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Criminal Justice Issues and Prisoners' Rights

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by [Garrett Zehr](#) | July 31, 2015

Britain's highest court has ruled that putting individuals in solitary confinement for an extended period of time without external review is unlawful.

The appellants Kamel Bourgass and Tanvir Hussain were both wrongfully held in solitary for more than six months because the process lacked oversight, the UK Supreme Court ruled.

The decisions to continue the segregation of the two appellants were taken without lawful authority, and their segregation beyond the initial 72 hours was therefore unlawful, the court said in the unanimous [ruling](#).

Legislation governing prison rules in Britain requires that decisions to hold someone in segregation longer than three days must be made by the Secretary of State for Justice and not by prison officials. The Court noted that the rules are designed to provide a safeguard against excessively prolonged segregation by prison staff and that this protection can only be effective if the oversight is external to the prison.

The appellants also filed a human rights claim of procedural fairness under the European Convention on Human Rights, but this was dismissed.

Bourgass and Hussain were both put in solitary after being accused of assaults on other individuals. Both were alleged to have bullied others in prison over their faith, claims the men deny. Prison officials claimed it was necessary to separate them from other prisoners for good order and discipline.

Bourgass was detained in segregation at Her Majesty's Prison Whitemoor prison from March 10 to April 22, 2010 and after being released for a day was sent back until October of that year. Hussain was in segregation at HMP Frankland prison from April 24 to October 2010.

While in solitary, the men were locked in their cells for 23 hours per day and were not allowed contact with other prisoners. Exercise was restricted to a solitary caged area and they were not allowed physical visits with visitors.

The court heard substantive evidence about the effect of segregation on individuals. The ruling cited a report published in June 2015 by the Prisons and Probation Ombudsman for England and Wales that found that 28 prisoners died of suicide while being held in solitary between January 2007 and March 2014.

It also quoted a Prison Service Order issued by the Secretary of State in 2013 that said: Research into the mental health of prisoners held in solitary confinement indicates that for most prisoners there is a negative effect on their mental wellbeing and that in some cases the effects can be serious. A study by Grassian & Friedman (1986) stated that, Whilst a term in solitary confinement would be difficult for a well-adjusted person, it can be almost unbearable for the poorly adjusted personality types often found in a prison. The study reported that the prisoners became hypersensitive to noises and smells and that many suffered from several types of perceptual distortions (eg hearing voices, hallucinations and paranoia).

The Court also noted that according to the Secretary of State, segregation was to be used only as a last resort after all other alternatives such as transfer to another area of the prison, closer supervision, and incentives, were exhausted.

Both Hussain and Bourgass are serving sentences for terrorism-related offences. Hussain was convicted for his role in a 2006 airline bomb plot while Bourgass was found guilty of a 2002 ricin terrorist plot.

A Prison Service spokesman [told media](#) after the ruling: We are currently considering the Supreme Court judgment but are pleased it found no fault with the majority of the procedures around the segregation of prisoners. All prisoners who are segregated are already subject to a careful assessment so their physical and mental wellbeing is safeguarded.

According to the [Guardian](#) newspaper, no individuals are expected to be released from solitary confinement as a result of the ruling. But

the Howard League, a leading British prison reform organization, believes that the practice of placing people in prolonged solitary without proper review is widespread. We welcome this landmark decision, Howard League head Frances Crook said in a press release. The Secretary of State for Justice will need to take urgent steps to alter the segregation process to ensure that it complies with the Prison and Young Offenders Rules by providing for external scrutiny of decisions to segregate beyond 72 hours.

Garrett Zehr is a Toronto-based legal aid lawyer practicing criminal defense and international human rights law, and a proud union member.

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