EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 48852/17
Fjotolf HANSEN
against Norway

The European Court of Human Rights (Fifth Section), sitting on 29 May 2018 as a Committee composed of:

Yonko Grozev, *President,*
Erik Møse,
Gabriele Kucsko-Stadlmayer, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 June 2017,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Fjotolf Hansen, formerly Anders Behring Breivik, is a Norwegian national who was born in 1979 and is in preventive detention. He was represented before the Court by Mr Ø. Storrvik, a lawyer practising in Oslo.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The acts of terrorism and the applicant's conviction

3. On 24 August 2012 the City Court (*tingrett*) convicted the applicant of acts of terrorism committed on 22 July 2011. He had set off a car bomb in the Government quarter in Oslo and attacked participants at a political youth camp on Utøya Island outside Oslo with semi-automatic weapons. He had killed 77 people and wounded 42. He was sentenced to preventive detention for 21 years, with a minimum of 10 years to be served, pursuant to

Articles 39c and 39e of the 1902 Penal Code (see paragraph 140 below). In its judgment the City Court stated, *inter alia*:

> "Although none of the experts believe the defendant to be a borderline case, there seems to be agreement that he is 'a special case', as the experts Aspaas and Tørrissen write to conclude their supplementary report. The experts Husby and Sørheim touch upon similar ideas when they, in connection with the danger assessment, describe the defendant's 'uncommon symptom profile' with a combination of affective flattening, persistent homicidal thoughts, solid delusions of a right to select victims and kill, combined with the lack of any identifiable cognitive impairment and with no disturbing sensory delusions like hallucinosis.
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> The court itself is struck by the defendant's wordy presentation of his fanatical far-right extremist attitudes mixed with pretentious historical parallels and infantile symbolism. His conceptions are accompanied by an unfettered and cynical justification of the acts of violence as being 'cruel, but necessary'. A recurring question during the trial has furthermore been the importance of the reported acts for the diagnostication. However, as was pointed out during several of the testimonies given by the expert witnesses, glorification of violence or extreme acts of violence do not form part of the ICD-10 diagnostic criteria for psychosis."

4. As reasons for the sentencing, the City Court stated, *inter alia*, the following:

> "Furthermore, at the time of the delivery of the judgment there is an imminent risk that the defendant will commit new murders and serious acts of violence. The court makes reference to the fact that the defendant believes that the murders at the Government District and on Utøya were legitimate acts, and that extreme violence is a necessary means to achieve his political goals. The defendant has in court also related his alternative plans, like blowing up the Royal Palace and newspaper editorial offices, and killing journalists at the SKUP conference. The murders at the Government District, the murders on Utøya and the defendant's plans demonstrate the extreme violence he has the will and capacity to carry out. The defendant has furthermore stated that there will be more terror attacks; this is also written in his compendium. The thought of extreme violence and murder is evidently stimulating to the defendant. This was clearly seen in court when he described how he had planned to kill Gro Harlem Brundtland by decapitation. The defendant seemed excited during the description and gave the impression that he enjoyed giving it. In its assessment of the danger, the court has also attached importance to the defendant having demonstrated a capacity for planning the acts of terrorism without being discovered.
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> The court also makes reference to the fact that the court-appointed expert witnesses Aspaas and Tørrissen ... conclude that there is a 'high risk of serious acts of violence in the future', and in connection with this they make reference to the defendant stating that violence and terror are necessary to have his extreme political views prevail. The court-appointed expert witnesses Husby and Sørheim also concluded in their report that the risk of future violence was very high ... When deciding what importance to attach to the assessment made by the latter experts it must, however, be taken into consideration that their danger assessment is based on the precondition of psychotic delusions.
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> The basic requirement of protection of society is linked to the risk of a repeat offence, but when assessing the need for such protection the perspective must be turned towards the future, ...

> There is no doubt that a sentence of imprisonment based on ordinary principles of sentencing in the case at hand would have been set at the maximum sentence under the law: 21 years of imprisonment.
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> The defendant has, after several years of planning, carried out a bomb attack aimed at the central government administration and thus also at the country's democratic institutions. He has killed 77 persons, most of whom were youths who were mercilessly shot face to face. The defendant subjected a large number of persons to acute mortal danger. Many of those affected have sustained considerable physical and/or psychological injuries. The bereaved and next of kin are left with unfathomable grief. The material damage is enormous. The cruelty of the defendant's acts is unparalleled in Norwegian history.
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> It follows from the Supreme Court's practice that it takes a lot to assume that such a long sentence for a specific term is not considered sufficient to protect society against the danger a convicted person represents at the time of the delivery of the judgment ... Notwithstanding this, the court is in no doubt that also the basic requirement for preventive detention is fulfilled in this special case.
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> If the defendant is to serve a 21-year prison sentence without release on probation, he will be 53 years old at the time of his release. Even though 21 years is a very long sentence, the court finds it improbable that the element of time per se will reduce the risk of a repeat offence. At the time of release the democracy that the defendant wants to abolish, will still exist. Norway will still have inhabitants of different ethnic backgrounds, different cultures and different religions. The defendant stated in court that he wants to continue his political struggle behind the prison walls. After having served his sentence, the defendant will most probably have the will and capacity to carry out many and very brutal murders. The experts Aspaas and Tørrissen, who believe the defendant suffers from personality disorders, write ... that '[t]he kind of personality pathology that has been found is not very accessible to therapy. Factors that worsen the prognosis of violence will be close contact with environments that acknowledge and support the observee's political ideology and views on political violence'. The way the court sees it, a similar prognosis must be assumed even if the defendant's personality were not to fulfil the fundamental diagnostic criteria for personality disorder, being rather the manifestation of deviant personality traits. This means that the defendant also after having served a 21-year prison sentence will be a very dangerous man. Against this background, the court is of the view that the requirements for imposing a sentence of preventive detention are fulfilled, and thus believes that a sentence of preventive detention should be imposed."

2. The applicant's detention

5. The applicant was transferred to Ila Detention and Security Prison ("Ila") on 27 July 2011. There a maximum security department (a department with "*særlig høyt sikkerhetsnivå*" – a "particularly high level of security") was established, and on 8 August 2011 the correctional services authorities, for the first time, made a decision that the applicant be confined to that department. Similar decisions have since been made every six months and the applicant has lodged unsuccessful administrative appeals against these decisions. Between July and September 2012 the applicant stayed at Telemark Prison, before returning to Ila. On 9 September 2013 he

was again transferred to Telemark Prison and has since served there, also in a maximum security department.

6. In general, domestic legislation provides that inmates in maximum security departments are not to interact with inmates in other departments, whereas it is left to the local correctional services authorities to decide whether multiple inmates confined to maximum security departments should be allowed to interact with each other. In Telemark Prison, the applicant has had three cells, including one for physical exercise and one for studies, with ventilation and windows. His cells have been normally furnished with, *inter alia*, a toilet, shower, refrigerator, television, video game console, books and pictures (see, further, paragraphs 44 and 133 below), and delimited by a security gate to the other areas of the department. The material conditions had been relatively similar at Ila.

3. Proceedings before the City Court

7. On 1 July 2015 the applicant instigated civil proceedings against the Norwegian Government, claiming that the conditions of his detention violated Articles 3 and 8 of the Convention. He complained, notably, that there had been a breach of those provisions due to the extent of the security measures that had been put in place, including his being confined to maximum security departments and not being allowed to socialise with other inmates, his being subjected to body searches, use of handcuffs and control of his visits, correspondence and telephone calls.

8. In its judgment of 20 April 2016 the City Court (*tingrett*) found that the applicant's rights under Article 3 of the Convention had been violated, but not those under Article 8. As to Article 3, the City Court assessed first of all that the authorities should have made further attempts to socialise the applicant with other inmates, and in any event that the formal reasons given in the decisions confining the applicant to a maximum security department had not been sufficiently detailed on this matter.

4. Proceedings before the High Court

(a) Introduction

9. The Government appealed against the City Court's judgment as concerned the finding of a breach of Article 3 of the Convention. The applicant appealed as concerned the finding that Article 8 had not been breached.

10. The High Court (*lagmannsrett*) heard the case from 10 to 18 January 2017. Prior to the hearing, the High Court had taken evidence at Ila and Telemark Prison. The hearing took place at Telemark Prison. The applicant was present and represented by counsel. Ten witnesses were heard.

11. In its judgment of 1 March 2017 the High Court found that none of the applicant's rights under the Convention had been violated.

(b) The High Court's assessment under Article 3 of the Convention

12. As to Article 3 of the Convention, the High Court took as its general starting point case-law of the European Court of Human Rights such as *Muršić v. Croatia* [GC], no. 7334/13, ECHR 2016; *Piechowicz v. Poland*, no. 20071/07, 17 April 2012; *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 and 4 others, 10 April 2012; *Van der Ven v. the Netherlands*, no. 50901/99, ECHR 2003-II; and *Ramirez Sanchez v. France* [GC], no. 59450/00, ECHR 2006-IX.

13. Turning to the concrete assessment of the conditions of the applicant's detention, the High Court noted that there was extensive documentation both as concerned decisions on use of force, reports on the implementation of the sentence, and as to the applicant's health. It stated that the parties largely agreed on the specific events that had taken place and which measures had been implemented; they disagreed instead on the assessments, in particular as concerned the risk relating to the applicant and the consequences of the security measures for the applicant and his health.

i. The risk relating to the applicant

14. Starting with the risk assessment, the High Court noted that the type and seriousness of the crimes that had led to his sentencing was the central point of departure. It pointed out, *inter alia*, that most of the victims on Utøya had been youths at a political summer camp, whom the applicant had mercilessly shot face to face. In the sentencing, the City Court had relied on the assessments of court-appointed psychiatric experts, who had assessed that there was a high risk of serious violent acts in future; the applicant had shown the capacity to plan acts of terrorism over a number of years without being discovered. The City Court had considered that even after serving 21 years, the applicant would be very dangerous. The applicant believed that his criminal acts had been justified and that extreme violence was a necessary tool in order to achieve political goals.

15. The High Court further noted that the acts of terrorism had been carried out in accordance with an extensive text ("compendium") that the applicant had worked on for several years and published on the Internet on the day of the acts. This text also included a detailed manual for terrorism and plans for taking hostages and escaping from prison.

16. The correctional services authorities had considered the risk related to the applicant on numerous occasions. This included six psychiatric assessments made between 18 August 2011 and 5 December 2016 and different assessments of the probability of different types of violent acts and their consequences. Questions concerning the risk had also been dealt with in weekly meetings about the applicant among the prison personnel, and the considerations during those meetings had been registered in monthly reports. There were also a number of other decisions that contained risk assessments.

17. In one of the assessments, an extensive report dated 16 January 2013, a psychiatrist had considered that the applicant was suffering from dissocial and dramatising personality disorders and, *inter alia*, completely lacked remorse for what he had done and was entirely without empathy for those who had become victims of his acts.

The report had concluded that, as concerned the risk relating to release on parole, if the applicant did not change his political beliefs considerably and go through a longer period of genuine remorse, depression and wishes that his acts could be undone, he would be likely to carry out violent acts again.

As to the risk of violence in prison, it had been concluded, *inter alia*, that the applicant would be capable of taking hostages, harm prison officers or carry out other violent acts – also against himself – if he found this opportune. According to the report, the challenge was that, because of the applicant's peculiar view of the world and his logic built upon that view, it would be difficult for the institution to understand when his motives might change. The applicant was considered as extremely self-centred and preoccupied with the spectacular. If he were to feel that he did not receive sufficient media attention, that the world was not interested in his analyses and that his affairs were forgotten, he would be capable of staging another spectacular event.

With respect to impulsive violence, it was stated in the report that the applicant could be capable of committing less serious, impulsive acts of violence if he were to perceive anything in prison as a serious narcissistic offence, his way of thinking ("*hans hensiktsmessighetstenkning*") could be challenged, and he would be capable of committing less serious, impulsive acts of violence in spite of his usually appearing very controlled.

On the topic of violence against the applicant, it was stated in the report that if he were to interact with other inmates without meticulous supervision, one or several of the others could possibly try to "take him out".

18. In a new risk assessment of 5 December 2016 the psychiatrist had concluded that the risk of violence, for the most part, remained unaltered. The risk of violent acts in prison had somewhat decreased, but the psychiatrist pointed to certain factors that could increase the risk of planned violence in prison. She had stated that in her view, observation had to continue until well after the end, in January 2018, of the proceedings before the High Court, since it could be several years before the applicant would again receive any considerable media attention. She further considered that, even though the applicant functioned inconspicuously on a day-to-day-basis, one should never disregard the possibility of his having plans that also included violence.

As concerned the risk of impulsive violence at that time, it was stated that one could not forget that the applicant was of the view that he could

obtain weapons for use in a common department (*fellesskapsavdeling*) and that he had undoubtedly thought through how objects of daily life could be used as weapons. The psychiatrist opined that the applicant should be observed at a time when he received little response to his ideological initiatives and with respect to how this would cause stress to him.

19. The psychiatrist had testified before the High Court and then stated that her assessments from 2013 were essentially appropriate also at the time of the hearing, both as concerned the diagnoses and with respect to the risk of new violence.

She was further of the view that the applicant's goal remained the same. He wanted to lead a fascist and "ethno-nationalist" revolt in Europe. He had by then turned towards neo-nazism, which she perceived as a pragmatic move to adjust to the surroundings. In her view, the risk of violence was primarily long-term – the applicant was relatively stable mentally and had shown that he could handle the day-to-day frustrations well; therefore the risk of violence in prison in the short-term was considered to have diminished.

20. The applicant had, in his statement during the appeal hearing, submitted that since the autumn of 2012 he had opposed advancing his political goals by the use of violence. He had stated that his acts on 22 July 2011 had been intended as revenge for what nationalists had suffered since 1945. This revenge, he maintained, had been completed in 2011 and the applicant would abandon his political project if "ethno-nationalists" were allowed to participate in Norwegian democracy.

21. The High Court noted that, after the applicant had reported Ila to the police for torture in 2013, he had followed up with a letter in which he had stated that, if he wanted to, he could attack prison officers with weapons for hitting or stabbing created from objects in his cell. In a letter to the correctional services authorities of 23 December 2014, he had informed them that he was considering establishing an "Aryan Brotherhood" community in Norwegian prisons, as a parallel to the Aryan Brotherhoods known in the United States.

22. Before the High Court, the applicant had further stated that he was a "party secretary in the Nordic State"; in a letter to, *inter alia*, politicians in September 2016 he had stated that he was also a "spokesperson for Norwegian national socialists, fascists and other ethno-nationalists". A prison journal of 9 November 2016 read that, when the conversation had turned to 22 July 2011, the applicant had been clear that he did not feel remorse and did not in any way have problems defending what he had done on Utøya and in Oslo. This had, among other things, been revenge against the Labour Party for what it had subjected persons sharing his opinions (*meningsfeller*) to since 1945. He had maintained that he was Norway's sole political prisoner and that he had tens of thousands of supporters in Norway

and elsewhere. The prison staff had perceived that both his body language and his way of speaking emphasised that this was his firm belief.

23. In the High Court's view, it was reasonable to understand the recent nuances in the applicant's political views primarily as reflections of considerations of appropriateness (*hensiktsmessighetsvurderinger*). This included his approaching national-socialistic theories and environments of the more "traditional type"; his political project and fundamental frames of reference had not changed particularly since 2011.

24. The High Court considered that the particular features of the applicant's personality had to be given major weight when assessing the risk of violence in the future. His generally calm and polite behaviour during approximately five and a half years' imprisonment therefore did not give reason to consider the risk of planned violence in the long term as reduced. The risk assessments made by the correctional services authorities had been thorough and appropriate. No errors had been pointed out in their factual bases or in the psychiatric assessments. In the High Court's view, there were no grounds to deviate from the conclusions that had been drawn in the assessments.

25. In summary, the High Court pointed out that throughout the whole period, there had been a high risk of new, serious violence from the applicant. In addition, on the basis of the text that the applicant had written prior to his acts of terror and former statements he had made, there had particularly in 2011 and 2012 been reasons for taking into account the possibility of him having a network that could be apt to use violence in order to help him escape from prison.

26. In the High Court's view it was unlikely that the applicant no longer supported the use of violence as a political means. There was still a high risk of violent acts in the long-term – not least if the applicant were to perceive reduced attention to himself and his political project. Although the risk in the short-term was perceived as having diminished, the security for prison staff, not least, indicated that extensive security measures should be in place.

27. Furthermore, the risk concerned completely limitless violence if the applicant were to find this opportune. It was very difficult to reveal any increase in the risk – the acts of terrorism for which the applicant had been convicted had been secretly planned for a very a long time; the violence had not been provoked by any close prior events, emotional strain or visible changes to his mental health.

28. Turning to the risk of violence against the applicant in prison, the High Court was of the view that that sort of risk still clearly existed. It mentioned, *inter alia*, that on one occasion in 2015, an inmate had managed to make his way to the door leading into the department where the applicant was held. The inmate had hammered on the door while shouting death threats. After this, physical measures had been adopted in order to avoid

similar situations in future. Another inmate, who had been friends with a person present on Utøya on 22 July 2011, had expressed the wish to take revenge on the applicant. Although time had passed, the High Court concluded that there was still a relatively high risk of violence and serious threats against the applicant from other inmates. It added that it was not a simple task to clarify which persons might be capable of violence against the applicant, should they be given the opportunity.

29. On the question of whether there was a risk that the applicant could inspire others to carry out violent acts, the High Court concluded that the applicant could inspire persons in right-wing extremist environments and stated that his wish to establish networks with persons who shared his opinions had to be viewed against that background. The High Court also noted that the applicant could be a source of inspiration even for persons outside any such networks. There had already been examples of serious violent acts and, *inter alia*, bomb threats, that had to be assumed to have been inspired by the applicant's acts.

ii. The implemented security measures

30. Turning to the measures adopted to counter the above risks related to the applicant, and the consequences these measures had for him, the High Court initially noted that the conditions of the applicant's detention were, as a starting point, clearly more burdensome than an ordinary prison sentence would imply, both due to the possibility of his detention being prolonged and due to the strict security regime in the maximum security department.

(α) The confinement to a maximum security department

31. The High Court went on to note that in general, serving at a maximum security department would normally imply exclusion from interaction with other inmates – in domestic procedural law often coined as "isolation". Full isolation was considered as a very far-reaching measure to be used with great caution and also other limitations on contact with other inmates over time could be harmful.

In more detail, the High Court set out that lack of personal contact represented a serious psychological strain and could also lead to somatic issues, such as problems with concentration and sleep, apathy and head and muscle pain. Research had shown that anxiety, depression and psychosis could develop. Isolation in prisons could, over time, lead to mental illnesses and increased risk of suicide. Reference was made to witnesses who had appeared in court, case-law of the European Court of Human Rights, and recommendations from the Committee for the Prevention of Torture (CPT). The burdens of isolation were heavier if the inmate was concurrently subjected to limitations in social contact with persons outside prison through control of letters, visits and telephone calls, and if further restrictions on access to information and sense impressions were imposed,

for example restrictions on access to newspapers and television or lack of a view outside through a window. Other limitations on the freedom to act and move would imply extra burdens, for example use of handcuffs or limitations to the possibilities for going outside. Repeated body searches would often be perceived as degrading and increase the total mental strain resulting from the security measures.

32. The High Court observed that maximum security departments had been used only infrequently in Norway. Some ten inmates had served under this system since it was introduced in 2002. Apart from the applicant's case, inmates had been held at maximum security departments for periods lasting from one month and up to one year and nine months. When the applicant had arrived at Ila in July 2011, maximum security departments had not been used since 2008 and never at Ila, wherefore it had been necessary to alter the building and draw up a local directive (*instruks*).

33. The reasons for the applicant's confinement to maximum security departments had essentially been the same throughout the whole period. In a decision of 21 June 2016 from the Directorate of the Norwegian Correctional Service (*Kriminalomsorgsdirektoratet*) it had been stated that the applicant represented a particular risk of escaping, of taking hostages and a danger of new, particularly serious crime. In the proportionality analysis it had been stated that it was not appropriate, for security reasons, that the applicant interact with other inmates, and that there were no other inmates serving at maximum security departments at the time. According to the relevant domestic rules, the restrictions on interaction following from serving at maximum security departments should be compensated by increased contact with staff and satisfactory work, teaching and other activity offers. The Directorate had come to the same conclusion in its decision of 19 December 2016.

34. The applicant himself had, from the outset, argued that he had suffered harm due to isolation and both Ila and Telemark Prison had focussed on the risk of such harm; this matter had been discussed in notes, journals and reports. The applicant had had extensive contact with health personnel at Ila, in conversations which had often had characteristics of social contact. Since October 2011 such contact had taken place in a visiting room with a glass wall. In Telemark Prison the applicant had been offered the opportunity to speak with a psychiatrist as well as other health personnel twice weekly.

35. In a report from Ila dated 10 December 2012, reference had been made to changes in the applicant's behaviour that might be due to isolation. He had been perceived as more questioning and quarrelsome towards measures and routines after returning from Telemark Prison, where he had stayed for two months (see paragraph 5 above). After the transfer to Telemark in 2013 (ibid.), it had, in a report of 11 November 2013, been remarked that on some occasions he had appeared confused and forgetful

with respect to which activities he had, for example, carried out the day before. Forgetfulness had also been noted in further reports of 5 September and 14 July 2015. In the latter, the question of harm due to isolation had been passed on to the health department.

36. The prison doctor at Ila at the time had stated before the High Court that some symptoms had been registered during the applicant's stay there, but that he had not suffered harm due to isolation. The applicant had seemed downcast for a period in 2012, but this had been perceived as a reaction to the conditions of his detention, for example that he had not immediately obtained approval to have a personal computer or that letters to persons who shared his opinions had been stopped. The doctor did not perceive the applicant as mentally vulnerable.

37. The applicant had also reacted with despair and frustration when, in October 2015, he had been informed that he would have to share the maximum security department with other inmates and that, in connection with this, the area available to him would be reduced. Journals from the autumn of that year noted that the applicant, on some occasions, had stated that he had "isolation headache". The prison doctor had concluded that he was suffering from tension headaches. With time, the applicant had chosen to break off contact with the psychiatrist and later also with the prison doctor. The High Court understood that the applicant had feared that contact with a psychiatrist could be perceived as weakness and used against him towards persons who shared his opinions.

38. The prison doctor in Telemark Prison from September 2013 to January 2016 had never found signs of serious isolation harm. The matter had been considered both by a psychiatrist and the health team in the prison. The doctor had noted that the applicant had, for certain periods, suffered from headaches, but headaches were common for many people.

39. The applicant had maintained during the appeal hearing that he had become "more right-wing radical" and referred, as an example, to his performing a "Nazi salute" at the opening of the hearing. He was of the view that this political radicalisation was a result of isolation, including the fact that his opinions were never corrected.

40. The psychiatrist had concluded that there were no signs of particular vulnerability to isolation. She had perceived the applicant's mental condition to be relatively stable throughout his whole stay in prison and referred to his not having developed typical symptoms such as apathy, change of circadian rhythm, reduced cognitive functioning or delusions.

41. In the High Court's view, the applicant's health and manners had not changed much in spite of the very long stay under very strict security measures. He had kept a normal circadian rhythm and had worked a great deal on studies, on the conditions of his detention and his political project. He had not reported any noteworthy physical problems and there had not been any need for treatment for mental problems. He had not reported any

specific serious mental problems. None of the psychiatrists or doctors who had examined him had concluded that he had suffered any harm due to isolation. Neither his situation prior to the criminal acts nor his behaviour in prison indicated, in the High Court's opinion, that he had any particular mental vulnerability. The High Court noted that, prior to his imprisonment, he had also periodically lived with moderate interaction with others.

42. Based on the above, the High Court concluded that there were no clear signs of harm due to isolation. In this assessment it also took into account the possibility that the applicant had under-reported mental problems in order to appear as a strong leader.

43. The absence of signs of harm due to isolation was, however, not sufficient for there not to be a breach of Article 3 of the Convention. The High Court, accordingly, went on to examine other aspects relating to the applicant's having been confined to maximum security departments.

44. In that respect, the High Court stated that the physical and material conditions of the applicant's detention were, in its view, very good compared to those of other inmates in Norwegian prisons. The applicant had three cells, all with ventilation and each with a window – some with privacy film. He had a television, fridge, shower and toilet. There was no camera in his living cell. In his study cell there was a desk and a personal computer. He had access to an exercise bicycle if he so wished and the cells were otherwise furnished normally. He had pictures, books, films, games and letters on shelves and in boxes. He could play music and had a gaming console. His cell area was delimited by a security gate to the other areas of the department. The material conditions had been relatively similar at Ila.

45. The applicant studied political social sciences and received outlines and sometimes recordings of lectures; he had taken several exams, with good results. He could spend one hour outside in the prison yard every day. In Telemark Prison, since December 2015, he had also had the option to use a larger outdoor area every second week, in 2016 increased to approximately once a week; at Ila he had not had access to a similar area. He had access to newspapers every morning and in his time off he watched television and films and played video games. He also spent a lot of time on writing letters, on his political activities, or working with administrative appeals related to the conditions of his detention. In addition he worked out a couple of times a week and walked daily in the small prison yard.

46. Through the testimony and records of conversations with the applicant made in medical papers and reports from prison officers, the High Court had gained a clear impression that the applicant's studies in political social sciences were of considerable importance to him. There were reasons to assume that he perceived that the studies strengthened his political project. He therefore experienced his day-to-day life as clearly more meaningful than if he had had more ordinary work tasks.

47. The High Court noted, moreover, that the applicant was authorised to have monitored visits. He had, however, only remained in contact to a very limited degree with persons he had known before his acts of terrorism. He had had some visits from his mother when serving at Ila – all but one of which had taken place with a glass wall. The applicant had not wanted contact with his father as long as he did not endorse his political project. The prison staff had refused visits from three persons whom the applicant had not known from before; apparently these had not been cleared due to suspicion that the purpose of the visits had been to establish contact with right-wing extremist environments.

48. In Telemark Prison the applicant had regular contact with a volunteer visitor (*besøksvenn*). From April 2016 they had met for one and a half hours once a week, previously it had been every second week. The contents of their conversations were not recorded, but the High Court understood that they often discussed items of current interest in which they were both engaged. The visitor stated before the High Court that he had also brought up the applicant's acts of terrorism with him.

49. The applicant also had a weekly conversation with a priest, which had been the case throughout his detention. This gave the applicant a possibility for confidential contact, as the priest was under a duty of confidentiality.

50. Furthermore, the applicant had, throughout his detention, been offered regular contact with health personnel. During the initial time in custody, he had been checked upon daily. After a while, this had been reduced to five, and ultimately to three times weekly. The reasons for the frequent supervision in the initial period had been, *inter alia*, fears of suicide attempts. The contact entailed speaking with psychiatrists, doctors or nurses. In addition to questions about the applicant's health, other day-to-day matters and societal issues were often discussed, and the conversation had often lasted for around 30 minutes. With time, the applicant had also used these conversations to ask for help in achieving relief in the conditions of his detention, which in his view amounted to torture.

51. Upon transfer to Telemark Prison, the arrangement for regular conversations with the health service had continued. In early 2014, the applicant had discontinued further conversations with the psychiatrist and psychologist because he thought this contact could weaken his political credibility. After some time he had had conversations with a nurse approximately twice weekly. In addition there had been possibilities for consultation when particularly needed. He had partly used the conversations to advance his wishes concerning relaxation of the conditions of his detention. In the summer of 2016 he had stopped regular conversations with the health services. Since then, the staff had continually considered whether there were signs of changes to his health.

52. The applicant still had no interaction with other inmates. He had not at any time seen any other inmate; when he moved through common areas, other inmates there would be locked in their cells due to fears of unrest and comments of disapproval towards the applicant if he were seen.

53. The applicant had on many occasions complained of the lack of opportunities for social contact. From October 2012 he had consistently appealed against the decisions that he be confined to a maximum security department. According to the domestic legislation, inmates in maximum security departments should not interact with inmates in other departments. Whether multiple inmates under maximum security should be allowed to interact with each other had to be decided by the correctional services authorities (see also paragraph 6 above) and would depend largely on risk assessments.

54. The correctional services authorities had referred to the fact that interaction with other inmates could give the applicant the opportunity to establish an extreme right-wing network in the prison, or give him the opportunity to obtain assistance in communication with such networks outside the prison. It was evident from the risk assessment report of 5 December 2016 that the applicant would like to serve his sentence in a mixed-inmate department. He had in this context presumed that this would be a department with only imprisoned fascists, so that they could form a group. He had also stated that, if he were placed in a mixed-inmate department, he would build himself up to become very strong and acquire weapons. The High Court noted that the applicant had made considerable efforts to make contact with likeminded people.

55. Other inmates had been placed in the maximum security department at Telemark Prison only for two short periods during the applicant's sentence. On these two occasions, the conditions had not been suitable for interaction with him: for example, one of the inmates had stated that it would be unfortunate for his criminal case if he were to interact with the applicant. The High Court also pointed out that, while the prison could place an inmate in a certain department without consent, inmates could not be forced to participate in social activities with others.

56. The High Court went on to state that the opportunity to interact with other inmates was of great significance, not least for those serving long sentences. Interaction provided social impulses in day-to-day life and could reduce the risk of developing mental ailments. Inmates had few others they could confide in without confidential information concerning personal matters being reported to prison management. This applied particularly to those serving sentences in maximum security departments. Interaction with other inmates furthermore provided the opportunity to choose for oneself who to talk to.

57. The high risk of violence from the applicant, should he become frustrated in the future, combined with the risk of violence against him from

other inmates, made it difficult to establish a secure arrangement for interaction. The problems were amplified by his expressed desire to enlist inmates to support his political project, and to establish contact with extreme right-wing individuals outside prison. On the basis of the risk of violence, contact with other inmates would be difficult to carry out without the presence of personnel.

58. The High Court was of the view that the correctional services authorities should, at an earlier date, have conducted more extensive assessments of the opportunity to carry out interaction with one or more inmates who were not confined to the maximum security department. No concrete plans for interaction had been presented to the court, for example whether the applicant and another inmate could be on either side of the security gate or carry out a joint sports activity.

59. The applicant had very extensive contact with prison personnel and the objective of this was partly to ensure that he had social interaction. Multiple personnel were always present when the applicant was having contact. The officers did not have a duty of confidentiality towards prison management as to what inmates confided in them. Material information would be logged. Contact with personnel normally took place through the security gate in connection with routine inspections. In the circumstances, the contact with prison personnel nevertheless helped cover the applicant's social needs. The scope and content of conversation with personnel was therefore significant in the assessment of whether the lack of interaction with other inmates entailed a breach of Article 3 of the Convention.

60. During the first phase at Ila until the judgment in the criminal case had been rendered, there had been frequent inspections. In the initial period, there had been two inspections each hour. The correctional officers had then normally only had brief conversations with the applicant, except for the department manager, who had sometimes had multiple conversations with him each day. The manager had then also discussed current affairs such as news items with the applicant; their total conversation time could vary between 15 and 50 minutes each day. During this period, the applicant had also been subject to a number of police interrogations and had had extensive contact with his defence counsel. There had also been conversations with forensic psychiatrists, and the applicant had for a period been under observation in a psychiatric hospital.

61. In the second phase, correctional officers had also been allowed to discuss, for example, current affairs with the applicant. The total daily conversation time with personnel had then increased by an estimated 30 to 40 minutes. This relatively extensive contact with the applicant had been intended to compensate for the fact that he was prohibited from interacting with other inmates.

62. In the third phase, which had started when the applicant was transferred to Telemark Prison in September 2013, the routines had been

generally equivalent to those at Ila. The correctional officers could, however, initially not discuss political issues or issues concerning his case with the applicant. The manager of the applicant's department at the time had also had conversations with the applicant lasting 15-20 minutes on a number of occasions.

63. As of the winter of 2014, the applicant had more extensive contact with personnel. Common subjects of conversation were, for example, films, television series and everyday topics. A social consultant had also assisted him in preparing a rehabilitation plan, and not least in planning and facilitating his studies. As of the summer of 2014, there had been no restrictions as regarded topics that could be discussed and the new department manager had generally had daily conversations with the applicant for 15-20 minutes. The applicant had been interested in hearing the personnel's opinions on, for example, topics in the news.

64. Over the last two years before the High Court's judgment, inspections had lasted up to one hour. Sometimes personnel would play backgammon or other games with the applicant at the security gate. The scope of contact with personnel had been increased as a consequence of some compensatory measures being discontinued during two periods in the autumn of 2015, when another inmate had been in the department.

65. An arrangement had started in April 2014 involving one hour of interaction with personnel each week as a purely social measure. In January 2016, this organised interaction had been expanded to twice each week. Once a week they would, for example, cook in the common area outside the security gate and once a week they would have other social activities.

66. An observation programme (*observasjonsprogram*) had been implemented since 1 January 2016 as part of the preventive detention sentence. The applicant had, in this connection, been confronted with his acts of terrorism. Training in independent living skills had also started in 2015, which meant that the applicant was responsible for washing his cell area and his clothes.

67. Since the summer of 2016, the extent of social activities with the applicant, such as in connection with inspections, had been logged. Since then, the applicant had had, on average, daily social contact with personnel for more than two hours. This came in addition to exercise in the fresh air, organised interaction with personnel twice each week and conversations with the social consultant, priest, volunteer prison visitor and, if needed, medical personnel.

68. As a preliminary summary concerning social contact, the High Court noted that being denied interaction with other inmates constituted a clear strain and it was entirely extraordinary for an inmate not to have contact with other inmates over a period of about five and a half years. On the other hand, the correctional services authorities had implemented very extensive compensatory measures. This concerned both the time spent by personnel in

connection with inspections, the organised joint activities with personnel twice each week, as well as the fact that the applicant had, to a considerable degree, had conversations with the social consultant, priest, volunteer prison visitor and, if desired, medical personnel. The High Court also noted that the scope of compensatory measures had increased in recent years, prior to its judgment.

(β) Body searches

69. Turning to the body searches, the High Court noted that these posed a number of questions pursuant to Article 3 of the Convention. They had to be examined in isolation, but also as a part of the overall strain on the applicant. Body searches where inmates were examined without clothes were a particularly invasive control measure that inmates might experience as highly degrading. Reference was made to *Van der Ven*, cited above, §§ 58 et seq.

70. A very considerable number of body searches had been conducted at Ila during the first phase of the applicant's detention. The correctional services authorities had registered a total of 117 searches in 2011, 199 in 2012 and 76 in 2013. When searches conducted by the police were added, the applicant had estimated the total number of body searches during this period at 880.

71. The scope had to be viewed in the light of the available risk assessments during this period; the acts of terrorism had indicated a substantial risk of new violence from the applicant. This had been further amplified by the applicant having stated that he belonged to a larger network.

72. The High Court assumed that the searches conducted by the police had taken place in connection with being subject to police interrogations and during the criminal case, that is, when the applicant had left or entered the prison. It was of the view that these searches had been justified and not disproportionate, to ensure that the applicant had not gained access, for example, to objects which might be used as stabbing weapons.

73. The body searches conducted by the correctional services authorities had primarily taken place in connection with stays outside the maximum security department. As a result of the possibility that someone could, for example, have tossed objects into the exercise yard, without this being noticed by camera surveillance or personnel nearby, the High Court was of the opinion that there were no grounds for criticising the authorities for conducting body searches following use of the yard. The same applied to searches following use of the shower room or other parts of the building outside the security gate. Structural changes had not been made to prevent the applicant from finding objects that could be used as stabbing weapons on these premises. The applicant had been interested in, and described opportunities to find, objects in the prison that could be used as weapons.

74. Body searches had also been conducted on a number of occasions as an unannounced control measure. This was in compliance with the routine set for confinement to a maximum security department.

75. The applicant had hardly ever been in the proximity of people other than personnel. Visits had taken place in a visiting room with a glass wall. The cells had been converted so that it would not be possible to find building components or loose objects that could be used as weapons. The likelihood of finding objects that could be used as, for example, a stabbing weapon had then been reduced considerably. Nothing had ever been found during the body searches, and the applicant had so far acted in accordance with what was required from prison inmates. Depending on the circumstances, searches could also alternatively take place over his clothes. The objective could furthermore be partially achieved using a metal detector, which at the time of the High Court's judgment happened frequently at Telemark Prison.

76. In the view of the High Court, there should not have been that many unannounced body searches at Ila during periods when the applicant had only been in the maximum security department. The other extensive control measures had indicated that it would be highly unlikely that, in such a situation, he would have concealed, for example, potential weapons on his body.

77. The number of searches had clearly been lower in recent years. The correctional services authorities had registered 75 in 2014, 35 in 2015 and 5 in 2016. During the appeal proceedings it had been stated that body searches had not been conducted since the end of 2015 or early 2016. This had been linked to structural adaptations at Telemark Prison, the use of a fixed metal detector, the risk of violence having been considered somewhat lower and to there having been a general relaxation in the use of security measures as long as the applicant remained exclusively in secure prison areas.

(γ) Handcuffs

78. The prison had continually made decisions concerning the use of handcuffs for up to six months at a time. Handcuffs had been used during the stay at Ila a total of 768 times in 2011 and 1007 in 2012. The total number of times had been 441 in 2013, distributed between Ila and Telemark Prison. The police had also used handcuffs during transfer out of the prison. As a point of departure, the applicant had been handcuffed every time he exited a cell door. The use of handcuffs had eventually been reduced, not least after 15 April 2013, when a door had been fitted between the living area cell and the study cell at Ila.

79. At Ila, handcuffs had been applied before the cell door was opened, by having the applicant put his arms through the hatch. The handcuffs had then been held in place while the applicant moved forward with the opening door. This had involved him having to take small steps over the threshold, a

method used for security reasons, because of the possibility of his having gained access to utility articles with the potential to be shaped into stabbing weapons.

80. Following the transfer to Telemark Prison, handcuffs had been used a total of 150 times in 2014, 80 times in 2015, and 33 in 2016. The use had been considerably reduced at Telemark Prison once a security gate had been installed, so that the applicant could move freely between all three cells at his disposal. From September 2015, handcuffs had not been used as long as the applicant had been in the maximum security department – only when he had been out, for example, in the large exercise yard.

81. On the basis of the continuous risk assessments, the High Court found that there was no basis for criticising the correctional services authorities for the scope of or method for using handcuffs during movement. There was no indication that the purpose has been to punish or humiliate the applicant; the use of handcuffs had been gradually reduced, in part following structural changes and in part on the basis of new assessments of the security risk.

(δ) Inspections during the night

82. During the first period at Ila, there had been two inspections each hour. This also took place at night. In practice, this had taken place by opening the cell hatch and checking whether the applicant gave any sign of life, and that there was otherwise nothing unusual. A flashlight had also been used if necessary. This had also entailed extra strain, although it had been stated that the applicant had normally slept through the night. The scope of night inspections had been reduced following the City Court's judgment, and at the time of the High Court's judgment only comprised inspections of areas outside the cell door. The High Court had no remarks concerning the scope of, or procedure used for, night inspections on the basis of the available risk assessments.

(ε) The control of the applicant's visits and telephone use

83. The High Court noted that control of the applicant's correspondence was relevant both to Articles 3 and 8 of the Convention. For practical reasons, it described the letter inspection in more detail when examining Article 8, though it was taken into account also when examining Article 3.

84. Turning to the control of the applicant's visits and his telephone use, the High Court noted as a point of departure that domestic legislation provided that one or more telephone calls lasting a total of up to 20 minutes were allowed each week. During the stay at Ila, the applicant had been granted extra telephone time with his mother.

85. In addition to the telephone contact with his mother while she was still alive the applicant had, for several periods, been in regular telephone contact with a few female friends with whom he had become acquainted

during his imprisonment. He had chosen to terminate some of this telephone contact himself. The correctional services authorities had refused telephone contact with three people.

86. The High Court noted that the extent of visits and telephone calls had been relatively limited throughout the imprisonment. An important reason had been that the applicant's social network had been limited, and had been so also before the terror acts he committed on 22 July 2011. He had himself chosen to terminate contact with his father and, on two occasions, with female telephone friends with whom he had become acquainted during his imprisonment.

87. The conversations with the volunteer prison visitor, the priest and most visits from the applicant's mother had been conducted in a visiting room with a glass wall. The same had generally applied for contact with medical personnel and, until June 2016, his attorneys. The High Court stated that a glass wall reduced personal presence during interaction. The volunteer prison visitor had stated that he eventually forgot that they were separated by a glass wall.

88. The High Court was of the view that the applicant's visitors had had to be subject to visitor control for security reasons. The experience of personal presence could also have been reduced by the fact that correctional officers were sitting close by during the conversations.

89. Since June 2016 visits from the applicant's lawyers had been conducted by having them sit on either side of the security gate in the wing. This had to be presumed to provide the experience of more personal contact.

90. In the High Court's opinion, attempts should have been made to conduct more visits at the security gate, rather than using the glass wall. The use of a visiting room with a glass wall was, in the situation in question, nevertheless not a weighty element in the assessment pursuant to Article 3 of the Convention. The key aspect was the scope of social contact and the impulses this could provide for the applicant.

iii. Other aspects

91. The High Court pointed out that the purpose of the extensive security measures had been to prevent violence from the applicant, protect the applicant from violence against him, and to prevent him from influencing others to carry out violent acts. The authorities had obviously had no intention to break down the applicant either physically or mentally, nor had the purpose been to prevent the applicant from communicating his political message, save for encouragement to use violence.

92. The High Court noted that the conditions of the detention had gradually been relaxed. The extent of social contact had increased, not least throughout 2016. At the same time the use of far-reaching security measures, such as body searches, had clearly been reduced.

93. Relaxation of the security measures had been considered, *inter alia*, in connection with the preparation of decisions concerning continued detention in a maximum security department. These decisions were taken for six months. In addition, continuous assessments had been made in the coordination group for the applicant's detainment. This group had met on a weekly basis and included leaders and experts in the prison. Trying out interaction with other inmates had been discussed, but had not yet been carried out.

94. In the High Court's view, there was reason to attempt, within a relatively short time, interaction with one or a few other inmates in strictly controlled situations. It had been mentioned that interaction by the security gate or as a sports activity could be tried. The High Court assumed that consideration would be given to trying interaction with inmates not serving in a maximum security department.

95. Several types of decisions could be appealed against administratively, and their validity could also be challenged before the courts. The applicant had prospects to achieve further relaxation and have his detention conditions examined again in future. The decisions to confine the applicant to maximum security departments were valid for six months only, as were decisions concerning handcuffs. They had been reasoned and could be appealed against. The same was true for other decisions, such as refusal of post, visits or telephone use and use of the glass wall. The applicant had, to very considerable degrees, appealed against the decisions. Close to 200 decisions concerning conditions of his detention had been made.

96. The applicant had not brought the decisions before the courts, but he had complained to the Parliamentary Ombudsman (*Sivilombudsmannen*) and the Ombudsman's preventive unit had thereto conducted inspections at Telemark Prison, including of the maximum security department. The applicant had also filed a police report concerning the detention conditions and had submitted complaints concerning medical personnel to the Norwegian Board of Health Supervision (*Helsetilsynet*).

97. In a letter of 12 April 2014, the Parliamentary Ombudsman had pointed out that the correctional services authorities should have provided more thorough grounds for the decision for continued imprisonment in the maximum security department. The High Court agreed that the requirements for the assessments and grounds in such decisions had to be stringent, still they had to be viewed in the light of previous assessments. There had been dedicated coordination groups both at Ila and Telemark Prison that had been responsible for following up the applicant's prison conditions.

98. The special conditions that the applicant was serving under, as well as the large number of appeals from him, entailed that the advisers and decision-makers had been very familiar with previous assessments. In the High Court's view, there was much to indicate that the considerations

underlying the decisions had been sufficiently extensive. In any event, deficiencies in the grounds alone would not constitute a basis for ascertaining a violation of the Convention.

99. In the letter of 12 April 2014, the Parliamentary Ombudsman had also expressed the view that the correctional services authorities should follow up and provide feedback on aspects addressed as regarded imprisonment in a maximum security department regardless of whether there was a right to appeal under administrative law. The High Court agreed that objections to the use of security measures that did not require a formal decision under domestic legislation should also have been processed and specifically responded to. Not least, this applied because the overall security measures had been so strict over such a long period.

100. The applicant had also asserted that it had to be emphasised under Article 3 of the Convention that he had not been granted legal aid. The High Court noted at this point that there did not seem to have been any need for legal aid in connection with the applicant's very high number of appeals, which had not been covered. The present case related to issues of great significance to his welfare, but his not having been granted legal aid was in any event not a weighty element in the assessment pursuant to Article 3.

iv. Comparison with the Court's case law, summary and conclusion

101. The High Court carried out a detailed comparison of the applicant's case and cases that had been examined by the European Court of Human Rights, in particular *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, 18 March 2014; *Piechowicz*, cited above; and *Ramirez Sanchez*, cited above.

102. In summarising the applicant's case, the High Court opened by stating that being excluded from interaction with other inmates over a longer time entailed considerable mental strain that could inflict mental harm, and that both the European Court of Human Right's case-law as well as Norwegian legislation were based on the presumption that such exclusion had to be limited in time. It went on to highlight, *inter alia*, the following:

– The mental state of the specific applicant was still stable after a lengthy stay under strict security measures, and there were no clear signs of any harm due to isolation.

– The applicant was still strongly marked by his right-wing extremist political universe – weight could not be attached to his statements to the effect that he was no longer a proponent of violence.

– It was likely that the risk of violence would increase, should the applicant perceive that he was not receiving much attention for himself or his political project; the risk could also increase if he experienced being treated as an ordinary inmate. There was, accordingly, a high long-term risk of new violent acts, in particular minutely planned, spectacular violence to attract attention. One could not expect to register changes in the applicant's

behaviour prior to such acts. There was also a need for extensive assessments and practical measures to protect the applicant from other inmates.

– A number of measures had been implemented to compensate for the lack of interaction with other inmates; the applicant received social stimulus to a relatively large extent.

– The applicant had considerable freedom as to his day-to-day life. He often found his days meaningful by way of his studies, his political project and working on his detention conditions. Prior to the terrorism acts, he had also spent considerable time on his political project and computer games.

– The limitations on the applicant's freedom of movement had, to some degree, been compensated by his having three cells at his disposal; no other inmates had their own study room or a cell for working out.

– The lack of contact with other inmates, the extent of body searches and the use of handcuffs were clear strains that had characterised the applicant's detention; in other areas he had clearly enjoyed better conditions than inmates in Norwegian prisons would experience. Overall, the compensatory measures appeared very well-suited for the applicant's needs. The High Court still deemed that the opportunity for some limited interaction with some other inmates should be examined in detail and, if appropriate, tested within a relatively short time.

103. Based on the high risk of violence from and against the applicant, the extensive compensatory measures that had been implemented, the applicant's health, the extensive procedural guarantees and the circumstances overall, the conditions of the applicant's detention were not found to have been disproportionately burdensome. They had been necessary to ensure the security of society and of the applicant and it was not likely that safety could have been adequately secured through alternative, less burdensome means. The number of non-notified body searches should, in the High Court's view, have been lower, but the threshold under Article 3 had not been crossed.

104. After an overall assessment of the conditions of the applicant's detention, the High Court concluded that there had been no breach of Article 3 of the Convention either at the day of its judgment or when viewing the whole period from July 2011 to January 2017 as a whole. There was neither inhuman nor degrading treatment in the sense given to those terms in that provision.

v. Whether Article 3 of the Convention had been breached in some periods

105. The High Court went on to examine whether the conditions at Ila prior to the transfer to Telemark Prison in September 2013, viewed in isolation, had entailed a breach of Article 3 of the Convention.

106. In that respect, the High Court had regard to how the risk of planned or impulsive violence had been assessed as higher during the first

phase at Ila, which was connected to his arrest for particularly extensive and limitless violence and the descriptions in the text he had written. It had also been considered that the applicant might have emotional reactions if he understood what he had done, which indicated a need for measures to prevent suicide.

107. The measures had been exclusively implemented for security reasons; the purpose had not been to affect the applicant's mental state. Ila had not been adapted for maximum security prisoners and it had been necessary to make structural changes to the building. In the meantime, security had had to be ensured by way of measures targeting the applicant.

108. The number of body searches and the use of handcuffs had to be viewed in the light of how the applicant had often been outside his cell in connection with meetings with counsel, psychiatrists and health personnel, as well as police questioning and court hearings. He had at this time also had to move around more in connection with showers and going outside into the prison yard. Later on he had moved in connection with his mother's visits, contact with health personnel and the priest, as well as going to the prison yard. It was relevant that the security measures had been relaxed with time.

109. The High Court compared the instant case to that of *van den Ven*, cited above. It noted in that respect, *inter alia*, that there had been a particular risk in the instant case, and the applicant had concretely considered and described the possibility of attacking staff using weapons created with objects available in prison; moreover the focus on a possible suicide risk had been legitimate. Furthermore, in contrast to the situation in *van den Ven*, the applicant had not been harmed by the conditions and the body searches had not been carried out in a similarly degrading way to those in that case.

110. Based on an overall assessment, the thresholds for neither inhuman nor degrading treatment contrary to Article 3 of the Convention had been exceeded during the period from July 2011 to September 2013.

(c) The High Court's assessment under Article 8 of the Convention

111. As to Article 8 of the Convention, the High Court took as its general starting point case-law such as *A.K. v. Latvia*, no. 33011/08, 24 June 2014; *Bensaid v. the United Kingdom*, no. 44599/98, ECHR 2001-I; *Erdem v. Germany*, no. 38321/97, ECHR 2001-VII (extracts); and *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61.

112. As the case appeared before the High Court, it had only been asked to examine the issue of control of the applicant's correspondence and that of the lack of treatment for his alleged mental vulnerability.

i. Control of the applicant's correspondence

113. The High Court noted that for inmates confined to maximum security departments, the opportunity to conduct correspondence was an important element in the right to privacy and this particularly applied when the inmate had few or no visits from family and traditional social networks from before the imprisonment.

114. There had been a complete ban on correspondence for the applicant during his remand in custody from July to November 2011. Thereafter a liberal practice had been followed until the summer of 2012, when the correctional services authorities had learnt that the applicant was sending letters to right-wing extremists in other countries, which led to more stringent control and practice.

115. The applicant had not been subjected to a ban on correspondence since November 2011. He had conducted extensive correspondence by letter with private individuals, press agencies as well as public institutions. Permission had been granted to send and receive letters to and from authorities, media and organisations, as well as letters to individuals without associations with extreme right-wing groups. More than 4,000 letters had been sent and received by the applicant over five and a half years and between 20 and 25 percent of them had been stopped by the letter inspection.

116. The stopped letters had primarily been from the applicant, while most incoming correspondence had been delivered to him. There had been no inspection of letters to or from attorneys.

117. The correctional services authorities had stopped what they had considered to be mass dispatches of letters to ideologically like-minded individuals; individual letters to or from known right-wing extremist convicts; and individual letters to sympathisers that had to be presumed to contribute to the establishment of extreme right-wing networks. This had to be viewed in the light of the fact that the applicant had maintained his goal of building networks through correspondence. Certain letters had also not been sent because they could not be inspected, for example due to very dense writing or crossed-out text.

118. The High Court observed that the restrictions had been in accordance with the law and served a legitimate aim. As to the proportionality, it stated that the letter inspection had also to be assessed against the background of the applicant's conviction for politically-motivated terror acts and that there was a high risk of planned and completely limitless acts of violence. In the text written by the applicant prior to the terror acts (see paragraph 15 above), he had called for violence to change society. Letters from the applicant had been published on right-wing extremist websites. The applicant had a form of "hero" status in certain right-wing extremist groups and his acts had already been a source of inspiration for serious violence in Germany and also criminal acts

(threats) in Norway. Society thus had a strong interest in stopping letters that contained direct or indirect incitements to violence or which could, for example, serve to build right-wing extremist networks. Concurrently, the letter inspection had not affected contact with the applicant's family, close friends or other social relations established before his imprisonment.

119. Furthermore, the High Court pointed out that the letters had been assessed individually and that the applicant had been awarded legal safeguards in the right to appeal, of which he had largely availed himself – on some occasions successfully.

120. Following an overall assessment, the High Court concluded that Article 8 of the Convention had not been violated in connection with the mandatory letter inspection.

ii. Treatment of mental vulnerability

121. Turning to the applicant's allegations concerning the lack of "care" for "mental vulnerability", the High Court noted that it was not a question of "care" as in ordinary medical care, but rather that the applicant claimed that the limitations to his possibilities for social contact entailed a breach of Article 8 of the Convention.

122. The High Court made reference to case-law of the European Court of Human Rights, such as *Vasileva v. Bulgaria*, no. 23796/10, § 63, 17 March 2016, with further references. It assumed that the considerations in *Bensaid*, cited above, § 47 – which concerned expulsion – to the effect that Article 8 of the Convention could protect against measures by the authorities that have negative consequences for mental health – could apply also to prison inmates. In the instant case, however, the applicant's mental condition was stable; he still had a dissocial and dramatising personality disorder and little had changed. There were no grounds for considering him to have any particular mental vulnerability. The applicant had good access to health services. He had himself chosen not to avail himself of these services for a time, but the health personnel still continually considered whether he needed supervision. There would thus, in any event, not be issues concerning proportionality under Article 8 of the Convention because of alleged mental vulnerability.

5. Proceedings before the Supreme Court

123. The applicant appealed against the High Court's judgment.

124. On 8 June 2017 the Supreme Court's Appeals Leave Committee (*Høyesteretts ankeutvalg*) ("the Committee") unanimously refused leave to appeal.

125. As concerned the applicant's appeal against the High Court's assessment of evidence, the Committee noted that the evidence presented before the City Court and the High Court had been extensive and included inspections on site. The appeal to the Supreme Court had not substantiated

any claims of significant new evidence, nor any changes or developments that could affect the assessment. The Committee found that, in the interest of clarifying the case, there was no need for the Supreme Court to review the evidence again; such review by the Supreme Court would, in any case, be based on the presentation of secondary evidence. Furthermore, no other compelling reasons existed to serve as grounds on which to grant leave to appeal to the Supreme Court against the assessment of evidence. Leave was therefore refused for this part of the appeal, including the claim that the applicant was mentally vulnerable. The Committee referred to the High Court's judgment, which concluded that the applicant suffered from no such vulnerability.

126. As concerned the applicant's appeal against the High Court's application of the law, the Committee noted that the applicant had claimed that the High Court had misconstrued and misapplied Article 3 of the Convention in concluding that the conditions of his confinement did not constitute inhuman or degrading treatment. In particular, he had emphasised the stress of continuous solitary confinement, in the light of the security measures otherwise imposed.

127. The Committee observed that the isolation of the applicant from other inmates had lasted close to six years. This was an extraordinarily long time (*ekstraordinært lenge*). The isolation had not been found to have harmed his physical or psychological health. However, the risk of severe and irreversible psychological trauma associated with such prolonged isolation from regular, meaningful human interaction was generally quite high. Weighty reasons were therefore required to justify such solitary confinement with reference to Article 3 of the Convention.

128. Committing the applicant to solitary confinement was considered necessary on the grounds that he was dangerous. In its judgment of 24 August 2012, where the applicant was sentenced to preventive detention, the City Court had concluded that there was a high risk of him committing serious violent offences in the future, even after serving a regular prison sentence of 21 years. As had been detailed in the High Court's judgment, a number of risk assessments had been carried out throughout his detention, and they had all come to similar conclusions. Based on the extensive evidence presented, the High Court had concluded that the correctional services authorities were justified in concluding that the applicant represented, and continued to represent, a considerable security risk for his environment and society in general, even during his detention. He was isolated from other prisoners in order to prevent violence within the prison, reduce the risk of escape, prevent networking for the purpose of instigating new attacks and prevent the applicant from inspiring others to commit the kind of extreme violence he himself had committed.

129. Keeping the applicant from interacting with other inmates was also motivated by the assumption that the acts of terrorism for which he had

been convicted – and the message he continued to attempt to communicate in various contexts – entailed a considerable risk of serious attacks on his person.

130. In the early phases of the applicant's detention, especially, the security measures implemented had been stringent, including frequent night-time inspections and the use of handcuffs and body searches. Over time these measures had been eased, in line with, *inter alia*, recommendations in a visit report, dated November 2015, by the Parliamentary Ombudsman. Handcuffs had not been used inside the department since September 2015, and no body searches had been carried out since the end of 2015 or early 2016. Night-time inspections had, over time, been limited to inspecting the areas outside the cell door.

131. Generally speaking, there was no doubt that the conditions of the applicant's confinement caused the applicant great hardship, and they were also potentially harmful. However, overall, they caused no distress or hardship exceeding the unavoidable level of suffering inherent in the long period of detention he was serving and in the fact that on several levels he had represented, and continued to represent, an unusually high risk of very serious incidents. The High Court had concluded that alternative, less invasive measures had so far not been able to achieve a satisfactory level of security.

132. It had been established that all measures implemented in connection with the applicant's conditions of confinement had been authorised by or implemented pursuant to law, and they had been based on what the European Court of Human Rights had referred to as "genuine grounds both *ab initio* as well as when its duration is extended" (see *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 and 4 others, § 212, 10 April 2012). The issue of whether solitary confinement was necessary had been reviewed regularly. Health personnel had continually and closely monitored the applicant's health. Decisions to commit him to a maximum security department, which in reality had entailed solitary confinement, had been reasoned. These decisions had also been reviewed through administrative appeals procedures. As part of the case pending before the Committee, the applicant had also been given the opportunity for judicial review of his case in several courts. The procedural safeguards emphasised by the European Court of Human Rights had therefore been satisfactorily implemented.

133. The physical environment of the applicant's detention was, under the circumstances, very good. He had access to three continuous cells, with daylight and access to a television, a shower, a toilet, a refrigerator, a computer, exercise equipment, a stereo system and a video game console. He had the option of going outside in the yard for one hour each day and access to a newspaper every morning. During his detention, he had been able to receive instruction, study and take exams at university level with

good results. Increasingly, steps had been taken to facilitate more extensive and social interaction between the applicant and various categories of prison personnel. He had a regular prison visitor, whom he was free to talk with every week. These moderating elements made it easier for the applicant to cope with the stringent detention regime and the lack of ordinary human interaction. They contributed to giving his days a certain structure and meaning, and they facilitated physical and mental stimulation. They also largely served as a psychological substitute for the lack of social interaction with other prisoners.

134. In its judgment, the High Court had criticised the correctional services authorities on the grounds that the possibility of at least some degree of interaction with other inmates should have been given greater consideration and that the decisions should have included a more detailed justification. Furthermore, the use of random body searches at Ila was, in the High Court's assessment, unnecessarily high. Also, greater consideration should have been given to the possibility of using bars instead of glass walls for visiting purposes.

135. These criticisms were relevant for an assessment of whether the conditions of confinement have been, and continue to be, inhuman or degrading. However, the material elements of the applicant's detention regime – including the degree of isolation – were based on verifiable professional assessments, and they were implemented for the purpose of safeguarding critical security concerns as well as the applicant's health and dignity. The Committee recognised that the correctional services authorities, in the applicant's case, faced a considerable challenge in maintaining an optimal balance in this respect.

136. Upon an overall and comprehensive assessment, the High Court had concluded that the threshold for infringement of rights established by Article 3 had not been exceeded. The Committee saw no basis on which to draw a different conclusion. At this point, the applicant's appeal had no prospects of succeeding before the Supreme Court.

137. As concerned the remaining parts of the appeal, the Committee took into account the applicant's claim that the use of handcuffs and body searches constituted independent violations of Article 3 of the Convention. In this context, the Committee found it sufficient to refer to the High Court's judgment, with which the Committee concurred.

138. Furthermore, the applicant claimed that monitoring his correspondence and visits violated his right to respect for his private life and his correspondence pursuant to Article 8 of the Convention. The High Court had given a comprehensive assessment on this issue as well, and had concluded that the measures had statutory authority, pursued legitimate aims and were proportionate – and thus also justifiable under Article 8. The Committee saw no basis on which to draw a different conclusion.

139. These other parts of the applicant's appeal also had, in the Committee's view, no prospects of succeeding in a hearing before the Supreme Court.

B. Relevant domestic law

140. The applicant's preventive detention had been ordered pursuant to Article 39c of the Penal Code of 22 May 1902 no. 10 (*straffeloven*), in force at the time of the applicant's criminal acts and his conviction, the relevant parts of which read:

> "When a sentence for a specific term is deemed to be insufficient to protect society, a sentence of preventive detention in an institution under the correctional services may be imposed instead of a sentence of imprisonment when the following conditions in no. 1 or no. 2 are fulfilled:
>
> 1. The offender is found guilty of having committed or attempted to commit a serious violent felony, sexual felony, unlawful imprisonment, arson or other serious felony impairing the life, health or liberty of other persons, or exposing these legal rights to risk. In addition there must be deemed to be an imminent risk that the offender will again commit such a felony. In assessing such risk importance shall be attached to the felony commited or attempted especially as compared with the offender's conduct and social and personal functioning capacity. Particular importance shall be attached to whether the offender has previously commited or attempted to commit a felony as specified in the first sentence.
>
> ..."

The two first paragraphs of Article 39e of the 1902 Penal Code read:

> "When passing a sentence of preventive detention the court shall fix a term that should usually not exceed 15 years and may not exceed 21 years. On application by the prosecuting authority the court may, however, extend the fixed term by up to five years at a time. Proceedings for such extention may be instituted in the District Court not later than three months before the period of preventive detention expires.
>
> A minimum period of preventive detention not exceeding 10 years should also be termined".

The 1902 Penal Code was replaced by a new penal code of 20 May 2005 no. 28, which entered into force on 1 October 2015. Article 39e of the 1902 Penal Code was continued in substance in Article 43 of the 2005 Penal Code.

COMPLAINTS

141. The applicant complained under Articles 3 and 8 of the Convention of the conditions of his detention, in particular his solitary confinement; his being subject to body searches; the control of his correspondence, and his not being treated for mental vulnerability.

THE LAW

1. Article 3 of the Convention

142. The applicant complained that the conditions of his detention ran contrary to Article 3 of the Convention, which reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

143. The applicant submitted that the length of his solitary confinement viewed in conjunction with the strict security regime and his mental vulnerability amounted to inhuman or degrading treatment or punishment. In that respect he also argued that, while he could lodge administrative complaints against the commitment to a maximum security department, he could not lodge such complaints against the contents of that commitment, in particular the solitary confinement. In the alternative, the applicant argued, there had been a violation of Article 3 due to the high number of body searches.

144. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. Even in the most difficult of circumstances, such as the fight against terrorism or crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends 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. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Ramirez Sanchez*, cited above, §§ 115-119, ECHR 2006-IX).

145. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see, for example, *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 128, ECHR 2009; and *Ramirez Sanchez*, cited above, § 119). Besides the extent to which he has been subject to body searches, the applicant's allegations in the present case concern, specifically, his being subject to solitary confinement and lack of judicial safeguards in that respect. The Court has held that, although the prohibition of contact with other prisoners for security, disciplinary or protective reasons can in certain circumstances be justified, solitary confinement, even in cases entailing only relative isolation, cannot be imposed on a prisoner indefinitely. Moreover, it is essential that the prisoner should be able to have an independent judicial authority review the merits of and reasons for a

prolonged measure of solitary confinement. Indeed, solitary confinement, which is a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules adopted by the Committee of Ministers on 11 January 2006 (see, for example, *Ramirez Sanchez*, cited above, §§ 120-124 and § 145, ECHR 2006-IX; and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, §§ 104-107, 18 March 2014).

146. Turning to the instant case, the Court does not call into question that the applicant's detention posed significant challenges for the domestic authorities and that those authorities considered it necessary to combine his detention with extraordinary security measures.

147. The applicant has not as such complained of the physical conditions in which he has been held. The Court still notes that as he has had access to three cells with, *inter alia*, a television, shower, toilet, refrigerator, video game console and exercise equipment (see paragraphs paragraphs 44 and 133 above), in addition to the option of going outside for one hour every day (see paragraphs 45 and 133 above), the physical conditions appear proper (see, similarly, *Ramirez Sanchez*, cited above, § 129; and, in contrast, for example *Mathew v. the Netherlands*, no. 24919/03, §§ 209-216, ECHR 2005-IX).

148. With respect to the nature of the applicant's solitary confinement, the Court observes that he has had access to university studies, in which context he has received documents and sometimes recorded lectures (see paragraphs 45 and 133 above). He has also had access to television and a daily newspaper (ibid.). He has, in principle, been entitled to write and receive letters, though there has been control of his correspondence. Furthermore, he has in principle been entitled to monitored visits, though he has had few visitors, and monitored telephone calls (see, in particular, paragraphs 83-90 above).

149. In summary, the applicant has not been subject to "complete sensory" or "total social" isolation, but one that has been "partial and relative" (see *Ramirez Sanchez*, cite above, § 135). In view of the length of the period for which the applicant has been subject to that type of solitary confinement, a rigorous examination is nonetheless called for in order to determine whether it was justified, whether the measures taken were necessary and proportionate compared to the available alternatives, what safeguards were afforded to the applicant and what measures were taken by the authorities to ensure that the applicant's physical and mental condition was compatible with his continued solitary confinement.

150. The Court observes that the conditions in question were implemented for the purpose of safeguarding critical security concerns as well as the applicant's health and dignity. Moreover, as stated by the High Court, the degree of isolation was based on verifiable professional assessments (see paragraph 135 above).

151. Furthermore, the Court observes that the domestic authorities had established a number of measures to remedy the solitary confinement. In addition to daily contact with prison staff, the applicant had been offered contact with a priest, nurses and a volunteer prison visitor (see, for example, paragraphs 48-51, 59-68, 87 and 108 above). He had also had contact with a psychologist, but, prior to the domestic proceedings, he had refused psychological counselling (see paragraphs 37 and 51 above). With regard to the applicant's submission concerning mental vulnerability, the Court finds that the domestic courts made a reasonable assessment of the facts when reaching the conclusion that he did not have any particular mental vulnerability (see paragraphs 41, 122 and 125 above). The applicant had been monitored closely by the prisons' health services and the High Court noted that no clear signs of harm due to his solitary confinement had been observed (see paragraphs 42 and 102 above).

152. The Court considers that the conclusions drawn by the domestic courts were based on acceptable assessments of the relevant facts. As to the application of Article 3 of the Convention on those facts, the High Court meticulously scrutinised the balance between the degree of the applicant's relative isolation on the one hand, and the degree of compensating measures on the other, as struck by the correctional services authorities. It examined in that respect the necessity of confining the applicant to relative isolation and the effect that the security measures had on the applicant and his health, based on extensive written evidence and witness testimony, including from experts and professionals (see, in particular, paragraphs 10 and 14-68 above). The Court, having carefully examined all the material available to it, finds no grounds for reaching a different conclusion to that of the domestic courts with respect to the applicant's confinement to relative isolation not having implied treatment or punishment exceeding the threshold of what is "inhuman or degrading" and hence contrary to Article 3.

153. As to body searches, the Court finds that there are no reasons to criticise the domestic authorities for searches carried out in connection with, for example, transport, and it has otherwise noted that the number of searches has gradually been reduced considerably, in line with the continuous risk assessments (see paragraph 70-71 and 77 above). As to the random searches at Ila specifically, the Court has noted the High Court's finding that the number of such searches appeared to have been high during a part of the applicant's stay there, insofar as other security measures introduced at Ila had reduced his possibilities to carry hidden weapons or items that could be used as such (see paragraph 76 above). Taking into account that the totality of the security regime has to be examined in conjunction and bearing in mind that that regime will necessarily depend on assessments of risk based on the information at the relevant time, the Court sees no grounds for finding a violation of Article 3 of the Convention because of the body searches that have been carried out.

154. Concerning legal safeguards, the Court notes that in addition to the option of complaining about confinement to maximum security departments as such, as well as against decisions on specific security measures (see, *inter alia*, paragraphs 5, 95 and 132 above), the conditions of the applicant's detention have been carefully examined by three levels of domestic courts.

155. In the light of the above, and viewing the conditions of the applicant's detention as a whole, the Court finds that his complaint under Article 3 of the Convention does not disclose any appearance of a violation.

2. Article 8 of the Convention

156. The applicant argued that the control of his correspondence and the lack of treatment for mental vulnerability entailed a disproportionate interference with his rights as set out in Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

157. Under Article 8 of the Convention the applicant maintained that the control of his correspondence had lasted for too long and become too invasive. The applicant submitted, moreover, that Article 8 had been breached because of the lack of treatment for his alleged mental vulnerability.

158. As to the control of the applicant's correspondence, the Court concurs with the High Court's considerations that there had been a strong societal interest in hindering the applicant from sending letters containing direct or indirect appeals for violence or contributing to the establishment of extremist networks. Individual assessments of each letter had been carried out and the control of his correspondence had not prevented his contact with family, close friends or other social relations established prior to his detention (see paragraph 118 above). Noting, further, that relatively detailed rules and guidelines for the filtering had been developed, and that the applicant had had the option of requiring administrative reviews of decisions when letters were stopped (see paragraphs 114 to 119 above), an option of which he has largely availed himself, the Court finds no reason for further examination on the merits, namely whether the control of the applicant's correspondence was unlawful, did not pursue a legitimate aim or was disproportionate.

159. With respect to the lack of treatment for the applicant's alleged mental vulnerability the Court, as stated above in connection with Article 3 of the Convention, finds that the domestic court relied on a reasonable

assessment of the facts when finding that he did not suffer from such vulnerability (see paragraph 151 above). There is no appearance of a violation of Article 8, either, due to lack of treatment.

3. Conclusion

160. In the light of the above, the Court finds that the application is manifestly ill-founded and must be rejected in accordance with Article 35 § 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 June 2018.

Milan Blaško
Deputy Registrar

Yonko Grozev
President