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Solitary Confinement of Immigration Detainees

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SOLITARY CONFINEMENT OF IMMIGRATION DETAINEES[2]

I. INTRODUCTION

The following section aims to introduce the reader into the article and to give context, realistic definition and life to the issues raised.

1. SOLITARY CONFINEMENT

Solitary confinement is a punishment imposed on prisoners for disciplinary offences in exceptional cases. However it is also applied to administratively detained immigrants. At the immigration detention centre in Sofia, Bulgaria, where I have been providing legal aid, solitary confinement is internment to an empty cell with a surveillance camera recording 24 hours per day. That cell is called "the isolator". Asylum seekers and immigrants are placed there at the discretion of the detention officials for unlimited periods of time, without any act or explanations being served to the punished and without a possibility of appeal. The legal regulation is in Internal Rules adopted by the punishing authority; these rules are not published and no access is available to them by the detainees and their lawyers. At the same time, the regulation of solitary confinement in Bulgarian prisons for convicted criminals is in a Law adopted by the national parliament, there is a disciplinary procedure with guarantees with regard to the lawful imposition of the punishment and the appellate process, and there is a time limit of 14 days as a maximum for the duration of solitary confinement.

The present article argues that as a result of the criminalisation of migration, administratively detained asylum seekers and immigrants face arbitrary, harsher and therefore discriminatory discipline punishments during detention. Solitary confinement is widespread (Institute of Race Relations, 2008) and has damaging effects on the health of immigration detainees, many of whom are vulnerable persons who suffer the trauma of persecution and torture.

The article reveals existing state practice on imposing solitary confinement from the first-hand experience of the author and examines closely a pending case before the European Court of Human Rights. It looks at existing prison rules with regard to disciplinary punishment and advocates for their non-discriminatory application as minimum standards at immigration detention centres. It also provides an analysis of the international human rights principle of prohibition of torture, inhuman, cruel or degrading treatment or punishment in relation to detention conditions.

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[2] This paper is a result of academic research in my PhD studies, but it is inspired and based on my experience as a practicing lawyer providing free legal aid at the immigration detention centre in Sofia.

2. ADMINISTRATIVE DETENTION AND IMMIGRATION DETAINEES

Administrative detention is generally defined as "detention without charge or trial" (International Commission of Jurists, 2005: pp.4, 10–13). The use of the term "*administrative* detention" intends to highlight an important difference from detention under criminal law. Unlike prisoners, administratively detained immigrants are not detained as a result of committing a crime. Immigration detainees are not accused or convicted criminals, they are immigrants in irregular situations and asylum seekers. The former category of immigrants lack the necessary documents required by national law and this has entailed deportation. The objective of administrative detention is to serve the execution of the deportation order. Detention is not a sanction or a punishment, but a coercive administrative measure that is aimed at facilitating the implementation of the removal (deportation or expulsion). With regard to asylum seekers, Bulgarian law (Law on Asylum and Refugees: Art.47, Para.2, Subpara.1), for example, stipulates that those who are in a procedure for determining the state responsible for examining the application for asylum and those who have entered the country illegally and are in an accelerated asylum procedure are held in "transit centres". The role of the 'transit centres' is currently realized by the immigration detention centre in Sofia. However in practice asylum seekers in Bulgaria are often detained as undocumented immigrants on the basis of a deportation order since asylum applications are not registered at the moment of their submission (Ilareva, 2007: pp.60–61). Despite decreasing numbers of asylum seekers, the number of those detained is increasing.

Under international law, there should be differentiation in the places of detention of accused persons and of convicted persons. Article 10 (2) of the International Covenant on Civil and Political Rights and Article 17 (2) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provide that accused persons should be separated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. There is a presumption that conditions of detention of the accused will be better and the regime will be lighter than the ones applied to convicted persons. A similar presumption exists when Guideline 10 of the Twenty Guidelines on Forced Return, adopted in the Council of Europe (Council of Europe Committee of Ministers, 2005) and Article 16 (1) of the European Union Return Directive 2008/115/EC provide that immigration detainees should as a rule be accommodated in specially designated facilities, as differentiated from prisons, appropriate to their legal situation. Any impression of a "carceral" environment should be avoided (Council of Europe Committee of Ministers, 2005: Guideline 10.2.). Persons detained pending removal should not normally be held together with ordinary prisoners, whether convicted or on remand (Council of Europe Committee of Ministers, 2005: Guideline 10.4.). This is an official recognition that administratively detained immigrants are entitled to better detention conditions than the ones accorded in prisons.

Practice however has already shown that "separate" or "special" facilities could be the same or even worse than prisons. The official name of the detention centre in Bulgaria is "Special Home for Temporary Accommodation of Foreigners". This terminology is misleading and diverts public attention from uglier realities. In "accommodation" people are deprived of a fundamental human right – the right to liberty. The building has

the infrastructure of a prison: high walls, barbed wire, grills, security guards, recording cameras and restricted access. Furthermore, unlike prisoners, who have the right to go on home leave for good behaviour, detained immigrants are not allowed to leave the centre. Until 2009 when a time limit of 18 months was introduced, in Bulgaria detainees did not know the period of time for which they will be detained and there was no limit to its duration. Some cases extended for months, others for years.

Undoubtedly detention of asylum seekers and undocumented immigrants criminalizes them in the eyes of the public. When it comes to conditions of detention, immigrants face even harsher treatment and more restrictions than those accorded to criminal detainees (see Section II below). Guarantees with regard to the rights of detained immigrants are less regulated by law, which makes these people more vulnerable to arbitrary detention and other abuses. State authorities use the administrative character of the measure as a pretext not to apply the procedural safeguards established for criminal detention. Thus in 2008 the Supreme Administrative Court of Bulgaria (SAC) declared judicial review of immigration detention orders inadmissible with the argument that they were only administrative measures in execution of the deportation orders (SAC, 2008).

II. LACK OF SAFEGUARDS AND ALARMING PRACTICE

The following section studies closely a case pending before the European Court of Human Rights, Kadzoev v. Bulgaria. Comparison with rules for disciplinary punishment of convicted persons reveals that existing solitary confinement practice with regard to immigration detainees is arbitrary and constitutes discrimination.

All human beings are born free and equal in dignity and rights (Universal Declaration of Human Rights: Article 1). The criminalisation of migrants, however, creates their perception as '*non-persons*' with few, lesser or even no rights (Cholewinski, 2007: pp.301–306). This is seen in the current case of Mr. Said Kadzoev, an asylum seeker detained in Bulgaria since October 2006, who has been an object of constant punishment by solitary confinement for excessive periods of time: for two days in December 2006, for 20 days from 23 March till 13 April 2007, for five months from 28 May till 30 October 2007, for five months from 08 November 2007 till 02 April 2008, for some weeks in May and June 2008 and – at the time of submission of the article – almost without interruption for over an year since 21 August 2008. During solitary confinement he has been subjected to beatings in order to "pacify" him, deprived from basic utensils (such as cutlery) and on many occasions held handcuffed for days or weeks.

Mr. Kadzoev is an asylum seeker. There is expertise evidence that he was twice subjected to torture by the authorities in his country of origin for several months throughout which he was considered to have "disappeared" and then released without any charges against him. He entered Bulgaria irregularly at the end of October 2006 and was detained by the border police as an undocumented immigrant. A deportation order was issued against him, on the basis of which he is detained at the immigration detention centre ever since. Although he declared that he was seeking asylum in Bulgaria from his very first contact with the Bulgarian authorities and afterwards repeatedly submitted written asylum applications, his asylum claim was not registered for seven months while in the meantime the embassy of his country of origin was contacted and

measures were being undertaken with regard to his deportation. This led to Mr. Kadzoev's retraumatization at the detention centre resulting in his protest behaviour (Amnesty International, 2008).

In neither of the cases in which Mr. Kadzoev was punished by solitary confinement, he was served an administrative act to that end. No reasoning was provided to him about why he was punished. No information was given to him about any remedies available. The procedure, according to which the punishment was imposed was unknown – it was said to be prescribed in unpublished internal rules, to which neither the asylum seeker, nor his lawyer had access. In neither of the cases was Mr. Kadzoev given an opportunity to be heard before the decision on the punishment was taken. Mr. Kadzoev's lawyer had no access to any documents regarding the solitary confinement. All these factors led to the asylum-seeker's inability to avail of effective remedies against his solitary confinement.

Since no special procedure for judicial review of the solitary confinement and no administrative act for its imposition were known to Mr. Kadzoev, his lawyer lodged a judicial request against *the factual actions* of holding him in solitary confinement under the Administrative Code of Procedure. However the court dismissed the appeal on the grounds that the actions of the administrative organ were not factual, because they were based on a protocol for imposing the disciplinary punishment. Because of reluctance of the punishing organ to provide information to the court, the decision on the case was issued as late as three months and a half after the submission of the appeal while in the meantime the asylum seeker was held in solitary confinement.

Another time Mr. Kadzoev's lawyer submitted a *"blank" appeal* under the common Administrative Code procedure for appealing administrative acts against the act for imposing the solitary confinement (since that act was not served and was inaccessible). However this appeal could not be regarded an effective remedy for at least two reasons: firstly, the lack of knowledge about the reasoning for imposing the punishment affected the possibility for defence and, secondly, the time-consuming general administrative law procedure for appeal was not appropriate for solitary confinement cases in which speedy review is of crucial importance. After five months, before a court hearing on the appeal was ever scheduled in that occasion, the asylum seeker was released in the common dormitories.

Mr. Kadzoev's physical and mental health has significantly deteriorated as a result of his solitary confinement and ill-treatment at the "Special Home for Temporary Accommodation of Foreigners". No special medical treatment is provided to him in this relation. No access to his medical file is possible.

Mr. Kadzoev has gall stones and often receives extremely painful bilious attacks. In spite of that, no treatment has been applied, just injections for reducing the pain. When he received a next in succession crisis in early January 2008, a doctor from the emergency aid told him that a surgery was needed, yet this surgery has not been scheduled.

A *psychiatrist examination* conducted by the independent organisation – Assistance Centre for Torture Survivors (ACET) – concludes that there is reliable evidence of cumulative trauma, consistent with the torture, war and displacement experienced by Said Kadzoev in his country of origin. ACET also concludes that the reproduced situation of helplessness in his present detention in Bulgaria is the main retraumatizing factor in his case, amounting to inhuman and degrading treatment.

Mr. Kadzoev spends outside the solitary confinement cell only around 5 to 30 minutes per day; the toilet facility is inside the isolator. He is allowed no other visits than that of his lawyer and the occasional contacts with detention staff. He has no radio or television. Throughout most of the time he has been deprived of his mobile phone. In another case concerning similar practices, *Iorgov v. Bulgaria*, the European Court of Human Rights noted that "all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities" (Judgment of 11 March 2004, para.83 in connection with para.49).

Mr. Kadzoev has filed an application before the European Court of Human Rights (Application No. 56437/07) and his case is currently pending (Case of *Kadzoev v. Bulgaria*).

With regard to his solitary confinement and ill-treatment during detention the applicant alleges that he has been subjected to ill-treatment prohibited by Article 3 of the European Convention on Human Rights (ECHR) by being punished by solitary confinement arbitrarily and for excessive periods of time, and by being ill-treated during detention. By failing to take any effective legal measures to prevent such ill-treatment and to investigate the allegations for those violations, the state contravened also its positive obligations under Article 3 of the Convention.

The applicant further alleges that his solitary confinement for excessive length of time under the constant presence of a recording camera violated his right to private life under Article 8, ECHR. The interference with Mr. Kadzoev's privacy by holding him in an empty cell with nothing in it, but a recording camera had the effect of humiliating and debasing him and breaking his moral resistance. This surveillance adversely affected him and his personality in a manner disproportionate to any legitimate aim under Article 8 (2) of the Convention.

Mr. Kadzoev's inability to avail of effective remedies against his solitary confinement and the lack of access to his administrative and medical files represent a violation of his right under Article 13 of the ECHR.

Unfortunately the case of the asylum seeker Said Kadzoev, administratively detained in Bulgaria, is not a single one of its kind. Immigration detainees at the centre in Sofia are arbitrarily punished by solitary confinement for minor offences, for expression of protest or disagreement, for insisting to see a doctor. The punishment is disproportionate to the alleged offences; its imposition and duration depend entirely on the discretion of the detention authorities (Amnesty International, 2007).

A comparison with the imposition of the same punishment – solitary confinement – on persons in comparable situation – prisoners – reveals direct discrimination against the immigrants who are administratively deprived of their liberty in Bulgaria.

In the first place, the regulation of the disciplinary punishment imposed on convicted persons is found in the Law on the Execution of the Sentences, adopted by the National Parliament and published in the Official Gazette.

Secondly, according to Art.76 (k) of the Law on the Execution of the Sentences, the maximum time limit of solitary confinement is 14 days.

Thirdly, according to Art.77 of the same Law, when deciding on the disciplinary punishment, the punishing authority is obliged to take into account the health status of the prisoner. When the health status of the prisoner so requires, the execution of the punishment is postponed.

Fourthly, according to Art.79 (1) of the same Law, the prisoner has the right to be heard before the decision on the imposition of the punishment is taken.

Fifthly, Articles 78 to 78b of the Law on the Execution of the Sentences provides for a detailed regulation of the procedure for serving the order for imposition of the punishment to the prisoner and the appellate process against it.

On 06 April 2007 Mr. Kadzoev submitted a complaint before the national Commission for Protection against Discrimination, claiming that his solitary confinement since 23 March 2007 had been imposed in a discriminatory way in comparison with the imposition of the same punishment to other persons deprived of their liberty such as prisoners. As late as on 22 April 2008 the Commission issued a decision finding no discrimination in the case. The decision of the Anti-Discrimination Commission was appealed before the Supreme Administrative Court. The appeal asked the court to find that the actions complained were discriminatory and to make recommendation for regulation of the solitary confinement in immigration detention centres in law where safeguards are not less that the ones provided for in the Law on the Execution of the Sentences. With a final decision on 12 March 2009 the Supreme Administrative Court of Bulgaria dismissed the appeal and confirmed the decision of the administrative organ that there is no discrimination.

The lack of explicit safeguards with regard to disciplinary punishment of immigration detainees and the alarming state of existing practice speak for the need to promote application of prison rules at immigration detention centres as minimum standards.

III. EXISTING STANDARDS THAT APPLY

The following section examines rules on disciplinary punishments applicable to persons under any form of detention and the prohibition of torture, inhuman or degrading treatment or punishment.

1. LAWFULNESS OF DISCIPLINARY PROCEEDINGS

The Committee of the Human Rights Commission in charge of the study on the right of everyone to be free from arbitrary arrest, detention and exile concluded that "persons held in administrative detention should be entitled to the same safeguards as in the ordinary criminal procedure". The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly in 1988, explicitly states that all persons under any form of detention shall be treated in a humane manner and with respect for the inherent dignity of the human person. Therefore, the principles, developed by universal and regional international bodies in the context of prison detention or police custody, are completely applicable with regard to immigration detention.

Internationally agreed standards provide that "all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by or subjected to the effective control of judicial or other independent authority". A detained person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review (United Nations General Assembly, 1988: Principle 4).

According to Paragraph 57.2 of the European Prison Rules, adopted by recommendation Rec(2006)2 of the Council of Europe Committee of Ministers on 11 January 2006, national law shall determine:

a. the acts or omissions by prisoners that constitute disciplinary offences;
b. the procedures to be followed at disciplinary hearings;
c. the types and duration of punishment that may be imposed;
d. the authority competent to impose such punishment; and
e. access to and the authority of the appellate process.

The quality of the law is important. The legal regulation is not an aim in itself, but it should provide effective safeguards against human rights violations. This was reiterated by the European Court in the case of *Gülmez v. Turkey* (Judgement of 20 May 2008), which concerned unfair disciplinary proceedings and ensuing restriction on visiting rights:

> 49. To assess whether the interference complained of was "in accordance with the law", the Court must inevitably assess the relevant domestic legislation in force at the time in relation to the requirements of the fundamental principle of the rule of law. The expression "in accordance with the law" refers to the quality of the legislation in question. Domestic law must afford a measure of protection against arbitrary interference by public authorities with Convention rights, in respect of which the rule of law would not allow unfettered powers to be conferred on the Executive. Consequently, the law must indicate with sufficient clarity the scope of any executive discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). The law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to the impugned measures.

According to the Human Rights Committee, "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability (Case *Hugo van Alphen vs The Netherlands*, 1990: paragraph 5.8). Along the same lines, the Inter-American Court of Human Rights has stated that "no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individuals because, among other things, they are unreasonable, unforeseeable or lacking in proportionality" (Case Gangaram Panday, 1994: paras. 46–47).

No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. According to Paragraphs 43.2 and 43.3 of the European Prison Rules, medical staff shall pay particular attention to the health of prisoners held in solitary confinement, shall visit such prisoners daily, and shall provide them with prompt medical assistance and treatment. The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement.

The Working Group on Arbitrary Detention considers that "any asylum seeker or immigrant, upon admission to a centre for custody, must be informed of the internal regulations and, where appropriate, of the applicable disciplinary rules and any possibility of his or her being held incommunicado, as well as of the guarantees accompanying such a measure." (Working Group on Arbitrary Detention, 2000: Annex II).

2. PROHIBITION OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The prohibition against torture, inhuman, cruel or degrading treatment or punishment is a fundamental human rights principle codified in Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Article 3 of the European Convention on Human Rights, Article 5 of the American Convention of Human Rights, Article 5 of the African Charter on Human and Peoples' Rights, Article 13 of the Arab Charter on Human Rights adopted by the Arab League, Article 10 of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, etc. According to Article 10 (1), ICCPR, all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

International norms prohibiting ill-treatment contain both obligations of states to *refrain* from interfering with the individual's rights ("negative obligations") and duties to *undertake* specific affirmative tasks ("positive obligations"). These groups of state obligations will be examined in relation to detention conditions below.

2.1. NEGATIVE OBLIGATIONS TOWARDS INDIVIDUALS UNDER DIRECT STATE CONTROL

States have an obligation not to expose anyone under their jurisdiction to torture or to inhuman or degrading treatment or punishment. In this regard, the State is responsible for the actions of all its officials and organs, such as the police, security forces, other law enforcement agencies, and any other State bodies who hold the individual under their control, whether they act under orders, or on their own accord (Interights, 2006: pp. 1, 44). According to the European Court of Human Rights, a state cannot avoid responsibility for acts done by state officials by claiming that it was unaware of those acts (Case of Ireland v the United Kingdom, 1978).

At universal level, in General Comment No. 20 concerning prohibition of torture and cruel treatment or punishment, paragraph 6, the Human Rights Committee has noted "that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7 (of the ICCPR)". The Committee against Torture has considered certain modalities of administrative detention to be constitutive of ill-treatment in accordance with Article 16 of CAT and has recommended several times abolishment of all kinds of "incommunicado detention" (Committee against Torture, 1997: para. 121d; 1998: para. 135 and 1999: para. 18). The United Nations Special Rapporteur on the question of Torture recalls that the Basic Principles for the Treatment of Prisoners adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990, in particular its principle 7, reads as follows: "[e]fforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged" (United Nations Special Rapporteur on the question of Torture, 2002).

According to Paragraph 60.5 of the European Prison Rules, "solitary confinement shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible."

According to the 2nd General Report (CPT/Inf (92) 3) of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):

> The principle of proportionality requires that a balance be struck between the requirements of the case and the application of a solitary confinement-type regime, which is a step that can have very harmful consequences for the person concerned. Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.

In the case of *Mathew v. the Netherlands*, the European Court reiterated the above CPT conclusions and stated that total social and sensory isolation can destroy the personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. Article 3, ECHR, contains an absolute prohibition of ill-treatment, subject to no exceptions or derogations.

In the case of *Kucheruk v Ukraine* the European Court reminded European Prison Rules standards (Committee of Ministers, 1987: para. 39) that handcuffs, restraint-jackets and other body restraints shall never be applied as a punishment. They shall not be used except in exhaustively enumerated circumstances as a precaution measure or on medical grounds.

2.2. POSITIVE OBLIGATIONS OF STATES

A. PROTECTIVE MEASURES

The state has an obligation to provide effective legal and practical framework to prevent and protect against prohibited ill-treatment. Protection is owed against ill-treatment originating both from state agents and/or private individuals.

An issue in this regard may arise with regard to the guarantees provided in domestic law against misuse of power by detention officials. The asylum seeker in the case *Kadzoev v. Bulgaria* can make a valid argument that the state has not fulfilled its positive obligation under Article 3, ECHR, by not providing an effective legal framework against arbitrariness in the use of solitary confinement as a discipline punishment in immigration detention centres.

B. PROVISION OF ACCEPTABLE CONDITIONS OF DETENTION AND ADEQUATE MEDICAL TREATMENT FOR DETAINEES

The European Court has ruled on several occasions (e.g., in the cases of *Dougoz v. Greece, Peers v. Greece, Price v. United Kingdom, Kalashnikov v Russia*) that the detention of persons in poor conditions amounts to *degrading treatment*. Although whether the conditions of detention have been acceptable or not is determined on a case by case basis, relevant factors include the length of time the detainee was subject to those detention conditions and the effect that they have had on him/her.

Conditions of detention must be humane, with due respect shown for the inherent human dignity of the person. Furthermore, in the cases of *Amuur v. France* (Judgment of 20 May 1996) and *Riad and Idiab v Belgium* (Judgement of 24 January 2008) the European Court explicitly stated that there should be some relationship between on the one hand, the ground of permitted deprivation of liberty relied on and, on the other,

the place and conditions of detention. The Court considered relevant that the detention measures in question applied to foreign nationals who had committed no offences other than those related to their residence status.

Health care is a fundamental human right which state authorities that deprive personal liberty shall respect. According to Principle 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Guideline 10 (v) of the UNHCR Guidelines on Detention (UNHCR, 1999), medical care and treatment, including psychological counselling, shall be provided whenever necessary to detainees. Article 28 of the United Nations Convention on the protection of the Rights of All Migrants Workers and Members of Their Families provides that Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused to them by reason of any irregularity with regard to stay or employment. According to Guideline 10 (i) of the UNHCR Guidelines on Detention, there should be initial screening of detained persons to identify persons belonging to vulnerable groups so that their special needs could be taken into account.

The European Court of Human Rights has reiterated that "authorities are under an obligation to protect the health of persons deprived of liberty" and that "the lack of appropriate medical care may amount to treatment contrary to Article 3" (Case of *Kucheruk v Ukraine*, 2007: para. 148; Case of *Hurtado v. Switzerland*, 1994: para. 79; Case of *İlhan v. Turkey*, 2000: para. 87; Case of *Sarban v. Moldova*, 2005: para. 90; Case of *Mouisel v France*, 2002: paras. 40 and 43).

C. OBLIGATION TO CONDUCT AN EFFECTIVE OFFICIAL INVESTIGATION

According to Article 12 and 13 of the UNCAT, states are obliged to ensure that individuals, who allege that they have been tortured, have the right to complain and to have their cases "promptly and impartially examined" by competent authorities.

In the case of *Assenov and Others v Bulgaria* the European Court of Human Rights stated that where an individual raises an arguable claim that he/she has been seriously ill-treated by the police or other State agents unlawfully and in breach of Article 3 ECHR, that provision, read in conjunction with the State's general duty under Article 1 ECHR, requires by implication that there should be an effective official investigation. The *Assenov* positive obligation was endorsed and applied in the case of *Sevtap Veznedaroglu v Turkey*:

> "The inertia displayed by the authorities in response to her allegations was inconsistent with the procedural obligation which devolves on them under Article 3 of the Convention. In consequence, the Court finds that there has been a violation of that Article on account of the failure of the authorities of the respondent State to investigate the applicant's complaint of torture."

In *Assenov* and *Sevtap Veznedaroglu* the Court was not able to establish if the applicants had been ill-treated by officials as they claimed, but went on to find breaches of the effective investigation obligation under Article 3 ECHR.

IV. CONCLUSION

Solitary confinement of immigrants is a severe form of administrative detention that puts at grave risk the physical and mental integrity of the person. While this article has revealed the need to apply prison rules as minimum standards at immigration detention centres, in conclusion it will echo some unpopular, but wise voices:

"Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention."

The United Nations Special Rapporteur on the question of Torture, 2002: para. 26(h)

"Governments should consider the possibility of progressively abolishing all forms of administrative detention. When this is not immediately possible, Governments should take measures to ensure respect for the human rights of migrants in the context of deprivation of liberty."

The United Nations Special Rapporteur on the Human Rights of Migrants, 2002: paras. 74 and 75

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