Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.

[119] Commission on Human Rights, *Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38*, E/CN.4/2003/68, 17 December 2002, §26.

In particular, with regard to the Basic Principles on the Treatment of Prisoners, the SRT cites[120] Principle 7, which states: "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged"[121].

The SRT also starts to draw the connection between solitary confinement and the mental well-being of the inmate. For example, in one case it states "that prolonged solitary confinement in conditions of severe material deprivation and with no or little activity may have a serious impact on the psychological and moral integrity of the prisoner".[122]

2.4.2 The 2008 report of the Special Rapporteur on Torture

As already stated, it is only after 2008 that solitary confinement starts to be reported more extensively and explored much deeper by the SRT.

In fact, in the Report to the UN General Assembly of 28 July 2008, the SRT expresses his concerns with regard to the extensive use of solitary confinement that he found while exercising his mandate. He also gives an indicative definition of solitary confinement as the "physical isolation in a cell for 22 to 24 hours per day" with the possibility "in some jurisdictions" to spend one hour outside. He also reiterates that prolonged solitary confinement may in some circumstances "amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture". The report further gives examples of the uses of solitary confinement that the SRT encountered, traces back the history of solitary confinement and for the first time it doesn't simply states that this practice could cause negative psychological effects, but it clearly and

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United Nations General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Assembly resolution 57/200 of 18 December 2002*, A/58/120, 3 July 2003, §50.
Commission on Human Rights, *Report of the Special Rapporteur, Theo van Boven,* E/CN.4/2004/56, 23 December 2003, §§47-48.
United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/59/324, 1 September 2004, §20.
United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/60/316, 30 August 2005, §7.

[120] United Nations General Assembly, *Report of the Special Rapporteur*, 3 July 2003, §50.
Commission on Human Rights, *Report of the Special Rapporteur*, 23 December 2003, §47.

[121] United Nations General Assembly, *Basic Principles for the Treatment of Prisoners*, A/RES/45/111, 14 December 1990, §7.

[122] United Nations General Assembly, 2004, §46.

explicitly lists some of its negative health effects that range "from insomnia and confusion to hallucinations and mental illness". Moreover; it states that the key factor that causes these negative effects is the reduction to minimum of "socially and psychologically meaningful contact". Pre-trial detainees are, furthermore, even more at risk, as their perception of insecurity of their situation is even stronger than that of other detainees and are, therefore, more at risk of suicide and to self-harm acts.

Because of these reasons, he reiterates that "the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort". He also recommends the States "regardless of the specific circumstances" to increase the possibilities of social contacts with the staff and with other detainees (also through communal activities), to allow more visits and access to "mental health services".[123]

The importance of this report also lays in its annex, the Istanbul Statement on the Use and Effects of Solitary Confinement, written by a group of experts on solitary confinement in 2007 at the International Psychological Trauma Symposium in Istanbul.[124]

This group of experts recommends to keep the use of solitary confinement "to a minimum", and that should be used only "in very exceptional cases, for as short a time as possible and only as a last resort". It furthermore recommends to raise the level of social interaction with the prison staff and among detainees, to allow visits from family members and friends and to arrange mental health services. Moreover, it prohibits in an absolute way the imposition of solitary confinement in the cases of mentally ill detainees, children under the age of 18 and as part of the sentence of life-sentenced and death row inmates. Finally, the use of solitary confinement as a way "to apply psychological pressure on prisoners […] should be absolutely prohibited".[125]

2.4.3 The reports of the Special Rapporteur on Torture after 2008

In later reports the issue of solitary confinement is further elaborated. In particular, in the 2010 report to UN General Assembly, the SRT, Manfred Nowak, takes a very strong

[123] United Nations General Assembly, 2008, §§77-83.
[124] Smith, 2008, p. 57.
[125] United Nations General Assembly, 2008, pp. 24-25.

stand by stating that "solitary confinement and similar forms of deprivation of human contact for a prolonged period of time also amount to inhuman or degrading treatment."[126]. This statement raised a very important debate on "'whether … prolonged solitary confinement' constituted '*per se* cruel, inhuman or degrading treatment or punishment'", that the following SRT, Juan E. Méndez, tried to clarify in his 2011 report. One very important stand that he takes is, after reiterating the definition of solitary confinement "as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day", is the definition of prolonged solitary confinement, that is when the period of isolation exceeds 15 days. Notwithstanding the awareness of the SRT of the inexistence of studies that clearly define an amount of days after which solitary confinement becomes prolonged, he states that the choice of 15 days comes from the review of literature that indicates that beyond this point "some of the harmful psychological effects of isolation can become irreversible".[127]

2.4.4 General principles and safeguards

The SRT is of the opinion that, as a general rule, solitary confinement should be allowed only in "exceptional circumstances", "as a last resort" when all other methods did not achieve the intended result, and its duration, "properly announced and communicated", should be "as short as possible" and proportional to the committed criminal or disciplinary offence. Moreover, some safeguards should be in place in order to avoid its arbitrary use or its indefinite prolongation. For example, all information that regard all impositions of solitary confinement should be recorded. They should include the reasons for the use of the measure, the authority who imposed it and the medical assessment of the detainee's physical and mental health; they should, moreover, be made available to the inmate's lawyer. Furthermore, there has to be an independent mechanism of review, and an independent judicial body should be made available in order to challenge the reasons that justify the use of solitary confinement. As all other detainees, those who are undergoing solitary confinement should be able to meet their lawyer.[128]

[126] Human Rights Council, *Report of the Special Rapporteur*, 5 February 2010, §234.
[127] United Nations General Assembly, *Interim report of the Special Rapporteur*, 2011, §§19, 26, 60, 79.
[128] United Nations General Assembly, 2011, §§75, 87, 89-91, 93, 95-99.

2.4.5 The role of the medical staff

The role of the medical personnel is very important, as it has the duty to check the mental and physical health of the detainees who are going to be subjected to solitary confinement to establish if they can sustain the measure and to keep under control their health during the measure. If from the examination it appears that the detainee's mental or physical health is worsening, the review of the measure should take place. The medical personnel should also check that the conditions of solitary confinement with regard to cleanliness, the conditions of the cell and the regime are complying with the standards.[129]

2.4.6 Solitary confinement as a violation of the CAT

After reviewing all the relevant existing standards that regard all aspects of solitary confinement, the SRT concludes that, solitary confinement itself can amount to a violation of Article 7 of the ICCPR, of Article 1 or of Article 16 of the CAT because of the "severe adverse health effects" that might cause; however the existence of a breach to the said articles should be assessed "on a case-by-case basis" and taking in consideration "all the relevant circumstances", which include: "the purpose of the application of solitary confinement, the conditions, length and effects of the treatment and, of course, the subjective conditions of each victim that make him or her more or less vulnerable to those effects". He particularly stresses that the longer the time a detainee spends in solitary confinement and the greater his incertitude regarding the time he will undergo the measure, the wider the possibilities that he will suffer "serious and irreparable harm […] that may constitute cruel, inhuman or degrading treatment or punishment or even torture".[130]

With regard to prolonged solitary confinement, the SRT is of the opinion that it constitutes a treatment contrary to the scope of the penitentiary system, which is, according to Article 10 of the ICCPR, the "reformation and the social rehabilitation"[131] of the detainee. Moreover, as prolonged solitary confinement causes a very high degree of "mental pain and suffering", the SRT agrees with the HRComm's General Comment

[129] United Nations General Assembly, 2011, §§100-101.
[130] United Nations General Assembly, 2011, §§58, 59, 70-71, 80.
[131] United Nations General Assembly, *International Covenant on Civil and Political Rights*, Article 10.

No. 20 "that prolonged solitary confinement amounts to acts prohibited by article 7 of the Covenant, and consequently to an act as defined in article 1 or article 16 of the Convention". Therefore, he states that "any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances".[132]

The SRT then addresses some particular uses of solitary confinement that constitute a breach of either Article 1 or 16 of the CAT and of Article 7 of the ICCPR. For example its use as a form of punishment for a criminal behaviour as well as for offences to the prison rules (in the second case the level of pain felt by the detainee should reach a certain level of gravity in order for the act to be considered a breach); its use during pre-trial detention to intentionally extort a confession or information; indefinite solitary confinement during pre-trial detention; in the case of very poor conditions of solitary confinement and a too strict regime that cause severe physical and mental suffering[133].

Moreover, he notes several times that solitary confinement enhances the risk that other acts constituting cruel, inhuman or degrading treatment or punishment or torture might take place.[134]

Through the recommendations, the SRT invites the States parties to "increase the level of psychological, meaningful social contact" for the detainees undergoing solitary confinement, to abolish its use as a punishment (either as part of a sentence or as a disciplinary measure), to abolish its use during pre-trial detention (especially when it is used to extort a confession or information), to absolutely prohibit its use in the case of juveniles or of people with mental health issues, and to completely abolish the practice of indefinite solitary confinement.[135]

2.4.7 Specific groups

The SRT addresses also the cases of vulnerable groups.

In the case of children, the SRT observes that solitary confinement is used in many States

[132] United Nations General Assembly, 2011, §76, 79.
[133] United Nations General Assembly, 2011, §§72-75, 81.
[134] United Nations General Assembly, 2011, §§59, 70, 80.
[135] United Nations General Assembly, 2011, §§83-87.

both as a disciplinary and as a protective measure in the juvenile systems; he also finds it in psychiatric institutions for children and during immigration detention.[136] His opinion concurs[137] with that of the Committee un the Rights of the Child, which, in General Comment No. 10 of 2007 on Children's rights in juvenile justice, absolutely prohibits the use of "closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned"[138]. The SRT is therefore of the opinion that the imposition of solitary confinement of any length on children under the age of 18 constitutes a cruel, inhuman or degrading treatment which violates Article 7 of the ICCPR and Article 16 of the CAT and that should be completely prohibited.[139]

With regard to people with mental illnesses, the SRT finds that, even if in some circumstances their "physical segregation" might be necessary, solitary confinement should not be used because it exacerbates existing mental health problems. Therefore, he states that any imposition of solitary confinement of any length constitutes a cruel, inhuman or degrading treatment which violates Article 7 of the ICCPR and Article 16 of the CAT. This measure should never be used in their case.[140]

With regard to the LGBT inmates, the SRT states that their placement in solitary confinement as a form of protection could constitute an act contrary to the CAT.[141]

In the case of women, the SRT agrees with Rule 22 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), that adds the prohibition of the imposition of solitary confinement on pregnant, breastfeeding mothers and on mothers with small children. He furthermore adds that it shouldn't be used as a punishment for having complained about sexual abuses or

[136] Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, A/HRC/28/68, 5 March 2015, §§44, 55, 60.
[137] United Nations General Assembly, 2011, §33.
[138] Committee on the Rights of the Child, *General Comment No. 10 of 2007 on Children's rights in juvenile justice*, CRC/Cc/GC/10, 25 April 2007, §89.
[139] United Nations General Assembly, 2011, §§77, 81, 86.
Human Rights Council, 2015, §§44, 86.
Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/HRC/31/57, 5 January 2016, §22.
[140] United Nations General Assembly, 2011, §§68, 78, 81, 86.
[141] Human Rights Council, *Report of the Special Rapporteur,* 2016, §35.

other forms of mistreatments and reiterates that it should be completely prohibited in the case of female children under 18 and on women with mental illnesses.[142]

The SRT also addresses the case of specific groups of detainees, who are held in solitary confinement on the basis of the crime they committed. The case of suspected terrorists who are subjected to solitary confinement as a way to pressure them to confess or to reveal information is a clear form of torture.[143] In 2009, also the case of the use of solitary confinement on persons accused or condemned for drug-related crimes was found to constitute a discriminatory treatment.[144]

3. The Mandela Rules

The standards set by the SRT were partially inscribed in the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) of 2015, which substitute and update the standards of the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1977. The review of the Standard Minimum Rules started in 2012. In 2013, the SRT and the Committee against Torture advised the Expert Group set up by the Commission on Crime Prevention and Criminal Justice with the updated standards, which, even if at times are phrased in slightly different ways, have basically the same content.[145]

3.1 General principles

In 2015, the General Assembly adopted the revised United Nations Standard Minimum Rules for the Treatment of Prisoners. With regard to solitary confinement, the new

[142] Human Rights Council, 2016, §§22, 70.
United Nations General Assembly, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),* A/C.3/65/L.5, 6 October 2010. Available at: https://documents-dds-ny.un.org/doc/UNDOC/LTD/N10/561/94/PDF/N1056194.pdf?OpenElement, (accessed 4 April 2017), Rule 22.
[143] United Nations General Assembly, 2004, §20.
United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/71/298, 5 August 2016, §46.
[144] Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, A/HRC/10/44, 14 January 2009, §§67, 74.
[145] United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, A/68/295, 9 August 2013, §§25, 26.
Committee against Torture, *Observations of the Committee against Torture on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR)*, CAT/C/51/4, 16 December 2013, §§1, 2.

standards for the most part reflect the recommendations of the SRT and improve significantly the previous rules in this area. One of the most important improvements is the definition of solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact" and the definition of prolonged solitary confinement as when the measure is imposed for more than 15 consecutive days.[146] Rule 43 prohibits in all circumstances indefinite and prolonged solitary confinement and the "placement of a prisoner in a dark or constantly lit cell".[147] According to Andrea Huber from the Europäische Rechtsakademie, the meaning of "meaningful human contact" has to be taken from the Istanbul statement on the use and effects of solitary confinement and from the reports of the Committee against Torture. In particular, he indicates the elements that turn a "human contact" into a "meaningful human contact": "human contact must be face to face and direct, more than fleeting or incidental, enabling empathetic interpersonal communication". He also adds that the mere "interactions determined by prison routines, the course of (criminal) investigations or medical necessity" are not sufficient to reach the level of a "meaningful human contact".[148] Rule 45 follows the recommendations of the SRT and of the Committee against Torture by stating that "solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority", prohibiting its imposition in relation to the inmate's sentence and in the case of prisoners with "mental or physical disabilities when their conditions would be exacerbated by such measure". With regard to children and women, it refers to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and to the Bangkok Rules, which respectively prohibit the placement in solitary confinement of children under the age of 18, of pregnant and breastfeeding women, and of mothers with infant children.[149]

[146] United Nations General Assembly, *Revised Mandela Rules*, 2015, Rule 44.
[147] United Nations General Assembly, *Revised Mandela Rules,* 2015, Rule 43.
[148] A. Huber, 'The relevance of the Mandela Rules in Europe'*, ERA Forum*, 2016, Vol.17, No. 3, 2016, p. 307.
[149] United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, §67.
United Nations General Assembly, *Bangkok Rules*, Rule 22.
United Nations General Assembly, *Revised Mandela Rules,* Rule 45.

3.2 Role of the medical staff

The Mandela Rules also better specify the role of the medical personnel. Rule 46 states that the health-care personnel shouldn't be involved in the imposition of disciplinary sanctions, but that should be particularly carful and daily visit those who are undergoing "any form of involuntary separation" from the rest of the prison population. The meaning of "involuntary separation" is specified in Rule 37 and includes "solitary confinement, isolation, segregation, special care units or restricted housing, whether as a disciplinary sanction or for the maintenance of order and security". The medical personnel has the duty to report to the director if the detainee subjected to any disciplinary sanction (which include solitary confinement) should experience any "adverse effect" on his physical or mental state as a result of the application of the measure and has to advise him on the termination of the measure on the grounds of "physical or mental health reasons". The Rule also adds that the medical staff should have "the authority to review and recommend changes to the involuntary separation" to make sure that such measures do not "exacerbate the medical condition or mental or physical disability of the prisoner".[150]

3.3 Condition of the cells

Rule 42 addresses indirectly the conditions of solitary confinement by stating that some "basic conditions" regulated by the Mandela Rules "cannot be withdrawn or reduced under any circumstances". These "general living conditions" include "those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space". Rule 35 gives to a physician or a public health official the monitoring role on these basic aspects of the conditions of detentions.[151]

3.4 Safeguards

With regard to safeguards, Rule 37 requires that all these forms of involuntary separations be authorized by law or regulation; moreover, the principle of legality should be applied in the imposition, during the imposition of the measure and for its review. Rule 39

[150] Huber, *ERA Forum,* pp. 306-307.
United Nations General Assembly, *Revised Mandela Rules,* Rules 37, 46.
[151] Huber, p. 305.
United Nations General Assembly, *Revised Mandela Rules,* Rules 35, 42.

requires all disciplinary sanctions to be recorded along with Rule 8 which also requires the recording of all complaints regarding "allegations of torture or other cruel, inhuman or degrading treatment or punishment". Rule 41 provides the inmates with the possibility to challenge the accusations of any disciplinary offence either in person or through a legal advisor and, when a disciplinary sanction is imposed, prisoners should have the opportunity "to seek judicial review". Finally, Rule 38 states that, if prisoners are held separated, "the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison".[152]

Council of Europe standards on solitary confinement

For the purpose of this work, it is also important to consider the regional standards that exists on solitary confinement. The CoE is the most important organization in the European region dealing with human rights protection and promotion.[153] With regard to solitary confinement, the three main instruments that will be considered are the European Prison Rules (EPR) and other relevant Recommendations of the Committee of Ministers, the case law of the European Court of Human Rights (ECtHR), and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

1. The European Prison Rules

The first version of the European Prison Rules (EPR) dates back to 1973 as an adaptation of the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955 to the European context. The second revision of the EPR occurred in 2006.[154] They were "adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies".[155] The Committee of Ministers is the decision-making body of the

[152] Huber, pp. 306-307.
United Nations General Assembly, *Revised Mandela Rules,* Rules 8, 37-39, 41.
[153] M. Nowak, 'The Council of Europe. An introduction to the Human Rights Mechanisms of the Council of Europe', in M. Nowak, K. M. Januszewski, & Hofstätter (ed.), *All Human Rights for All*, Vienna – Graz, Neuer Wissenschaftlicher Verlag GmbH Nfg KG, 2012, p. 121.
[154] Council of Europe, 'Commentary on Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules', in *European Prison Rules*, Strasbourg, Council of Europe Publishing, 2006, available at: https://rm.coe.int/16806f3d4f, p. 39.
[155] Committee of Ministers, *Recommendation Rec (2006) 2 of the Committee of Ministers to member*

CoE and has its foundation in the Statute of the Council of Europe; it is composed by the Ministers of Foreign Affairs of member States, or by their permanent representatives.[156]

1.1 General principles

The EPR, being almost ten years older than the Mandela Rules, are less detailed on the issue of solitary confinement.[157] Rule 60 of the EPR sets the standards on solitary confinement, which "shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible". Differently from the Mandela Rules, the EPR don't contain a definition of the practice; they also fail to include a maximum time limit for its imposition and the prohibition to impose "indefinite and prolonged solitary confinement". Under the EPR, detainees have the right to defend themselves from the accuse of disciplinary offence, should never be placed in a dark cell as a form of punishment, nor be subjected to "all other forms of inhuman or degrading punishment", nor be totally denied visits from family members.[158]

1.2 Role of the medical staff

According to the EPR, the role of the medical staff is to visit daily those held in solitary confinement and to be particularly careful to their health. The medical staff has also the duty to "report to the director" when it considers "that a prisoner's physical or mental health is being put seriously at risk "by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement". Differently from the Mandela Rules, the EPR don't prohibit the participation of the health care staff in the imposition of a disciplinary measure.[159]

1.3 Specific groups

The EPR are generally less "gender-sensitive" than the Mandela Rules, in fact, with regard to solitary confinement it is possible to notice that they don't include a prohibition

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States on the European Prison Rules, 11 January 2006, available at: https://rm.coe.int/16806f3d4f.

[156] P. Gianniti, 'Il Sistema europeo di protezione dei diritti fondamentali', in P. Gianniti (ed.), *La CEDU e il ruolo delle Corti: globalizzazione e promozione delle libertà fondamentali*, Bologna, Zanichelli, 2015, p. 128.

[157] Huber, pp. 300, 306.

[158] Committee of Ministers, *European Prison Rules*, Rules 59, 60.
Huber, pp. 305-307.

[159] Committee of Ministers, *European Prison Rules*, Rule 43.
Huber, p. 306.

to impose solitary confinement on children, pregnant women, breastfeeding mothers, or mothers with small children, which, on the other hand, is included in Rule 45 of the Mandela Rules.[160]

1.4 Further interpretation of the EPR

According to a commentary published by the Council of Europe, the rules on solitary confinement apply regardless the reason of the imposition of the measure: "for disciplinary purposes; as a result of their "dangerousness" or their "troublesome" behaviour; in the interests of a criminal investigation; at their own request". The commentary also adds that solitary confinement "refers to all methods of removing prisoners from association with other prisoners by placing them alone in a cell or a room" and that "dark cells" refers to the "most extreme" form of solitary confinement that entails also the use of "sensory deprivation by lack of access to light, sound or fresh air". Moreover, the commentary adds that detainees undergoing solitary confinement have the right, as all other inmates, to "one hour of daily outdoor exercise" set forth by rule 27, and to be granted access to reading material. For those held "under special high security" the same provisions are valid.[161]

With regard to the medical staff, the commentary adds that it should not have the duty to certify a "prisoner fit for punishment".[162]

2. The European Rules for juvenile offenders

Another document of importance was adopted in 2008 by the Committee of Ministers and contains the European Rules for juvenile offenders subject to sanctions or measures.[163] These Rules apply to all juveniles ("any person below the age of 18") and prohibit solitary confinement "in a punishment cell" while allowing "segregation for disciplinary purposes […] only in exceptional cases where other sanctions would not be effective".[164] The sanction should be set "for a specified period of time, which shall be as

[160] Huber, pp. 300-307.
[161] Council of Europe, *European Prison Rules*, pp. 68, 80.
[162] Council of Europe, *European Prison Rules*, p. 79.
[163] Committee of Ministers, *Recommendation Rec (2008) 11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, 5 November 2008, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2716.
[164] Committee of Ministers, *European Rules for juvenile offenders*, Rules 21.1, 95.

short as possible". While in segregation, juveniles should be able to get access to "reading material", to "at least one hour of outdoor exercise every day" and should not be restricted to enjoy the two hours of daily exercise provided by Rule 81. Moreover, "appropriate human contact" should be provided and the medical staff should be informed and "given access to the juvenile concerned". "Restrictions on family contacts or visits" should not be placed "unless the disciplinary offence relates to such contacts or visits".[165]

3. Recommendation concerning the ethical and organisational aspects of health care in prison

With regard to mentally ill prisoners or inmates at risk of suicide, it is important to refer to Recommendation No. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison of 1998. First of all, it is important to note that the Recommendation recognises "disciplinary confinement" as one of the measures "which might have an adverse effect on the physical or mental health of the prisoner"; therefore, it gives the duty to the "health care staff [to] provide medical assistance or treatment on request by the prisoner or by prison staff".[166] Also, from this document, it is clear that in principle solitary confinement should not be imposed on mentally ill; in fact, Rule 56 states that:

> In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible.[167]

Finally, Rule 58 prescribes that "the risk of suicide should be constantly assessed both by medical and custodial staff" and that to avoid self-harm, "physical methods", "close and constant observation, dialogue and reassurance, should be used in moments of crisis".[168]

4. Recommendation concerning dangerous offenders

The Committee of Ministers also gives attention to dangerous offenders. Even though the

[165] Committee of Ministers, *European Rules for juvenile offenders*, Rule 95.
[166] Committee of Ministers, *Recommendation No. R (98) 7 of the Committee of Ministers to member States concerning the ethical and organisational aspects of health care in prison*, 8 April 1998, available at: https://rm.coe.int/16804fb13c, Rule 66.
[167] Committee of Ministers, *Recommendation No. R (98) 7 of the Committee of Ministers,* Rule 56.
[168] Committee of Ministers, *Recommendation No. R (98) 7 of the Committee of Ministers,* Rule 58.

Recommendation does not include a regulation of the use of solitary confinement, it does state that the human rights of dangerous offenders should be protected like those of all other inmates, but taking into account "their particular situation and individual needs". A "risk assessment and management" should be carried out and specific tools and practices should be established in order to deal with the specific situation. Moreover, safeguards should be in place in order to monitor their imprisonment, the respect for their "human dignity should be guaranteed" regardless the risk that they pose, and the EPR should be followed with regard to their conditions of detention.[169]

5. European Convention on Human Rights

5.1 European Court on Human Rights

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as European Convention on Human Rights (ECHR), was signed by the States members of the CoE in 1950 and entered into force in 1953. It is a regional binding treaty that protects civil and political rights in the area of the CoE: States willing to become members of the CoE have to ratify the ECHR. The Convention has sixteen Protocols; the most important ones are Protocol No. 13 of 2002 on the "abolition of death penalty in all circumstances" (to become members of the CoE it is now required to abolish the death penalty) and Protocol No. 11 of 1998, that reformed the monitoring system of the ECHR. With the entry into force of Protocol No. 11, a full-time Court replaced the double structure formed by the Commission on Human Rights and the ECtHR set by the original treaty. Currently, there are 47 independent individuals serving as judges of the Court with a 9-year mandate that can't be renewed. The judgements of the ECtHR are binding and Article 46 of the ECHR gives to the Committee of Ministers the duty to supervise their execution. The judgements of the Court interpret the provisions of ECHR causing its continuing evolution and making it "a living instrument".[170]

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[169] Committee of Ministers, *Recommendation Rec (2014) 6 of the Committee of Ministers to member States concerning dangerous offenders,* 19 February 2014, available at: http://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%282014%29+3+concerning+dangerous+offenders.pdf/cec8c7c4-9d72-41a7-acf2-ee64d0c960cb, (accessed 27 July 2017), Rules 3, 8, 9, 10, 22, 40, 48.

[170] Nowak, *All Human Rights for All*, p. 121.
Di Stasi, A. 'Tutela procedurale e l'esecuzione delle sentenze della Corte Europea dei Diritti dell'Uomo', in M. L. Aversano, A. Di Stasi (ed.), *CEDU e ordinamento italiano: la giurisprudenza della Corte Europea dei Diritti dell'Uomo e l'impatto nell'ordinamento interno (2010-2015)*, Padova, CEDAM,

5.2 Definitions

The conditions of detention and, more specifically, the practice of solitary confinement are addressed by the ECtHR through the interpretation of Article 3 of the Convention, which states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".[171]

In its jurisprudence, the Court has established that Article 3 "enshrines one of the fundamental values of democratic societies".[172] Article 3 cannot be derogated under any circumstance, as set by Article 15 of the ECHR and as reiterated by Court, making the prohibition of torture an absolute right.[173] For an act to fall under the scope of Article 3, it has to be of "a minimum level of severity". Once the line of the minimum level is crossed, it is the intensity of the suffering imposed on the victim that determines if a treatment or punishment is inhuman, degrading or amounting to torture. The elements to assess the intensity of suffering are both objective (e.g. "the duration of the treatment") and subjective (e.g. the "physical or mental effects" of the punishment on the victims, "the sex, age and state of health of the victim").[174]

With regard to torture, the Court states that "it was the intention that the Convention should […] attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering" and it refers to Article 1 of the CAT, from which it takes the requirement of the minimum severity of the treatment. Moreover, the purpose of the treatment should be that of obtaining information, to extort a confession or to inflict a punishment. In particular, in order to be labelled as torture, the severity of an act "depends

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2016, pp. 47-48, 56
Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950, Articles 20-23, 46.

[171] Scutellari, *La CEDU e il ruolo delle Corti,* p. 738.

[172] Among the others:
European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, 8 July 2004, §424.
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §97.

[173] Among the others:
European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, §424.
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§97-98.
Scutellari, pp. 784-785.

[174] European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §99.
Scutellari, p. 741, 743.

on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim". However, when a treatment is particularly grave and humiliating, it can be labelled as torture independently from the subjective conditions of the victim.[175]

As previously stated, it is the severity of the inflicted pain or suffering that is used by the Court to differentiate torture from inhuman and from degrading treatment.[176] Therefore, a treatment will be regarded as inhuman when, "inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering"; however, the purpose is not a *necessary* element for a treatment to be considered inhuman. On the other hand, a degrading treatment causes "in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them"; moreover, the Court has to pay a particular attention to the aim of a degrading treatment to establish whether it "is to humiliate and debase the person concerned" and to the consequences, whether "it adversely affected his or her personality in a manner incompatible with Article 3".[177]

5.3 Conditions of detention: general principles

Under Article 3 the conditions of detention must be in conformity with some general principles set by the jurisprudence of the Court. The "human dignity" of the detained person has to be ensured, the "manner and method of execution of the measure" should not increase the inmate's "unavoidable level of suffering" entailed in a prison detention, and the "health and well-being" of the detainee should be "adequately secured". In order to evaluate the conditions of detention, the Court considers "the cumulative effects of those conditions, […] the specific allegations made by the applicant, […] the stringency

[175] European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, §§426-427.
Scutellari, pp.747, 750-751.
[176] European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, §426.
[177] Among the others:
European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, §§425, 427.
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §100.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, Application no. 59450/00, 4 July 2006, §118.
Scutellari, pp. 744-745, 755.

of the measure, its duration, its objective and consequences for the persons concerned".[178]

5.4 Solitary confinement

The jurisprudence on solitary confinement is very wide. First of all, it is important to note that the Court does not consider "a prisoner's segregation from the prison community" as amounting "to inhuman treatment" "in itself" when it is used for protective, judiciary, disciplinary or security reasons or when it is requested by the inmate.[179] However; it clearly states that "complete sensory isolation coupled with total social isolation" is regarded as "a form of inhuman treatment", as it "can destroy the personality" of the detainee and "cannot be justified by the requirements of security or any other reason".[180]

In order to assess whether a violation of Article 3 takes place with regard to solitary confinement, the Court considers several elements, in particular: "the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned". Moreover, the duration of such confinement is analysed by the Court in conjunction with "its justification, the need for the measures taken and their proportionality with regard to other possible restrictions, the guarantees offered to the applicant to avoid arbitrariness and the measures taken by the authorities to satisfy themselves that the applicant's physical and psychological condition allowed him to remain in isolation".[181]

5.5 Condition of the cells

In order to establish if the conditions of a cell for isolation are in conformity with Article 3, the Court takes into consideration several elements, such "as access to natural light or

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[178] European Court of Human Rights, *Case of Horych v. Poland*, §§89-90.
European Court of Human Rights, *Case of Piechowicz v. Poland*, Application no. 20071/07, 17 April 2012, §§162-163.
[179] Among the others:
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §104.
European Court of Human Rights, *Case of Messina v. Italy (No. 2) (dec),* Application no. 25498/94, 8 June 1999, p. 13.
Scutellari, p. 760.
[180] Among the others:
European Court of Human Rights, *Case of Messina v. Italy (No. 2) (dec),* p. 13.
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §107.
European Court of Human Rights, *Case of Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, 8 July 2004.
[181] European Court of Human Rights, Case of X v. Turkey, Application no. 24626/09, October 2012, §40.

air, adequacy of heating arrangements, compliance with basic sanitary requirements, the opportunity to use the toilet in private and the availability of ventilation".[182]

For example, the Court was satisfied with the condition of a cell for solitary confinement when it was "in conformity with the European Prison Rules", was "large enough for a single occupancy" (6.84 square meter was considered "large enough for a single occupancy" in Ramirez Sanchez v. France), had a window allowing in the cell natural light and air, and was provided with artificial light, furniture (bed, table and chair), and sanitary facilities.[183]

5.6 Other conditions

When assessing the conditions of solitary confinement, the Court also takes in consideration whether the applicant has access to a television, books, and newspapers, the possibility, duration and equipment to exercise indoor and/or outdoors, and whether he has access to in-cell or out-of-cell activities (alone or with other detainees).[184] In particular, the Court points out that the State has to make an "effort to counteract the effects of […] isolation by providing [the inmate] with the necessary mental or physical stimulation" on the grounds that "all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities".[185]

5.7 Social isolation

In order to determine the level of social isolation of the isolated detainee, the Court considers his access to information (e.g. newspapers, television phone calls), his communication with the prison staff (e.g. visits from a medical practitioner and degree of communication with the prison staff), with other inmates (e.g. possibility to engage in collective activities), with his family, with his lawyer, and other persons (through visits or mail). The Court regards in particular access to television as a "mitigating" factor of

[182] European Court of Human Rights, *Case of Zakharkin v. Russia,* Application no. 1555/04, 10 June 2010, §

[183] European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§110-112.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§12, 127, 130.

[184] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §128.

[185] European Court of Human Rights, *Case of Horych v. Poland*, §98.
European Court of Human Rights, *Case of Piechowicz v. Poland*, §173.

social isolation along with contacts and visits with family members; on the other hand, the restriction of the communications with the prison staff "to the strict minimum required for their work […] is not in itself capable of lessening a prisoner's social isolation". Depending on these factors, social isolation can be relative or total.[186] In any event, the Court clearly states that solitary confinement, even when it entails "only relative isolation, cannot be imposed on a prisoner indefinitely".[187]

5.8 Duration of solitary confinement

The Court does not set a specific time limit for the imposition of solitary confinement; however it states that, when social isolation is imposed for extended periods of time (e.g. in the case of special prison regimes for "dangerous prisoners", that will be mentioned later), it has to be justified, the "measures taken [have to be] necessary and proportionate in the light of the available alternatives", safeguards have to be available to the detainee, the physical and mental health of the inmate has to be assessed in order to ensure that they are "compatible with his continued solitary confinement".[188] As already mentioned, solitary confinement, even when it entails "only relative isolation, cannot be imposed on a prisoner indefinitely".[189]

The imposition of solitary confinement has to be well motivated when used for long periods of time.[190] The reiteration of the imposition of the measure for a prolonged period of time has to be justified and the motivations "need to be increasingly detailed and compelling as time passes". The decision has to be taken by an identifiable authority that has to consider "any changes in the prisoner's circumstances, situation or behaviour" when making the decision. Furthermore, the detainee's physical and mental health should be regularly monitored "in order to ensure that his condition is compatible with continued

[186] European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§116-136, 145.
[187] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §145.
Scutellari, p. 761.
[188] European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§138-140.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §136.
[189] Among the others:
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §145.
European Court of Human Rights, *Case of Horych v. Poland*, §91.
Scutellari, p. 761.
[190] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§136-137.

solitary confinement".[191]

Safeguards have to be available to the detainee, especially an "independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement".[192]

The case of Ramirez Sanchez v. France is very interesting from the point of view of the time spent by the applicant in solitary confinement: notwithstanding the "particularly lengthy period" (eight years and two months) of isolation, the Court, after considering all the aforementioned circumstances (including conditions, social isolation etc.), found no violation of Article 3.[193] Nevertheless, the Court expressed concerns on "the possible long-term effects of the applicant's isolation".[194]

5.9 Dangerous detainees

In many Countries that are members to the Convention, there are some specific regimes that apply to those detainees who are considered "dangerous".[195] Such "special prison regimes are not per se contrary to Article 3", but their conditions have to conform to the principles of prison detention above mentioned.[196]

In the case of dangerous detainees "more stringent security measures" can be employed with the aim "to prevent the risk of escape, attack, disturbance of the prison community or contact with those involved in organised crime". These kinds of security measure often entail a component of solitary confinement, and "are a form of 'imprisonment within the prison'", that should be used "only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the Prison Rules adopted by the Committee of Ministers on 11 January 2006".[197] Moreover, the ECtHR points out that harsh isolation

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[191] Among the others:
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§104-106.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §139.
[192] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §145.
[193] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §§136, 150.
Scutellari, p. 762.
[194] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §150.
[195] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §138.
[196] European Court of Human Rights, *Case of Horych v. Poland*, §89.
Scutellari, p. 761
[197] Among the others:
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §§104-106.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §139.
European Court of Human Rights, *Case of Piechowicz v. Poland*, §165.

"may be justified" when the detainee is linked to "organised crime" and especially to "mafia-type organisations, in order to avoid contact between the organisation and the inmate.[198] Nevertheless, the Court reiterates that "alternative solutions to solitary confinement" for dangerous inmates that cannot be placed in the general prison population "would be desirable".[199]

As these special regimes involve the use of solitary confinement, the Court emphasises that it is important that the motivations for their imposition, continuation, and termination take in consideration "any changes in the applicant's personal situation and, in particular, the combined effects of the continued application of the impugned measures"; moreover, the rules of application of the regime should "provide for adequate solutions enabling the authorities, if necessary, to adjust the regime to individual conduct or to reduce the negative impact of social isolation".[200]

In Horych v. Poland and Piechowicz v. Poland, when deciding in the case of a special regime, it took into consideration "the facts of the case as a whole and […] the cumulative effects of the "dangerous detainee" regime on the applicant". In these two cases "the Court [found] that the duration and the severity of the measures taken exceeded the legitimate requirements of security in prison and that they were not in their entirety necessary to attain the legitimate aim pursued by the authorities".[201]

5.10 Mentally ill detainees

As general principles applying in cases of "mentally ill persons", the Court states, that because of their particular vulnerability, they are in need of "special protection".[202] This

[198] Among the others:
European Court of Human Rights, *Case of Horych v. Poland*, §94.
European Court of Human Rights, *Case of Piechowicz v. Poland*, §169
[199] Among the others:
European Court of Human Rights, *Case of Öcalan v. Turkey (No. 2)*, §141.
European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §146.
Scutellari, p. 761.
[200] European Court of Human Rights, *Case of Horych v. Poland*, §102.
European Court of Human Rights, *Case of Piechowicz v. Poland*, §177.
Scutellari, p. 761.
[201] European Court of Human Rights, *Case of Horych v. Poland*, §103.
European Court of Human Rights, *Case of Piechowicz v. Poland*, §178.
[202] European Court of Human Rights, *Case of Renolde v. France*, Application no. 5608/05, 16 October 2008, §109.

particular vulnerability and the "inability [of mentally ill persons] to complain coherently or at all about how they are being affected by any particular treatment" are taken into consideration by the Court when assessing if a "treatment or punishment" is in compliance with Article 3.[203] The Court further points out that the "treatment of a mentally ill person may be incompatible with the standards imposed by Article 3" regardless his ability to point out "any specific ill-effects".[204]

Moreover, the cumulative elements of mental condition and suicide risk "require special measures geared to their condition in order to ensure compatibility with the requirements of humane treatment".[205]

The Court further states that the placement of this category of people (whether at suicide risk or not) in "solitary confinement or a punishment cell for a prolonged period" has "inevitably an impact on [their] mental state.[206]

In the cases of Renolde v. France and Keenan v. The United Kingdom, the Court assessed that the imposed periods of solitary confinement (forty-five days and seven days respectively, which in the Keenan case was cumulated with the imposition of "an additional twenty-eight days to his sentence") amounted to a violation of Article 3.[207]

5.11 Other Articles of the Convention considered in relation to solitary confinement

In the case of Renolde v. France, the Court found a violation of Article 2 (right to life)[208]. In this case, the applicant, a mentally ill person known to be at risk of suicide, was placed in solitary confinement "for a prolonged period", where he managed to take away his own life. In this case, the Court stated that "the authorities [had] failed to comply with their

[203] European Court of Human Rights, *Case of Keenan v. The United Kingdom*, Application no. 27229/95, 3 April 2001, §111.
[204] European Court of Human Rights, *Case of Renolde v. France,* §121.
European Court of Human Rights, *Case of Keenan v. The United Kingdom*, §113.
[205] European Court of Human Rights, *Case of Renolde v. France*, §109.
[206] European Court of Human Rights, *Case of Renolde v. France*, §128.
[207] European Court of Human Rights, *Case of Renolde v. France*, §§128-130.
European Court of Human Rights, *Case of Keenan v. The United Kingdom*, §116.
[208] "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. […]" *Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 2.

positive obligation to protect [the applicant's] right to life".[209]

In the case of Ramirez Sanchez v. France, the Court found a violation of Article 13 (right to an effective remedy)[210] on the grounds that a mechanism of review allowing "the applicant to challenge the decisions to prolong his solitary confinement" was not available.[211]

In the case of X v. Turkey, the Court found a violation of Article 14 (prohibition of discrimination)[212] "taken in conjunction with Article 3"[213] on the grounds that because of his sexual orientation, the applicant had been subjected to solitary confinement, during which he was "deprived of any contact with other inmates and of any social activity […] had no access to outdoor exercise and was only rarely allowed out of his cell". In particular, the Court stated that "where a difference of treatment is based on sex or sexual orientation, […] the principle of proportionality does not only require that the measure chosen be generally adapted to the objective pursued; it must also be shown that it was necessary in the circumstances".[214]

6. European Convention for the Prevention of Torture

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was adopted by the Committee of Ministers in 1987 and entered into force in 1989. The Convention has the main purpose to establish a preventive mechanism of protection from acts prohibited by Article 3 of the ECHR in

[209] European Court of Human Rights, *Case of Renolde v. France*, §§107-110.
[210] "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." *Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 13.
[211] European Court of Human Rights, *Case of Ramirez Sanchez v. France*, §166.
[212] "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." *Convention for the Protection of Human Rights and Fundamental Freedoms*, Article 14.
[213] With regard to the application of Article 14, the Court states that "Article 14 is not an autonomous provision. It only complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions". European Court of Human Rights, *Case of X v. Turkey*, Application no. 24626/09, October 2012, §48
[214] European Court of Human Rights, *Case of X v. Turkey*, §§50, 53, 57.
Scutellari, p. 765.

places where people are deprived of their liberty. This preventive mechanism is the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which is empowered to "carry out fact-finding visits" to "all kinds of places where persons are deprived of their liberty". Article 7 allows the Committee to carry out both "periodic visits as well as ad hoc visits". After each visit, the CPT writes a report containing the "facts found during the visit" and the recommendations of the Committee on the strengthening the protection of persons deprived of their liberty; the report is confidential and can be made public at the request of the member State.[215] The CPT is not a judicial organ and its recommendations are not of a binding nature; however, if the Country does not comply with them, the Committee can publicly state its position on the matter. The role of the CPT as exercising pressure on States has been widely recognized and the effects of such pressure have taken the form of modifications of rules and regulations in the treatment of detained persons in several Countries.[216] The Committee can refer to "the case-law of the Court and the Commission of Human Rights on Article 3 […] as source of guidance".[217]
The Convention has two Protocols, which entered into force in 2002. In Particular, Protocol 1 allows the Committee of Ministers of the CoE to "invite any non-member State to accede to it".[218]

The members of the CPT are of the same number of the State parties to the Convention, they come from very "different professional backgrounds (doctors, psychologists, social workers, lawyers, criminologists etc.)" and act in their personal capacity, independently and impartially.[219] It is important to notice that the first President of the CPT, who served

[215] Gianniti, *La CEDU e il ruolo delle Corti*, pp. 136-137.
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Text of the Convention and Explanatory Report*, Strasbourg, 2002, available at: https://rm.coe.int/16806dbaa3, (accessed 10 July 2017), §§11-13, 23, 25, 30, 47, 73, 77.
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26 November 1987, Articles 1, 2, 7, 10, 11.
[216] Gianniti, *La CEDU e il ruolo delle Corti*, pp. 137-138.
[217] European Committee for the Prevention of Torture, *European Convention for the Prevention of Torture*, §27.
[218] European Committee for the Prevention of Torture, *European Convention for the Prevention of Torture*, §11 footnote.
[219] European Committee for the Prevention of Torture, *European Convention for the Prevention of Torture*, §§35, 38.

from 1989 to 1993, was Professor Antonio Cassese[220] (who, among other international roles, also held the presidency of the International Criminal Tribunal of Rwanda and the International Criminal Tribunal for the former Yugoslavia); moreover, between 2000 and 2011, Professor Mauro Palma (who is currently the President of the Italian National Preventive Mechanism) held the Italian membership at the CPT and served as its President between 2007 and 2011.[221]

6.1 General principles

The CPT's positions on solitary confinement are expressed in the Country reports and in the General Reports; in particular, the 21st General Report summons up the Committee's views on the issue.[222] The CPT recognizes the potential harmful effects of the use of solitary confinement, especially in connection to its use over a long or indeterminate period of time and to the "considerably higher rate of suicides" that is registered in isolation; therefore, it states that this measure "on its own potentially raises issues in relation to the prohibition of torture and inhuman or degrading treatment or punishment". For this reason, as a general principle, the CPT, with very similar words to those used by other international human rights bodies, states that:

> "if [the] criteria [set by this report] are followed, it should be possible to reduce resort to solitary confinement to an absolute minimum, to ensure that when it is used it is for the shortest necessary period of time, to make each of the solitary confinement regimes as positive as possible, and to guarantee that procedures are in place to render the use of this measure fully accountable".[223]

The CPT gives a definition to the practice, which is "whenever a prisoner is ordered to

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European Convention for the Prevention of Torture, Article 4.
Nowak, *All Human Rights for All*, p. 122.

[220] An extremely interesting account on the birth of the CPT and on some of its first visits can be found in: A. Cassese, *Umano-Disumano. Commissariati e prigioni nell'Europa di oggi*, Bari, Laterza, 1994.

[221] ICTR Basic Documents and Case Law, 'Judge Antonio Cassese'*, ICTR Basic Documents and Case Law*, [website], http://ictrcaselaw.org/ContentPage.aspx?cid=3025, (accessed 27 July 2017).
Garante Nazionale dei diritti delle persone detenute o private della libertà personale, 'CV Mauro Palma', *Garante Nazionale dei diritti delle persone detenute o private della libertà personale*, [website], 2016, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/4b421e12ed2f5bbe7c5df939bb0a5353.pdf, (accessed 27 July, 2017).

[222] European Committee for the Prevention of Torture, 2011.

[223] European Committee for the Prevention of Torture, 2011, §53.

be held separately from other prisoners"; however, differently from other international bodies, the standards apply whether the inmate is "held on his/her own" and when "he/she [is] accommodated together with one or two other prisoners".[224]

In accordance with the Court's view, the CPT states that the use of solitary confinement has to be justified in light of the "extra restrictions" imposed on "the already highly limited rights of people deprived of their liberty". In order to assess the justification for the imposition of solitary confinement, the CPT uses a framework elaborated by the ECtHR, which analyses five elements[225]:

1. Proportionality: of the measure as compared to the harm that the inmate has or is likely to cause, or to the potential harm that could be done to the inmate by other detainees. "The longer the measure is continued, the stronger must be the reason for it […]".
2. Lawfulness: solitary confinement has to be regulated by "domestic law", which should state all the details that regard the imposition of the measure from the circumstances to the authority, from the procedures for the imposition to the mechanisms of review and those of appeal, the rights of the inmate (e.g. the right to speak against the imposition of the measure), and a clear differentiation between each type of solitary confinement.
3. Accountability: the records regarding solitary confinement should include, among other things, "all decisions to impose solitary confinement, […] all reviews of the decisions", and, for each detainee undergoing solitary confinement, his "interactions with the staff […] including attempts by staff to engage with the prisoner and the prisoner's response".
4. Necessity: the restrictions applied during the regime of solitary confinement (e.g. "rights to visits, telephone calls" etc.) should have the aims to maintain "the safe and orderly confinement of the prisoner and [to satisfy] the requirements of justice"; therefore, the provision should not impose an "automatic withdrawal of [other] rights" and should, on the other hand, allow the "relaxation of any

[224] European Committee for the Prevention of Torture, 2011, §54.
[225] European Committee for the Prevention of Torture, 2011, §55.

restriction which is not necessary in individual cases".

5. Non-discrimination: upon deciding on the imposition of the measure, it is important that the authorities do not take into consideration "irrelevant matters", so that solitary confinement is not used "disproportionately, without an objective and reasonable justification, against a particular prisoner or particular groups of prisoners". [226]

The CPT understands that different types of solitary confinement are used in very different situations and should, therefore, be regulated differently. However, there are some standards that are common to all kinds of solitary confinement, which are analysed below.

6.2 Conditions of the cell

With regard to the conditions of the cell in which the isolated inmate is confined, the CPT's view is very similar to that of the ECtHR. The cell should "enjoy access to natural light and be equipped with artificial lighting (in both cases sufficient to read), and have adequate heating and ventilation". The "adequate size" indicated by the CPT should not be less than 6 square meters. In terms of furniture, the cell for punishment "should be equipped, as a minimum, with a table, adequate seating for the daytime (i.e. a chair or bench), and a proper bed and bedding at night"; moreover, it should be provided with toiletries and "with a means of communication with prison staff". When the cell is used for other types of solitary confinement, it "should be furnished in the same manner as cells used by prisoners on normal location".

6.3 Other conditions

With regard to other conditions of confinement, the CPT stresses that isolated inmates should have the same possibilities to shower as in the general prison population, the same is valid for food and clothing. Moreover, they should be able to exercise outdoors at least for one hour per day, like the other inmates. With regard to "the exercise area, […] it should be sufficiently large to enable [the inmates] genuinely to exert themselves and

[226] European Committee for the Prevention of Torture, 2011, §55.

should have some means of protection from the elements.[227]

6.4 Safeguards

In general, there are some particular safeguards that have to apply to all kinds of solitary confinement. First of all, the reasons for the use of solitary confinement should be explicitly stated, reported, and should become stronger for a longer application of the measure. Secondly, there should be a mechanism of review of the measure and the frequency of review should be set for each type of confinement. Moreover, an "effective appeal process" should always be available to the inmate undergoing solitary confinement.[228]

6.5 Role of the medical personnel

As a general rule, the CPT states that the "medical personnel should never participate in any part of the decision-making process resulting in any type of solitary confinement"; however, it should monitor very carefully the health of those undergoing the measure "immediately after placement and thereafter, on a regular basis, at least once per day". Most importantly, it is their duty to "report to the prison director whenever a prisoner's health is being put seriously at risk by being held in solitary confinement".[229]

6.6 Specific uses of solitary confinement

Apart from the above principles, the CPT also addresses each type of solitary confinement.

6.6.1 Remand detainees

In the case of remand detainees undergoing solitary confinement, the CPT states that they "should be treated as far as possible like other remand prisoners" and the restrictions imposed on them reduced to a minimum; the same applies to solitary confinement, which should "only be used sparingly and where there is direct evidence" that the "administration of justice" would not be effectively carried out "if the prisoner concerned

[227] European Committee for the Prevention of Torture, 2011, §§58-60.
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Imprisonment. Extract from the 2nd General Report of the CPT*, Strasbourg, 1992, available at: https://rm.coe.int/16806ce96b, (accessed 15 July 2017), 48.
[228] European Committee for the Prevention of Torture, 2011, §§56-57.
[229] European Committee for the Prevention of Torture, 2011, §§62-63.

associates with particular inmates or others in general".[230]

6.6.2 Sentenced detainees

The CPT, in accordance to other international bodies, reiterates that solitary confinement "should never be imposed […] as part of a sentence" on the grounds of the "generally accepted principle that offenders are sent to prison as a punishment, not to receive punishment".[231]

6.6.3 Solitary confinement as a disciplinary measure

With regard to solitary confinement as a disciplinary measure, the CPT considers that it should be impose following "the principle of proportionality, […] only in exceptional cases and as a last resort, and for the shortest possible period of time". Moreover, the CPT recommends 14 days as the maximum time limit for disciplinary isolation and adds that "sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period" should be prohibited.

With regard to this kind of isolation the CPT further adds that detainees "should be visited on a daily basis by the prison director or another member of senior management" and that their "condition or behaviour" should be taken into account upon deciding for the termination of the measure. As a general principle, other restrictions (e.g. family visits, access to a lawyer) on these inmates should not be imposed, "they should be entitled to at least one hour's outdoor exercise per day […], from the very first day of placement in solitary confinement, and be encouraged to take outdoor exercise"; furthermore, their access to reading material "should not be restricted to religious texts". Moreover, the CPT stresses the importance of giving them "some stimulation" in order to maintain "their mental wellbeing".[232]

6.6.4 Administrative solitary confinement for preventative purposes

This kind of solitary confinement is used, according the CPT, for different purposes that are usually security-related. The imposition is usually done on "prisoners who have caused, or are judged likely to cause, serious harm to others or who present a very serious

[230] European Committee for the Prevention of Torture, 2011, §§57, 61.
[231] European Committee for the Prevention of Torture, 2011, §56.
[232] European Committee for the Prevention of Torture, 2011, §§56, 57, 61.

risk to the safety or security of the prison". The time may variate from "as short as a few hours, […] or for as long as a period of years" depending on the danger posed by the inmate. The CPT is particularly concerned with regard to this kind of regime, as it "is potentially the longest lasting type of solitary confinement and often the one with the fewest procedural safeguards". For these reasons, it recommends "stringent controls", such as: the authorisation of the measure to be done only by "the most senior member of the staff," a scrupulous reporting mechanism should be in place as well as the monitoring "for the first few hours", and a particular care from the medical staff. Solitary confinement should be terminated as soon as "the reason for the imposition of the measure has been resolved". In the case of the imposition of a longer measure, efforts should be made to achieve the reintegration of the inmate in the general prison population through an individualized plan.[233]

6.6.5 Protective custody

In the case of protective custody, the CPT advises the States to resort to it "only when there is absolutely no other way of ensuring the safety of the prisoner concerned" and that "all the alternatives" to solitary confinement (e.g. transfer to another prison, mediation etc.) "should be tried first and the full consequences of a decision to go on protection explained to the prisoner" (when it is a voluntary request). If the inmate wishes to go back to the general population, he should be allowed to do so "if this can be safely done". Moreover, the aim of the measure should be the reintegration of the inmate in the general population; however, when this is not possible, an effort should be made so that he can "safely associate" with other selected inmates and engage into "situations where it would be possible to bring [him] out of cell".[234]

6.6.6 Juveniles

With regard to juveniles, the CPT, recognizes the danger that solitary confinement can pose to "their physical and/or mental well-being"; however, differently from other international bodies, it allows solitary confinement for disciplinary reasons to be used only as a "last resort", that it "should only be imposed for very short periods and under

[233] European Committee for the Prevention of Torture, 2011, §§56, 57, 61.
[234] European Committee for the Prevention of Torture, 2011, §§56, 57, 61.

no circumstances for more than three days".

In the case of solitary confinement for protection or preventive purposes, the CPT understands that they "may […] be required in order to protect particularly vulnerable juveniles, or to prevent serious risks to the safety of others or the security of the prison". However, it limits their use "in extremely rare cases" and only when "absolutely no other solution can be found". Just as in the case of adults, the CPT states that the authority and the procedure have to be clear and that safeguards (e.g. review and appeal mechanisms) have to be in place.

In all cases, while undergoing the measure, juveniles "should be provided with socio-educational support and appropriate human contact". Moreover, the health care staff should, just as with adult detainees, visit the juveniles undergoing the measure "immediately after placement and thereafter on a regular basis, at least once per day".

Finally, the CPT considers the use of "calming-down room" for "the placement of a violent and/ or agitated juvenile" only in "highly exceptional" circumstances, for a few hours and the health care staff should be alerted.[235]

7. Comparison of the European instruments

After analysing the standards set by the single bodies, it is possible to draw some considerations. First of all, as it was already mentioned, the EPR fall behind the Mandela Rules in many areas and also in that of solitary confinement; the same is valid when a comparison is done between the EPR and the ECtHR and the CPT standards. In fact, the EPR are less detailed: they don't prohibit the use of prolonged or indefinite solitary confinement and don't take into consideration the needs of specific or vulnerable groups that could be subjected to solitary confinement. On the other hand, the ECtHR and the CPT set much more detailed standards; however, as their scope is quite different, they developed them in two different ways. The CPT defines solitary confinement, takes in consideration all kinds of uses of the measure and gives very detailed indications on the procedures to impose all types of isolation; moreover, it gives attention to specific groups (e.g. remand detainees, juveniles), and sets a specific time limit to the use of disciplinary

[235] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *24th General Report of the CPT. 2013-2014*, Strasbourg, available at: https://rm.coe.int/1680696a9c, (accessed 15 July 2017), §§128, 129.

solitary confinement. On the other hand, the Court has a much more developed jurisprudence on relative isolation and on the special regimes; in fact, the standards it set through its sentences are its tool to establish whether a violation of Article 3 took place. With regard to the conditions of the cells, the standards of the Court and of the CPT are almost the same.

Italy's compliance to the international standards

In Italian law, solitary confinement is regulated by Article 33 of the penitentiary law, which allows three types of solitary confinement: for health reasons, for disciplinary reasons, and for judiciary reasons. The confinement for health reasons does not fall within the object of this research; therefore, only the other types of confinement will be analysed along with the isolation of life-sentenced inmates stated in Articles 72 and 184 of the penal code and two special regimes, which, even if they do not entail solitary confinement, in some situations they are customarily carried out in this way: that of 14-bis (*sorveglianza particolare*) and that of 41-bis of the penitentiary code. This chapter will point out the problems of compliance between the Italian situation and the international standards analysed in the previous chapters.

1. General principles

Article 27 of the Italian Constitution and Article 1 of the penitentiary law, state that penal sanctions cannot consist in inhuman treatments and respect the dignity of the person.[236] For this reason, it is important to underline that, according to the Constitutional Court "restrictions imposed to the rights of detainees that are not functional to meet security necessities related to the detention of prison" are illegitimate because they "would acquire only a further afflicting value" which would violate the Constitution.[237]

[236] "The penitentiary treatment has to comply to the principle of humanity and has to respect the dignity of the person." L. 26 luglio 1975 n. 354, Norme sull'ordinamento penitenziario e sull'esecuzione delle misure privative e limitative della libertà, Article 1.1. [Translation by Federica Brioschi. All translations of quotes in this chapter are my own unless otherwise stated.]
"Punishment cannot consist in inhuman treatment and must aim at the rehabilitation of the convicted person." Costituzione della Repubblica Italiana, Article 27.3. [Translation from: http://www.prefettura.it/imperia/contenuti/La_costituzione_italiana_in_lingua_straniera-16489.htm]
[237] M. Ruotolo, 'The domestic remedies must be effective: sul principio di effettività della tutela giurisdizionale dei diritti dei detenuti', *Rivista Associazione Italiana dei Costituzionalisti*, 2013,No.4, p.5. Corte Costituzionale, sentenza, 7 giugno 2013, n. 135, §6.

The principle of legality with regard to solitary confinement is prescribed by international bodies (the CAT, the SPT, the SRT, the Mandela Rules, the ECtHR, and the CPT). The regulation of solitary confinement in Italian law has already been mentioned above; moreover, it is important to note that Article 73 of the regulation that gives execution to the penitentiary code states that solitary confinement sections should not be used in cases that are not prescribed by the law; this has been interpreted by the jurisprudence as the prohibition to assign only one single detainee to a section of the prison (the assignment to detainees to prison sections falls into the powers of the penitentiary administration) as a form of illicit isolation.[238]

2. Solitary confinement for disciplinary and judiciary reasons, and imposed on life-sentenced inmates

First of all, it is important to note that, the doctrine compares the *regimes* of solitary confinement for disciplinary and judiciary reasons to the *regime* of solitary confinement imposed on life-sentenced inmates by the judge even if their legal basis is very different. With regard to solitary confinement imposed on life-sentenced detainees it is important to point out that it is a day-time solitary confinement and that, differently from the other types of solitary confinement, it is a real "penal sanction" and not a "modality of execution of the penalty".[239] Notwithstanding this legal difference, solitary confinement acquires in all these cases the character of the exceptionality (i.e. solitary confinement "is not the normal form of detention in prison"); moreover, it is always prohibited to impose restrictions on: the cell, clothing, hygiene, food, and outdoor exercise; the regime with regard to these particular fields should be the normal one.[240]

2.1 Condition of the cells

From the previous chapters, it is possible to notice that all UN and European bodies (the

[238] D.P.R. 30 giugno 2000 n. 230, Regolamento recante norme sull'ordinamento penitenziario e sulle misure preventive e limitative della libertà personale, Article 73.
M. G. Coppetta, 'Articolo 33. Isolamento', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, pp. 379-380.
[239] For more details see the paragraph on solitary confinement imposed on life-sentenced detainees.
[240] M. A. Zuccalà, 'Articolo 72. Concorso di reati che importano l'ergastolo e di reati che importano pene detentive temporanee, in G. Forti, S. Seminara, G. Zuccalà (ed.), *Commentario breve al codice penale*, Assago, Wolters Kluwer, CEDAM, 2016, pp. 517-521.
Coppetta, *Ordinamento penitenziario commentato*, pp. 378-379.

HRComm, the Committee against Torture, the SPT, the SRT, the Mandela Rules, the EPR, the ECtHR, and the CPT), with different wording and precision in the description, prescribe that the cells for solitary confinement should never be unhygienic, and should always have an adequate size, light, air, heating, ventilation, sanitary facilities and basic furniture.

The conditions of the cells in the Italian law are regulated by Article 6 of the penitentiary law and Articles 6 and 7 of the regulation. They prescribe that a regular cell (which should also be used in the case of solitary confinement) should be of a "sufficient size" (9 square meters in the case of a single bedroom), have access to enough "natural and artificial light" to work and read, it should be ventilated, and heated. Toiletries should be decent, placed in separated area adjacent to the cell, should have access to running hot and cold water, and include a sink, shower and a bidet (especially in the female prisons or sections). It is to point out that it is very rare that all these requirements are satisfied especially with regard to the shower, which is usually taken by the inmates in communal bathrooms following some shifts.[241]

In practice, the situation of the cells is very different from what is prescribed by law, in fact, during his visits the Garante nazionale dei diritti delle persone detenute o private della libertà personale[242] (National Guarantor for the rights of persons deprived of personal liberty, hereafter the Guarantor), the Italian National Preventive Mechanism, found the established custom to hold people in disciplinary isolation in so-called "smooth cells", which are cells "lacking all furniture except from the bed and, at times, the table and stool" or in cells that were not in compliance to the minimum European standards.[243]

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[241] L. 354/1975, Article 6.
D.P.R. n. 230/2000, Articles 6, 7.
C. Renoldi, 'Articolo 6. Locali di soggiorno e di pernottamento', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, pp. 106-108.

[242] Currently the Presidency of the National Guarantor is held by Professor Mauro Palma, former President of the CPT between 2007 and 2011. Information from: Garante Nazionale dei diritti delle persone detenute, 'CV Mauro Palma'.

[243] Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, 'Relazione al Parlamento 2017', *Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale*, March 2017, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bc9d71fe50adf78f32b68253d1891aae.pdf, (accessed 4 April 2017), p. 70.
Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', *Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale,* 2016,

The placement in "smooth cells" is often an answer to self-harm acts or attempted suicides; however, it is important to point out that several strategies have been elaborated by the penitentiary administration to reduce self-harm and suicide risks keeping into account the international standards on this topic.[244]

2.2 Outdoor exercise

The Mandela Rules, the EPR, the ECtHR, and the CPT point out that those in solitary confinement should be granted outdoors exercise (for at least one hour for some bodies). Article 10 of the Italian penitentiary law regulates the time of outdoor exercise, which can't be less than two hours per day and is normally carried out in groups. While in solitary confinement, inmates still spend outdoors the regular amount of time, but instead of being in group, they exercise alone.[245]

2.3 Role of the medical staff

With regard to the monitoring of the inmate's health, the international bodies (the HRComm, the Committee against Torture, the SPT, the SRT, the Mandela Rules, the EPR, the ECtHR, and the CPT) state, with different wording and degrees of precision, that the prison doctors should monitor every day the heath of those undergoing solitary confinement and visit them prior their placement in isolation.

In accordance with these standards, in the Italian law, Article 73 of the regulation gives the duty to the prison doctor and a member of the staff in charge of the "individual treatment" of the inmates to daily monitor isolated detainees. This monitoring is aimed to verify whether the detainee is able to bear the measure of solitary confinement.

Moreover, in accordance to the EPR, the staff of the penitentiary police has the duty to adequately monitor the inmate undergoing the measure.[246]

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http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/9958ac6c553f6e5037634149b372605b.pdf, (accessed 19 February 2017), pp. 42-43.

[244] R. Palmisano, 'Parere su celle senza suppellettili', *Dipartimento Amministrazione Penitenziaria Ufficio del Capo del Dipartimento. Ufficio Studi Ricerche Legislazione e Rapporti Internazionali*, Roma, August 2014, https://www.giustizia.it/giustizia/it/mg_1_12_1.page?facetNode_1=0_2&facetNode_2=0_2_23&contentId=SPS1145501&previsiousPage=mg_1_12, (accessed 20 July 2017), §4.

[245] D. Verrina, 'Articolo 10. Permanenza all'aperto', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, pp. 120-121.
Coppetta, p. 379.

[246] D.P.R. n. 230/2000, Article 73.

2.4 Disciplinary solitary confinement

Disciplinary solitary confinement is "the gravest among the disciplinary sanctions" contained in Article 39 of the penitentiary code, which states that "the exclusion from communal activities" (i.e. solitary confinement) cannot exceed fifteen days.[247]
The imposition of the measure is carried out by the disciplinary council, formed by the director (or by the employee with the highest level), the prison doctor[248] and the educator.[249] During the proceedings the detainee has the right to defend himself from the accusations.[250] Once the measure is approved, it is communicated to the Surveillance Magistrate and is included in the inmate personal file.[251] There isn't an independent judiciary body of control; however, the detainee can file a complaint to the Surveillance Magistrate.[252]

In order to execute this sanction, the medical staff has to certify that the inmate is fit to sustain it and has the duty to monitor his health to discover the insurgence of any pathological states.[253] Article 80 of the regulation states that if the prison doctor does not certify the inmate as fit for the punishment of solitary confinement, the application sanction is suspended until the causes that do not allow the execution of the measure are removed.[254]

Coppetta, p. 379.
[247] Coppetta, p. 380.
[248] It is important to notice that through a specific delegating law (D.P.R. 23 giugno 2017, n. 103, Modifiche al codice penale, al codice di procedura penale e all'ordinamento penitenziario) the Parliament has recently delegated to the Government the task to modify some parts of the penitentiary law. Paragraph 85, letter m of the delegating law prescribes that the modification of the law should exclude the prison doctor from the disciplinary council.
[249] L. 354/1975, Article 40.
Coppetta, p. 382.
[250] D.P.R. n. 230/2000, Article 81.
[251] D.P.R. n. 230/2000, Article 81.
Coppetta, p. 438.
[252] Coppetta, p. 382.
[253] L. 354/1975, Article 39.
M. G. Coppetta, 'Articolo 39. Sanzioni disciplinari', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, p. 437.
[254] D.P.R. n. 230/2000, Article 80.
Coppetta, *Ordinamento penitenziario commentato*, 2015, p. 437.

Article 73 of the regulation states that solitary confinement is to be carried out in the in a regular cell[255] even in the case of a detainee keeping a disrupting behaviour or menacing "order and discipline".[256] An internal regulation of the Department of the Penitentiary Administration (DAP) further states that disciplinary solitary confinement should take place in the detainee's cell, when he is already housed in a single cell, but this provision is basically never applied.[257]

According to the regulation, the only limitation imposed to the inmate undergoing solitary confinement is the communication with other inmates[258] In the previous regulation (which dated back to 1976) the limitations posed to isolated inmates were both of communication with other inmates and to receive calls or visits; therefore, jurists have commented that, as the regulation does not contain such a provision anymore, it can be inferred that telephone calls and visits with the family, lawyer, and other people are allowed to take place. Moreover, as the regulation does not forbid it, it can be deduced that the inmate is allowed to write or receive letters, to keep a radio or to have access to newspapers.[259]

Article 39 of the penitentiary law also states that this sanction is suspended in the case of pregnant women, women who are in the first six months after the delivery of the child, and breastfeeding mothers up to one year.[260]

Some problems of compliance with the international standards can be pointed out.

First of all, the Mandela Rules and the CPT state that the prison doctor should not be involved in the imposition of a disciplinary measure and that he should report to the director if the placement in solitary confinement causes any adverse effect on the health of the inmate. It is interesting to note that while on one hand the EPR have been interpreted in a way so that the medical staff should not certify the inmate as fit for the

[255] See above for more details.
[256] D.P.R. n. 230/2000, Article 73.
Coppetta, p. 381.
Palmisano, 'Parere su celle senza suppellettili', §1.
[257] Circolare DAP 21 April 1998 n. 148339/4 -1, Regime penitenziario - L'isolamento.
Associazione Antigone and CILD, 'Joint Submission to the UN Human Rights Committee on Italy', §40.
[258] D.P.R. n. 230/2000, Article 73.
Coppetta, p. 381.
[259] Coppetta, p. 381.
[260] L. 354/1975, Article 39.

punishment, on the other hand, the SPT is the only body that states that the prison doctor should do so.

In the report on its 2013 visit, the CPT labels as "unacceptable" the fact that the prison doctor takes part of the disciplinary proceedings as a member of the disciplinary council, as it undermines a "positive doctor-patient relationship". For the same reasons, the CPT also recommends that the prison doctor should not certify a detainee fit for punishment, in accordance with the European Prison Rules and the 21st General Report of the CPT. [261]

Another problem highlighted by the Guarantor regards the procedure of application of the measure in light of the CPT standards and the Mandela Rules. In fact, in his opinion the inmate does not have the possibility to defend himself by presenting evidence and witnesses; furthermore, during his visits, he found that the inmates are not informed (or are only partially informed) on the possibility to appeal against the disciplinary measure.[262]

The CPT with regard to this same issue, in its 2012 visit, it found that the reasons for the imposition of the measure were very briefly stated; moreover, prisoners "did not receive a copy of the decision itself but only a notification of the sanction" and the possibility to appeal was "often" not given "in writing". Moreover, the CPT expressed concerns on the fact that the inmate's lawyer could not take part to the disciplinary hearing and that the Surveillance Magistrate "examined appeals only on procedural grounds, but not on the merits". It recommended to address these issues and to allow inmates "to call witnesses on their behalf and to cross-examine evidence given against them."[263]

As already stated, the Italian legislation, in accordance with the Committee against Torture, the SRT, the Mandela Rules, and the CPT (which in reality sets as a maximum time in solitary confinement,14 days), allows isolation as a disciplinary measure up to 15

[261] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 25 May 2012*, Strasbourg, 19 November 2013, CPT/Inf (2013) 32, §§96-97.

[262] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 70-72.

[263] European Committee for the Prevention of Torture, *Report to the Italian Government on the visit to Italy,* 2013, §95.

days. However, the imposition of subsequent orders of 15-day disciplinary solitary confinement is not prohibited by Italian law and it has been documented by the Guarantor as a practice that led to months-long solitary confinement (the intervals between measures vary, but the Guarantor found "intervals of only five or six days"), which he considered "not acceptable".[264] A judgement of the Court of Cassation prohibited the practice of subsequent applications of the measure (also in the case of brief intervals between measures) and a recent internal regulation of the DAP stated that five days should be the minimum interval between the application of two measures.[265] For the Guarantor "intervals of only five or six days" between measures are in violation of international standards and advised the penitentiary administration to modify the rules of application in order to include "intervals of at least fifteen-twenty days" between the application of two measures.[266]

It is worth to note that both the CPT and the Committee against Torture prohibit the practice of reiteration a disciplinary measure of solitary confinement, that creates a situation of *de facto* prolonged isolation.

With regards to juveniles, it is possible to note that the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990, the HRComm, the Committee against Torture, the SRT, the Committee on the Rights of the Child and the SPT prohibit the practice of solitary confinement in the case of children under the age of 18; the Committee against Torture further adds that the prohibition should be set by law and also done in practice. It is interesting to note that the European Rules for Juveniles offenders subject to sanctions or measures is the only international instrument that allows the use of segregation for the shortest period of time and only in very exceptional cases; the CPT also allows the placement in solitary confinement of juveniles, but not for more than three

[264] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 70-72.
[265] Palmisano, 'Parere su celle senza suppellettili', §2.
Corte di Cassazione, I sezione penale 14 Dicembre 2012, Attanasio.
Circolare DAP 6 May 2015.
Stati Generali sull'Esecuzione Penale, 'Documento finale', *Ministero della Giustizia*, [website], https://www.giustizia.it/giustizia/it/mg_2_19_3.page?previsiousPage=mg_14_7, (accessed 29 July 2017), Parte quarta, §5.3.
[266] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 70-72.

days.

Article 79 of the Italian penitentiary law prescribes that the said law also applies to juveniles until the creation of a penitentiary law for minors by the legislator; however, this has never been done.[267] Therefore, as the same penitentiary law applies to minors, they are not excluded from the disciplinary measure of solitary confinement. However, the application of the measure varies from prison[268] to prison. This is confirmed by the Observatory on juvenile prison facilities established by Associazione Antigone[269] in 2009, which found that in some IPMs, directors decide not to apply solitary confinement as a disciplinary punishment, thus preferring other methods such as mediation (as it was reported also by the Guarantor[270]), while other directors decide to apply it as an exceptional measure of a last resort for the maximum of 15 days in accordance with the law. In some cases, the minor is still allowed to go to school, while other times school attendance is also excluded from the activities. At times, the disciplinary measure of the exclusion from all activities is not translated into total isolation because the minor is still kept in the cell with the other inmates; therefore, the sanction consists "only" in the exclusion from communal activities.[271]

Associazione Antigone also pointed out that the presence of solitary confinement sections or cells (especially when they are "smooth cells") favours "mistreatment by the

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[267] L. 354/1975, Article 79.
Associazione Antigone, *X Rapporto Nazionale sulle Condizioni di Detenzione. L'Europa ci guarda*, Edizioni Gruppo Abele, 2013, available at: http://www.associazioneantigone.it/upload/images/6818sintesiXrapporto_LEUROPACIGUARDA_versione5.pdf, (accessed: 21 February 2017), p. 6.

[268] Juveniles prisons in Italy are called Istituti Penali per Minori (IPM).

[269] Associazione Antigone is an NGO "dealing with human right protection in penal and penitentiary system", which was founded in 1991. In 1998 "Antigone received from the Ministry of Justice special authorizations to visit prisons" and in 2009 received the authorization to enter also in "all Italian juvenile prison facilities". Information from Associazione Antigone and CILD, 'Joint Submission to the UN Human Rights Committee on Italy. 119th Session - 06 March to 29 March 2017', *Antigone* and *CILD*, 2017, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ITA/INT_CCPR_CSS_ITA_26630_E.pdf, (accessed: 22 July 2017), p. 2.

[270] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', p. 94.

[271] Associazione Antigone, 'Ragazzi Fuori. Terzo Rapporto di Antigone sugli Istituti Penali per Minori', *Associazione Antigone*, 2015, http://www.associazioneantigone.it/upload2/uploads/docs/RagazziFuoricompleto.pdf, (accessed: 20 February 2017), pp. 22-23, 72, 101, 144, 187.

penitentiary police" and enhances the risk of suicide among inmates.[272]

2.5 Administrative solitary confinement

Administrative solitary confinement can be imposed by the director on the detainee awaiting the summon of the disciplinary council only if the disciplinary offence can be punished with disciplinary solitary confinement and only in the case of "absolute urgency determined by the necessity to prevent damages to people or things, or the insurgence or diffusion of disorders" or in the case of "particularly grave facts" which can undermine the "security and order" of the prison. The administrative measure has to be approved by the prison doctor in the same way as for disciplinary solitary confinement, and can't exceed ten days and the time spent in this measure has to be subtracted from the inflicted disciplinary sanction. There is no mechanism of control apart from the adoption of a motivated order.[273] It is worth to report that during a visit, the Guarantor found that a person had been detained in this kind of isolation waiting for the disciplinary council to meet and decide on the order for fifteen days, basically already undergoing the full punishment without the order to have been issued.[274]

As it can be seen from the previous chapter, the CPT is the only international body concerned with regard to this particular use of solitary confinement and generally recommends safeguards to be in place against abuses as well as a reporting and a monitoring mechanisms, and a particular attention from the medical staff.

2.6 Solitary confinement for judiciary reasons

With regard to pre-trial detainees, it is possible to note from previous chapters that the HRComm expresses concerns on the use of long-term solitary confinement during pre-trial detention; moreover, the SPT states that the lack of activities, educational or work possibilities, limited information on the trial, limitations on the contacts with the outside world, and limitations on the time spent outside the cell could affect the health pre-trial

[272] Associazione Antigone, *Ecco perché l'isolamento fa male,* [webpage], 2016, http://www.associazioneantigone.it/upload2/uploads/docs/isolamentofamale.pdf, (accessed: 22 July 2017).
[273] Coppetta, p. 438.
D.P.R. n. 230/2000, Article 78.
[274] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 30-31.

detainees; furthermore, the SRT recommended its abolition in the case of pre-trial detainees; finally, the CPT recommends that the restrictions imposed on isolated inmates should be reduced to a minimum and solitary confinement should be applied only when the administration of justice absolutely requires it.

In Italy, solitary confinement for judiciary reasons can be applied during the preliminary investigations and the authority that can impose it is the judge of the preliminary investigations (GIP). The law does not provide the precise circumstances for the imposition of the measure; however, the emerging approach to limit the discretionary power of the GIP uses Articles 274, 277 and 299 (paragraphs 1, 2, 4) of the code of criminal procedure.[275] Article 274 states the circumstances in which the GIP can impose precautionary measures, Article 277 is a safeguard of the rights of the person undergoing pre-trial detention, Article 299 regulates the termination or the substitution of the precautionary measures.[276] This approach circumscribes the use of solitary confinement for judiciary reasons only to those cases when it is "the indispensable instrument" to meet the "specific precautionary need" listed in Article 274. From these Articles, it can be deduced that the imposition of the measure as a coercive tool (e.g. with the aim of inducing the inmate to confess) is prohibited.[277]

Article 73 of the regulation states that isolated detainees undergoing pre-trial detention should be subjected to the same conditions as the other inmates and that further limitations should be imposed only by the judicial authority; this means that these further restrictions should be strictly related to the "specific precautionary needs".[278] With regard to the limitations to the contact with other people, it is clear that the Surveillance Magistrate should always be able to meet with the isolated inmate, the prison staff has to follow the rule of the minimum contacts required by their duty, and contacts with the chaplain are regulated by the GIP. On the other hand, limitations of religious practices have to be justified and motivated by the isolation order. Also, restrictions on visits, letters, and

[275] Coppetta, pp. 382-383.
[276] D.P.R. 22 settembre 1988 n. 447, Codice di Procedura Penale, Articles 274, 277, 299.
[277] Coppetta, p. 383.
[278] D.P.R. n. 230/2000, Article 73.
Coppetta, p. 383.

telephone calls with the family or other people can be imposed only on the grounds of "precautionary needs".[279] Visits and correspondence with the lawyer cannot be limited. On the other hand, telephone calls with the lawyer have to be authorized by the GIP.[280] With regard to the authorities who have access to institutes as a control mechanism of detention conditions through Article 67 of the penitentiary code, the regulation allows them to speak with all detainees, "including those in solitary confinement for judiciary reasons".[281]

If the health of detainee held in this kind of solitary confinement is at stake, the GIP can transfer the inmate to a hospital; on the other hand, the prison staff has the duty to report to the GIP the insurgence of any deterioration of the mental or physical health of the isolated pre-trial detainee.[282]

There is no independent judiciary body of control; however, the jurisprudence allows the possibility to file an appeal to the Supreme Court of Cassation; on the other hand, when the request to end the measure is denied by the GIP, it is possible to appeal to the Court of Appeal (without going directly to the Supreme Court of Cassation). When the penitentiary administration wrongfully applies the restrictions imposed by the order of the GIP, the detainee can file a complaint to the Surveillance Magistrate.[283]

Associazione Antigone, in the shadow report submitted to the Human Rights Committee pointed out that the law "fails to establish a specific limit of time for pre-trial detainees to spend in confinement, leaving this determination to the discretion of the judges".[284]

2.7 Solitary confinement imposed on life-sentenced inmates

As already stated, differently from the aforementioned types of solitary confinement, which are a "modality of execution of the penalty" (or "a modality of prison life"), the

[279] Coppetta, p. 383.
[280] Coppetta, p. 384.
[281] Coppetta, p. 384.
L. 354/1975, Article 67.
D.P.R. n. 230/2000, Article 117.
[282] D.P.R. n. 230/2000, Article 22.
L. 354/1975, Article 11.
Coppetta, p. 383-384.
[283] Coppetta, p. 385.
[284] Associazione Antigone and CILD, 'Joint Submission to the UN Human Rights Committee on Italy', §40.

solitary confinement imposed on life-sentenced detainees is a "penal sanction" imposed because of the "committed crimes". In fact, it is inflicted by Articles 72 of the penal code in the case of the imposition of more than one life sentence or in the case of a combination of a life sentence and one or more other penal sanctions. In the first case the time span of solitary confinement that the judge can apply varies between six months and three years, while in the second case the time span is between two and eighteen months. Solitary confinement is applied in this case during the day, in fact during the night the detainee is housed either alone or with other inmates. The doctrine does not consider this measure as inhuman, as the detainee is allowed to participate to communal life through working activities.[285] The regulation adds to this that these inmates are not excluded from educational activities, practical trainings, and religious practices.[286] This has been interpreted as the will of the legislator to avoid to terminate the "individual treatment" that had been started during pre-trial detention. There aren't further limitations imposed on the inmate with regard to the communications with the external world.[287]

However, the Guarantor has found that the common interpretation of this kind of solitary confinement is "the total exclusion of the inmate" from all kinds of communal activities, especially when the inmate is also detained under the 41-bis regime (see below). He further points out that the jurisprudence of the Court of Cassation excludes the use of total isolation and refers to the CPT standards, which point to the abolition of solitary confinement as part of a prison sentence.[288] A proposal to reform some aspects of solitary confinement imposed on life-sentenced detainees comes from the *Stati Generali sull'esecuzione penale* (General States on the execution of the execution of penal sanctions). This initiative brought together the penitentiary administration and the representatives of different sectors of the civil society involved in the topic of the execution of penal sanctions. The work of the *Stati Generali* elaborated proposals for the reform of the penitentiary law (which took place during the discussion of the Parliament

[285] Zuccalà, *Commentario breve al codice penale*, pp. 517-521.
R.D. 19 Ottobre 1930 n. 1398, Codice Penale, Article 72.
Coppetta, p. 378.
[286] D.P.R. n. 230/2000, Article 73.
[287] Coppetta, p. 380.
[288] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', p. 71.

on the same reform[289]); the proposal on the issue of solitary confinement as part of a sentence was to introduce a number of safeguards in order to ensure "the compliance of the measure to the Constitutional principles of humanity and to the right to health".[290]

With regard to this kind of solitary confinement, the CPT in its report of the 2012 visit, urged the "Italian authorities to review the relevant criminal legislation" in order to abolish the imposition of isolation as part of a prison sentence.[291] Other international bodies which ask to all Countries to abolish solitary confinement as part of a sentence are the HRComm, the Committee against Torture, the SRT, the Mandela Rules, and the CPT. The CPT in the report on the 2004 visit, apart from this statement, it also underlined the "unacceptable" conditions in which the inmates of the prison of Parma were held, and had found a total lack of activities or occupations for these inmates; therefore, it had recommended to enhance their material conditions and to provide them with the possibility to work or to have access to other activities.[292]

2.8 Protective solitary confinement

Protective solitary confinement is not prescribed in any Italian law; however, it is frequently informally used in order to protect those detainees who have committed grave crimes (e.g. violence against children) or belong to a particular category (e.g. police forces). The regulation prescribes that when other measures do not insure the protection of the inmate, the penitentiary administration should transfer the inmate to a section or prison where his safety can be better ensured.[293] However, this is often translated in a "forced allocation" of LGBTQ detainees in sections either dedicated to inmates who committed "particularly grave crimes", or in dedicated sections. In both cases, they are

[289] See footnote 248.
[290] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', p. 72.
R. Polidoro et al., 'Tavolo 16 – Il Trattamento. Ostacoli Normativi all'individuazione del Trattamento Rieducativo', *Ministero della Giustizia*, https://www.giustizia.it/resources/cms/documents/sgep_tavolo16_relazione.pdf, (accessed 24 July 2017), pp. 20-21.
[291] European Committee for the Prevention of Torture, 2013, §98.
[292] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Rapport au Gouvernement de l'Italie relatif à la visite effectuée en Italie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 21 novembre au 3 décembre 2004*, Strasbourg, 27 April 2006, CPT/Inf (2006) 16, §§89-91.
[293] D.P.R. n. 230/2000, Article 32.
Coppetta, p. 379.

often excluded from all activities (e.g. work or education) aimed to their reintegration into society.[294] The Guarantor adds that, even if it is undeniable that "LGBTQ detainees have more probabilities to become victims" of sexual violence, their separation from the general population and placement in sections where a stricter regime is in place, or where a single inmate might find himself in a *de-facto* solitary confinement because there aren't other detainees in his section, is not an acceptable solution to the problem; therefore, "alternative solutions to guarantee the protection of all detainees" should be found. He agrees that the possibility to have protected areas for these detainees during night-time is certainly positive; however, a normal environment should be ensured during the day and during communal activities safety should be guaranteed for all inmates.
He also adds that particular attention should be given to transsexual detainees, who should be allowed into female section or prisons, while on the other hand in the case of a personal search, it should be up to male guards to carry it out.[295] It is worth to report a case encountered by the Guarantor in one of his visits to a prison, where transsexual detainees were completely separated from the general prison population; he noted that all activities for them were carried out in the section where they were placed and that it was almost impossible to have access to communal activities with the other detainees. The section appeared to the Guarantor as "a sort of 'ghetto'".[296]

In light of the standards that have been previously analysed, it is possible to note that the SPT expressed concerns on the use of solitary confinement for the protection of LGBT inmates, and that the SRT stated that their placement in solitary confinement could constitute an act contrary to the CAT. For the ECtHR, if a difference of treatment is

[294] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', pp. 76-77.
E. De Caro, 'Tra sezioni-ghetto, abusi e sopraffazioni. Dove e come vive la comunità LGBT ristretta?' *Torna il carcere. XIII Rapporto di Antigone sulle condizioni di detenzione*, 2016, http://www.associazioneantigone.it/tredicesimo-rapporto-sulle-condizioni-di-detenzione/03-lgbt/, (accessed: 23 July 2017).
[295] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', pp. 76-77.
Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, 'Rapporto sulla visita alla Casa Circondariale di Gorizia (CC14)', *Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale*, 2016, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/8d51100f177d5e5ddea1e2b2c5f20c08.pdf, (accessed: 19 February 2017), pp. 12-16.
[296] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', p. 28.

imposed on the basis of the sex or sexual orientation of the inmate, the State has to show its necessity and proportionality to the specific circumstance, otherwise it could incur into a violation of Article 14 in conjunction of Article 3 because the difference. The CPT recommends that all alternatives should be tried prior the use of solitary confinement in this case, which should constitute an *extrema ratio*; in any case all efforts should be done in order to allow the inmate to safely associate with other inmates.

2.9 Voluntary solitary confinement

Voluntary solitary confinement is also not regulated by law; however, the doctrine recognises its use to meet the request of the detainee who wishes to stay separated from the general prison population.[297] The Guarantor has found in several prisons this kind of confinement, which had been requested by some detainees to avoid to be detained in overcrowded cells. He further stated that isolation is not the solution to this kind of problem.[298]

3. Special regimes

The two special regimes that fall within the scope of this research are *sorveglianza particolare* (particular surveillance) prescribed by article 14-bis of the penitentiary law and the 41-bis regime. Even if neither of them prescribe total isolation, they are quite often combined (the two special regimes) and sometimes they are used in combination with solitary confinement for sentenced inmates. In these cases, it has been observed that the final result is a *de facto* total isolation of the inmate even for prolonged periods of time. The Guarantor has expressed concerns on this matter.[299]

Another issue of concern for the Guarantor is the fact that detainees under special regimes

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[297] Coppetta, p. 379.
[298] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 56-57.
[299] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', p. 71.
Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 22-23.
R. Grippo, 'Illegittimità dell'isolamento totale e della cella liscia. Rapporti tra sorveglianza particolare, sanzioni disciplinari, "41 bis" e circuiti: strumenti alternativi o in sovrapposizione?. Nota a ord. Tribunale di Sorveglianza di Bologna del 27.09.2011, imp. G.', *Diritto Penale Contemporaneo*, 15 March 2012, available at: http://www.penalecontemporaneo.it/upload/1331639337nota%20Rosa%20Grippo%20a%20Trib.%20Sorv%20Bologna.pdf, (accessed: 7 January 2017), pp. 5, 15.

or undergoing a combination of measures are often held in so-called "aree riservate" (reserved areas), particular areas inside maximum-security sections, where the conditions are "even stricter than those defined by law". Often, inmates detained in these sections have access to very small outdoors areas, which are also closed by a net covering the sky and lacking any equipment.[300]

In the report on the 2004 visit, the CPT expressed concerns on the institution of the "aree riservate", in particular it had found an "unacceptable" case, in the prison of Parma in which a detainee had been kept in *de facto* isolation in one of these areas for about two years.[301]

3.1 Sorveglianza particolare

The regime of *sorveglianza particolare*, as already mentioned, is prescribed by Article 14-bis and regulated by Articles 14-ter and 14-quater of the penitentiary law. It can be imposed on all detainees (also in pre-trial detention), who behave in ways that compromise the safety and the order of the prison, who use menaces or force to impede the activities of other detainees, and who take advantage of the detainee's intimidation felt towards them. It has to be noted that the ratio of the regime is not to punish, but rather a preventive measure used to meet the dangerousness of a detainee and to ensure that the "order and security in the prison are maintained".[302] It is worth to notice that an internal communication of the DAP has underlined that the such a regime should not be used as an answer to "isolated disciplinary offences", which should be dealt through the regular disciplinary sanctions.[303]

The regime can be imposed the first time for six months and, thereafter, it can be renewed every three months. The order of the imposition of the measure has to include the reasons

[300] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', pp. 71, 145.
Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 76-77.
[301] European Committee for the Prevention of Torture, *Rapport au Gouvernement de l'Italie,* 27 April 2006, §84.
[302] L. Cesaris, 'Articolo 14-bis. Regime di sorveglianza particolare', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, p. 164.
L. 354/1975, Article 14-bis.
[303] Coppetta, p. 438.
Cesaris, *Ordinamento penitenziario commentato,* p. 165.

for its application. The authority which imposes it is the penitentiary administration, which has to ask the non-binding opinion of the full disciplinary council (and of the judiciary authority in the case of a pre-trial detainee).[304] Article 14-ter provides a complaint mechanism against the imposition or the reiteration of the measure. The complaint has to be filed to the Surveillance Tribunal, which can rule against the imposition of the measure, but not on the contents of the measure (even though it can express contrariety on their imposition). Following the decision of the Surveillance Tribunal, it is possible to appeal to the Supreme Court of Cassation.[305]

The restrictions imposed by the regime are described in Article 14-quarter. First of all, the Article prescribes that the applied restrictions should be "strictly necessary to maintain the order and security" inside the prison (therefore the regime varies on a case-by-case basis), and prohibits restrictions on hygiene, health, food allowance, clothing, the possibility to read books and newspapers, religious practices, the use of the radio, the two hours out-of-cell daily exercise (which, according to the Surveillance Tribunal of Bologna, should not be carried out in isolation[306]), visits with the lawyer and family; on the other hand, objects that are normally allowed in the prison can be limited only if they constitute a threat to security; moreover, correspondence can be limited following the application of Article 18-ter of the penitentiary law, which does not completely prohibit, but only limits correspondence (except in the case of the lawyer and other mechanisms of control).[307]

On the other hand, as the communal activities are not among the lists of the restrictions, they can be limited. In particular, restrictions can be imposed on the participation to educational programs, cultural and recreational activities, sports, and, "in general, on the freedom of movement inside the prison". Moreover, Article 20 of the penitentiary law prohibits the participation of the inmate in *sorveglianza particolare* to work.[308]

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[304] Cesaris, pp. 167-168.
[305] Cesaris, pp. 173-175.
[306] Tribunale di sorveglianza di Bologna, Ordinanza, 27/09//2011, 2011/1690, con nota di R. Grippo, p. 4.
Grippo, *Diritto Penale Contemporaneo*, p. 8.
[307] Cesaris, p. 177.
Verrina, *Ordinamento penitenziario commentato,* p. 121
[308] L. 354/1975, Article 20.

This regime falls in the scope of this research because, the imposition of all these prohibitions can create a *de facto* solitary confinement regime, which has been declared "without any legal basis" by the Surveillance Tribunal of Bologna in 2011.[309] The Guarantor has, therefore, recommended that "at the national level indications be given to avoid local interpretations of the regime of *sorveglianza particolare* ex article 14-bis of the penitentiary law as a system of continuous isolation".[310]

The Guarantor has highlighted that during his visits he has found the custom, also in this case, to hold detainees undergoing *sorveglianza particolare* in "smooth cells", which is against "the principle of humanity and the respect of human dignity".[311] He has also found (at least in one case) the use of this measure in combination with disciplinary solitary confinement to sanction the same behaviour and has underlined that the central administration should regulate the use of these measures in a way to prohibit their cumulative application.[312] Furthermore, he recommended that detainees held in *sorveglianza particolare* "are ensured access to appropriate human contacts, the participation to communal activities and the possibility to spend time outdoors without being isolated".[313]

In its report on the 1992 visit to Italy, the CPT was satisfied by the regime of *sorveglianza particolare*; however, it "reminded the importance of a program of activities for the detainees undergoing special security measures".[314]

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[309] Cesaris, p. 178
Tribunale di sorveglianza di Bologna, Ordinanza, 27/09//2011, 2011/1690, con nota di R. Grippo, p. 4.

[310] Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale, 'Rapporto sulla visita nella Regione Calabria', *Garante Nazionale dei Diritti delle Persone Detenute e Private della Libertà Personale*, 2016, http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/af2c64c4c9f2e1de78547162deb188ed.pdf, (accessed: 19 February 2017), p. 12.

[311] Garante Nazionale dei Diritti delle Persone Detenute, 'Relazione al Parlamento 2017', p. 70.
Grippo, p. 10.

[312] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nelle Regioni di Veneto, Trentino Alto Adige, Friuli Venezia Giulia', pp. 71-72.

[313] Garante Nazionale dei Diritti delle Persone Detenute, 'Rapporto sulla visita nella Regione Calabria', p. 12.

[314] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Rapport au Gouvernement de l'Italie relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en Italie du 15 au 27 mars 1992*, Strasbourg, 31 January 1995, CPT/Inf (95) 1, §146.

3.2 41-bis regime

There are two different situations in which Article 41-bis can be used: the first is "in exceptional episodes of revolt or in other grave emergences situations" (paragraph 1 of the law) while the second is in case of "grave danger for public order and security" (paragraph two of the law).[315]

In cases falling under the first paragraph of 41-bis, the Minister of Justice can "suspend" in the prison (or in part of it) where the facts are happening "the application of the normal rules of treatment" of the detainees in order to "re-establish order and security". It appears that this provision has never been used and in any case the doctrine believes that the suspension should not involve the fundamental rights of the detainees, which can be found in Article 14-quarter aforementioned.[316]

Normally it is the second paragraph (and the following ones) of the law, which gives origin to the 41-bis regime, which is applied on detainees sentenced, in pre-trial detention or under investigation for mafia-related crimes, terrorism or subversion of democratic order, and who still have connections (which have to be proved) with a criminal, terroristic or subversive organization.[317] In fact, the aim of the law is to cut all links between 41-bis prisoners and their criminal organizations.[318]

The law imposes restrictions on visits with the family (one per month and always audio and video recorded), phone calls (one per month after the first six months of the regime and only to call the family if in the previous month there had been no visit from the family; it is also recorded), censure of the correspondence (except national and international monitoring bodies), limitation on money, goods and object coming from outside the prison, to exchange objects and to cook foods.[319] These restrictions prescribed by law are not the full list, in fact the penitentiary administration can (and does through internal regulations) impose further restrictions to meet "the necessity to prevent contacts with

[315] L. 354/1975, Article 41-bis.
[316] L. Cesaris, 'Articolo 41-bis. Situazioni di emergenza', in F. Della Casa, G. Giostra (ed.), *Ordinamento penitenziario commentato*, Assago, Wolters Kluwer, CEDAM, 2015, pp. 446-447.
[317] Cesaris, *Ordinamento penitenziario commentato*, pp. 451, 454-455.
[318] Cesaris, pp. 447-448.
[319] Cesaris, pp. 459-460, 462-463, 466.

the criminal organization".[320] It has to be noted that, even if the regime is "individualised" (i.e. applied on the single subject in light of the "social dangerousness" of the single inmate), it is applied to all detainees in the same way; for this reason, jurists have pointed out that, in order to reach the aim to address the "social dangerousness" of the single detainee, the "capacity of each subject" to maintain contacts with the criminal organization and "his role inside the organization" should be taken in consideration.[321]

The imposition of the measure is done by a decree of the Minister of Justice after asking the opinion of the public prosecutor who carries out the preliminary investigations or of the judge of the case, and acquiring "any other information" from police forces specialised in fighting mafia-type organizations and organised crime. The decree (the one of first imposition as well as those of subsequent extensions) has to contain the motivations of the imposition and the time of application, which is of four years for the first time and of two years the following extensions. The extensions can be done when it is proved that the inmate's "capacity to maintain ties" with the criminal organization did not cease. It is important to point out that the law explicitly states that "the mere passing of time does not constitute *per se* a sufficient element to exclude the capacity to maintain contacts with the organisation".[322]

It is possible to file a complaint against the imposition of the regime to the Rome Surveillance Tribunal within twenty day of the communication of the imposition of the measure and the Tribunal should carry out the decision in less than ten days; however, in practice this is never the case and the ECtHR has condemned Italy several times for the violation of the right to an effective remedy (Article 13 of the ECHR) and, when the Surveillance Tribunal did not analyse the complaint because the decree had already expired, the ECtHR found a violation of the right to a fair trial (Article 6 of the ECHR). After the decision of the Rome Surveillance Tribunal, it is possible to file an appeal to the Supreme Court of Cassation if the law was wrongfully applied by the Surveillance Tribunal (which can happen in the case of lack of a motivation for the imposition of the measure). If the Surveillance Tribunal decides for the termination of the regime, the

[320] Cesaris, p. 457, 463-464.
[321] Cesaris, pp. 459, 466-467.
[322] Cesaris, pp. 468-470.

Minister of Justice can issue a new order only if there are new elements, which had not been taken in consideration by the Surveillance Tribunal upon deciding on the matter. It is also possible to file a complaint following the same procedure in the case of a violation of the decree by the penitentiary administration during the execution of the measure.[323]

The kind of solitary confinement entailed in this regime is partly different from those previously analysed. In fact, the law prescribes that detainees have the possibility to exercise outdoors for two hours per day in groups that can't be formed by more than four detainees undergoing the same regime. The members of these "sociality groups" have to be chosen by the prison administration and should consider the affiliation to the criminal organization to avoid the placement in the same groups of components of friend or enemy organizations. All efforts have to be done in order to avoid contacts between members of other "sociality groups".[324]
It is important to note that in one case the Surveillance Magistrate of Reggio Emilia considered (provvedimento of 22 November 2012) that the prohibition of communication with other inmates exists only in the case of disciplinary solitary confinement and not in the case of 41-bis.[325]

The 41-bis regime gave rise to concerns to the CPT and was subjected to the judgements of the ECtHR several times.
The Court on one hand has until now recognized the legitimacy of the regime in light of the justification for its use; however, on the other hand it has tackled some particular issues such as the right to an effective remedy or the right to the respect of private and family life and correspondence.[326] Nevertheless, it stated several times that the level of social isolation entailed in the regime is only relative and "it does not constitute *per se* an inhuman or degrading treatment"[327].

[323] Cesaris, pp. 473-478, 481-482.
[324] Cesaris, p. 465.
[325] Palmisano, 'Parere su celle senza suppellettili', §2.
[326] L. Manconi et al., 'Rapporto sul regime detentivo speciale. Indagine conoscitiva sul 41 bis', *Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani*, April 2016, https://www.senato.it/application/xmanager/projects/leg17/file/repository/commissioni/dirittiumaniXVII/allegati/Rapporto_41bis_aprile_2016.pdf, (accessed 15 February 2017), p. 37.
[327] For example:

In the report on the 1992 visit, the CPT addressed the conditions of detentions of the 41-bis, and, in particular, it stressed the importance to allow the detainees to participate to a program of activities in order to reduce the harm that could arise from their isolation.[328]
In the report of the 2008 visit, the CPT stated that inmates should be allowed to keep "genuine human contacts" with the prison staff.[329]
In its latest report on the 2012 visit to Italy, the CPT underlined the changes that the regime had undergone since its previous visit. It furthermore pointed out that the regime was very "impoverished" (caused by the reduction "from five to four" inmates for each sociality group, the reduction from four to two hours of the time that inmates can spend outside their cells, and the lack of activities), and that these restrictions cumulated with the reduction of the "contacts with the outside world [constitute] a form of small-group isolation which may, if applied for prolonged periods, have harmful effects of a psychological and physical nature".[330]
With regard to this topic, the Human Rights Committee in its concluding observations to the latest periodic report of Italy expressed concerns on "the severe restrictions imposed on prisoners in terms of socialization with other inmates" and recommended an improvement of the "communications among prisoners".[331]

Effects of solitary confinement

In order to understand the harm that solitary confinement can do to any isolated person, it is of great importance to look at the scientific discoveries of other disciplines.

1. Observed effects of solitary confinement (1800-1970)

As mentioned in the first chapter, the effects of solitary confinement on inmates were registered at a very early stage of its use; however, the acknowledgement of this practice

European Court of Human Rights, *Affaire de Bagarella c. Italie*, Application no. 15625/04, 7 July 2008, §30.
[328] European Committee for the Prevention of Torture, *Rapport au Gouvernement de l'Italie* 31 January 1995, §92.
[329] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Italian Government on the visit to Italy carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 26 September 2008*, Strasbourg, 20 April 2010, CPT/Inf (2010) 12, §78.
[330] European Committee for the Prevention of Torture, 19 November 2013, §§52, 55-57.
[331] Human Rights Committee, *Concluding observations on the sixth periodic report of Italy*, CCPR/C/ITA/CO/6, 1 May 2017, §§32-33.

as the cause of mental illness among detainees came later; in fact, studies on the effects of solitary confinement are currently being held and the debate on the topic is still vivid.

In the second half of the 1800s physicians formulated several theories that tried to explain the causes of mental illnesses. Some believed that the brain was a "complicated nervous organ" and that mental illness was to be sought in its deformations. Others thought that it was impossible for the mind to fall ill and that the source of mental illness was to be found in the sickness of other organs, which could not properly "serve as tools for the normal activity of mental faculties". Not only it was thought that the mind could not be the cause mental illness, but the fact that the "social conditions could lead to madness" was "almost unconceivable"; therefore, the attention of the studies were concentrated on the physical conditions of detention and on hygiene. Others explained mental illnesses with the hereditary predisposition of the brain that inevitably led to degeneration. Also, some believed that masturbation could cause all sorts of mental disorders and, as inmates were found to perform such acts, this justified the insurgence of mental problems in prisons.[332]

These theories were found by the prison workers and physicians very far from the actual situation in the prions where isolation was used; in fact, they documented the physical and mental health problems of the inmates and understood that they were caused by solitary confinement. At times, they tried to prove their findings, alleviated the effects of isolation, and advocated for the reduction of its use or its total abolition, as it was clear to them that it did not have the power to rehabilitate offenders.[333]

As we have already seen, towards the end of the 18th century, the extensive use of solitary confinement as a rehabilitative tool was abandoned in light of its harmful effect in almost

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[332] P. S. Smith, 'Isolation and Mental Illness in Vridsløselille 1859-1873. A New Perspective on the Breakthrough of the Modern Penitentiary', *Scandinavian Journal of History*, 2004, Vol. 29, No.1, pp. 9-11, 19-21.
Smith, 2006, pp. 457-458.
P. S. Smith, ' "Degenerate Criminals". Mental Health and Psychiatric Studies of Danish Prisoners in Solitary Confinement 1870–1920', *Criminal Justice and Behavior*, 2008, Vol. 35, No. 8, pp. 1058-1059, 1062.
[333] Smith, 2004, pp. 8-9, 11, 16-18.
Smith, 2006, pp. 457-462.
Ignatieff, pp. 117-118, 195-196.
Grassian, 2006, pp. 341-342, 368.

all Countries that had adopted it to this end. However, in the "international community of prison experts" the debate on whether isolation could indeed cause harmful effects remained open until 1930, when it was finally recognized that "solitary confinement in the case of sentences of short duration has advantages but also certain inconveniences", that could be overcome by providing "adequate medical service and a system of classification of prisoners". Moreover, the experts recommended that long sentences be carried out in commune and not in isolation.[334]

In the 1950s and 1960s studies on solitary confinement, brainwashing, sensory and perceptual deprivation were carried out in the United States in the framework of the Cold War. Unfortunately, most of these studies aim to research the effects of sensory and perceptual deprivations, and only some of them focus on solitary confinement alone.[335]

2. Recent and contemporary studies

Notwithstanding the presence of at least some Cold War studies on solitary confinement, it is interesting to note that when, in 1983, Stuart Grassian carried out his first study on isolated inmates at the Walpole State prison, he could compare his findings only with 19th century studies because he could not find any other more recent study.[336]

Recently, several literature reviews have summoned up the findings of a vast number of studies and observations by the prison staff on the effects of solitary confinement. According to Smith, the debate can be considered settle on the "basic issue", that is that "solitary confinement – regardless of specific conditions and regardless of time and place – causes serious health problems for a significant number of inmates".[337]

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[334] Smith, 2006, p. 467.
N. K. Teeters, *Deliberations of the International Penal and Penitentiary Congresses: Questions and Answers, 1872-1835*, Philadelphia, Temple University Bookstore, 1949, available at: https://babel.hathitrust.org/cgi/pt?id=uc1.b3914948;view=1up;seq=182, p. 172.
[335] Smith, 2006, pp. 442, 469-471.
Grassian, 2006, pp. 343-344, 380-383.
SGrassian, 'Psychopathological effects of solitary confinement', *American Journal of Psychiatry*, 1983, Vol. *140,* No. 11, p. 1450.
[336] Grassian, *American Journal of Psychiatry,* 1983, p. 1450.
[337] Smith, 2008, p. 61.

Craig Haney[338] and Peter Scharff Smith[339] (but also many others)[340] give a detailed list of effects of solitary confinement, which were found in several studies, publications and researches. The division in the categories below is taken from the 2006 Smith's study, while the symptoms are collected among the studies cited at the beginning of this paragraph.

Physiological Symptoms and Reactions: severe headaches, heart palpitations, perspiring hands, trembling, hypertension, hypersensitivity to perceptual stimuli (e.g. sounds are perceived as very loud) that "produce dramatic overreactions", pains in the abdomen and in the chest and "muscle pains in the neck and back". Moreover, problems with digestion, appetite disturbances, diarrhoea, weight loss, dizziness, fainting.
Confusion and Impaired Concentration: confusion, problems with thinking, concentration, and memory loss, that result in the inability to focus enough to read, watch television, and to understand what is happening.
Hallucinations, Illusions, and Paranoid Ideas: paranoia, hallucinations, perceptual distortions (e.g. wavering of the cell walls), illusions, hearing voices without understanding if they are real or not, talking to oneself, development of aggressive or violent fantasies which are often difficult to stop.
Emotional Reactions and Impulsive Actions: depression, panic attacks, anxiety, "problems with impulse control", irritability, uncontrollable violence, self-mutilation, suicide ideation and attempts, hopelessness, a sense of impending emotional breakdown, aggression and rage, negative attitudes and affect[341].
Lethargy and Debilitation: lethargy, chronic tiredness, identity disintegration, insomnia and sleep disturbances, loss of sense of time, difficulty in maintaining "a normal day-night sleep cycle", withdrawal.

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[338] The studies of Haney are more oriented to supermax-like solitary confinement.
Haney, 2003, pp. 130-133.
[339] Smith, 2006, pp. 488-493.
[340] For example:
Grassian, 1983, pp. 1452-1453.
Grassian, 2006, pp. 332, 335-336.
United Nations General Assembly, 2008, p. 23.
[341] Term that "encompasses both emotions and moods. Positive affect refers to positive emotions and mood, negative affect refers to negative emotions and moods". Definition from: M. W. Eysenck and M. T. Keane, *Cognitive Psychology. A Student's Handbook,* Hove, Psychology Press, 2015, p. 636.

Because each person is different "medically, physically and […] psychologically", then each inmate reacts to solitary confinement in a different way and experiences different symptoms in more or less severe forms. Moreover, it has been observed that the symptoms presented by isolated inmates can vary substantially depending on the conditions under which solitary confinement is carried out and on the level of imposed social isolation.[342]

A different categorization of the symptoms is done by Haney and helps to understand the depth of the suffering that people undergoing solitary confinement experience in a supermax prison.[343]

The first category is a list of twelve Symptoms of Psychological and Emotional Trauma, which are "regarded as reliable indicators of general psychological distress". The symptoms of this category are: nervousness and anxiety, headaches, lethargy and chronic tiredness, trouble sleeping, impending nervous breakdown, perspiring hands, heart palpitation, loss of appetite, dizziness, nightmares, hands trembling, fainting. In his 2003 study[344] in a supermax prison he found that half of the inmates suffered from all the symptoms (apart from fainting), almost all of them suffered from the first four (nervousness and anxiety, headaches, lethargy and chronic tiredness, troubled sleeping), and circa 70% of them suffered from the following three (impending nervous breakdown, perspiring hands, heart palpitations). In a more recent conference, Haney points out that during the years of his research he had the opportunity to collect much more data, and that it all points to the same result: that all inmates in solitary confinement "experience severe distress and psychic pain".[345]

[342] Grassian, 1983, pp. 1453-1454.
Smith, 2006, pp. 474, 488, 493.
Haney, 2003, p.132.
United Nations General Assembly, *Interim Report of the Special Rapporteur on Torture,* 2008, p. 23.
Haney, *Law & Neuroscience Conference 2017. A Question of Fit: Translating Neuroscience for Law, Clinical Care & Policy*.
[343] Haney, 2003, pp. 132-137.
[344] See Table 1 below
[345] Haney, *Law & Neuroscience Conference 2017,* 2017.

TABLE 1: Symptoms of Psychological and Emotional Trauma

Symptom	*% Presence Among Pelican Bay SHU Prisoners*
Anxiety, nervousness	91
Headaches	88
Lethargy, chronic tiredness	84
Trouble sleeping	84
Impending nervous breakdown	70
Perspiring hands	68
Heart palpitations	68
Loss of appetite	63
Dizziness	56
Nightmares	55
Hands trembling	51
Tingling sensation[a]	19
Fainting	17

NOTE: SHU = security housing unit.
a. Not necessarily a symptom of psychological trauma. It is included as a control question to provide a baseline against which to measure the significance of the trauma-related responses.

Table 1: Symptoms of Psychological and Emotional Trauma from Haney's 2003 study in the Pelican Bay SHU Prison. The numbers on the right indicate the percentage of detainees that reported experiencing the symptom on the left side of the table.[346]

The second category is a list of Psychopathological Effects of Prolonged Isolation: ruminations ("obsessive thinking about issues"[347]), irrational anger, oversensitivity to stimuli, confused thought process, social withdrawal, chronic depression, emotional flatness, mood and emotional swings, overall deterioration, talking to self, violent fantasies, perceptual distortions, hallucinations, suicidal thoughts. In his 2003 study[348] he found that more than 80% of inmates suffered from the first five: ruminations (or "intrusive thoughts"), irrational anger, oversensitivity to stimuli, confused thought processes (or "difficulties with attention and often with memory"), social withdrawal (e.g. the avoidance of social contact). Between 60% and 70% of inmates suffered from the following six (chronic depression, emotional flatness, mood and emotional swings, overall deterioration, talking to self, violent fantasies), and less than half of them "reported symptoms that are typically only associated with more extreme forms of psychopathology": perceptual distortions (44%), hallucinations (41%), and thoughts of suicide (27%).

[346] Haney, 2003, p. 133.
[347] Eysenck and Keane, *Cognitive Psychology,* p. 645.
[348] See table 2 below

TABLE 2: Psychopathological Effects of Prolonged Isolation

Symptom	*% Presence Among Pelican Bay SHU Prisoners*
Ruminations	88
Irrational anger	88
Oversensitivity to stimuli	86
Confused thought process	84
Social withdrawal	83
Chronic depression	77
Emotional flatness	73
Mood, emotional swings	71
Overall deterioration	67
Talking to self	63
Violent fantasies	61
Perceptual distortions	44
Hallucinations	41
Suicidal thoughts	27

NOTE: SHU = security housing unit.

Table 2: Psychopathological Effects of Prolonged Isolation from Haney's 2003 study in the Pelican Bay SHU Prison. The numbers on the right indicate the percentage of detainees that reported experiencing the symptom on the left side of the table.[349]

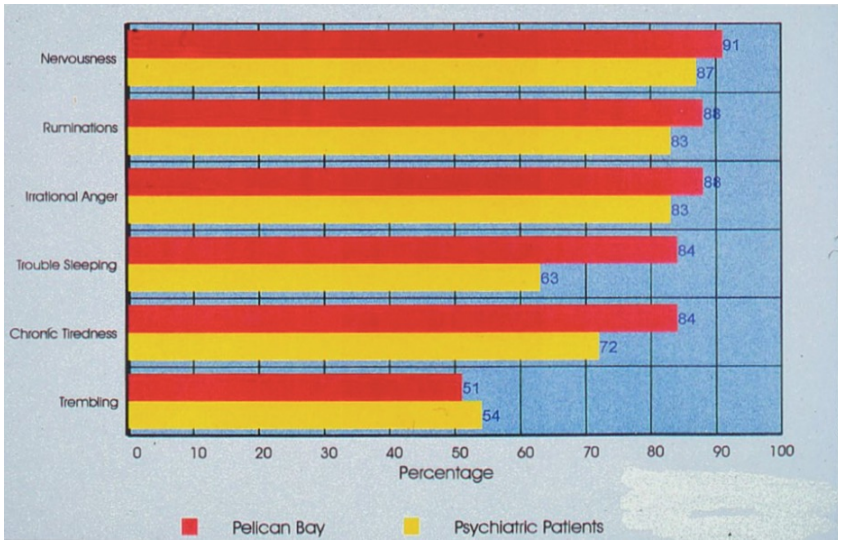
2.1 Analysis of some of the symptoms

It is possible to comment some of these symptoms from different points of view.

First of all, already in his 2003 study, Haney had noted that many of the symptoms that isolated inmates experienced were very similar to those suffered from post-traumatic stress disorder[350] (PTSD)[351]; however, since then, he conducted some further studies that aimed to find a group of people that could be compared to them in terms of traumatisation. The only result that Haney could find "in the medical and psychiatric literature" was a group of political prisoners, who, after escaping from East Germany, looked for psychiatric care in West Germany. Graph 1 below shows that "the Pelican Bay sample was actually even more traumatized than that group".[352]

[349] Haney, 2003, p. 134.
[350] "Posttraumatic stress disorder is a diagnosis, which consists of a set of symptoms, which occurs after a traumatic exposure. Only, if the exposure to trauma evokes an intense feeling of fear or horror or helplessness, PTSD can be diagnosed. It is a sever anxiety disorder." Definition from: B. Lueger-Schuster, 'Psychological consequences of torture', in M. Nowak, K. M. Januszewski, & Hofstätter (ed.), *All Human Rights for All*, Vienna – Graz, Neuer Wissenschaftlicher Verlag GmbH Nfg KG, 2012, p. 352.
[351] Haney, 2003, p. 132.
[352] Haney, 2017.

Graph 1: Comparison of the traumatization of Pelican Bay prisoners with psychiatric patients from East Germany



Graph 1: Comparison between the percentages of people that reported experiencing the symptom on the left side of the graph. In red, the Pelican Bay Prison inmates (the numbers are from the 2003 study); in yellow, the psychiatric patients from East Germany.[353]

Grassian describes solitary confinement as toxic and associates with the symptoms that he measured on the inmates in the course of his studies ("Hyperresponsivity to External Stimuli", "Perceptual Distortions, Illusions, and Hallucinations", "Panic Attacks", Difficulties with Thinking, Concentration, and Memory", "Intrusive Obsessional Thoughts", "Overt Paranoia", and "Problems with Impulse Control") a real isolation syndrome similar to "delirium" that he describes as "strikingly unique". Moreover, he points out that some of the described symptoms are "found in virtually no other psychiatric illness", while others are "a rare phenomenon in psychiatry". For example, "loss of perceptual constancy (objects becoming larger and smaller, seeming to 'melt' or change form, sounds becoming louder and softer, etc.)" is usually "associated with neurological illness" and doesn't exist as a psychiatric illness. Other symptoms that he labels as rare in psychiatry are: "acute dissociative, confusional psychoses", "cases of random, impulsive violence in the context of such confusional state", "severe and florid perceptual distortions, illusions, and hallucinations", and "hyperresponsivity to external stimuli" [which is] so rare that the appearance of this symptom also might suggest an

[353] Haney, 2017.

organic brain dysfunction etiology".[354]

Also with regard to depression, stress, and anxiety, which severely affect isolated inmates, it is possible to draw some considerations.

First of all, individuals suffering from anxiety or depression "differ from healthy individuals in several ways".[355]

From a psychological point of view people suffering of depression or anxiety experience more problems in emotion regulation (i.e. overriding the "initial, spontaneous emotional response") and their states tend to be increased by rumination. Moreover, individuals suffering from anxiety are very sensitive to threatening stimuli and tend to interpret ambiguous situations, especially those "potentially involving social or intellectual threat" in a threatening way. On the other hand, depressed individuals are more prone to ruminate on negative past experiences or feelings and tend to make more risky decisions as a way to react to an environment perceived as unrewarding.[356]

From a neurological perspective, it has been found that individuals suffering from depression or stress "for extended periods" had a reduced hippocampus, which is involved in "memory, geographic orientation, cognition and decision-making".[357]

From a physiological point of view, stress causes increased blood pressure and heart rate, it releases "adrenaline and noradrenaline" and directs the "blood flow to the muscles and brain", thus, increasing the sensibility of neurons to stimuli, but also reducing the blood flow (vasoconstriction) to other areas of the body, such as "the renal, gastrointestinal, and skin beds".[358] A reduced blood flow causes less "blood tissues exchanges" and in the long run causes "focal damage in most body organs, including the brain, heart, and kidney".[359]

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[354] Grassian, 2006, pp. 333, 335-338.
[355] Eysenck and Keane, p. 668.
[356] Eysenck and Keane, pp. 643, 645, 658, 667, 673.
[357] J. Stromberg, 'The science of solitary confinement. Research tells us that isolation is an ineffective rehabilitation strategy and leaves lasting psychological damage', *Smithsonian.com*, 19 February 2014, available at: http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/, (accessed: 5 July 2017).
[358] K. Taylor, *Brainwashing. The science of thought control,* Oxford, Oxford University Press, 2004, available from eBook Super Collection – Austria, (accessed 10 May 2016), p. 153.
P. I. Korner, *Essential Hypertension and Its Causes. Neural and Non-Neural Mechanisms*, New York, Oxford University Press, 2007, available from eBook Super Collection – Austria, (accessed 27 June 2017), p. 323.
[359] Korner, *Essential Hypertension and Its Causes*, p. 542.

Moreover, thanks to "the release of glucocorticoid hormones", the metabolism is induced "to release more energy from fat stores and allow more glucose to reach and energize the brain". While these alterations of the body allow the individual to better face a dangerous situation, in the long run "high levels of adrenaline and glucocorticoids can damage the heart and muscles, [and] weaken the immune system, leaving the person more vulnerable to infections". Other effects of stress are high blood pressure and hypertension (reported as a physiological symptom of solitary confinement).[360] Headaches, heart palpitations, perspiring hands and trembling (also widely found in isolated inmates) are symptoms normally associated to hypertension.[361] People suffering from hypertension "tend to be more assertive, have higher levels of anxiety and defensiveness, show more repressive anger and feelings of depression, and have a greater capacity of self-deception".[362] Apart from taking medication, among the "physiological antidotes to essential hypertension are exercise training and social support", two elements that people in solitary confinement are greatly missing.[363]

Furthermore, it is important to note that several studies[364] found self-harm and suicides to be more prevalent in solitary confinement, where inmates perform such acts either because of the insurgence of mental health problems, because of despair or failure to adapt to the prison condition (especially in the first hours of incarceration) or with a manipulative intent (i.e. with the aim to avoid solitary confinement), than in the general prison population. In particular, the study conducted by Kaba et al. found that isolated inmates with 18 years of age or younger, or with severe mental problems (or a

[360] Korner, pp. 317, 338.
Taylor, *Brainwashing,* p. 153.
[361] Haney, 2003, p. 133.
[362] Korner, p. 334.
[363] Korner, pp. 358, 545.
B. Williams, 'Harm vs. Benefit. The Health Consequences of Solitary Confinement', *Law & Neuroscience Conference 2017. A Question of Fit: Translating Neuroscience for Law, Clinical Care & Policy*, UCSF/UC Hastings Consortium on Law, Science and Health Policy, California, February 16-17, 2017, http://www.ucconsortium.org/events/law-neuroscience-conference-2017/, (accessed: 29 June 2017).
[364] F. Kaba et. al., 'Solitary Confinement and Risk of Self-Harm Among Jail Inmates', *American Journal of Public Health*, 2014, Vol. 104, No. 3, pp. 444-447.
Haney 2003, p. 131.
Smith, 2006, pp. 453, 499-500.
Haney, 2017.

combination of the two) were more prone to engage in non-lethal self-harm, while older isolated inmates were more prone "to commit potentially fatal self-harm". It is important to note that any act of self-harm, whether "reflecting a true interest in severe self-harm or suicide" or performed with a manipulative intent, can have severe consequences.[365]

With regard to the Italian case, it is possible to find several studies on the phenomenon of suicide in detention. In general, the frequency of suicide is higher in the first year of detention (and especially in the first weeks or days) and in the case of remand detainees.[366] One study carried out by Pietro Buffa pointed out that between 2008 and 2010, the 68.6% of the suicides took place in sections where a "closed regime" was applied. A closed regime usually means that detainees are for the most part of the day locked in their cells and that their only possibility to socialize is with their cellmate. The study further noticed that almost half of the suicides that took place in these sections were perpetrated by inmates who were place alone in a cell, which means that the 33% of the total suicidal acts took place in solitary confinement-like conditions.[367]

2.2 Duration of solitary confinement and its effects

The troubling effects of isolation can be registered even after a few days (or, in some cases, even after a few hours) spent in solitary confinement; however, normally they start to be seen between two and four weeks and become chronic after one or two months. The longer the time spent in confinement, the more damaging its effects.[368] It is also possible to observe that several studies have found a change in the electroencephalography[369] (EEG) frequencies only after a few days of solitary confinement. The changes are very

[365] Kaba et. al., *American Journal of Public Health*, pp. 444-447.
[366] E. Cinosi et al., 'Suicide in Prisoners: An Italian Contribution', *The Open Criminology Journal,* 2013, Vol. 6, pp. 22-25.
E. Pini et al., 'Valutazione e prevenzione del rischio auto/etero lesivo e suicidario in carcere: l'attività di un DSM', *Rivista Sperimentale di Freniatria*, 2015, Vol. 139, No. 3, pp. 150-152.
Comitato Nazionale per la Bioetica, *Il Suicidio in Carcere. Orientamenti Bioetici*, 25 June 2010, pp. 8-9, 12-13.
[367] P. Buffa, 'Il suicidio in carcere: la categorizzazione del rischio come trappola concettuale ed operativa', *Rassegna Penitenziaria e Criminologica*, 2012, No. 1, pp. 7-118, available at: http://rassegnapenitenziaria.it/rassegnapenitenziaria/cop/741125.pdf, (accessed 28 July 2017), p. 62.
[368] Smith, 2006, pp. 494-495.
United Nations General Assembly, 2008, p. 23.
Haney, 2003, p. 132.
[369] "Recording the brain's electrical potentials through a series of scalp electrodes." Definition from: Eysenck and Keane, p. 718.

similar to those registered in subjects undergoing sensory or perceptual deprivation.[370] In a 1972 experiment with volunteer detainees held in solitary confinement, the change to slower EEG frequencies was registered already from the fourth day in isolation and continued to decline to the end of the seven-day experiment. This change was interpreted in two way: as "a tendency toward increased theta activity [that] occurs with frustration and stress", or "as an index of adaptation to isolation".[371] Grassian finds this "abnormal pattern" a "characteristic of stupor and delirium" that impairs the capacity of the individual to maintain "an adequate state of alertness and attention to the environment". This causes three different effects: overreactions to external stimuli, "the inability to focus" on a particular task (e.g. reading or thinking), and "the inability to shift attention" from unpleasant thoughts.[372]

Haney also studied the effects to long-term solitary confinement (ten years or more), and observed that throughout the imprisonment in supermax-like condition, the symptoms experienced by the inmates did not fade: both the mean number of symptoms and their mean intensity was almost twice as much as in the general prison population.[373]

> Even though they had been in isolation for ten years or longer […] they had not gotten used to the experience. They had not acclimated to this environment, they were still suffering ten, fifteen, twenty years later compared to the counterpart in the mainline prison population.[374]

Furthermore, he was able to isolate the effects of long-term solitary confinement in a category that he names "Social Pathologies". The inmates suffering from these type of effects, are usually those who seem to adjust well to solitary confinement, who do not present any of the clinical symptoms, and who manage to function well in isolation. These detainees usually have spent long periods of time in solitary confinement and their

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[370] Smith, 2006, p. 471.
P. Gendreau et al., 'Changes in EEG Alpha Frequencies and Evoked Response Latency During Solitary Confinement', *Journal of Abnormal Psychology*, 1972, Vol. 79, No. 1, pp. 54-59.
Grassian, 2006, pp. 345-346.
[371] Gendreau et al., *Journal of Abnormal Psychology*, pp. 54-59.
[372] Grassian, 2006, pp. 330-332.
[373] Haney, 2017.
[374] Haney, 2017.

"patterns of thinking, acting, and feeling" have changed in a so gradual way that the change has gone unnoticed to themselves and to others. They have basically learnt "to leave without people" by becoming "asocial beings". The downside of learning to live alone is that they become "dysfunctional" in social settings, in fact they usually manifest problems when returned to the general prison population or upon release.
These "Social Pathologies" identified by Haney are several, "are not mutually exclusive" and inmates might move from one to another or use a combination of them in order to adapt to solitary confinement.[375]

First of all, inmates experience problems in regulating their own behaviour, and "may become uncomfortable with even small amounts of freedom".
Secondly, they lose "the ability to initiate behaviour of any kind" and a subsequent "chronic apathy, lethargy, depression, and despair".
Further, they experience loss of identity, of connection to the social world, but also a real "ontological insecurity", meaning that inmates sometimes doubt if they "still exist".
The lack of social interactions also causes the detainees to lose the capacity to deal with them; therefore, they feel uncomfortable, disoriented and even frightened by social situations. This causes them, once they are once again into a social setting, to keep separated from the others: this is called "social withdrawal". In the most serious cases they might even end up creating "their own reality" and "live in a world of fantasy".
Finally, they experience frustration and fantasies of revenge that fill some inmates with anger and cause them rage outbursts; others devote themselves to "fighting against the system" that dehumanizes them so much.[376]

Even if Haney's study clearly shows the dangers of long-term solitary confinement on those inmates, who seem to adapt well and who don't show nor complain of any sign of illness, the debate is not settled. Some studies (in opposition to Haney's view) interpret the lack of any symptom as a "sign of healthy coping strategy"[377], while others (who

[375] Haney, 2003, pp. 137-141.
Haney, 2017.
[376] Haney, 2003, pp. 137-141.
Haney, 2017.
[377] Smith, 2006, p. 474.

come to the same conclusion as Haney) interpret it very negatively, because they acknowledge the problems arising after leaving solitary confinement (e.g. social withdrawal).[378]

The question on whether the symptoms recede upon the termination of solitary confinement is also of interest. Most of the authors agree that normally the symptoms (even the acute ones) quickly diminish and fade with time, but this varies on a case-by-case basis. On the other hand, those who have endured prolonged periods of solitary confinement and who started to suffer from different forms of "social withdrawal" are very likely to be affected by isolation permanently.[379]

2.3 Neuroscience

Another very interesting perspective that can be brought as a further remark of the harmful effects of solitary confinement is that of neuroscience.

It is usually believed that once an individual becomes adult, his brain will not change anymore; however, this is very far from the truth, in fact, "brains change all the time" in response to any stimulus perceived by the senses.[380]

The question as to how solitary confinement affects the brain has been the object of a very recent study carried out by Professor Michael Zigmond from the University of Pittsburgh. He didn't perform such a study on humans, but rather on mice, which are also social animals. He separated the mice in two groups: one was placed in a so-called "enriched environment", where they had toys and lived in community; the other group was housed in single solitary confinement cells without any stimulus.

The changes on the brain were dramatic after only four months. It is possible to look at image 1 below, that shows the areas of the brain that were affected by the lack of social interaction and their associated function; namely: "decision making", "motivation and

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[378] Smith, 2006, p. 474.
Grassian, 2006, pp. 329, 333, 353-354.
[379] Smith, 2006, pp. 484, 495-497.
Grassian, 2006, pp. 332, 354.
Haney, 2003, p. 141.
Grassian, 1983, Vol. *140,* No. 11, p. 1453.
[380] K. Taylor, *Brainwashing. The science of thought control,* Oxford, Oxford University Press, 2004, available from eBook Super Collection – Austria, (accessed 10 May 2016), p. 115.

reward", "learning, memory, and navigation" and "motor function". In all these areas "profound neurochemical changes" have been measured as a result of isolation. Moreover, it has been observed that isolated mice had a lower "capacity to overcome inflammation and infection", so they became sick easier, and to "overcome accidental stress". [381]

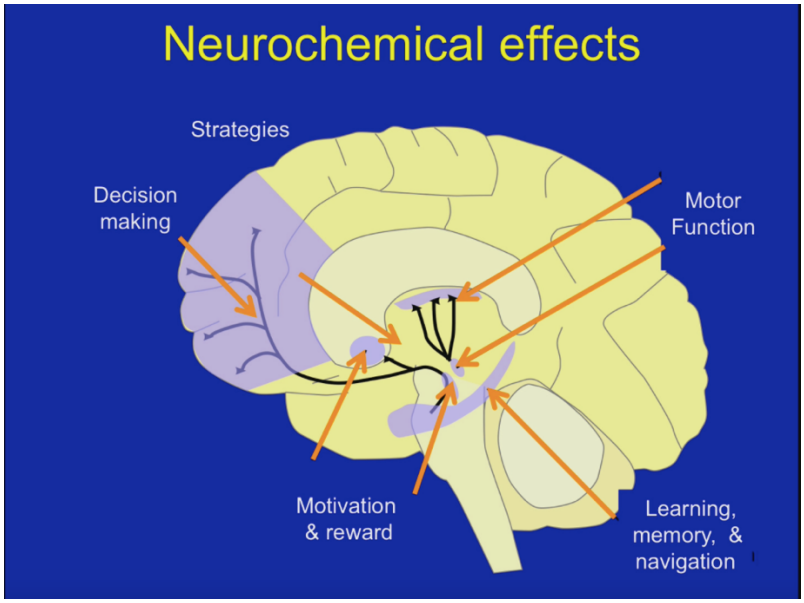

Image 1: Areas of the brain that affected by the lack of social interaction and their associated function.[382]

Image 2 below shows the "anatomical changes" that were measured in the brains of isolated mice, meaning that the structure of the brain cells dramatically changed in only four months.

At the top-left corner it is possible to see a normal neuron from the cerebral cortex. [383] Every neuron is formed by one axon, that sends inputs to other neurons, a cell body that organizes the life of the cell, and many dendrites, that receive inputs from other cells.[384] On the other hand, at the bottom-left corner of the image, it is possible to see the neuron

[381] M. Zigmond, 'Consequences of isolation. Insights from and regulation for animal studies', *Law & Neuroscience Conference 2017. A Question of Fit: Translating Neuroscience for Law, Clinical Care & Policy*, UCSF/UC Hastings Consortium on Law, Science and Health Policy, California, February 16-17, 2017, http://www.ucconsortium.org/events/law-neuroscience-conference-2017/, (accessed: 29 June 2017).
[382] Zigmond, *Law & Neuroscience Conference 2017,* 2017.
[383] Zigmond, 2017.
[384] Taylor, p. 108.
Zigmond, 2017.

of a mouse that has undergone solitary confinement: both the axon and the dendrites are "dramatically reduced".

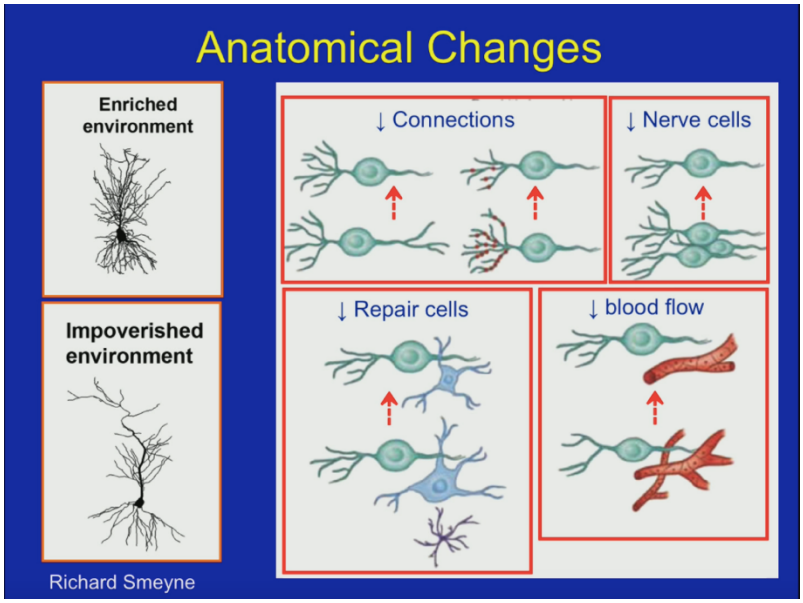

Image 2: Anatomical changes in the brain of mice after four months of isolation.[385]

Each of the four red boxes on the right side of the image shows the comparison between the effects of an enriched environment (at the bottom of each box) and the effects of isolation (at the top of each box). From these images, it is possible to observe that there are "fewer connections", "fewer neurons", "fewer repair cells" ("factors" that are activated when the neurons "get into trouble"); moreover, the "blood flow, which is essential for bringing nutrients into the brain and to taking toxins out of the brain is dramatically impaired because there are fewer blood vessels [and] fewer capillaries".[386]

Professor Michael Zigmond also points out that it is possible to see the effects of isolation on the behaviour of animals only after a few days of confinement: they become more aggressive when put back with another animal and they tend to stay by themselves without interacting with the others.[387]

[385] Zigmond, 2017.
[386] Zigmond, 2017.
[387] Zigmond, 2017.

2.4 Specific groups

2.4.1 Pre-trial/remand detainees

Several studies[388] have observed how much more straining imprisonment is on prisoners on remand when they are held in solitary confinement, if compared to non-isolated prisoners on remand (who are also under stress). This is particularly true for those who are imprisoned for the first time, in fact, they experience all the adjustment problems related to incarceration and the stress related to being subjected to solitary confinement.[389] Moreover, it was observed that solitary confinement entails higher risks "of damaging the mental health of the imprisoned individuals", "of hospitalization […] for psychiatric reasons", and of suicides (the risk is higher in the very few hours and up to the first fourteen days of imprisonment) or self-harm.[390]

The reasons of such higher risks are usually identified with the "overwhelming feeling of uncertainty" related to the developing of the case, with the absence of a precise time limit of the isolation measure, and with the rise of the levels of stress caused by inactivity, the disruption of social links and low levels of sensory deprivation.[391]

The use of solitary confinement during pre-trial detention also entails the danger that the measure be used as a way to extort a confession from a pre-trial detainee, who might be willing to reveal information or plead guilty in order to be transferred to the general prison population.[392] Many researchers and the United Nations outlawed this practice.[393]

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[388] C. Haney et al., 'Examining jail isolation: what we don't know can be profoundly harmful', *The Prison Journal*, 2016, Vol. 96 No. 1, p. 143.
Smith, 2006, pp. 478-480, 498.
H. S. Anderson et al., 'A longitudinal study on prisoners on remand: psychiatric prevalence, incidence and psychopathology in solitary vs. non-solitary confinement', *Acta Psychiatrica Scandinavica*, 2000, Vol. 102, No. 1, pp. 23-24.
[389] Haney et al., *The Prison Journal*, 2016, p. 143.
Smith, 2006, p. 498.
[390] Smith, 2006, p. 478-479, 498-500.
[391] Smith, 2006, p. 498.
Anderson et al., *Acta Psychiatrica Scandinavica*, p. 24.
[392] Smith, 2006, pp. 500-502.
[393] Smith, 2006, p. 502.
United Nations General Assembly, 2008, p. 23.
United Nations General Assembly, 2011, §73.

Some argue that solitary confinement causes a breach of the right to defence, as the effects of the measure impede the pre-trial detainee to function properly in order to prepare his own defence.[394]

2.4.2 Mentally ill

With regard to the mentally ill, it has been found that solitary confinement is likely to exacerbate their existing condition and it has, therefore, been established that this particularly vulnerable category of people should not be exposed to such a measure neither as a punishment nor as a treatment.[395]

Moreover, setting aside those suffering from a mental condition, the individuals who are likely to be more affected by solitary confinement, are those, who are "emotionally unstable, who suffer from clinical depression or other mood disorders", along with "individuals with primitive or psychopathic functioning or borderline cognitive capacities, impulse-ridden individuals".[396]

2.4.3 Protective custody

Another widespread use of solitary confinement is that of protective custody. This form of protection is normally requested by and granted to vulnerable groups such as LGBT inmates and cooperating witnesses. A study of 1988 of Brodsky and Scogin (reported by Haney[397] and Smith[398]) found that, as they are normally housed in conditions that are very similar to those of punitive solitary confinement, they are very likely to suffer the same effects as the other isolated inmates. The study found that "social isolation" could have been a "possible cause" for the rising of these symptoms along with the lack of "sufficient stimulation and activities" and that the prison administration should have provided such activities to the inmates.[399]

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[394] Smith, 2006, p. 502.
[395] Grassian, 2006, pp. 332-333.
Haney, 2003, p. 142.
United Nations General Assembly, 2008, p. 24.
United Nations General Assembly, 2011, §86.
[396] Haney, 2003, p. 142.
Grassian, 2006, p. 348-349, 350-351.
[397] Haney, 2003, pp. 136-137.
[398] Smith, 2006, p. 483.
[399] S. L. Brodsky, and F. R. Scogin, 'Inmates in Protective Custody: First Data on Emotional Effects', 1988 *Forensic Reports,* Vol. 1, pp. 267–80. Cited in Smith, 2006, p. 483.

2.5 Other field-related studies

2.5.1 Harms to the warden

In the literature regarding the effects of solitary confinement it is very difficult to find studies that take into consideration the harm that such practice causes on the people who work inside places of detention. The question arises especially in those prison systems where solitary confinement is extensively used. One study on solitary confinement which included this aspect was carried out by Rhodes in 2004 and pointed out the stressful environment to which the prison guards are subjected, the stringent regulations to which they have to abide and the informal rules (or mentalities) that are formed inside the prisons (or the unites) over time.[400] Also Haney, in a very recent paper, analysed this particular topic and concluded that the continuous repression and the repetition of the use of violence, force, and humiliation used by the prison guards causes them to "naturally become desensitized to these actions". Moreover, these behaviours, "traditions" and "values" are passed down from a generation of prison guards to the following, thus keeping alive this kind of toxic environment.[401]

2.5.2 Short-term solitary confinement as a punishment

Of particular interest is a 2015 study of an associate Professor, Robert G. Morris on the "effectiveness" of the use of "short-term solitary confinement as a punishment" in response to an act of violence perpetrated by an inmate.[402] The research was carried out in 70 prisons in Texas, where the maximum time in punitive isolation is of 15 days (the inmate has to spend 72 hours in the general population between each 15 days in isolation); solitary confinement in this case is a 23-hour confinement. The study divided two fairly homogeneous groups of inmates between those who, after a violent misconduct were placed in punitive confinement, and those who, after a violent misconduct were not

[400] L. A. Rhodes, *Total confinement. Madness and Reason in the Maximum Security Prison*, London, University of California Press, 2004, pp. 12, 26-27, 46-48, 57-58, 61, 65, 75-76, 80, 100, 131-134, 138, 193- 197, 205-206.
[401] Haney, 2008, pp. 969-970, 979.
[402] R. G. Morris, 'Exploring the Effect of Exposure to Short-Term Solitary Confinement Among Violent Prison Inmates', *Journal of Quantitative Criminology*, 2015, Vol. 32, p. 1.
K. Horner, 'Criminologist Challenges the Effectiveness of Solitary Confinement', *The University of Texas at Dallas*, 31 March 2015, http://www.utdallas.edu/news/2015/3/31-31472_Criminologist-Challenges-the-Effectiveness-of-Soli-_story-wide.html, (accessed 23 June 2017).

punished in this way (taking into consideration a variety of variables). Professor Robert Morris, in order to evaluate the "effectiveness" of the measure, measured for each group if a second violent act occurred within one year from the first violent infraction and how many days it took to the inmate to commit it (when it did). The results show that solitary confinement doesn't have any "substantive effect" (positively or negatively) in the inmate's engagement in a second violent act, nor makes any "substantive difference in the timing to subsequent violence". Therefore, Professor Robert Morris questions the "utility" of the practice as a tool to manage prisons.[403]

Concluding remarks

Professor Michael Zigmond concludes his speech at the (already cited) conference by stating that "social interaction" is an element of "absolute essential nature" and that "our brain requires social interaction" in order to remain healthy.[404] On the other hand, long-lasting "social deprivation" (also referred as "social exclusion" reduced "meaningful social contact", deprivation of "meaningful human contact") has been found harmful for several reasons and it is believed to be the central harmful feature of solitary confinement.[405] In fact, many inmates in solitary confinement experience an insufficient "level of social and psychological stimulus […] to remain reasonably healthy and relatively well-functioning".[406] The reason is that the lack of meaningful human contact undermines the very essence of the self and it impairs its capacities from a cognitive, emotional and social point of view: it has a destabilizing effect on the thoughts and emotions of individuals, who might not be able to understand the appropriateness of their feelings and emotional reactions. Also, it has been found a cause of increased "health problems", "physical morbidity and mortality".[407] Research further indicates that even

[403] Morris, *Journal of Quantitative Criminology,* pp. 15, 21.
Horner, *The University of Texas at Dallas*.
[404] Zigmond, 2017.
[405] Smith, 2006, p. 488.
Smith, 2008, p. 60.
Haney et al., 2016, pp. 141-142.
United Nations General Assembly, 2008, p. 23.
Grassian, 2006, p. 354.
[406] Smith, 2006, p. 488.
Smith, 2008, p. 60.
United Nations General Assembly, 2008, p. 23.
[407] Haney et al., 2016, pp. 141-142.

the isolation in small groups in a variety of circumstances causes adverse symptoms very similar to those of solitary confinement.[408]

In order to combat the negative effects of solitary confinement scientists recommend that solitary confinement be only used for the shortest possible time, to increase the possibilities for inmates to engage in meaningful social contact and in stimulating activities, which can be done in several ways. For example, it is possible to allow more contacts with the prison staff, with volunteers, with family and friends. Furthermore, it is also important to provide prisoners with activities both in and out of their cell, such as access to work, educational programs and therapy.[409]

It is precisely because of the harm that solitary confinement can do that all international bodies have given a special attention to this particular measure and have set standards and limitations to its use.

In the Italian experience, as it has been shown, there is certainly space for the improvement of the legislation and practice of solitary confinement. Last year a proposal for the modification of the regulation of solitary confinement was elaborated by Associazione Antigone and presented by several parliamentarians to the Chamber of Deputies.[410] If approved as it is, the text of the proposal would resolve several issues that were highlighted in the chapter dedicated to Italy. For example, it would prohibit the imposition of solitary confinement on juveniles and abolish the provision of the Penal Code that prescribes isolation as part of a prison sentence; another of the modifications would bring the procedure for the imposition of the disciplinary measure of solitary confinement in line with the international standards. It will be of great interest to follow the discussion of this proposal that would certainly improve the current legislation.

Smith, 2006, p. 503.
[408] Grassian, 2006, pp. 356-362.
United Nations General Assembly, 2008, p. 25.
[409] United Nations General Assembly, 2008, pp. 24-25.
Haney, 2003, pp. 149-150.
Smith, 2006, pp. 504-505.
[410] Camera dei Deputati, *Proposta di legge (Abrogazione dell'articolo 72 del codice penale e modifiche alla legge 26 luglio 1975, n. 354, concernenti il regime disciplinare penitenziario e la detenzione in isolamento)*, n. 4035, XVII Legislatura, 15 settembre 2016.

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Abstract

Solitary confinement is a practice used in all prison regimes around the world and Italy is no exception. This research compares the level of compliance of the Italian legislation and practice of solitary confinement to the standards of the United Nations and the Council of Europe. The research is divided into seven chapters. The first one states the existing definitions of solitary confinement, the second is a historical account of the birth of the practice of isolating inmates, and the third gives an overview of the current uses of solitary confinement. The fourth chapter is a review of the UN standards and includes the Human Rights Committee, the Committee against Torture, the Subcommittee for the Prevention of Torture, the Special Rapporteur on Torture, and the Mandela Rules. The fifth chapter reviews the instruments of the Council of Europe with regard to prison conditions hence the European Prison Rules and other recommendations of the Committee of Ministers of the Council of Europe, the European Court on Human rights, and the European Committee on the prevention of torture. Chapter six reviews the Italian legislation and practice of solitary confinement and compares them to the aforementioned international standards. Finally, chapter seven gives an account of the harm that solitary confinement can do even when it is used for short periods of time.

Abstract

Einzelhaft ist eine Praxis, die in allen Gefängnisregimen der Welt verwendet wird und Italien ist keine Ausnahme. Diese Arbeit untersucht, in welchem Grad die italienische Gesetzgebung und Praxis der Einzelhaft den Standards der Vereinten Nationen und des Europarats entsprechen. Die Arbeit ist in sieben Kapitel aufgeteilt. Das erste Kapitel behandelt die bestehenden Definitionen der Einzelhaft, das zweite ist eine historische Darstellung der Entstehung der Praxis der Isolierung von Häftlingen, und das dritte gibt einen Überblick über die gegenwärtigen Verwendungen der Einzelhaft. Das vierte Kapitel ist eine Untersuchung der VN-Standards und umfasst den Menschenrechtsausschuss, den Ausschuss gegen Folter, den Unterausschuss für die Verhütung von Folter, den Sonderbeauftragten für die Verhütung von Folter, den Sonderbeauftragten für Folter und die Mandela Regeln. Das fünfte Kapitel untersucht die Instrumente des Europarats hinsichtlich der Verhältnisse in Gefängnissen und daher auch die Europäischen Gefängnisregeln und andere Empfehlungen des Ministerrats des Europarats, des Europäischen Menschengerichtshofs und des Europäischen Ausschusses für die Verhütung von Folter. Kapitel sechs untersucht die italienische Gesetzgebung und Praxis der Einzelhaft und vergleicht sie mit den obengenannten internationalen Standards. Kapitel sieben erklärt schließlich den Schaden, den Einzelhaft verursachen kann, auch wenn sie für kurze Zeiträume verwendet wird.