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ARTICLE

The Evolution and Implementation of Norway's Ultimate Penalty: An Exceptional Approach to Life Imprisonment?

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Abstract

Though formal life sentences have been abolished in Norway, *forvaring* (post-conviction indefinite preventive detention) – a type of informal life sentence – can be imposed on individuals convicted of certain offenses who are considered to be at high risk of future offending. While great attention has been paid to Norway as an "exceptional" penal outlier globally, there is a notable lack of comprehensive knowledge about its indefinite penal sanction. Drawing on extensive historical research and legal and policy documentary analysis as well as leveraging a unique national dataset on the total forvaring population, this article provides the first international in-depth assessment of the evolution and implementation of Norway's ultimate penalty. In so doing, it highlights significant disparities between policy ambitions and current practice and questions the extent to which the sanction of forvaring can be considered an "exceptional" approach to life imprisonment. It is argued that the development and growth of this type of informal life sentence can be seen as the epicenter of the impact of a more punitive ideology in Norway, emphasizing the need to move away from

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the concept of penal exceptionalism to better understand the full spectrum and practice of Norwegian and Nordic penality.

Keywords: *forvaring*; indefinite preventive detention; life imprisonment; penal exceptionalism; Norway

Introduction

Forvaring (post-conviction indefinite preventive detention) is the ultimate penalty in Norwegian law. Forvaring is a sanction imposed for certain offenses when a determinate sentence "is not considered sufficient to protect others' lives, health, or freedom."[1] The sanction is intended to be both punitive and preventive; punitive because it is legally defined as a criminal punishment imposed on persons who have criminal responsibility for their actions (Johnsen 2011; Jacobsen 2017) and preventive because those sentenced to forvaring are released only once they have been assessed as no longer presenting an imminent risk of committing future serious crimes.[2] The indefinite duration is justified on the basis that, at the time of conviction, it is not possible to estimate how long the individual will present a danger of committing further crime. Forvaring is therefore a type of informal life sentence, whereby the court imposes "a sentence that it does not call life imprisonment, but which could actually result in the persons being held in prison until they die there" (Van Zyl Smit and Appleton 2019, xi). In their global analysis of life imprisonment, Dirk van Zyl Smit and Catherine Appleton (2019) found at least fifty countries that impose post-conviction indefinite preventive detention sentences of this type, though the numbers of individuals serving informal life sentences, and the different types of regimes imposed, remains largely unknown.

While international interest in the use of forvaring has grown in the wake of Anders Behring Breivik's sentencing for the July 22, 2011, terror attacks in Oslo,[3] some of the coverage has portrayed his punishment as a fixed-term sentence of twenty-one years. This tends to overlook the indefinite nature of forvaring, referring to Breivik's "light" or "lenient" twenty-one-year sentence, despite the possibility of Breivik remaining in prison for the remainder of his life (see, for example, Fisher 2012; Labutta 2016). Norway has in fact practiced indefinite post-conviction preventive detention since the implementation of the 1902 Penal Code, with the current system coming into force in 2002.[4] Of significance, the number of individuals serving forvaring has nearly doubled in recent years from seventy-eight individuals in 2012 to

[1] Norwegian Penal Code 2005 (*Lov om straff*) LOV-2005-05-20-28, s.40.

[2] Supreme Court of Norway (*Norges Høyesterett*), HR-2014-2013-A – Rt-2014-934, October 16, 2014.

[3] On August 24, 2012, Anders Behring Breivik was convicted of acts of terrorism committed on July 22, 2011, by Oslo City Court. He detonated a car bomb in the government district of Oslo and carried out an armed attack on participants at a political youth camp on Utøya Island, just outside the city. His actions resulted in the deaths of seventy-seven people and injuries to forty-two others. He was sentenced to preventive detention for twenty-one years, with a minimum term of ten years to be served.

[4] Norwegian Penal Code 1902 (*Almindelig borgerlig Straffelov*) LOV-1902-05-22-10, Amendment Act to the Penal Code (*Lov om endringer i straffeloven og i enkelte andre lover*) LOV-2001-06-15-64.

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152 at the beginning of 2022,[5] with the current total constituting 5 percent of the overall prison population.[6] Given the indefinite nature of the sentence and its steadily increasing scale, this is a particularly important element of the Norwegian penal field that warrants closer assessment.

This is of added salience since Norway's correctional system continues to be internationally understood as "exceptional" and a penal policy touchstone, "making the relatively small nation somewhat of a penological giant" (Anderson 2023, 924). This extends to international policy interest in the use of indefinite preventive detention, including, for example, recent proposals from the Finnish government to replicate how Norway's system of forvaring is legislated and implemented (see Lopez 2019). Interestingly, though, the proposed changes to the Finnish system have been driven more by right-wing politicians seeking alternative indefinite punishments for so-called "dangerous offenders" than by Norway's reputation for penological excellence.[7]

Yet little is known globally about Norway's ultimate penalty. In the following sections, we therefore aim to examine the evolution and implementation of Norway's ultimate penalty. After outlining key features of penal exceptionalism and indefinite preventive detention, we introduce our data sources and methods. We first adopt a historical approach to examine how the logic and legitimation of indefinite preventive detention in Norway has evolved over time. Our analysis then turns to examine how the legal and policy framework of the current forvaring system has been implemented, and, finally, to assess how the system works in practice. In so doing, we combine documentary analysis of relevant legal and policy criteria with quantitative data from a unique dataset of the total forvaring population in Norway. Our assessment highlights how, despite a significant increase in the use of forvaring, Norway's ultimate penalty has received little political scrutiny or opposition, both historically and contemporaneously, and identifies a significant gap between penal-welfare ambitions and punitive practice. In the concluding discussion, we reflect on the main findings and consider the extent to which forvaring can be considered an "exceptional" approach to life imprisonment.

Penal exceptionalism and indefinite preventive detention

Global interest in exceptional approaches to punishment has increased over recent decades. While many point to a punitive turn in Anglo-American societies, marked by

[5] Data provided by the University College of Norwegian Correctional Service (Kriminalomsorgens høgskole og utdanningssenter).

[6] According to the Council of Europe's Annual Penal Statistics (SPACE 1), Norway's total prison population on January 1, 2022, was 3,034 individuals, including pre-trial detainees (Aebi, Cocco, and Molnar 2023). Though a relatively small total prison population, it is noteworthy that Norway's national population size was around 5.4 million people in 2022. See Statistics Norway, https://www.ssb.no/en/befolkning/befolkningsframskrivinger/artikler/norways-2022-national-population-projections.

[7] In June 2023, the new right-wing coalition government in Finland announced it would "... immediately seek solutions to ensure that prisoners who are the most dangerous to society and to the safety of other people are not released. Preventive detention will be introduced" (Finnish Government 2023, 218). In a similar vein, prison officials in New Zealand consulted with Norwegian counterparts on their experience with Anders Behring Breivik when considering how to manage Brenton Tarrant, convicted of murdering fifty-one people in 2019, and the first person in New Zealand to be sentenced to whole life imprisonment (Smith 2019).

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an increased reliance on prisons and a decreased emphasis on welfare-oriented crime control policies (see Garland 2001), certain jurisdictions—particularly the Nordic nations—have been framed as exceptional for their more restrained approach to punishment (Pratt 2008a, 2008b). Penal exceptionalism, therefore, is "an inherently comparative concept" that is "used to identify those nations that have diverged from [punitive] penal practices often observed in England and Wales and the USA" (Brangan 2019, 781). Norway has garnered particular praise from international media and scholars for low incarceration rates and humane prison conditions, with its approach being described as a "shining light" compared to other nations (Paddison 2019). The Nordic penal exceptionalism thesis attributes this phenomenon to strong cultures of equality and well-funded welfare states (Pratt 2008a; Pratt and Eriksson 2014).

The penal exceptionalism thesis, however, faces ongoing scrutiny, both regarding its nature (does punishment in the Nordic region truly differ significantly?) and its trajectory (is exceptionalism attenuating as more punitive policies and practices emerge?). A body of theoretically and empirically sophisticated literature has offered a more nuanced picture of Nordic penality, shedding light on penal exceptionalism's shortcomings.[8] These new perspectives note, for example, that penal exceptionalism fails to account for the extensive use of pre-trial detention and solitary confinement in Nordic countries (Mathiesen 2012; Smith 2012), the disproportionate punishment of foreign citizens (Barker 2012; Ugelvik and Damsa 2017; Todd-Kvam 2018), and the imposition of significant and long-term "punishment debt" (Todd-Kvam 2019), and argue that even the highly praised prisons in these regions invoke pain and hardship (Ugelvik and Dullum 2012; Shammas 2014).

While indefinite preventive detention was mentioned in John Pratt's (2008a) original analysis, it is interesting that Norway's ultimate penalty has not been a significant focus in the debates on penal exceptionalism (see also Pratt and Eriksson 2014). However, while discussing forvaring in the context of the "welfare sanction," John Pratt (2008a, 131) did caution that, "[t]he unchallenged place of experts and the primacy given to collective interests above those of the individual meant that individual human rights might receive little regard." More recently, Victor Shammas (2018, 86) has argued that the advent and growth of preventive detention "represents a hardening of the Norwegian legal environment," and Ben Crewe, Julie Laursen, and Kristian Mjåland (2022) see a bifurcation between indefinite preventive detention as an oppressive system of correcting the individual and a "mild and humane" prison system for determinate sentences.

In a broader context, global research on life imprisonment has predominantly focused on the development of formal life sentences (Van Zyl Smit and Appleton 2019), leaving room for a comprehensive evaluation of informal life sentences, including Norway's indefinite preventive detention system (Penal Reform

[8] For critical analysis, see Shammas 2016; Smith and Ugelvik 2017b; Reiter, Sexton, and Sumner 2018; Kemp and Tomczak 2023.

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International et al. 2024).[9] Research by John Pratt and Jordan Anderson (2016) and John Pratt (2020), however, has highlighted the rise of the so-called "security sanction" across certain anglophone societies, including the use of indefinite preventive measures as punishment for serious crimes. Doubtless, similar systems of indefinite preventive detention exist elsewhere (for example, in Australia, Denmark, France, Germany, Hong Kong, South Africa, and Switzerland) whereby individuals who commit certain violent or sexual offenses and pose a risk to the public can be detained indefinitely "at the disposal of the state" and are usually housed in specialist institutions (Van Zyl Smit and Appleton 2019, 82).[10] Such informal life sentence systems "can be as harsh, and in some cases even harsher, than formal life sentences," yet very little research has been conducted on the evolution and implementation of such sentences, on the number of persons so sentenced across jurisdictions, or on the impact of such sentences on the individuals who are serving them (Penal Reform International et al. 2024, 4).

Indeed, despite Norway's prominent position within the Nordic penal exceptionalism framework, there has been little global engagement with the development of its ultimate penalty, its contemporary shape and form, and its implementation within the penal system. While there is some research in Norwegian on the sanction of forvaring, including the legal framework, and on subgroups of the forvaring population, particularly children and young people,[11] internationally, there is a clear empirical and theoretical gap in our understanding of the history, logic, and implementation of this type of informal life sentence and of what this implies about Norwegian and Nordic penal exceptionalism.[12] Our goal in this article is to address this oversight.

Research methods

Alexander Pisciotta (1981) argued in favor of historical approaches, citing Steven Schlossman (1977, 192) to support his argument: "[I]t is imperative to study correctional history if only for the illusions it can dispel, if only to see how important it is to penetrate the veneer of reform and distinguish clearly between theory and reality" (Pisciotta 1981, 116). We agree with this sentiment. An analysis of how informal life sentences have evolved in Norway can help us deliver a "productive dialogue between theory and empirical particulars," while laying the groundwork for

[9] The term "informal life imprisonment" has been established within the literature on life imprisonment to refer to a sentence that the sentencing authority "does not call life imprisonment, but which could actually result in the persons being held in prison until they die there" (Van Zyl Smit and Appleton, 2019, xi). The term encompasses both *de facto* life sentences (lengthy determinate sentences) and post-conviction indefinite preventive detention sentences. Forvaring thus falls within this definition because it allows for the indefinite preventive detention of convicted persons without specifying that it is potentially a life sentence.

[10] Such systems of preventive detention are usually treatment oriented, with a strong psychiatric element, though in Switzerland post-conviction indefinite preventive detention with no treatment offered may be imposed on the grounds that the person detained is untreatable (Coninx 2016).

[11] For example, Johnsen 2006, 2011, 2013; Johnsen and Storvik 2006; Johnsen and Engbo 2015; Drake 2019; Holmboe 2020; Fornes and Gröning 2021; Gröning, Jacobsen, and Husabø 2023.

[12] For critical and comparative insight, see Mathiesen 1965; Dullum 2014; Lappi-Seppälä 2016; Van Zyl Smit and Appleton 2019; Johnsen and Storvik 2020; Crewe et al. 2022.

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a similar dialogue between policy ambitions and practice (Guiney 2020, 82). Such an approach is also useful to help address some of the inherent limitations of the penal exceptionalism framework, "where examples are routinely over general and lacking in historical specificity" (Brangan 2019, 782). Our empirical analysis integrates historical research of social and political debates as well as documentary analysis of contemporary legislation, policy documents, and official statistics. We have aimed to identify both the important changes and, as Paul Knepper (2014) highlights, continuities in terms of the logic and legitimation of the use of preventive detention over time.

Our quantitative data are drawn from a unique national register encompassing every forvaring sentence imposed between January 1, 2002 and January 1, 2022, the first twenty years of Norway's current ultimate penalty. We believe that the dataset is internationally unique in terms of its comprehensiveness. The sources of the register were sentence and release data for individuals subject to forvaring, integrated with data from the Norwegian Correctional Service's registration and case management system. Each sentence was given an identification number, and variables registered for each sentence included the sentenced person's age, gender, citizenship, previous convictions, index offense, year of sentence, use of expert examinations at sentencing, and status of the sentence (in prison, paroled, released, and so on). Since a person sentenced to forvaring must stay in prison for a minimum of one year, the register is updated twice a year (in January and in August/September) to ensure completeness.

Data protection approval was granted by the Norwegian Agency for Shared Services in Education and Research. Data were analyzed using SPSS v. 28 to calculate frequencies and descriptive statistics annually and at five-year key variables. This enabled us to explore key characteristics of the overall forvaring population as well as to elaborate longitudinal trends. These were then used to interrogate the ambitions derived from the policy analysis in order to explore their credibility in practice. Much of the source material we used was in Norwegian. All translations in the text are our own and were discussed among the authors who have both English and Norwegian as first languages.

The history of forvaring

Legislative proposals for a system of indefinite preventive detention to deal with so-called "dangerous offenders" were first drafted in Norway by a Law Commission in 1893 and were partly influenced by Franz von Liszt, a prominent German criminologist and law reformer of the time (Jacobsen 2020). In 1902, Norway became the first Nordic country to include a two-track system of post-conviction indefinite preventive detention in its penal law. It is noteworthy that criminological admiration of Norway has a long history, with the Norwegian Penal Code of 1902 being considered the most modern in Europe at that time (Lappi-Seppälä 2016). Indeed, the American Series of Foreign Penal Codes heralded it as follows: "There is unanimous agreement among comparative criminal lawyers that the modern era of Criminal law began with the promulgation of the Norwegian Penal Code of May 22, 1902" (cited in Flaatten and Heivoll 2014, 15).

The Penal Code of 1902 established two distinct indefinite "special criminal reactions" (*strafferettslige særreaksjoner*) for managing those individuals deemed to be

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dangerous: (1) preventive safeguarding (*sikring*) for any convicted person, regardless of their mental state,[13] and (2) additional preventive detention (*etterforvaring*), specifically for those deemed fully accountable for their actions.[14] Though not considered to be a punishment, these special criminal reactions were aimed to protect society from individuals judged to be at risk of committing future serious crimes through indefinite preventive detention:

> If someone has committed multiple completed or attempted crimes ... the court may decide to pose a question to the jury as to whether, given the nature of the crimes, the underlying motive, or the disposition revealed through them, the guilty person should be considered especially dangerous to society or to an individual's life, health, or welfare. If the posed question is affirmed, the judgment can determine that the convicted person can be kept in prison as long as deemed necessary, but not longer than three times the determined sentence, and in no case more than fifteen years beyond it.[15]

Key points in the logic of this form of indefinite preventive detention were: (1) it could only be imposed for repeat offenses; (2) dangerousness was a key factor; and (3) while indefinite, there was a maximum duration of fifteen years in addition to the determinate sentence. Prior to being sentenced, convicted persons were subjected to forensic psychiatric assessment, including a prediction of future offending. Even at this time, a contemporary scholar and head of the Norwegian "Criminalist Association," Francis Hagerup (1901, 8–9) raised several dilemmas as the legislation was being considered:

> [I]t is crucial that the punishment set in the judgment is clearly defined and adjusted based on the objective severity of the crime and the subjective guilt of the offender. In such situations, does society have both the right and obligation to go beyond this defined boundary of punishment? And should society also apply preventive measures to the accountable offender? Measures that, from a strict legal viewpoint, are more akin to precautions prescribed for dangerous mentally ill individuals rather than actual punishment?[16]

He argued that the Norwegian provisions differed from other jurisdictions, placing decisive emphasis on dangerousness rather than on presumed incorrigibility. Hagerup (1901, 9) also raised concerns about the lack of opposition to the legislation, an observation that, as we will argue, remains a feature of political debates on indefinite punishment in Norway: "This provision is undoubtedly one of the most modern and radical in the entire draft, and it is therefore noteworthy that no

[13] Sikring was reserved for those with "poorly developed or permanently weakened mental faculties" and could be imposed in addition to punishment (Norwegian Penal Code 1902, s. 39). Various safeguarding measures could be imposed, including prohibiting a convicted person from a certain place of residence and detention in a psychiatric hospital, detention center, or prison (see Storvik 2021).

[14] Norwegian Penal Code 1902, s. 65; later s. 39a.

[15] Norwegian Penal Code 1902, s. 65.

[16] Francis Hagerup also served as Conservative Party leader, and two terms as the Prime Minister of Norway from 1895 to 1898 and from 1903 to 1905.

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opposition against it has been shown in any of the instances the draft has so far passed—not even in the previous Parliament's Judiciary Committee."

It is interesting that we can begin to observe a pattern of international acclaim, compliant political actors, and critique from Norwegian scholars as far back as the late nineteenth and early twentieth centuries. Yet, despite its international acclaim, the two-track system of preventive sentencing proved ineffective, and the reactions were seldom used in practice (Hauge 1996). This led to further reforms in 1929, including the removal of the upper time limit and of the explicit reference to dangerousness (Høyer 1991; Grøndahl 2000).[17] The revised sanction was again unanimously approved by the Norwegian Parliament, albeit with some debate and a vote in favor of "expert judges" (rather than a jury) deciding on whether the convicted person posed a risk of recidivism.[18] Preventive detention was contemporaneously described as "a policing measure taken in the interest of society to prevent the man from relapsing into new and serious crimes" (Nissen 1934, 114).

From the 1950s onwards, strong criticism emerged of the system for its weak and inadequate legal protections. The Norwegian Association for Penal Reform (*Norsk forening for kriminalreform*), for example, highlighted a number of major flaws in the system, including: (1) indefinite periods of confinement being imposed for minor offenses, breaching the principle of proportionality; (2) a growing skepticism toward rehabilitation and the effectiveness of institutional treatment; (3) the detrimental impact of indeterminate periods of detention on individuals so detained; and (4) the dominant role of forensic psychiatrists in predicting future recidivism (Christie 1978; Dullum 2014; Lappi-Seppälä 2016; Dahl 2017). This formed part of a wider critique against institutional control and, particularly, the use of indefinite sanctions, which emerged internationally at that time as well as in the Nordic countries (see, for example, Goffman 1961; Mathiesen 1974; Tonry 2013).

In Norway, a government-appointed Committee of Experts proposed reducing the use of post-conviction indefinite sentencing to a minimum and that mentally ill persons in prison should be moved to psychiatric institutions (Norges Offentlige Utredninger 1974, 17). These proposals were met with additional criticism from individual scholars advocating for the complete abolition of indefinite reactions (Mathiesen 1974) as well as from practitioners in psychiatry who perceived the proposed reforms as "intruding too greatly on their own discipline" (Lappi-Seppälä 2016, 472). Subsequently, a government white paper, titled *On Crime Policy*, also criticized the reliability of predicting future dangerousness, questioning the underlying rationale of indefinite preventive detention:

> A basic prerequisite for the use of preventive detention is that future crimes—in practice violent crimes—can be predicted with a fairly high degree of probability. It seems clear today this is a doubtful assumption. A group of professionals who have been involved in these kinds of problems, namely the psychiatrists, do not seem to support a system based on the prediction of dangerousness based on the medical criteria the current legislation provides for.

[17] Amendment Act to the Penal Code 1929 (*Endringslov til straffeloven*) LOV-1929-02-22-5.
[18] *Parliamentary Debates* (*Stortingsforhandlinger*), Ottende Del Sak no. 4, 1929.

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> This failing assumption is particularly troubling considering that preventive detention is not a punishment for committed acts, but in reality is a punishment based on suspicion of future criminality. This raises questions of significant importance regarding both the requirements for legal security and justice. The situation is different in cases where there is a recurrence of dangerous violent crimes. Such repetition can be an indication of danger beyond what can be inferred from the specific act. The institution of preventive detention in its current form seems, under any circumstance, to be on its way out. (Justis- og politidepartement 1978, 170)

During the 1980s, after a long period of criticism against preventive sentencing measures, policy efforts to find alternatives to preventive safeguarding continued. While the abolition of all types of indefinite sanctions was being debated across the Nordic countries, Norway was the only country that moved to abolish formal life sentences, which it achieved in 1981.[19] The underlying rationale was that, in practice, a life sentence in Norway did not mean a lifelong prison sentence. Those sentenced to formal life imprisonment spent, on average, between eleven and twelve years in prison (Norges Offentlige Utredninger 1974, 17), and no person in Norway had ever served a lifetime in prison. The maximum prison term, however, was increased from fifteen to twenty-one years at that time to ensure that there were, in effect, no real changes to existing penal practice (see Todd-Kvam, Dahl and Appleton, forthcoming).

Moreover, a 1983 green paper by the Penal Law Commission argued that the need for a system of indefinite preventive detention was strengthened following the abolition of formal life imprisonment (Johnsen 2006). As such, a new law proposal was put forward by the government in 1990 and was accepted in 1997, taking effect on January 1, 2002 (Norges Offentlige Utredninger 1990). This major reform had a significant impact on the Norwegian system of criminal sanctions and introduced a revised system of post-conviction indefinite preventive detention (see Gröning, Jacobsen, and Husabø 2023). The old system of preventive safeguarding was thus abolished and replaced with three new indefinite sanctions: forvaring (preventive detention) and two types of compulsory psychiatric care orders. The two new care orders—compulsory psychiatric treatment (*tvungent psykisk helsevern*) and compulsory care (*tvungen omsorg*)—were not defined as punishment but, rather, as "special criminal reactions," with the specific purpose of protecting society against future crimes (Holst 2020).[20] The new revised sanction of forvaring, however, was originally labelled as both a "special criminal reaction" and a criminal punishment—arguably, "blurring the distinction between correctional punishment and other, non-correctional criminal sanctions" (Jacobsen and Hallgren Sandvik 2015, 176)—a continuity from Hagerup's concerns back in 1901.

[19] Finland and Denmark, for example, restricted the use of post-conviction indefinite preventive detention, while Sweden abolished it outright in 1981. In these countries, formal life imprisonment was also subject to a "sustained critique and procedural reforms," restricting the length and use of informal life sentences (Van Zyl Smit and Appleton 2019, 18).

[20] Norwegian Penal Code 2005, s. 12.

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While parliamentary debate on these matters focused primarily on the psychiatric care orders, one political party (Sosialistisk Venstreparti) did oppose the new indefinite forvaring sanction, with their justice spokesperson arguing:

> I find it incomprehensible that the majority does not have more principled objections to imposing an indeterminate punishment for supposedly dangerous lawbreakers. And one very easily glosses over the question of assessing "dangerousness". It is suggested that it should normally be determined by a personal examination. This is a somewhat superficial evaluation. Regarding assessing "dangerousness", I don't believe there are professionals who would see themselves unequivocally capable of doing so. And this is not about assessing whether a person is dangerous here and now—that is likely quite possible to determine. But it's a matter of assessing whether a person will be dangerous when he has finished serving time in prison. This means that one should be able to predict "dangerousness" five to ten years into the future, perhaps more. It is not possible to determine this with any degree of certainty. . . . I perceive this as a very serious problem in terms of legal security.[21]

Such concerns align with the earlier critiques of indefinite preventive punishment in Norway in terms of the difficulty in predicting a person's future dangerousness and the implications for their legal security and constitutional rights. However, all other parties supported the proposed indefinite preventive detention sanction, and the new law was passed with an overwhelming majority and little public or political debate. Norway's new system of indefinite preventive detention, a type of informal life sentence, duly came into force on January 1, 2002.

The legal and policy framework of forvaring

Preventive detention in law

Section 40 of the Norwegian Penal Code of 2005 sets out the conditions for imposing forvaring:

> **§ 40. Conditions for imposing preventive detention**
>
> When a prison sentence *is not considered sufficient to protect others' lives, health, or freedom*, preventive detention in a facility under the correctional service can be imposed if the offender is found guilty of having committed or attempted to commit a violent crime, a sexual offense, a deprivation of liberty, arson, or another crime that violated others' lives, health, or freedom.
>
> (Emphasis added)

[21] *Parliamentary Debates* (*Stortingsforhandlinger*), *Møte torsdag den 12, Sak no. 1*, December 12, 1996, 269.

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> If the crime was of a serious nature, there must be an imminent risk[22] that the offender will again commit a serious crime, as mentioned in the first paragraph. If the crime was of a less serious nature, the following must be the case:
>
> 1. The offender must previously have committed or attempted to commit a serious crime, as mentioned in the first paragraph.
> 2. It must be assumed that there is a close connection between the previously committed and the current crime.
> 3. The risk of relapsing into a new serious crime as mentioned in the first paragraph must be particularly imminent.
>
> In assessing the risk of recidivism according to the second and third paragraphs, emphasis should be placed on the committed crime, especially in relation to the offender's behavior and social and personal functional ability. For cases mentioned in the second paragraph, particular emphasis should be placed on whether the offender has previously committed or attempted to commit a serious crime, as mentioned in the first paragraph.

Despite the early criticism of predictive sentencing, assessments of risk of future dangerousness (conducted both by the court itself and by a forensic psychiatrist) continue to be a central part of the preventive sentencing process. In deciding on the first condition (if a determinate prison sentence is sufficient to protect society), Anders Løvlie (2006, 205) states: "This is done by calculating the sentencing for a fixed-term sentence for the same offense, and then assessing whether there will be a risk of recidivism at the time of release." In addition to this overarching condition, there are two risk descriptions—"imminent" for serious offenses and "particularly imminent" for less serious offenses. Before a sentence can be passed, a personal examination of the defendant's social situation, upbringing, relationship to alcohol and drugs, and so on must be carried out. However, the court may instead order a forensic psychiatric (risk) assessment (expert examination) and prediction of future offending.

While indefinite preventive detention is often considered in other countries to be a corrective measure and not a penalty,[23] forvaring has been legally defined in Norway as a criminal punishment.[24] On January 1, 2006, forvaring was removed from the list of "special criminal reactions" in the Penal Code and defined as a separate criminal punishment only, reflecting a shift toward increased punitiveness in Norway's

[22] While the unofficial English translation of the Penal Code by the Norwegian Ministry of Justice uses "obvious risk," we consider "imminent" a better translation of the Norwegian term "*nærliggende*."

[23] In the case of *M. v. Germany*, for example, the German Government argued that preventive detention was not a "penalty" but part of its twin-track system of sanctions and "measures of correction and prevention." ECtHR, *M. v. Germany*, Application no. 19359/04, December 17, 2009, para. 113. The Court, however, was not persuaded, ultimately concluding that preventive detention under the German Criminal Code amounted to a "penalty" within the meaning of Article 7 of the European Convention.

[24] Forvaring is intended for those deemed criminally responsible. Although rules about diminished responsibility do not exist in Norway, suffering from a mental disorder at the time of the offense may be considered a mitigating circumstance at sentencing. Norwegian Penal Code 2005, s. 78; see also Gröning 2021, 2022.

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forvaring system (Johnsen 2011; Jacobsen 2017; Johnsen and Storvik 2020) and, by extension, attenuation of penal exceptionalism (Shammas 2016). The change in the law also cemented forvaring's status as Norway's ultimate penalty: "Forvaring must be considered to be the law's severest sanction for serious and ordinary crimes" (Justis- og politidepartementet 2005, cited in Johnsen 2011, 11).

At sentencing, the court delineates both a "minimum" period, marking the earliest eligibility for parole, and a "maximum" period, signaling the prosecution's deadline to request a court review should they see continued imprisonment as necessary. Typically, the maximum should not surpass fifteen years, but it can extend to twenty-one years.[25] Since 2015, for certain serious or aggravated offenses, this can stretch to thirty years.[26] To prolong incarceration beyond the maximum term, the prosecution must petition the court no later than three months before its expiry, with possible extensions in increments of up to five years, contingent upon the individual's ongoing risk assessment. In the absence of a timely extension request, the individual is released at the maximum term. The minimum term is usually capped at ten years but can extend to fourteen or twenty years if the maximum sentence is over fifteen or twenty-one years, respectively.[27] Individuals sentenced to forvaring can seek to apply for parole after completing their minimum term. As the guidelines for the implementation of forvaring make clear, considerations of risk and future offending continue to play a central role at this stage:

> A sentence of preventive detention is imposed when it is considered there is an imminent danger that the person in question will once again commit or attempt to commit a serious crime that infringes upon the lives, health, or freedom of others. The question of whether there is a basis for parole depends on a specific assessment of whether the convicted person is believed to have achieved such a high degree of self-development and responsibility that parole can be considered as being defensible from a security perspective. It should be taken into account that the purpose of the preventive detention system is first and foremost to protect society against new serious criminal acts from the convicted person. (Justis- og politidepartementet 2004, 21)

Decisions about release, however, are mostly made by a judicial panel in court, comprising expert judge(s) and independent lay members.[28] Those serving forvaring have the right to be present at release hearings, to be legally represented, to request

[25] Norwegian Penal Code 2005, s. 43.

[26] The serious offenses listed include genocide, crimes against humanity, war crimes and certain aggravated terrorist acts. The increase to thirty years was made to match an equivalent increase in the maximum determinate sentence for certain terror offenses, which was done in part with the intention to avoid "Norway becoming a safe haven for terrorists and their supporters" (Justis- og politidepartementet 2007–8, 172).

[27] Norwegian Penal Code 2005, s. 43.

[28] Despite the transition away from all-lay juries in Norway over recent decades, it is noteworthy that lay people continue to have a role in certain sentencing decisions, including the prolongation of a forvaring sentence (see Norges Offentlige Utredninger 2011). While the overarching reform was the subject of contemporaneous media debate, there has been no specific commentary or response to this change in relation to forvaring.

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others to attend, to hear and question the evidence presented by other parties, to call authorized witnesses, and to submit pre-hearing representations. Victims and families may also be present during this process and, as witnesses, may provide input about the individual's potential release. Prison staff and experts, including psychologists and psychiatrists, evaluate the individual's behavior, mental health, and risk of reoffending. These assessments focus on the potential threat that the person poses to society, factoring in any progress made in rehabilitation, changes in risk levels since the original offense, mental stability, and overall conduct during their time in prison. If the court determines that a serious risk of reoffending remains, based on the advice of specialists and prison staff, the detention period can be extended by up to five years at a time. As mentioned earlier, there is no upper limit to the duration of preventive detention, meaning that it can potentially become a life sentence. However, it can also lead to conditional release or probation if the individual is considered no longer a risk to the public (see Storvik 2021).

Of further consideration, in 2012, the Norwegian Penal Code was amended to enable forvaring sentences to be imposed on children (aged fifteen to seventeen inclusive) but only as a last resort and if "altogether extraordinary circumstances" apply.[29] Here, the maximum timeframe should not usually exceed ten years and may not exceed fifteen years. While it was noted in the preparatory works that the new indefinite sanction in Norway should "almost never" be used against children, the precise meaning of such circumstances has not clearly been defined (Gröning and Sætre 2019, 189; see also Fornes and Gröning 2021). Significantly, the majority of European countries prohibit the imposition of formal life sentences on children, and very few have a provision for them to be detained indefinitely under preventive measures (Van Zyl Smit and Appleton 2019). While preventive detention in Norway can only be imposed on minors in extraordinary circumstances, Linda Gröning and Hilde Sætre (2019, 190) have argued that "preventive detention not only stigmatizes the child as being criminal, but also as being dangerous, which may be in tension with Art. 40 [of the UN Convention on the Rights of the Child] and the 'desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'"

Policy ambitions for preventive detention

While the developments in legislation increasingly emphasize the punitive elements of forvaring (Johnsen and Storvik 2020), the statutory implementation guidelines also focus on rehabilitation and treatment. For example, section 2 of the guidelines states: "Within a necessary safe and secure regime, the sentenced person should be given the opportunity to change their behavior and adapt to a life in freedom" (Justis- og politidepartementet 2004). The logic of societal protection here flows from both incapacitation and rehabilitation. As mentioned above, for a person to be released, a court must assess whether the individual serving a forvaring sentence has changed such that their risk of reoffending is reduced and they no longer pose a danger to society (Jacobsen 2020; Johnsen and Storvik 2020). Due to the sanction's severe and indefinite nature, the forvaring regime is supposed to be implemented and resourced

[29] Norwegian Penal Code 2005, s. 40.

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differently, in a more individualized way than an ordinary prison term, and with greater focus on intensive rehabilitation and progression toward release. Yet, from the outset in 2002, concerns were raised about a lack of investment in the rehabilitative content of the forvaring sentence and the fact that the regime imposed did not compensate for the intrusive and indeterminate nature of the sanction (Rieber-Mohn 2003).

Nonetheless, according to the guidelines, individuals subject to forvaring must be housed in separate prison units, and the regime should provide particular arrangements relevant to their needs, with the overarching aim of rehabilitation to ensure that those sentenced have the opportunity to change their behavior and adapt to lead useful and law-abiding lives. Such a system requires the coordination of multiple services and professional expertise across different fields to be able to meet extensive and complex individual needs and to provide more resources than ordinary high security prison wings. The Norwegian Correctional Service (*Kriminalomsorgen*) has stated:

> The aim of preventive detention is that the offender will change his or her behavior and adapt to a law-abiding life. The contents of a preventive detention sentence are designed with the offender's possibilities for development in this direction in mind and will as much as possible be adjusted to the individual's specific needs. It is based on cross-professional collaboration and wings for preventive detention that have access to more resources than general high security wings. There are strict demands for the registration of activities and of the offender's development. (Kriminalomsorgen n.d.a)

Overarching policy ambitions underpinning the Norwegian Correctional Service are also intended to apply here: these ambitions emphasize normalizing living conditions for people in prison and ensuring their fundamental rights, reflecting European and international human rights standards (Council of Europe 2003, 2006; UN Office on Drugs and Crime 2015). Norway's "import model," meanwhile, should provide access to services within prisons, granting all persons in prison, including those in forvaring, equal access to health care, education, and work on a par with people living in the community (Fridhov and Langelid 2017; Smith and Ugelvik 2017a; Johnsen and Fridhov 2019). This approach has been understandably praised both by scholars, including proponents of the penal exceptionalism thesis (see Pratt 2022), and in international media, which has affirmed that people in prison can benefit from a system "that is designed to offer . . . some of the comforts and opportunities of life on the outside" (Lewis 2022).

Within Norway's high security prison estate, two high security units have been designed as specific forvaring institutions for men: (1) Ila Prison and Detention Centre in Bærum near Oslo and (2) Nermarka Prison Unit in Trondheim.[30] No separate forvaring unit has been created for the small number of women who have been sentenced to forvaring; all eight females serving forvaring at the time of the study were detained together with those serving determinate sentences at Bredtveit Prison

[30] Children sentenced to forvaring can be detained at a youth unit up until the age of eighteen, when they will be transferred to a specialist forvaring unit for adults. For a critical review of Norway's youth units, see Fransson, Hammerlin, and Skotte 2019.

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and Detention Centre in Oslo.[31] Inside the high security prison estate, the majority of men serving forvaring are segregated from those serving determinate sentences, similar to life sentence systems where individuals who have committed serious crimes are separated on security grounds. Although at odds with the Council of Europe's (2003) non-segregation principle, segregation from others serving fixed-term sentences is justified both by reference to security and via the argument that it provides greater rehabilitative opportunities to "make the offender less dangerous" and to allow for the prospect of release (Justis- og politidepartmentet 2000–1, 41). Of concern, however, is that, while ambitions for intensified rehabilitative efforts might resonate with the concept of exceptional and progressive penal practice, attempts to both punish and rehabilitate can produce "a particularly acute mode of state intrusion" whereby individuals so sentenced can become "gripped psychologically by the penal state" (Crewe, Laursen, and Mjåland 2022, 25).

Moreover, one small survey of twenty-six persons sentenced to forvaring in Ila Prison, published in 2010, found that the participants expressed skepticism about their rehabilitation, with nearly 70 percent asserting a negative effect from the prison's rehabilitative efforts (Værøy, Andreson, and Mowinkel 2011). Furthermore, the National Audit Office has recently raised criticisms of the Norwegian Correctional Service's rehabilitation and resettlement work (Riksrevisjonen 2022). Their report showed that Ila Prison had capacity under the average for education places (capacity for approximately 35 percent of prisoners) and that 15 percent of Ila's forvaring population were without an offer of activity (23, 49). In terms of access to welfare services, prisons in Norway range between, at best, thirty-six persons in prison per full-time equivalent (FTE) social welfare advisor to, at worst, 818. Ila Prison, where most people have been sentenced to forvaring, is in the middle of this range with 120 people per FTE social welfare advisor (19). In addition, recent reports from Norway's Parliamentary Ombudsman have strongly criticised the long-term isolation of people in prison with mental health problems at Ila Prison (Sivilombudsmannen 2017).[32] Ila has therefore recently introduced a new six-person unit intended to provide "meaningful social interaction and activities for mentally ill prisoners who have been excluded for a long time due to behavior caused by serious and complex problems" (Kriminalomsorgen n.d.b). Overall though, there are strong indications that the logic behind preventive detention in Norway, whereby prisoners would lose out on the certainty of a definite release date, but would gain better services and opportunities for reform, has proven challenging to deliver in practice.

According to section 9 of the national guidelines, following the Council of Europe's (2003) principle of progression, people serving forvaring may be transferred to a prison of a lower security level during the sentence but not before they have served two-thirds of the minimum term of their sentence. Like other people in Norwegian prisons, individuals serving forvaring sentences have the right to apply for prison

[31] At the time of writing, women serving forvaring sentences have been moved to Telemark Prison in Skien following a fire safety inspection at Bredtveit Prison in November 2023, while others serving fixed-term sentences have been moved to Ullersmo Prison (Viggen 2023).

[32] In addition, Anders Behring Breivik has been held under maximum security conditions for more than ten years and been in contact with very few other prisoners during his time in prison. Oslo District Court (*Oslo tingrett*), TOSLO-2015-107496-3, April 20, 2016, 13; ECtHR, *Hansen v. Norway*, Application no. 48852/17, June 21, 2018; see also Johnson and Storvik 2020.

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leave and for permission to work in the community during their sentence. However, the time limit differs, and applications from forvaring prisoners are again usually only granted after two-thirds of the minimum term has passed (Lappi-Seppälä 2016). A major divergence regarding the management of progression for individuals sentenced to forvaring is the centrality of continual risk assessments throughout the sentence. Such an approach to rehabilitation and resocialization aligns more closely with the "new penology" than with penal exceptionalism, given its emphasis on the control and risk management of so-called "dangerous people" (Feeley and Simon 1992, 1994; Garland 1996; Johnsen 2006; Crewe, Laursen, and Mjåland 2022). It also raises the question about the accuracy of risk prediction (Fazel et al. 2022) and links to the wider long-standing concerns regarding the difficulties in predicting future crimes (Hood, Shute, and Wilcox 2000; Dullum 2014; Tonry 2019).

In line with release processes underpinning many formal life-sentence systems, release on parole from forvaring is usually conditional and under the supervision of the probation service. In Norway, parole supervision may only be enforced for a fixed period—between one and five years, after which persons subject to forvaring are "fully released" (*helt løslatt*) from both their parole conditions and from the forvaring sentence (Storvik 2021). Significantly, both the Norwegian Correctional Service and the court have the authority to set parole conditions for forvaring prisoners. The variety of restrictions that can be imposed on paroled forvaring individuals is set out in Table 1. Though time limited, they can be stringent and wide-ranging, significantly limiting a released individual's liberty. Furthermore, recent years have seen the imposition of additional parole conditions, including the use of electronic monitoring.[33]

Under section 46 of the Norwegian Penal Code, the court also has the authority to recall a released person subject to forvaring back to prison, or to extend their parole period if they significantly or repeatedly violate the conditions imposed or commit another criminal act, or if there are "special reasons [that] no longer warrant release on parole." While the implementation guidelines prioritize individualized rehabilitation and reintegration for individuals sentenced to forvaring, the release model predominantly emphasizes public safety, control, and restriction raising further challenges to the concept of penal exceptionalism. However, more research is needed on how such directives are implemented in practice.

In sum, despite strong criticism of the pitfalls of indefinite preventive sentencing that emerged during the twentieth century, the sanction continues to exist today in the form of forvaring, an indefinite punishment that lasts as long as a person is deemed to be a risk to the public, which, in principle, can be lifelong. Though no prisoner has served a whole life sentence in Norway, recent appeals and parole requests by Anders Behring Breivik have led the Court to declare that he will most likely spend the remainder of his life in prison.[34] With its indefinite nature aimed at preventing future serious offenses, forvaring is much more onerous than proportional fixed-term or backward-looking prison sentences (Jacobsen and Hallgren Sandvik 2015; Crewe, Laursen, and Mjåland 2022). Concerns surrounding public protection and the prediction and management of an individual's future risk have clearly penetrated the legislative development of this sanction, more closely

[33] See, for example, District Court (*Asker og Bærum tingrett*), 20-140782MED-AHER/1, February 19, 2021.
[34] Oslo District Court, TOSLO-2015-107496-3, 2016; see also Johnsen and Storvik (2020).

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Table 1. Parole conditions

Conditions set by the court and/or the Norwegian Correctional Service	Conditions set by the court only
To be supervised by the Norwegian Correctional Service	To follow any objectively justified condition
To report to the police regularly	To reside in a specified institution or municipal housing unit for longer than one year following release
To abide by regulations regarding residence, work, education or communication with identified persons	To be detained in an institution or housing unit and liable to recall due to escape, if necessary by force
To abide by regulations regarding disposable income and assets and the fulfilment of financial obligations	
To prohibit the use of alcohol or other intoxicating or narcotic substances	
To attend substance abuse treatment	
To attend drug treatment programs	
To attend psychiatric treatment	
To be housed in a specified institution for up to one year following release	
To provide compensation and restitution to the aggrieved party, as required	
To pay outstanding child support	

Source: Storvik 2021, 170.

aligning with Pratt's (2020, 179) recent analysis of the "rise of the security sanction" than with Nordic penal exceptionalism. Thus, while Norway removed formal life imprisonment from its penal arsenal in 1981, it cannot claim to be among other countries such as Portugal that have fully abolished life or indefinite sentences (see Pinto 2016; Todd-Kvam, Dahl, and Appleton, forthcoming). The sanction of forvaring can be imposed on convicted persons indefinitely and can therefore be categorized as an informal life sentence. Yet, as shown above, the sanction itself is far from informal, being imposed and implemented with an increased emphasis on court oversight and legal protections, alongside individualized rehabilitation efforts in order to counterbalance its severe and indefinite nature. However, questions remain regarding how fully these policy ambitions have been realized in practice. In the next section, we present key findings from our dataset, which includes information on all individuals sentenced to forvaring between January 1, 2002, and January 1, 2022, to evaluate how the system has been implemented in practice.

The practice of forvaring

Overall, a total of 357 forvaring sentences were passed between January 1, 2002 and January 1, 2022, of which sixteen (4.5 percent) were imposed for less serious crimes.

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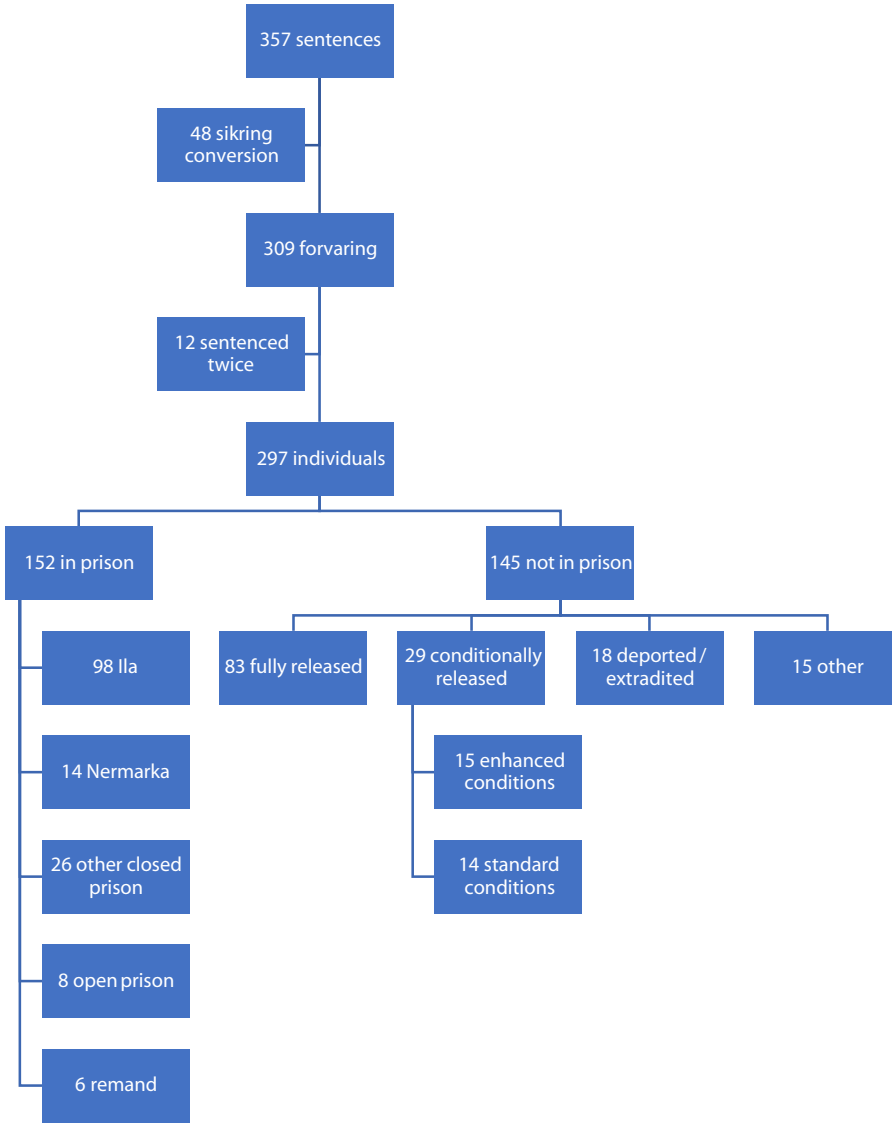

Figure 1. Overview of the dataset on January 1, 2022
Note: The category "other" included a small number of individuals who had been transferred to a psychiatric ward or who had escaped, disappeared, or died.

Forty-eight (13.4 percent) of the 357 sentences were conversions from the earlier preventive safeguarding system (sikring). These converted sentences were removed from our analysis below, which is based on 309 forvaring sentences. During the period, twelve individuals were sentenced twice to forvaring. In these cases, information on the first sentence was removed to enable individual-level analysis of the 297 persons in the dataset. For an overview of the dataset, see Figure 1.

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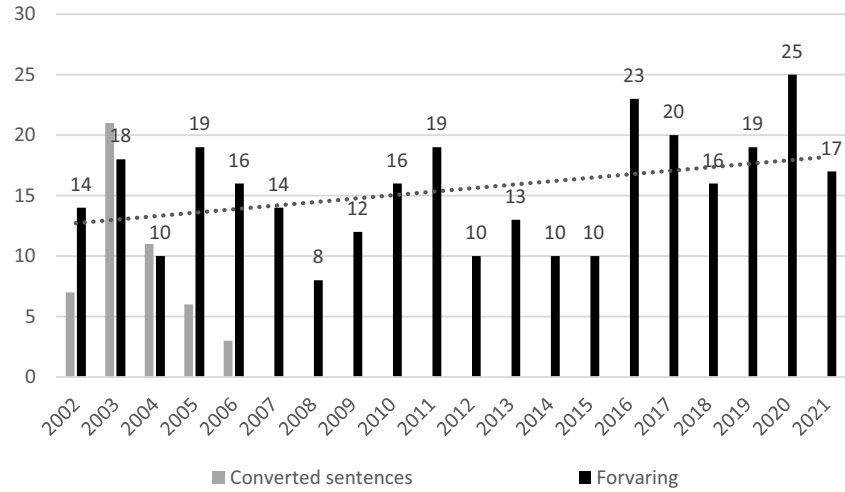

Figure 2. Number of forvaring sentences imposed annually 2002–2021.

Figure 2 shows the total number of forvaring sentences imposed each year since January 1, 2002 (n = 309 sentences imposed on 297 individuals) and an upward linear trendline. The median was sixteen new sentences imposed per year, with somewhat higher rates from 2016 onwards than in the period 2012–15 and incomplete data for 2021.

Table 2 reports various aspects of the sentences and sentenced individuals over the whole period and in five-year subperiods. During the first twenty years of forvaring, the mean minimum term imposed was 5.1 years (range: 0–14.0 years) and the mean maximum term was 8.7 years (range 1.5–21.0 years). Nearly half of the sentences (43.7 percent) had a minimum term of more than five years, and, as the scatter plot in Figure 3 shows, the average minimum term has steadily increased across the study period, lending support to the argument that forvaring has become more punitive over time.[35]

As reported in Table 2, persons sentenced to forvaring were frequently male, aged in their late thirties, and Norwegian citizens. The female proportion of the forvaring population, though small in number, has doubled, and the proportion who were Norwegian citizens has increased noticeably, over the last two time periods. Most sentenced non-Norwegians were citizens of a European (4.6 percent) or African (3.6 percent) state. As Table 2 shows, most sentences involved an expert examination (forensic psychiatric risk assessment), with their use increasing over time (up to 97.9 percent). Notably, nearly half of all sentences were imposed for the commission of a sexual offense, and about a quarter were imposed for homicide offenses. The high

[35] In setting the minimum and maximum terms for a forvaring sentence, the court is steered by the length of imprisonment for an equivalent determinate sentence. It is noteworthy that since 2006, the lengths of determinate sentences for sexual offenses have been increased. See Amendment Act to the Penal Code 2005 (*Lov om endringer I straffeloven*) LOV-2009-06-19-74 no. 28 May 20, 2005.

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Table 2. Characteristics of the forvaring population, January 1, 2002 – December 31, 2021

			Year of sentence			
		Total[a]	2002–6	2007–11	2012–16	2017–21
Number (individuals)[b]		297	70	63	67	97
Female (%)		5.0	5.7	3.2	3.0	6.2
Norwegian (%)		88.2	85.7	87.3	82.1	95.9
Mean age at sentence (years)		38.1	38.5	37.8	39.9	38.5
Number (sentences)		309	77	67	68	97
With expert examination (%)		89.8	84.4	87.7	86.4	97.9
Offense (%)	Sexual	47.6	45.5	47.8	54.4	44.3
	Homicide[36]	23.6	27.3	20.9	22.1	23.7
	Serious violence	14.2	10.4	11.9	13.2	19.6
	Arson	6.8	5.2	7.5	2.9	10.3
	Robbery	3.9	7.8	6.0	1.5	1.0
	Threats	2.9	4.5	4.4	4.4	0.0
	Other	1.0	0.0	1.5	1.5	1.0
Previous convictions (%)		81.8	79.2	83.1	77.6	86.2
Extended (%)		32.1	23.8	52.3	42.4	16.7
Years extended (n = 92)		5.11	5.62	5.88	4.93	3.38

[a]Missing data frequencies: age - 1, expert examination - 5, previous convictions - 6, extended yes/no - 19.
[b]First sentence excluded where necessary.

proportion of forvaring individuals convicted of sexual offenses is important because, in common with jurisdictions elsewhere, this is a stigmatized group both within the prison (Ugelvik 2015) and after release (Sandbukt 2021), often perceived to be at high risk of reoffending (Rosselli and Jeglic 2017). It is also important because one of the key punitive impulses in Norway has been toward sexual offending—the average prison sentence length for sexual offense convictions has nearly doubled from 450 days in 2002 to 828 in 2022, and the number of sanctions imposed per year for sexual offenses has also dramatically increased (from 429 in 2002 to 977 in 2022) (Statistics Norway 2024). Sentencing reforms as a response to sexual offending have had a knock-on effect on forvaring timeframes (see, for example, Jacobsen and Skilbrei 2020), as the two scatter plots in Figures 4 and 5 illustrate. There is no doubt that the increase in the maximum timeframe and especially the minimum timeframe has had a significant effect on the growing numbers of individuals serving forvaring

[36] This category includes homicide (77%), attempted homicide (22%) and joint enterprise cases (1%).

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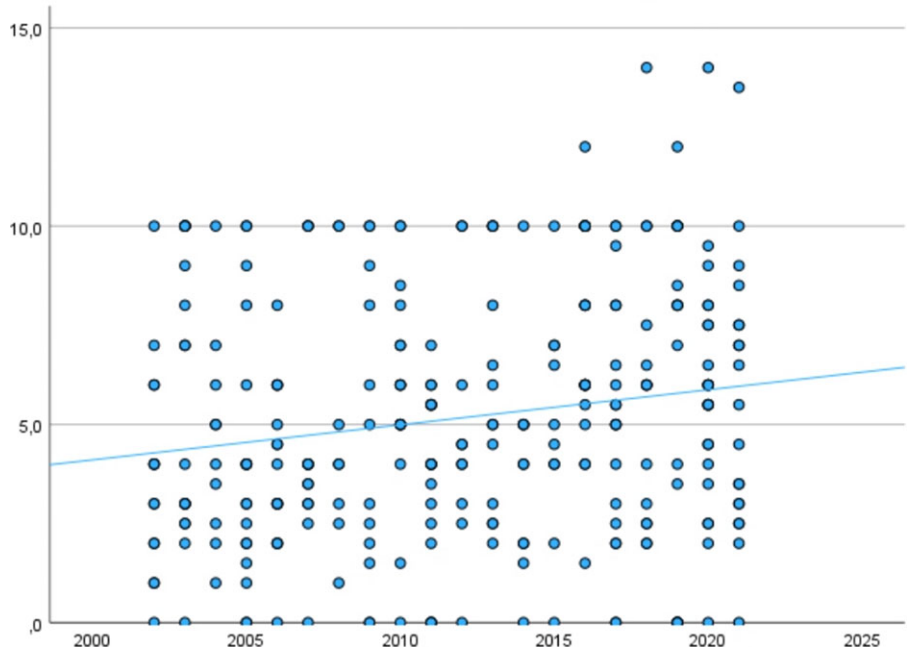

Figure 3. Minimum term set by the court.

Figure 4. Minimum forvaring timeframes for sexual offenses over time.

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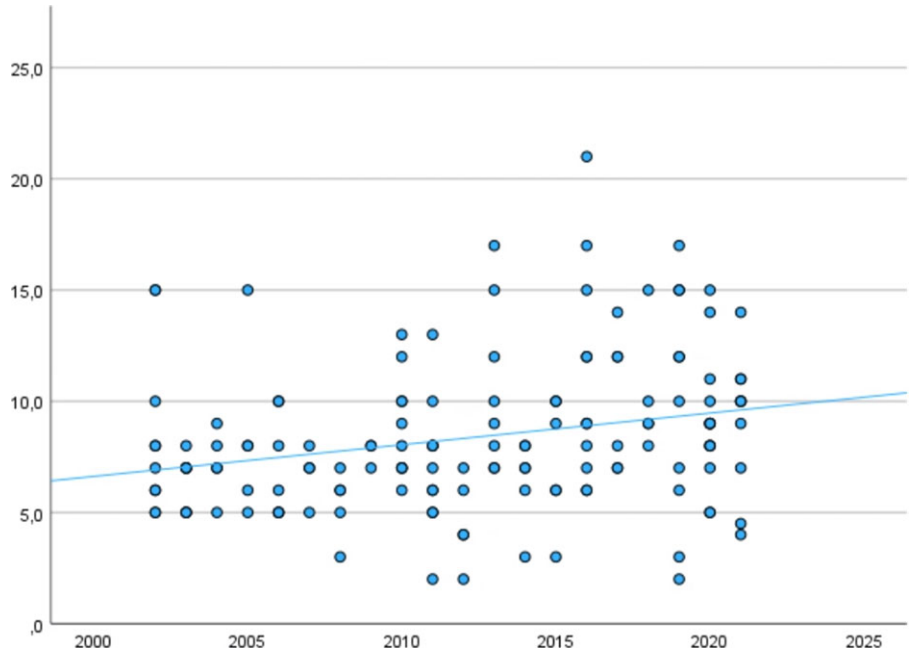

Figure 5. Maximum forvaring timeframes for sexual offenses over time.

for sexual offenses, as they remain in prison longer before becoming eligible to apply for parole.

Table 2 also shows that most persons sentenced to forvaring had a previous conviction. One-third of the sentences were subsequently extended for an average of five years. These extensions included time served on conditional release (parole) as well as during incarceration until the forvaring sentence was fully completed. While the proportion extended, and the duration of these extensions were noticeably lower in the later time period, insufficient time had elapsed for an extension to be imposed. The most recent figures are therefore not comparable with earlier time periods. On January 1, 2022, 152 of the 297 individuals sentenced to forvaring in the period 2002–22 remained in prison. Of these, 138 (90.7 percent) were in a closed prison, eight (5.3 percent) were in an open prison, and six (3.9 percent) were categorized as remand (*varetekt*) prisoners.[37] The remaining 145 individuals were released or otherwise no longer in detention in a Norwegian prison. Of these, eighty-three (57.2 percent) were "fully released" from their forvaring sentence, twenty-nine (20.0 percent) were conditionally released, eighteen (12.4 percent) had been deported, eight individuals had died (5.5 percent), and seven (4.8 percent) were either transferred to a mental or somatic health facility, had escaped, or had disappeared (see Figure 1).

With a relatively steady flow of long-term sentences imposed each year, the forvaring prison population has gradually grown over time due to accumulation

[37] The category of "remand" (varetekt) covers those awaiting a legally binding judgment of the prolongation of the forvaring sentence or the re-imprisonment of paroled persons.

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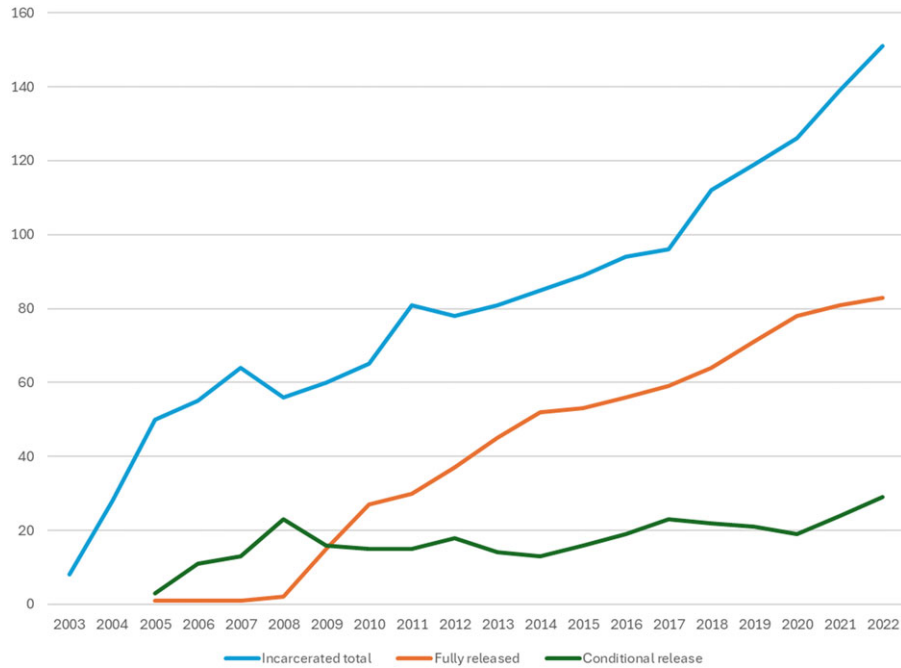

Figure 6. Number of incarcerated and released forvaring prisoners over time.

(see Figure 6). However, the recent increase has been relatively steep with the population in 2022 being twenty-eight percent higher than it was in 2020. Furthermore, the proportion of forvaring prisoners held in open (lower security) prisons has declined. In the period 2016-2018, about one in ten forvaring prisoners were held in open prisons but this proportion has now halved (5.5 percent), raising questions about how well the policy of progression for forvaring prisoners has been working in practice.

As noted above, two high security prisons have been designated to accommodate men serving forvaring sentences and provide a specialist regime. However, over the whole period since the forvaring system was established, individuals sentenced to forvaring have been housed across twenty-three high security prisons and seventeen open prisons or wings across all regions of Norway. Some individuals have moved to other prisons to attend a specialist program only available at a particular institution or to prisons closer to their hometowns as a part of the progression toward release. However, the rapid rise in people serving a forvaring sentence[38] means that increasing numbers of men are having to wait for a prison cell to become available in one of the designated forvaring institutions. These individuals awaiting transfer are housed in high security prisons not suited to their needs. This is highly problematic given that their release depends on assessments of their rehabilitative process, and it

[38] While the study period includes the COVID pandemic, a recent report shows that court efficiency in Norway was not significantly impacted due to successful digitization of services (Hoffart and Bjerke 2022).

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provides yet another example of the disconnect between policy goals and practice. It highlights a significant and growing challenge in Norway: the Norwegian Correctional Service's limited resources and capacity are insufficient to adequately support the increasing population of people serving indefinite sentences. This could lead to a detrimental cycle where constrained resources hinder rehabilitative efforts, resulting in fewer conditional releases and, consequently, further resource strain. Moreover, should the current trends of rising numbers and ongoing budgetary constraints persist, the situation is likely to deteriorate further.[39]

On January 1, 2022 eighty-three individuals were registered as having been fully released from forvaring. Most individuals who were fully released, ended their sentence after a single period of conditional release (n = 60, 72.3 percent), but some were completed with no period of conditional release (n = 17, 20.5 percent) or occasionally after two periods of conditional release (n = 6, 7.2 percent). The average time served in prison for those released from forvaring was 4.5 years (range of 1–20 years), and the average time on supervision in the community was 2.5 years (range 0–18 years). Figure 6 shows that the rate of release (full or conditional) has yet to catch up with the rate of new sentences being imposed. Though reconviction data of the total population included in this study were lacking at the time of analysis, it was possible to ascertain from the database that twelve of the 297 persons in the sample had been resentenced to a second forvaring term. Furthermore, eight individuals had died prior to being fully released from the forvaring system. Six of these persons were last recorded as being detained in prison prior to their death, and the other two persons were registered as being under supervision on conditional release.

Finally, we have not included the number of children (under eighteen years) sentenced to forvaring in Table 2. The courts were initially reluctant to sentence children to forvaring, but the first sentence to be handed down on a child—a fifteen-year-old—was the high-profile *Vollen* case in 2017 (Fornes and Gröning 2021; Gröning, Ottesen, and Øverland 2021).[40] The case involved a girl who was fifteen years and one month old at the time of the offense, just above the minimum age of criminal responsibility in Norway. She was sentenced to nine years of forvaring, with a minimum term of six years, for the premeditated murder of a social worker at the care home where she lived. Since then, eight cases have been considered by the court, resulting in five forvaring sentences for offenses committed by persons under the age of eighteen at the time of the offense (see Holmboe 2020). Importantly, the original *Vollen* case has been reconsidered by the court, and the young person has been resentenced to a psychiatric care order.[41]

Though the numbers are small, the rise in the imposition of forvaring on individuals who commit serious crimes below the age of eighteen has raised concerns about the extent to which Norway's system of preventive detention is an appropriate punishment for children (see UN Committee against Torture 2012; UN Committee on the Rights of the Child 2018). Further, a recent report by the UN Special Rapporteur on

[39] In addition, the population subject to indefinite compulsory mental health care orders has also increased dramatically, from fifteen people in 2002 to 334 in 2023. (SIFER Sør-Øst 2024, 48).

[40] Supreme Court of Norway (Norges Høyesterett), HR-2017-290-A, February 9, 2017.

[41] Supreme Court of Norway (Norges Høyesterett), HR-2017-290-A; see also Norsk Rikskringkasting 2022.

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Torture stated that, "[l]ife sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment" (Melzer 2017). Similarly, there have been calls among scholars to reassess and abolish the use of a "highly intrusive indefinite form of punishment" among children in Norway (Gröning and Sætre 2019, 190; see also Gröning, Ottesen, and Øverland 2021), not least given the *Vollen* case's original incorrect assessment of the criminal responsibility of the fifteen year old concerned.

While the policy ambitions of Norway's informal life sentencing system reflect a progressive approach to life imprisonment that aligns, to some extent, with international human rights standards, close analysis of the national dataset on the total forvaring population raises significant questions about the extent to which these policy objectives have been reached in practice.

Concluding discussion: An exceptional approach?

The evolution and implementation of different ultimate penalties around the world are invariably linked to local history and tradition as well as to structural, socioeconomic, and political contexts. The sanction of forvaring can be traced from the early development of a two-track system, where indefinite preventive special criminal sanctions, underpinned by correctional treatment and resocialization, were introduced to deal with so-called "dangerous" recidivists, to its current position in the Penal Code as Norway's harshest sanction. The historical analysis shows that concerns about societal protection from those deemed dangerous have been actualized into indefinite punishment for over a century. Despite a significant critique of the use of indefinite risk-based preventive punishment, and the abolition of formal life imprisonment during the second half of the twentieth century, Norway retains a post-sentence indefinite preventive detention system as its ultimate penalty, which allows for the possibility of punishing a person and prolonging their imprisonment for the remainder of their life. Forvaring is therefore a type of informal life imprisonment, and yet it has received surprisingly little international interrogation.

Given Norway's global image as an idealized or exceptional "penological giant" (Anderson 2023, 924), our aim in this article has been to examine the extent to which such a system could be considered an exceptional approach to life imprisonment. Our analysis has revealed that the logic of Norway's informal life sentence, even since its first inception in 1902, has maintained a focus on issues of dangerousness and risk prediction. The focus on the risk of further serious offending is particularly clear in contemporary legislation, policy, and practice. It is the key factor at both ends of the sentence—in deciding between a determinate or indefinite term and in determining eligibility for release on parole. Regarding forvaring's legitimation, both the current form of this sentence and its forbears have received little political scrutiny or public debate. Its contemporary legitimation focuses on both public protection and on concurrent punishment and rehabilitation. Rehabilitative opportunities should, according to policy guidelines, be better for persons sentenced to forvaring due to its indefinite nature, enabling their progression toward making the case that they no longer present a risk to society. Our findings on the implementation of forvaring, however, have highlighted significant discrepancies between such policy ambitions

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and current practices. Our data reveal that the number of persons serving forvaring has risen sharply in recent years, resulting in a kind of "forvaring overcrowding." There are now significantly more sentenced individuals than there are places in designated forvaring institutions, leaving many waiting (indefinitely) for rehabilitative resources that are currently not available to them. Recent data trends also depict increasing minimum and maximum prison terms, proportionally fewer transfers to open prison, stringent conditions imposed on release, as well a notable rise in the imposition of indefinite preventive sentences on children, contravening international human rights recommendations.

Regarding the limitations of this study, our analysis does not extend to the lived experience of preventive detention in Norway. There is a need for further research on how forvaring is experienced, including in terms of living as "risk objects" and living with the uncertainty of an indefinite sentence, both in prison and following release. Such research can help us understand more about the questions we raise here in terms of how preventive detention in Norway is structured (its indefinite nature and focus on risk), how it is implemented and resourced on the ground, and how it impacts on the lives of the individuals who are so sentenced. A second limitation is our positioning within the theoretical framework of penal exceptionalism. While well understood, the penal exceptionalism framework is better suited for making comparative arguments (or, as Ben Crewe and colleagues [2022] describe them, relative claims) than for conducting standalone research on specific aspects of Norwegian/Nordic penality. A new theoretical framework for understanding and explaining Norwegian penality on its own terms is needed. Such a framework should incorporate both the what and the how of Norwegian penal policy making.

Our research nonetheless carries important implications for our broader criminological understanding of Norwegian and Nordic penalty as well as for the development of life imprisonment research. Though Norway is often heralded as an example of exceptionalist practice, our analysis strengthens Berit Johnsen and Birgitte Storvik's (2020) observation that the punitive aspects of forvaring have become more salient over time. While the differences between Ila Prison and, for example, Pelican Bay State Prison in California remain stark (see, for example, Reiter 2016), and the relative breadth and weight of penality in Norway remains of a different order of magnitude when compared to more exclusionary jurisdictions (Crewe et al. 2022), there are important developments to observe when analyzing the Norwegian penal field on its own terms.

Of significance, the prevalence of Norwegian citizens serving forvaring indicates that, when it comes to non-citizens, societal protection comes from deportation more often than correction, aligning with previous work on bordered penality (see Franko 2019). Further, legislating for longer prison sentences for sexual offenses has had an impact on forvaring timeframes, as shown above, with both minimum and maximum timeframes being extended across the study period. These increases reflect a broader societal and political concern in Norway when it comes to rape and other sexual offenses—concern that encompasses the extent of sexual violence in society, underreporting and lack of convictions, and appropriate punishment when convictions do occur (Frøyland et al. 2022). Moreover, while the steady raise of young people sentenced to forvaring has been problematized and discussed among researchers (Drake 2019; Holmboe 2020; Fornes and Gröning 2021), this concern has not been

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reflected neither in the political nor the public debate. It is also worth mentioning that, in a populist political climate, "big" and severe cases leading to forvaring sentences—including, but not limited to, Anders Behring Breivik—tend to raise a call for even harsher sentences and more restrictive parole conditions for those released from forvaring (see also Johnsen and Storvik 2020).[42] When we layer on to this a period of budgetary stagnation and cutbacks for the Norwegian Correctional Service, which is creating problems for delivering rehabilitation and resettlement work (Todd-Kvam 2023), it becomes clear that, while relative comparisons of different penal cultures are useful, there is significant inherent value in focusing on field-internal dynamics and developments as well.

Clearly, Norway has not been immune to the impact of the punitive turn. While electronic monitoring has allowed many individuals to serve prison sentences at home, sentence lengths have increased for serious offenses, particularly sex offenses, both through legislative changes and in practice (see, for example, Statistics Norway 2024).[43] Additionally, long-term budget constraints have significantly weakened policy commitments to humane imprisonment and rehabilitation efforts (see, for example, Sivilombudsmannen 2019, 2020; Sekulic 2020; Todd-Kvam 2022; Koffeld-Hamidane, Andvig, and Karlsson 2024).[44] We contend that the development and expansion of the forvaring sanction can be seen as the epicenter of the impact of the punitive turn and the impulse toward societal protection on Norway's correctional system (see also Johnsen 2006).[45] Given that precedent plays such a decisive role in sentence determinations in Norwegian courts, it seems likely that the rise in forvaring sentences will lead to even more of these sentences in the future. The intrusive and indefinite nature of the forvaring sanction, and the lack of political scrutiny around it is of particular significance for Norway, but such technocratic legitimation without substantive critique also has implications for how preventive detention is seen internationally.

Norway's continuing exceptional reputation regarding criminal justice matters encourages the adoption of its penal policies and practices by other countries, potentially providing cover to those jurisdictions aiming to implement similar models of this type of preventive detention.[46] Moreover, in contrast to formal life sentences, this type of informal life imprisonment is a much less understood, yet equally onerous, form of indefinite punishment, aligning more closely with Pratt's (2020, 252) analysis of the emergence of "security sanctions" that "bolster the impression of strong government while normalizing more general use of preventive penal powers"

[42] In a similar vein, Serbia introduced life imprisonment without parole sentences into its criminal justice system in 2019 following the so-called "Tijana's Law Initiative," a public outcry response to the rape and murder of a thirteen-year-old girl in 2014. Notably, Serbia was one of the few countries that did not introduce life imprisonment after abolishing the death penalty in 2002. In its rationale for changing the law, the Serbian legislature stated that "this amendment derives its legitimacy from the will of 158,460 citizens who signed the petition, demanding the most severe punishment for the sex offenders" (Miljojkovic 2019).

[43] Amendment Act to the Penal Code 2009 (Lov om endringer i straffeloven).

[44] See also ECtHR, *Haugen v. Norway*, Application no. 59476/21, October 15, 2024.

[45] Similarly, Denmark has also witnessed a rapid rise in the use of forvaring (Johnsen and Engbo 2015).

[46] For critical discussion on how penal exceptionalism "feeds the fantasy that it would be possible to transform all prison systems," see Kemp and Tomzcak 2023, 11.

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than with an exceptional or welfarist approach to criminal justice. Given that there are at least fifty countries that impose such harsh sentences within their penal arsenal, much more attention should be paid to informal life sentence systems as well as to the individuals who are subject to them.

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