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**Report to the Danish Government  
on the visit to Denmark  
carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 2 to 8 December 1990**

This report was published by the Danish Government on 6 September 1991.

Strasbourg, 3 October 1991



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Copy of the letter transmitting the CPT's report

Strasbourg, 18 July 1991

Dear Mr Rentzmann,

In pursuance of Article 10, paragraph 1, of the European Convention for the prevention of torture and inhuman or degrading treatment or punishment, I have the honour to enclose herewith the report to the Danish Government drawn up by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) after its visit to Denmark from 2 December 1990 to 8 December 1990. The report was adopted by consensus by the CPT at its ninth meeting, held from 2 to 5 July 1991.

In order to facilitate consideration of the report by the Danish Government, it is accompanied by a preface explaining the CPT's mandate.

I would draw your attention in particular to paragraph 146 of the report, in which the CPT requests the Danish authorities to provide an interim and a follow-up report on action taken upon its report. More generally, the CPT is keen to establish an on-going dialogue with the Danish authorities on matters of mutual interest, in the spirit of the principle of co-operation set out in Article 3 of the Convention; consequently, any other communication that the Danish authorities might wish to make would also be most welcome.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Finally, I would be grateful if you could acknowledge receipt of this letter.

Yours sincerely,

Antonio CASSESE  
President of the European Committee for  
the prevention of torture and inhuman  
or degrading treatment or punishment

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## PREFACE

As the European Committee for the prevention of torture and inhuman or degrading treatment or punishment is a new institution, knowledge of its mandate and functions is inevitably limited. The CPT has therefore deemed it appropriate to begin the first of its reports to each Party by setting out some of the Committee's salient features. This should prove particularly helpful in differentiating the basis and aims of the CPT from those of two other Council of Europe supervisory bodies within the field of human rights: the European Commission and European Court of Human Rights.

Unlike the Commission and the Court, the CPT is not a judicial body empowered to settle legal disputes concerning alleged violations of treaty obligations (i.e. to determine claims ex post facto).

The CPT is first and foremost a mechanism designed to **prevent ill-treatment from occurring**, although it may also in special cases intervene after the event.

Consequently, whereas the Commission's and Court's activities aim at "conflict solution" on the legal level, the CPT's activities aim at "conflict avoidance" on the practical level.

This being so, the guiding maxim for the CPT when performing its obligations must be to "extend the widest possible protection against abuses, whether physical or mental" (quotation from the 1979 UN Code of conduct for law enforcement officials as well as from the 1988 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, both adopted by the General Assembly).

The CPT's activities are based on the concept of co-operation (Article 3 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). The CPT's task is not to publicly criticise States, but rather to assist them in finding ways to strengthen the "cordon sanitaire" that separates acceptable and unacceptable treatment or behaviour. In fulfilling this task the CPT is guided by the following three principles:

- i) that the prohibition of ill-treatment of persons deprived of their liberty is absolute,
- ii) that ill-treatment is repugnant to the principles of civilised conduct, even if used in milder forms, and
- iii) that ill-treatment is not only harmful to the victim but also degrading for the official who inflicts or authorises it.

The CPT first of all explores the prevailing factual situation in the countries it visits. In particular it:

- i) examines the general conditions in establishments visited;
- ii) observes the attitude of law enforcement officials and other staff towards persons deprived of their liberty;
- iii) interviews persons deprived of their liberty in order to understand how they perceive (i) and (ii) and hear any specific grievances they may have;
- iv) examines the legal and administrative framework on which the deprivation of liberty is based.

Subsequently, the CPT reports to the State concerned, giving its assessment of all the information gathered and providing its observations. In this regard, it should be recalled that the CPT does not have the power to confront persons expressing opposing views or to take evidence under oath. If necessary, it recommends measures designed to prevent the possible occurrence of treatment that is contrary to what reasonably could be considered as acceptable standards for dealing with persons deprived of their liberty.

In carrying out its functions, the CPT has the right to avail itself of legal standards contained in not only the European Convention on Human Rights but also in a number of other relevant human rights instruments (and the interpretation of them by the human rights organs concerned). At the same time, it is not bound by the case-law of judicial or quasi-judicial bodies acting in the same field, but may use it as a point of departure or reference when assessing the treatment of persons deprived of their liberty in individual countries.

To sum up, the principal differences between the CPT and the European Commission and European Court of Human Rights are:

- i) the Commission and the Court have as their primary goal ascertaining whether breaches of the European Convention of Human Rights have occurred. By contrast, the CPT's task is to prevent abuses, whether physical or mental, of persons deprived of their liberty from occurring; it has its eyes on the future rather than the past;
- ii) the Commission and Court have substantive treaty provisions to apply and interpret. The CPT is not bound by substantive treaty provisions, although it may refer to a number of treaties, other international instruments and the case-law formulated thereunder;
- iii) given the nature of their functions, the Commission and the Court consist of lawyers specialising in the field of human rights. The CPT consists not only of such lawyers but also of medical doctors, experts in penitentiary questions, criminologists, etc;
- iv) the Commission and Court only intervene after having been petitioned through applications from individuals or States. The CPT intervenes ex-officio through periodic or ad-hoc visits;
- v) the activities of the Commission and Court culminate in a legally binding finding as to whether a State has breached its obligations under a treaty. The CPT's findings result in a report, and, if necessary, recommendations and other advice, on the basis of which a dialogue can develop; in the event of a State failing to comply with the CPT's recommendations, the CPT may issue a public statement on the matter.

## **I. INTRODUCTION**

### **A. Dates of the visit and composition of the delegation**

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Denmark from 2 to 8 December 1990

2. The delegation consisted of the following members of the Committee:

- Mr Love KELLBERG (Head of the delegation)
- Ms Astrid HEIBERG
- Mr Petros MICHAELIDES
- Mr Michael MELLETT

Mr Frank BEYAERT, Professor of Forensic Psychiatry at the University of Utrecht, assisted the delegation as expert.

Mrs Claire POSSEMIERS DUVANTIER and Miss Birgit ERICHSEN assisted the delegation as interpreters.

The delegation was also accompanied by Mrs Geneviève MAYER-FABIAN, a member of the CPT's Secretariat.

### **B. Nature of the visit to Denmark**

3. The visit to Denmark was carried out in the framework of the CPT's programme of periodic visits for 1990. Denmark was chosen by lot in November 1989 to receive a periodic visit, and the precise dates of the visit were set shortly afterwards.

4. The CPT's delegation decided that during this first visit to Denmark it would concentrate its activities on prison establishments rather than on police stations.

### **C. Establishments visited**

5. The delegation visited the following places of detention:

#### Prisons

- Herstedvester Institution, Albertslund;
- Sandholm Institution, Birkerød;
- Blegdamsvejen Prison, Copenhagen;
- Police Headquarters Prison (Politigårdens Faengsel), Copenhagen;
- The Western prison (Vestre Faengsel), Copenhagen;
- Nyborg state prison, Nyborg.

#### Police establishments

- Police Headquarters, Copenhagen;
- Store Kongensgade Police Station, Copenhagen;
- Copenhagen Airport Police Station, Kastrup.

The visits to the Blegdamsvejen Prison, the Store Kongensgade Police Station in Copenhagen and the Police Station of Copenhagen Airport at Kastrup were not notified in advance of the visit to Denmark.

### **D. Consultations held by the delegation**

6. In addition to its talks with the persons with responsibilities at local level for the places visited, the delegation held consultations with the national authorities as well as with representatives of non-governmental organisations active in fields of interest to the CPT, of trade unions and of bodies responsible at local level for inspecting the treatment of persons held in custody on remand and for short-term sentences.

A list of the authorities and organisations with which the delegation held consultations is set out in Appendix 3 to this report.

### **E. Co-operation encountered during the visit**

7. The talks which the CPT's delegation held with the national authorities both at the beginning and at the end of its visit were conducted in a spirit of great co-operativeness.

Ambassador Kimberg, Permanent Under State Secretary for Foreign Political Affairs, laid particular emphasis on the Danish authorities' wish for genuine co-operation to be established with the CPT. The delegation also held fruitful exchanges of views with Mr Lundbaek Andersen, Permanent State Secretary for Justice and with other senior officials of the Ministries of Justice and Health. In this connection, the CPT would like to emphasise in particular the very positive attitude shown by all those whom the delegation met at its preliminary meeting with the Committee's liaison officers, during the high level talks and in the course of the actual visit. The CPT would also mention that its delegation's visit took place a week before general elections were held and that, despite this, it was fully satisfied with the level of consultation.

8. The CPT delegation's visit received a certain amount of media coverage (press and TV), which was apparently nothing unusual in view of the highly liberal tradition of the Nordic countries in this field. Another possible reason for the media's interest was the fact that the visit coincided with the latter part of an election campaign period. However, some of the information reported was substantially incorrect. In accordance with the CPT's policy in this regard and in order to respond to the readiness for co-operation shown by the authorities, the Head of the delegation agreed to a press release being issued by the responsible department of the Ministry of Justice, specifying the periodic nature of the visit and the correct composition of the CPT's delegation<sup>1</sup>.

9. At all the places visited, including those of which no prior notification had been given, the CPT's delegation received a highly satisfactory reception both from the persons responsible for the places and from the staff.

The CPT's delegation observed that the staff (both managerial and subordinate) at the places visited were aware of the possibility of a visit by the CPT and had some knowledge of the CPT's terms of reference. In 1989 the prison administration directorate of the Ministry of Justice published in a house magazine "Nyt fra kriminalforsorgen" (prison administration news), an article about the Convention and the Committee. In March 1990 the Ministry of Foreign Affairs had, in a general communication, announced that the "control committee" was thinking of making a visit of inspection to Denmark in 1990. Lastly, in a circular of 2 April 1990, the prison administration directorate reminded all establishments under its authority of the various announcements previously made, requesting them to provide the committee with all the necessary assistance for making whatever visits it should decide to make. (The above-mentioned information and instructions were repeated in a circular letter dated 28 November 1990).

During the consultations with the authorities, the delegation was informed that a similar circular had been sent to all police districts a fortnight before the visit.

10. In conclusion, the CPT appreciates the co-operative spirit that prevailed during its delegation's visit to Denmark, which was in full accordance with Article 3 of the Convention.

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<sup>1</sup> After the visit, the CPT learnt of other incorrect reports in the Danish press and exercised its right of reply on four occasions (letter of 12 December 1990 from the President of the CPT to the Editor-in-Chief of the newspaper "Det Fri Aktuelt"; letter of 1 February 1991 from the President of the CPT to the Editor-in-Chief of the newspaper "Jyllandsposten"; letter of 7 February 1991 from the first Vice-President of the CPT to the newspaper "Det Fri Aktuelt"; letter of 2 April 1991 from the President of the CPT to the Editor-in-Chief of the magazine "Sygeplejersken").





## **II. LEGAL FRAMEWORK AND FUNDAMENTAL GUARANTEES RELATING TO DEPRIVATION OF LIBERTY**

11. The pertinent legislation and regulations governing the conditions of the deprivation of liberty in Denmark, in the criminal, administrative and psychiatric fields are set out in Appendix 2 to this report. The fundamental guarantees against ill-treatment afforded to persons deprived of their liberty as well as the national supervision mechanisms of the treatment of such persons are also summarised in that Appendix.

In Chapter III below a number of cross-references are made to Appendix 2.

## **III. FACTS FOUND DURING THE VISIT**

### **A. Prisons**

12. The delegation visited the following five prisons: three local prisons in Copenhagen (Blegdamsvejen Prison, the Western Prison and the Police Headquarters Prison), the Herstedvester Institution for male and female prisoners (undergoing psychiatric treatment or observation) and for Greenlanders ordered to serve their sentence in Denmark, and the State Prison at Nyborg, an establishment for convicted prisoners.

The delegation also visited an institution at Sandholm, under the control of the Department of Prisons and Probation of the Ministry of Justice and forming part of the Copenhagen Prisons, which houses asylum seekers deprived of their liberty in pursuance of the Aliens Act.

#### **1. Copenhagen prisons**

13. The title "Copenhagen prisons" is used to designate a group of prisons with an official capacity of 550 under the authority of one governor. The prisons concerned serve the greater Copenhagen area.

14. The three local prisons in Copenhagen will be dealt with together in this report in view of their similarity from various points of view.

##### **a. General remarks**

15. The Western Prison and the Blegdamsvejen Prison operate principally as "local prisons", housing persons remanded in custody (awaiting trial or sentencing); however, they also accommodate some short-term prisoners. The Police Headquarters Prison caters for persons under arrest (including those still subject to preliminary investigations by the police) and allocates prisoners placed on remand and/or sentenced to a short term of imprisonment among the other Copenhagen prisons.

16. The Western Prison, built in 1895 and enlarged in 1918, is a cross-shaped building with four storeys; the exercise areas and the various services (hospital, administrative building, therapy centre) are situated in line with the various wings, within a large quadrangle surrounded by a wall. 92 % of the prisoners are male and approximately 80 % remanded in custody. The prison's official capacity is 430 prisoners, with 410 cells as well as 37 cells in the prison hospital for sick prisoners.

17. Blegdamsvejen Prison, built in 1848 and enlarged in 1908, is a single 3-storey building with an official capacity of 92 prisoners, for whom there are 92 cells. The prisoners are all male; approximately 40 % are convicted and 60% on remand. They are generally young people under 18 and prisoners presenting no serious risk of escape (prisoners likely to escape are detained in the Western Prison). In March 1990 a new approach was adopted resulting in the prison staff's traditional duties being extended to activities involving more direct contact with the prisoners (education, assistance to prisoners, etc).

18. The Police Headquarters Prison owes its name to its location, as it is situated in the same building as the police headquarters. It was built in 1924 and comprises two 4-storey units with a total of 50 cells. The official capacity of the establishment corresponds to the number of cells. There is a significant turnover of prisoners (approximately 8,000 people are detained in the prison annually), most of whom stay only a very short period (barely more than a night). One wing is reserved for arrested prisoners who are being interrogated by the police.

b. Treatment of persons deprived of their liberty

i. *physical ill-treatment*

19. The delegation heard from a wide variety of sources of a recent case (October 1990) in which serious ill-treatment was allegedly inflicted on a young man of 29, a Gambian national, during his detention in the Police Headquarters Prison and in the Western prison. This case, widely reported as a torture case in the press, prompted proprio motu action by the Ombudsman. The Ministry of Justice also initiated a judicial investigation in accordance with the new Article 21a of the Administration of Justice Act (see Appendix 2 to the report, paragraph 17).

Certain allegations were also heard in this connection concerning the behaviour of certain warders of the Police Headquarters Prison who, apparently, before beating the young man, covered his face with a garment.

**The CPT would like to be informed of the findings of the above-mentioned judicial enquiry as well as of any measures which the Danish authorities intend to take as a result of it.**

20. The CPT's delegation also heard other allegations of serious physical ill-treatment concerning a Tanzanian national, who was said to have been severely beaten with truncheons in the Police Headquarters Prison on 19-20 September 1990 by some of the prison's warders and subsequently strapped to a cell bed. The CPT understands that in this case the Ministry of Justice ordered an enquiry, as in the previous case. **Consequently, the CPT would like to be informed of the findings of the enquiry as well as of any measures which the Danish authorities intend to take as a result of it.**

21. The CPT was struck by the similarity of the allegations concerning the treatment of these two individuals, both from African countries. They suggest that there might be a problem of communication with nationals of states whose languages are little known or not known at all, especially when the behaviour of the individuals concerned, for a variety of reasons - for example, a failure to understand the reasons for their detention -, is disturbed.

The CPT is aware that training courses have already been provided for prison staff, in consultation with the Danish Red Cross and other bodies dealing with refugees and asylum seekers. However, it shares and supports the view expressed by the Governor of Copenhagen Prisons in a report of 16 November 1990 on the incident concerning the young man from Gambia, namely that specific training courses should be made available for the staff of the Police Headquarters Prison designed to enable them to deal with emergency situations and provide desperate or emotionally highly disturbed individuals with the necessary help.

**The CPT recommends that the above mentioned idea put forward by the Governor of Copenhagen Prisons be implemented.**

22. As regards the rubber truncheons about 50 cm long which the delegation observed in a cupboard in the reception office of the Police Headquarters Prison, the CPT **recommends the Danish authorities to ensure that their use is strictly limited to the cases mentioned in circular J.nr.d.f.k-l.k. 80-4-85 of 15 April 1988 on the use of force on prisoners.**

In this connection, the CPT notes that the wording of Articles 2(2), 3(2) and 7 of the above-mentioned circular, concerning recourse to truncheons and use of hands to restrain, does not appear entirely consistent. **It considers that the question of the authorised means of use of physical force should be clarified.**

ii. *inhuman or degrading treatment*

- *solitary confinement ordered by judicial decision*

23. In the Western Prison the CPT's delegation heard numerous allegations from a wide variety of sources concerning a specific form of solitary confinement not constituting a disciplinary penalty, namely the placing in solitary confinement by judicial decision, in response to a police application, of prisoners in custody, for the purposes of the criminal investigation (see Appendix 2 to the report, paragraphs 4 and 11). The many prisoners to whom the CPT's delegation spoke all said that this was a virtually routine practice for certain types of offences (an allegation to some extent supported by the remarks of police officers whom the delegation met) and applicable for indefinite periods. They claimed that solitary confinement was almost invariably ordered in such cases and subsequently prolonged without any real verification of the need to continue it. In practice, the mandatory legal review of solitary confinement could, it was claimed, be regarded as a mere formality.

24. A unanimous complaint from the prisoners in this connection, corroborated by statements from other interested circles (doctors, prison nursing staff, other prison staff, lawyers, non-governmental organisations etc), related to the harshness of the regime of total isolation, which was felt to be a treatment that could ultimately lead to the individual's psychological destruction. A prisoner subjected to such a regime is locked up in his cell for up to 23 hours out of 24, being allowed one hour's open air exercise a day, still in isolation. No form of activity with other prisoners is allowed. Apart from contacts with the prison staff - which are apparently few and far between, according to the staff themselves, because of the pressure of their work - and some contacts with the prison chaplain and instructor, the prisoner is cut off from any direct human contact. It was even alleged that attendance at religious services, including at Christmas time, was forbidden to persons subjected to total isolation. As regards correspondence and visits, they are subject to authorisation and supervision by the police authorities<sup>2</sup> (with the exception of visits from the prisoner's legal advisor).

Authorised visits take place either in the prison in the presence of a prison warder, or at the police station in the presence of a police officer. The CPT's delegation heard several complaints about the infrequency of visits in practice, for example: 4 visits authorised during 4 months' solitary confinement; one half-hour visit every fortnight during 5 months' solitary confinement.

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<sup>2</sup> The system is also called the "BB system", ie prohibition of "Brev" (letter) and "Besøg" (visit), which is particularly resented when combined with solitary confinement. The allegations heard by the CPT's delegation also related to this system, which is apparently very frequently applied; it usually accompanies solitary confinement and may even be continued after the period of solitary confinement has ended.

25. The CPT's delegation talked to a number of prisoners, particularly in the Western Prison, whose period of solitary confinement varied from 2 to 21 months for a period of detention on remand ranging from 7 to 24 months. Many complaints were made about the psychological effects of prolonged solitary confinement: anxiety, nervousness, stress, disturbed sleep, difficulties of concentration and elocution. The allegations were confirmed in substance by the medical staff met by the CPT's delegation, who had to deal with several patients suffering from the "isolation syndrome", characterised by not only the above-mentioned effects but also by suicidal tendencies, repetitive dreams, a loss of appetite and weight, and depression liable to result even in the development of paranoid ideas.

It was pointed out in this connection that the role of doctors and psychiatrists was limited, even in the Western Prison hospital which is also under the authority of the prison governor. The doctors could only give advice on the termination of solitary confinement. More often than not those medical recommendations were not acted upon, as priority was given to security considerations.

26. Several of those interviewed also said that they regarded their solitary confinement as nothing less than psychological torture. Many convergent allegations were made, and not just by prisoners, to the effect that solitary confinement was used by the police as a means of pressure to obtain statements. Prisoners, it was said, were informed that their period of solitary confinement would end as soon as "acceptable" confessions had been made.

27. The CPT understands that the question of remand prisoners in solitary confinement has for some time now been the subject of public debate in Denmark. According to the CPT's observations, the current practice is regarded by the prison and medical staff at the Western Prison as the establishment's thorniest problem.

28. The CPT is aware that a partial legal reform was introduced in 1984 (see Appendix 2 to the report, paragraph 11), though apparently without producing the expected results, namely limitation of recourse to and the length of placement in solitary confinement.

The CPT has noted that a scientific study financed by the Ministry of Justice was due to begin on 1 May 1991 with a view to evaluating, among 150 or so remand prisoners, the possible effects of placement in solitary confinement on the mental health of such prisoners. The CPT understands that the study shall cover a period of two years and result in the submission of a report to the Ministry of Justice, which shall also be made public.

29. The CPT would point out that, in certain circumstances, solitary confinement could amount to inhuman and degrading treatment, and that in any event all forms of solitary confinement should be as short as possible (cf. also paragraph 112 below). It wishes to make the following recommendations on this subject:

- firstly, that the Danish authorities ensure that in practice both the placing of remand prisoners in solitary confinement and the prolongation of such a measure are resorted to only in exceptional circumstances and are strictly limited to the actual requirements of the case, in accordance with the provisions of the Administration of Justice Act. In this connection the CPT would emphasise that the principle of proportionality requires that a balance be struck between the requirements of the investigation and the placing of someone in solitary confinement, which is a step that can have very harmful consequences for the person concerned;

- secondly, that the Danish authorities ensure that the periodic judicial review of solitary confinement is effective and, in case of prolongation of this confinement, that the reasons for such prolongation are set out in writing;

- thirdly, that the Danish authorities ensure that, whenever a prisoner held in solitary confinement or a prison officer on the prisoner's behalf requests a medical doctor, such a doctor is called without delay with a view to carrying out a medical examination of the prisoner. The results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of prolonged isolation, should be set out in a written statement, to be forwarded to the competent authorities (cf. also paragraph 112 below).

- fourthly, that the police be given detailed instructions as regards recourse to prohibitions/restrictions concerning prisoners' correspondence and visits, and that there be an obligation to state the reasons in writing for any such measure.

30. Further, the CPT would like to receive the following information:

- up-to-date statistics on the number of remand prisoners held in solitary confinement, on the type of solitary confinement in each instance and on its length;
- the conclusions of the study referred to in paragraph 28, as soon as they become available. It would also like to be informed of any measures which the Danish authorities intend to take as a result of this study.

- *special security cells and means of restraint*

31. The CPT's delegation noted that several types of cell are recognised under the Danish prison system: ordinary cells (usually for one person), which can also be used for the different types of solitary confinement (by judicial decision; as a punishment; on the prisoner's request); observation cells (placed after aggressive behaviour or to prevent suicide or acts of self-harm); maximum security cells (double cells for prisoners classified as dangerous by the Ministry of Justice); special security cells (cells furnished only with a bed, to which prisoners can be strapped).

32. The special security cells are used for the temporary holding of violent prisoners or those it is feared may commit acts of self-harm or suicide. According to Danish legislation, they may not be used for the purposes of punishment.

33. During its visit, the CPT's delegation heard allegations from various sources about the use made of special security cells.

Some of the allegations had fairly recently been reported in the press ("Sygeplejersken" magazine of 24 October 1990 and 7 November 1990). Other allegations about the use made of such security cells were communicated to the CPT's delegation during its discussions with non-governmental organisations. In particular, the allegations related to two cases of death which occurred in cells of this type in 1989. The delegation also had talks in the various establishments visited with prisoners who had experienced such cells. It was alleged in particular that prisoners were left alone strapped to the bed for long periods, sometimes a whole night, despite calls for assistance. The delegation heard several times the allegation that prisoners had no other choice but to comply with the needs of nature in the bed.

These questions were raised during the talks with the Danish authorities, which revealed that, after the above-mentioned events of 1989, the Ministry of Justice had immediately reacted by setting up a working party to look into the use made of these cells. Some of the working party's recommendations were incorporated in a circular of 26 September 1990 addressed to prison authorities.

34. During its visit to the Western Prison, the CPT's delegation made a detailed examination, in the light of the allegations heard, of one such cell in the hospital wing. The cell, measuring 5.15 m in length, 2.41 m in width and 3.16 m in height, was furnished solely with a bed, to the side of which were attached leather bracelets designed to immobilise the hands alongside the body, a broad leather strap to immobilise the trunk and leather bracelets to immobilise the ankles. Once a person has been attached, no movement is possible. Any attempt to move the hands and feet proves painful because of the rubbing of the rough leather against the skin (the leather straps for the wrists were in fact stained, apparently with blood). Very soon, the various joints swell as the blood has more difficulty in circulating. To say the least, the position very quickly becomes highly uncomfortable.

Near the wrist attached to the right-hand side of the bed there was an alarm button within reach of the fingers. When occupied, the cell is continuously lit by a neon light on the ceiling. At the top of the two walls it was possible for daylight to penetrate through small windows with unbreakable opaque panes.

35. The CPT's delegation was told that no-one had ever been attached in a such a position for more than two hours. This was confirmed by a study of the reports compiled on each committal to the special security cells of the Copenhagen Prisons, which were used on 91 occasions between January and December 1990 (29 prisoners having been strapped to the bed).

According to the general statistics in the above-mentioned working party's report, special security cells were used in 349 cases in Denmark during 1989 (a decrease compared with previous years). In 179 of these cases the period of detention was six hours or less, in 328 cases less than 24 hours and in one case more than three days.

The working party focussed its attention on cases in which use of the cells was combined with use of the means of restraint. An examination of the 184 cases in which special security cells had been used in the second and third quarters of 1989 showed that means of restraint had been applied in 82 of them.

**The CPT would like to receive general statistics, similar to those just indicated, in respect of 1990 and the first half of 1991, as well as specific statistics concerning each of the three Copenhagen prisons visited by its delegation. These latter statistics should show the reason for the use of means of restraint and the period during which they were applied in each case.**

36. The CPT has taken note of the reforms introduced in this field by the circular of 26 September 1990, making it compulsory, when means of restraint are employed or when force has been used to place a prisoner in the cell, to call a doctor immediately so that the person concerned can be examined as soon as possible.

37. However, the CPT has observed that some important suggestions made by the working party were not incorporated in the above-mentioned circular, and in particular:

- i. the continued surveillance ("fast vagt") of the prisoner by an appropriately trained prison officer exclusively assigned to the task, either from outside the cell or inside, as well as the recording in detail every quarter of an hour of the observations made;
- ii. the introduction of specific legislation, in view of the importance of the matter.

The CPT's delegation was told during the final conversations with senior officials of the Ministry of Justice that these proposals were under study in the Ministry, which had sought the views of the competent authorities and organisations.



38. The CPT notes that the Danish authorities are by no means indifferent to the criticisms expressed on this subject, as testified by the measures already taken and the studies carried out with a view to reducing the risks liable to result from the use of the security cells.

**The CPT considers that the aim should be to limit the use of means of restraint to situations resulting from clearly defined exceptional circumstances, and that any recourse to such means should take place under the strictest possible medical supervision or custodial surveillance.**

**In this connection, the CPT recommends that the above-mentioned suggestions (i and ii) of the working party on this subject be implemented.**

c. Conditions of detention

*i. physical conditions*

39. Although the Western Prison, the Police Headquarters Prison and Blegdamsvejen Prison are housed in old buildings, the physical conditions of detention were acceptable. As a general rule, all prisoners had their own cell.

40. In the Western Prison every prisoner (at the time of the visit, the prison contained 359 male prisoners, 32 female prisoners, and 12 persons in hospital) had his own cell, measuring 4.02 m in length, 2.17m in width and 3.16 m in height. Each cell was equipped with a bed, a washbasin with a mirror, a table and chair, two shelves, an icebox, a reading lamp and a ceiling lamp, and a compartment for a television set. All mattresses were fire-proof. The lighting could be controlled from both inside and outside. Each cell had an alarm.

The so-called observation cells (numbering five), which measured 4 m in length, 2.20 m in width and 3.16 m in height, contained a metal bed, a table and a bench, all of which were fixed to the ground. There was not, however, a washbasin. The neon lighting could be controlled only from the outside. When a prisoner is placed in such a cell, the lighting is on continuously and two checks are carried out every hour by the duty officer. **The CPT's delegation noted that the lighting was fairly strong and might prevent the prisoner from sleeping.**

The maximum security cells (numbering two), which are specially reserved for prisoners classified as dangerous (classification laid down by the Ministry of Justice), are double cells measuring 4.70 m in length, 3.16 m in width and 3.16 m in height. From the material point of view, they are particularly well equipped as, in addition to the furniture of an ordinary cell, the prisoners have a cupboard, a colour television set and a radio set. The lighting could be controlled from both inside and outside the cell.

As regards the special security cells, they have already been described at paragraphs 31 and following.

The state of repair and cleanliness of all the cells seen were acceptable.

41. None of the Western Prison's cells are equipped with toilet facilities. Each storey (four storeys per wing) has four toilets and three showers in a satisfactory state of repair and cleanliness, together with a WC and a bathroom for prisoners placed in isolation<sup>3</sup>. The delegation was informed by the staff (and this was confirmed by the prisoners) that during the day there was no restriction on access to the toilets (or to the showers). At night, prisoners could call a prison officer if they wished to use a toilet. No complaints were heard by the delegation on this subject.

**The CPT wishes to underline the importance it attaches to prisoners having ready access at all times to toilet facilities.**

42. In the Police Headquarters Prison (which contained nine prisoners on 2 December 1990), the physical conditions were similar to those in the Western Prison, though the former establishment was somewhat dilapidated in comparison with the latter. There was one cell per prisoner (2m wide, 4.4m long and 2.8m high), with the exception, however, of the waiting cells, reserved for prisoners due to be transferred to other establishments. These cells, numbering three (of which one was 2.30 m wide, 1.80 m long and 2.50 m high and two were 1.15 m wide, 2 m long and 2.50 m high) could be shared by two or more prisoners. On the day of its visit, the CPT's delegation saw three persons in the larger of these cells. **In this connection, the CPT wishes to emphasise the importance of such cells being strictly reserved for their purpose, namely a short holding period of a few hours.**

The delegation also saw the detention cell for intoxicated persons, measuring 2 m wide, 4 m long and 2.80 m high, the floor of which was tiled with an evacuation exit. In this cell the prisoners, because of their state, had only a mattress and some blankets, which appeared to be clean.

The equipment of this establishment is clearly designed for very short stays, although the delegation did meet prisoners serving brief custodial sentences. According to those to whom the CPT's delegation talked, although they could have served their sentences in an open prison elsewhere in the country, they preferred to remain in Copenhagen.

43. At Blegdamsvejen Prison, which the CPT's delegation visited without prior notice, the main aim of the delegation was to observe in situ the new and very interesting system of diversification of prison officers' tasks (see paragraphs 17 and 45). Consequently, the delegation did not concern itself with examining the physical conditions of detention, which do not call for any special comments as far as it was able to judge. At the time of the delegation's visit, the prison had 80 prisoners and a staff of 12-14 prison officers.

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<sup>3</sup> With the exception of the southern wing, which has two toilets and two bathrooms on each of the two isolation storeys; prisoners in solitary confinement have to be locked in the toilets and bathrooms by the officers.

*ii. prison regime*

44. On the whole, and subject to the CPT's observations on the regime of solitary confinement (see paragraph 29), the various activities (work, training facilities, leisure activities, library, meals etc) seemed acceptable in the Western Prison and Blegdamsvejen Prison. As the Police Headquarters Prison is intended only for very short stays, it is not really possible to talk of a regime.

Admittedly, the delegation did note that in the Western Prison only about 150 prisoners could take part in joint occupation activities, due to a lack of facilities and of available staff (some 50 of which have escort duties). Nevertheless, the delegation saw that some pilot projects were in progress with a view to providing the prisoners with more opportunities for sport ("sport coach project") as well as more freedom of movement. The latter project, aimed at giving the prisoners their own cell key, had been launched in the eastern wing of the prison.

**The CPT would like to be kept informed of the results of these projects as well as of any other programme implemented in this field.**

45. The CPT's delegation was particularly impressed by the relaxed atmosphere at Blegdamsvejen Prison, due to the very open detention regime under which prisoners and officers shared the various activities, such as the restoration and modernisation of the prison. As far as the CPT's delegation could see, the system was working to everyone's satisfaction. In particular, the prisoners appreciated being given responsibilities and considered that this was a starting point for their activities upon release.

Blegdamsvejen Prison is a striking example of the way in which a different psychological approach can transform the atmosphere of a prison, even a very old one which does not, on the face of it, possess adequate resources.

**The CPT welcomes this initiative, which it considers exemplary, and hopes that it will be extended to other establishments in the near future.**

46. In both the Western Prison and Blegdamsvejen Prison, the CPT's delegation had an opportunity to see how the system of prisoners' spokesmen operated. On the whole, according to what the delegation heard, such a system was supported by the prisoners, who could express their views through this channel on questions concerning the daily conditions of their detention.

**The CPT considers that such a system, through which prisoners can express their opinions on general conditions of detention, can have a positive effect upon the prison regime. It is of the view that a certain flexibility could be introduced into the circular of 15 March 1978 on inmate participation in discussions of questions of organisation (J. nr. d.f.k. 4k. 740.1), on the lines suggested by the Criminal Law Council (cf. Bind I, Chapter 16; Bind III, Part XV, Article 33 with comments).**

*iii. open air exercise*

47. With one exception, possibilities and conditions for open air exercise were found to be satisfactory. The delegation was concerned by the conditions under which prisoners in solitary confinement took their open air exercise in the Western Prison. For this purpose there was a special area reserved for them near the southern wing, which may be described as a rotunda, entirely surrounded with wire-netting, including the top, in the middle of which was a watch tower for the warders. A star-shaped formation of 23 corridors spread out from this watch tower, separated one from the other by concrete walls. Each corridor was 17 paces long and between one and six paces wide. In some of them there was a concrete bollard. In such a small area, practically the only exercise a prisoner could take was to walk up and down.

While bearing in mind that this arrangement is for persons subject to a regime obliging the prison officers to prevent any contact with others, the CPT believes that precisely for such persons, confined in their cells as they are, the possibility of taking open air exercise is of paramount importance.

**The CPT therefore recommends that the Danish authorities study the possibility of improving the exercise arrangements for prisoners in solitary confinement at the Western Prison, with a view to providing them with proper opportunities for open air exercise.**

*iv. medical care and hygiene*

48. As indicated in Appendix 2 (paragraph 22), a person detained on remand must as soon as possible after his arrival in the establishment concerned be offered the possibility of talking to a prison doctor or a nurse. The CPT considers that every prisoner should, on his arrival or as soon as possible thereafter, be seen and, if necessary, examined by a doctor.

**Consequently, the CPT recommends that every newly-arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. Save in exceptional circumstances, this interview/examination should be carried out on the day of admission.**

49. The CPT's delegation held detailed discussions in the prisons visited with members of the medical and nursing staff and inspected the facilities available to them. From the delegation's own observations as well as from the absence of complaints by prisoners, the CPT concluded that the medical care and services available were satisfactory.

More particularly, the CPT's delegation was told in the Western Prison's hospital wing that AIDS was not a major problem. Tests were carried out on a voluntary basis. The delegation was told by the Danish authorities that in one case (i.e. that of the young man from Gambia; cf. paragraph 19), the test was carried out without the person's consent. It was pointed out in this context that condoms were made available to prisoners wishing to have sexual relations with their partners in the rooms reserved for this purpose within the visiting area.

However the CPT is rather concerned at the Western Prison hospital's considerable workload, due to the large number of psychiatric patients to be treated. The CPT's delegation was told that this was the result of a combination of factors:

- first, remand prisoners who may need psychiatric care are not sent at the outset to ordinary psychiatric institutions because it is very difficult to find room in such institutions.
- secondly, patients found to have psychiatric problems could be sent to the St. Hans institution, but if the patient did not agree, a case had to be made out for compulsory placement.

The medical staff concerned pointed out that in such a context there was a need for more nurses with qualifications in psychiatric nursing.

**The CPT suggests that the Danish authorities either provide the Western Prison with more nursing staff qualified in psychiatric nursing or facilitate the admission of prisoners with psychiatric problems to duly equipped institutions more capable of meeting specific needs.**

*v. suicide prevention*

50. In the course of its visit the delegation heard a number of allegations concerning the suicide of a young Chinese man aged 25 at the Western Prison on 28 June 1990. Consequently, the delegation's members with medical backgrounds made a close examination of suicide case files and discussed the matter in detail with the establishment's medical staff. It emerged that only actual cases of suicide (up to 3 a year, mainly by hanging or opening of veins) are made the subject of specific reports, unlike attempted suicides, which are estimated to number about 200 a year.

51. The CPT is of the view that the question of suicide prevention is particularly important at the Western Prison, which receives a considerable number of especially vulnerable prisoners (foreigners, women, drug addicts) and also has many prisoners placed under a solitary confinement regime. The same is true for the Police Headquarters Prison, which receives arrested persons and allocates to other establishments those remanded in custody.

The CPT considers that two key elements of suicide prevention are the establishment of constructive relationships between staff and inmates and the identification of inmates with suicidal tendencies; both elements call for special training. The reception process has a crucial role to play in this context; if it is performed properly, that process can both identify those most at risk and relieve some of the anxiety felt by newly-arrived prisoners in general. Further, relevant information about a prisoner's psychological state should be systematically communicated to the staff of an establishment to which he is transferred.

**52. Consequently, the CPT recommends that prison staff be given specific courses on interpersonal communication skills and on the identification of persons with suicidal tendencies. Similarly, staff should receive clear instructions on the special precautions to be taken vis-à-vis persons identified as suicide risks and on the precise steps to be followed in the event of a suicide attempt.**

**Further, it is recommended that the Danish authorities ensure that there is a proper flow of information about persons considered as suicide risks between the staff of the establishments that accommodate them.**

*vi. access to information and rights*

53. Contrary to what was observed in the prison for convicted prisoners visited (see paragraph 97 below), the CPT's delegation was impressed by the efforts made in the three Copenhagen prisons, especially in the Western Prison, to inform prisoners of the relevant prison rules as well as of their rights and obligations. The important passages of the various texts and circulars had been translated into several languages, even uncommon ones (see Appendix 2 to the report, paragraph 10, footnote 6). The CPT's delegation was able to observe for itself the satisfactory manner in which information was circulated by such methods as the display of notices on the different landings<sup>4</sup>.

Access to information about the prison regime is, however, of limited value when no communication is possible on everyday matters between the prison's staff/management and foreign prisoners. This is a problem of some acuteness, especially in the Western Prison, which has a high proportion of foreign prisoners.

*vii. foreign detainees*

54. Despite the fact that since 1989 some special establishments such as the one at Sandholm have been opened (see paragraphs 61 et seq below) for persons placed in custody under the Aliens Act (asylum seekers), a good number of such persons are nevertheless incarcerated in the Western Prison in addition to foreign nationals detained because of a criminal offence. According to allegations made to the delegation, it is perceived as more convenient for the police responsible for carrying out investigations not to have to make the 25 km journey to the Sandholm institution. At the time of the delegation's visit the governor indicated that there were 11 asylum seekers in the Western Prison. According to the overall statistics supplied on 2 December 1990, a total of 67 persons were in custody in the Copenhagen Prisons under Section 36 of the Aliens Act, including 50 at Sandholm.

In this connection, the CPT supports the suggestion by the Governor of the Copenhagen Prisons to build outside the Western Prison a new bungalow-type structure of about 900 m<sup>2</sup> providing 40 places for persons detained under the Aliens' Act who have to remain in Copenhagen for the purposes of the police investigation (report sent on 16 November 1990).

**The CPT therefore recommends that the Danish authorities give careful consideration to this suggestion.**

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<sup>4</sup> For example, the delegation's visit and details of its composition were announced on various notice boards in the Western Prison.

55. The CPT's delegation heard somewhat contradictory allegations about the treatment of foreign prisoners. By some it was told that such people were treated properly, despite communication problems and other difficulties. By others it was informed of discriminatory and hostile attitudes, including disrespectful behaviour, mainly towards coloured people.

This matter had been the subject of severe criticism in the media and on the part of some members of the nursing staff in the recent past, in particular as regards the Western Prison. Two nurses were tried for defamation by the court of the county of Copenhagen (judgment of 2 April 1990)<sup>5</sup>. The court found that there was a hardcore of prison staff who adopted a hostile attitude towards asylum seekers/refugees, spoke to them abusively and treated them more severely than necessary.

The CPT has noted that the Danish authorities reacted in the wake of this case by carrying out an inspection at the Western Prison and introducing certain measures with regard to the training of prison officers in foreign cultures. Similarly, stress was laid on the importance of changing the regime in the prison by involving the staff more closely in advisory, educational and leisure activities, so as to create more contacts with prisoners.

The CPT also learned that the Ministry of Justice had initiated an independent judicial investigation (dommerundersøgelse) into these problems in July 1990.

**The CPT would like to be kept informed of the practical implementation of the above-mentioned training arrangements and of the changes in the regime. It considers that this training should be supplemented by language courses, following the example of the Sandholm Institution (see paragraph 69 below).**

**The CPT would also like to be informed of the results of the above-mentioned judicial investigation and of any measures which the Danish authorities intend to take as a result of it.**

56. The CPT is also concerned at the fact that members of the same family are sometimes held in different establishments and that a certain period (sometimes two weeks) may elapse without any possibility of contact between them. The CPT's delegation met one person in such a position who was in a particularly desperate state. The delegation was pleased to learn on the evening of its visit that the prisoner concerned had been allowed to visit his family. The CPT considers it important to avoid any splitting up of the family unit, except where absolutely necessary, since these people are in a particularly vulnerable situation and are not suspected of any criminal offence (on this point, reference can be made to Article 8 of the European Convention on Human Rights and Article 9 of the United Nations Convention on the Rights of the Child).

**It recommends that the Danish authorities ensure that the families of asylum seekers remain together as far as possible, and that even when it is absolutely necessary to separate the families' members for a certain period, contact is maintained between them.**

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<sup>5</sup> The two nurses were acquitted of four of the five charges laid against them, and sentenced to a fine for unjustified allegations to the effect that prison staff had severely beaten foreign prisoners.

57. The CPT has noted that the Danish authorities have already demonstrated the priority attached to these matters and that solutions are under consideration. **It nevertheless wishes to emphasise that, in a search for solutions, the following fundamental principles should be borne in mind;**

- **it is important that persons placed in custody under Section 36 of the Aliens Act should be kept in conditions fully reflecting the fact that their detention is not due to a criminal offence (if possible, they should be held elsewhere than in a remand prison);**
- **as specified in sub-section 36 (2) of the Aliens Act itself, it is desirable to take account of the particular situation of such persons by ensuring that the provisions on detention conditions in the Administration of Justice Act are applied with the necessary adjustments ("med de fornødne lempelser").**

*viii. inspection procedures*

58. The various possibilities for inspecting prisons are set out in Appendix 2 to the report (see paragraphs 14 and seq). The CPT's delegation had an opportunity to meet representatives of the body responsible for inspecting local prisons in Copenhagen, viz the Copenhagen City Council Board of Visitors. It was told that four inspections had been carried out in 1989 and two in 1990.

59. The CPT was surprised to learn that this body's access to the establishments it is responsible for inspecting was subjected by the prison administration to certain restrictions, on the basis of the current regulations; for example, no inspection could be carried out without prior notice, inspections had to be carried out by the Board as a whole (visits by individual members were not allowed) and interviews could be conducted only with detainees chosen by the prison governor. It would also seem that the following up of matters raised by the Board with the prison administration as well as with the Ministry of Justice causes problems.

60. The CPT considers that independent outside bodies of inspectors, such as Boards of Visitors, offer prisoners a considerable protection. The effectiveness of such bodies depends on the means at their disposal, in particular their powers and freedom of access to the establishments they are responsible for inspecting. Moreover, the heeding of the bodies' suggestions and remarks by prison authorities is a significant means of preventing any deterioration in conditions of detention.

Accordingly, **the CPT recommends that the Danish authorities review the conditions on which Boards of Visitors may carry out their inspections, with a view to strengthening the Boards' role.**



## 2. The Sandholm Institution

### a. General remarks

61. As already mentioned (see paragraph 54 above), the institution at Sandholm was opened in late 1989; this occurred as a result of criticism expressed, notably in Parliament, concerning the fact that persons placed in custody under the Aliens Act were held in prisons for persons suspected of having committed a criminal offence. However, this institution comes under the authority of the Department of Prisons and Probation of the Ministry of Justice and is run by the same prison management as the Copenhagen prisons. It is located 25 km north of Copenhagen.

62. The institution's official capacity is 40 inmates. It receives men and women. On 5 December 1990, the day of the CPT delegation's visit, the institution was accommodating 46 asylum seekers, mainly from Iran and Iraq but also from Central Africa.

The delegation was told that the average stay lasted 28 days, though stays could vary between four hours and four months.

63. The institution's inmates can move about freely inside, but are not allowed to go beyond its perimeter on their own.

### b. Treatment of persons deprived of their liberty

#### *i. physical ill-treatment*

64. At no time during its visit did the CPT's delegation hear any allegations of physical ill-treatment of asylum seekers in the institution, either from the persons interviewed or from other sources.

#### *ii. inhuman or degrading treatment*

65. No allegations were made of inhuman or degrading treatment. The CPT's delegation did, however, hear some complaints concerning the manner in which asylum seekers were interviewed in the immigration police's office (outside the institution's perimeter) and the negative and mistrustful attitude shown towards them, which affected their opportunities for corresponding or having contacts with their families. The CPT shall return to this question later (see paragraph 117 below, concerning police stations).

**66. In this context, the CPT wishes to recall the recommendation made in paragraph 56, and the comments under paragraph 57.**

c. Conditions of detention

i. *physical conditions*

67. The CPT's delegation observed that the conditions of detention and hygiene were in general of a satisfactory standard. It also noted that men and women were allowed to live together or separate, as they wished. However, the CPT's delegation heard that, although the institution had to date not had to accommodate any children, such an eventuality would create specific problems which would have to be solved in due course.

**The CPT would recall its recommendation in paragraph 56 and considers that it would be desirable to make as soon as possible the necessary changes permitting the reception of children.**

68. The CPT's delegation noted that the asylum seekers' rooms had no toilets. This did not seem to raise any problem during the day, as the rooms were open from 7 am until the asylum seekers were locked up in their rooms at 9.30 p.m. Moreover, the staff could be called if necessary up to midnight.

The CPT would emphasise once again the importance it attaches to prisoners having ready access 24 hours a day to toilet facilities and **recommends the Danish authorities to ensure that persons held in the Sandholm Institution can have access to toilets during the night.**

ii. *regime*

69. The CPT's delegation did not hear any complaints concerning the regime (work, leisure activities etc.) at the Sandholm Institution, even though a good many asylum seekers resented living in conditions similar to those of a prison. The delegation found that the Sandholm Institution was characterised by a relaxed atmosphere and very good relations between staff (specially trained in foreign cultures and languages) and detainees. The staff told the delegation that they felt more like carers than custodians.

*iii. contacts with families*

70. Many complaints were made about the difficulties experienced by the asylum seekers in making contact with their families (either by correspondence, telephone or visits). Permission to make contact was the responsibility of the police authorities, who took into account the risk of collusion in connection with false identity papers or with falsification of identity. The rules in this area are the same as those applicable to remand prisoners. It was alleged that even when permission was granted by the police authorities, various practical obstacles usually prevented contact from being established with families (telephone accessible only during working hours despite time lag between Denmark and home countries, lack of money for telephoning, etc).

With regard to restrictions placed by the police on contacts with families, the CPT, while appreciating the need to avoid any collusion, wishes to reiterate the comments made in paragraph 57 above. It considers that, particularly in the case of asylum seekers, these restrictions should be strictly limited to the absolute minimum necessary, **and requests the Danish authorities to see to this.**

*iv. medical care*

71. As the CPT's delegation did not include any doctor during the visit to Sandholm, no detailed examination was made of the medical services.

The delegation nevertheless gathered that it was intended to expand the medical service, at present composed of a doctor (for three hours a week) and a nurse (for ten hours a week). **The CPT would like to be kept informed of any developments on this matter.**

### **3. The Herstedvester Institution**

#### **a. General remarks**

72. This institution, made famous by the psychiatrist G.K. Stürup who set up the first "therapeutic community" in Europe, was opened in 1935 to cater for the new types of sentence introduced at that time in Denmark : namely preventive detention of psychopaths (for unspecified periods) and imprisonment of psychopaths (for specified periods).

Within a high perimeter wall, 8 buildings are spread over a wide area: one of them, facing the entrance gate, houses the administrative services, next to which stands the institution's infirmary; another building accommodates workshops and a sports hall; four are occupied by the prisoners (one of them contains a floor reserved for female prisoners). One of these four buildings is exclusively reserved for Greenlanders (13 places) serving sentences under the Danish Criminal Code and the Greenlandic Criminal Code.

73. The institution is officially designed to accommodate 131 prisoners, not counting 17 places in the special sections (infirmary, isolation unit). Ten of the cells are in a special section for drug addicts, and six in a separate unit for women. During its visit on 5 and 6 December 1990, the institution was holding 121 prisoners.

The person in charge of the institution is a lawyer, assisted by a team comprising a lawyer, a prison administrator and prison officers, and by a medical team of psychiatrists, general practitioners, nursing staff and psychologists. There are also social workers, educational staff and an interpreter.

#### **b. Status of the institution at Herstedvester**

74. Under its terms of reference, the CPT is not, in principle, required to look into the legal status of a place of detention. However, where this status is liable to affect the treatment of the establishment's inmates, on account of the uncertainties and grey areas it creates, the CPT considers it necessary to consider this aspect as well.

75. The CPT notes the hybrid nature of the institution's tasks; it is expected to simultaneously treat persons suffering from serious mental disorders, neuroses and personality and sexual aberrations, and act as a place where certain perpetrators of serious criminal offences serve their sentences.

Although more than half of the prisoners in the institution at Herstedvester are undergoing psychiatric/psychological treatment, it is placed under the authority and management of the Department of Prisons and Probation of the Ministry of Justice. As a result, the establishment's regime is first and foremost a prison regime in conformity with the rules in the Ministry of Justice's Regulation of 21 June 1973 (no. 422) on treatment in detention, which is based on Article 49 of the Criminal Code, and with various specific circulars (use of security cells, use of force, searches, use of handcuffs, etc). In practice, decisions lie with the institution's governor, who is a prison administration official.

76. This dichotomy and the resultant ambiguity are sources of conflicts in decision-making on the treatment of persons in custody; the legal and therapeutic points of view often diverge. These conflicts also have repercussions at a lower level, on the prison warders and health care personnel. The outcome is a degree of uncertainty as to exactly what type of regime is to be applied to the prisoners.

During its visit, the CPT's delegation witnessed such a conflict - of a fairly violent kind in an emergency situation - between the establishment's governor and a psychiatrist of the medical team concerning the placing in solitary confinement of a prisoner who had threatened a fellow prisoner, and the placing in a special security cell, with means of restraint, of the fellow prisoner who had refused to leave his detention block.

77. The CPT notes that the Danish authorities are fully aware of the ambivalent position of the Herstedvester Institution within the prison system. It welcomes the efforts made in recent years to work out solutions. In particular, the CPT noted a study carried out by the Health Committee ("Sundhedsudvalget"), set up by the Ministry of Justice, as well as the Criminal Law Council's conclusions on the subject, accompanied by proposals for the new legislation on the execution of sentences (Report no. 1181 of the "Straffelovsrådet").

At present, the mixed system operated within the Herstedvester Institution has no legal basis, apart from the letter of approval of 12 February 1985 sent by the National Health Council to the Department of Prisons and Probation (see Resolution of 28 September 1989 by the Legal Department of the Ministry of Justice). The institution's psychiatrists are reluctant to treat patients without their consent (about 2 cases a year), because the establishment is a prison. Nevertheless, in such a sensitive area as the integrity of the individual, it is essential that rules affording prisoners all the appropriate guarantees should stipulate the procedure to be followed.

Such a mixed system is not unusual in Council of Europe member States. The difficulty of its operation, and the delicate nature of the task of prison doctors, are reflected in the European Prison Rules (paragraph 26 and the introduction to the explanatory remarks concerning that paragraph (pages 43 and 44) ; paragraph 100(3)). More specifically, the CPT wishes to express its support for the reference made in the explanatory memorandum on the Rules to the immutable and paramount principles of medical responsibility, these principles were, moreover, recalled by the National Health Council in its above-mentioned letter of 12 February 1985.

**78. While recognising that they will not provide a complete solution to all the problems, the CPT wishes to recommend the following measures, which it believes would help to clarify the status of the Institution at Herstedvester:**

- firstly, with regard to the treatment of patients without their consent, the intended new Act on the execution of sentences should include a provision making the provisions of Chapter 4 of Act no. 331 of 1989 on deprivation of liberty and other coercive measures in psychiatry applicable to the institution (for example, along the lines of the Section 43 proposed by the Criminal Law Council<sup>6</sup>)
- secondly, with regard to the conditions of detention of mentally disturbed prisoners at Herstedvester, the extent to which the other Chapters of the same Act are to apply to the institution, for example, as regards recourse to physical coercion, the keeping of registers on the use of means of restraint, counselling about treatment, complaint procedures (*vis-à-vis* the local and national "patientklagenævn"), judicial remedies, etc., should be determined.

79. The CPT would also like to be kept informed of any proposals for amending Act No. 331 of 1989 to be submitted to Parliament for the 1994/95 parliamentary year (in accordance with section 46 thereof).

80. In conclusion, the CPT wishes to stress that it considers that the ordinary law concerning the treatment of mentally ill people should be applicable to such persons held in prisons. Moreover, the placement in solitary confinement of a mentally ill prisoner and the recourse to means of restraint can be considered as acceptable only if the treatment of such a prisoner is under the entire and sole responsibility of medical personnel.

c. Treatment of persons deprived of their liberty

i. *physical ill-treatment / inhuman or degrading treatment*

81. At no time during its visit did the CPT's delegation hear any allegations of physical ill-treatment or inhuman or degrading treatment being inflicted on the institution's prisoners. However, there was some criticism to the effect that there was too little tolerance towards deviant behaviour, often resulting in placement in isolation and placement in a special security cell.

The CPT considers that this question is directly linked to that of the institution's status and, in this regard, it refers to the above considerations, especially those in paragraph 78.

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<sup>6</sup> The proposed Section 43 reads as follows (translation):

"1. An inmate is entitled to medical treatment as well as other assistance in health matters.

2. The National Health Board and the Minister of Justice may allow that inmates, who fulfil the requisite conditions for being involuntarily retained in accordance with the law on deprivation of liberty and other forms of coercion within psychiatry, may be subjected to forced treatment in the Institution at Herstedvester in case the inmate cannot be transferred to a general psychiatric ward. The treatment shall be administered in accordance with the provisions laid down in the said law for such treatment.

3. The Minister of Justice shall give detailed rules on other assistance in health matters to inmates."

82. The situation of the women detained in the institution, who form a minority group, also engaged the CPT's attention. The delegation heard complaints about discriminatory attitudes and abusive behaviour, including sexual harassment, on the part of the other prisoners during joint activities (work, recreation and outdoor exercise).

**The CPT recommends the Danish authorities to ensure that women prisoners in the Herstedvester Institution are able to participate in joint activities in circumstances which safeguard their physical and psychological integrity. In particular, the staff should be made aware of the problems with which women may be faced in such an institution and be trained to deal with them in an appropriate manner, without leaving the prisoners to settle their difficulties on their own.**

*ii. conditions of detention*

*- physical conditions*

83. The CPT has no comments to make on the physical conditions of detention, which, according to its delegation's observations, were satisfactory. Prisoners occupy single cells measuring 3.02 m in length, 2.52 m in width and 2.84 m in height, which are suitably furnished (bed, table, chair, reading lamp, ceiling light, mirror, wash basin). The lighting is controllable from both the inside and the outside. Each cell has an alarm system. The mattresses were fire resistant (having been changed as a result of a fire).

The isolation cells (for voluntary or punitive isolation) have the same specifications. The CPT's delegation also examined the two maximum security cells for prisoners who, without necessarily having any mental disorder, are regarded as dangerous and placed in such a cell in total isolation by a decision of the Department of Prisons and Probation (at the time of the delegation's visit, there was one prisoner in a maximum security cell). To offset the total isolation, such prisoners have a cell measuring 5 m in length, 2.93 m in width and 2.84 m in height, and which is particularly well-equipped (television set, radio set, refrigerator, armchair and stereo record player). An adjacent cell had been converted into a gymnasium for the exclusive use of the occupant of the maximum security cell.

Lastly, the special security and observation cells have almost the same specifications as those described in paragraphs 34 and 40 above.

All cells were in a satisfactory state of repair and cleanliness, even though some of them (especially the observation cell and the cells of the psychiatric unit) would benefit from being refurbished.

- *prison regime / outdoor exercise / visits*

84. Special attention is paid in the Herstedvester Institution to work programmes, educational activities, training and education. For a good number of the prisoners this is an integral part of their treatment programme, though such activities are available to all prisoners. The CPT's delegation considered that the prison regime, opportunities for outdoor exercise, arrangements for visits, etc, were satisfactory.

85. The CPT's delegation was also told that prisoners were informed on their arrival of the institution's rules and the daily routine and that at the same time their specific needs were evaluated. The delegation did not hear any allegations suggesting that there were problems in this area.

86. However, the CPT's delegation did hear complaints to the effect that only male prisoners could be placed in the section with a semi-open regime. The CPT considers that women, just as men, should be able to benefit from the institution's semi-open regime.

**The CPT recommends the Danish authorities to study the possibility of enabling both men and women meeting the necessary conditions to enjoy access to the semi-open regime operating within the institution.**

- *complaint procedures*

87. The rules governing appeals by prisoners against decisions of the institution's authorities are the same as those in force in other prisons for convicted prisoners in Denmark. The CPT will be commenting on this question later. As regards more specifically the Herstedvester Institution, the CPT is not convinced that this type of procedure offers adequate guarantees for prisoners with mental disorders. It therefore reiterates its belief in the need to clarify the application of those provisions of Act No. 331 of 1989 which relate inter alia to complaint procedures and judicial remedies (see paragraph 78 above).



d. Treatment of Greenlanders

88. The CPT's delegation visited the detention unit reserved for Greenlanders and spoke to its inmates as well as with the medical and prison staff responsible for them.

These inmates cannot serve their sentences in Greenland, where there is apparently no closed prison (they are regarded as too dangerous by virtue of the offence committed to be kept in open prisons). It emerged from the delegation's discussions with the Greenlanders as well as with the institution's staff that the Greenlanders experienced considerable difficulties in adjusting to prison life, especially on account of cultural differences. Many complaints were made about the absence of Greenlandic food (see in this connection paragraph 96 below). Further, the language barrier, despite the existence of an interpreter, was regarded on both sides as severely impeding the scope for communication in everyday life.

89. It was alleged that a good number of the Greenlanders suffered from homesickness to an extent that could cause psychological disorders. These allegations were confirmed in substance by members of the establishment's team of psychologists, who stated that, in serving their sentences in a totally alien country in social and cultural terms, Greenlanders were in practice punished several times over: as a result of the absence of family links in Denmark, the total lack of participation in the rapid social changes occurring in Greenland, and the extreme difficulty of envisaging reintegration into Greenlandic society.

Furthermore, because of the many differences between them, cohabitation with the other prisoners during joint activities was not always easy.

90. The CPT is fully aware of the complexity of this question. It wishes merely to convey to the Danish authorities the observations made by its delegation during its visit, **and to suggest that the Danish authorities study ways of enabling the prisoners from Greenland to maintain appropriate links with their own society, into which they will eventually have to be reintegrated.**

#### 4. The State Prison at Nyborg

##### a. General remarks

91. The State Prison at Nyborg was built in 1913 and originally intended for young prisoners. Since 1973 it has functioned as a closed prison for male convicted prisoners. It is officially designed to accommodate 175 prisoners, each occupying a single cell. The prisoners are divided among 7 ordinary units and 4 special units (isolation unit, voluntary isolation unit, semi-open unit, unit for drug addicts who are offered therapeutic activities).

92. On the day of the CPT delegation's visit, the prison housed 160 prisoners, including 34 foreigners. According to the prison governor, the Danish prison system requires convicted prisoners to serve their sentences in an establishment near their home. However, Nyborg Prison has to accommodate prisoners from different parts of Denmark, because of the lack of space in other prisons. Moreover, foreigners who have no family in Denmark or no special ties with the country are also detained at Nyborg (otherwise, they serve their sentences in Vridsløselille Prison). The length of sentences ranges from a few months to life. However, the prison governor said that prisoners remain only for a fairly short period on average, because of the length of their period of custody on remand.

##### b. Treatment of persons deprived of their liberty

93. At no time did the CPT's delegation hear any allegations of physical ill-treatment or inhuman or degrading treatment of detainees in Nyborg Prison.

On 6 December 1990 the CPT's delegation witnessed an incident during which a prisoner had to be placed in isolation after consuming alcohol smuggled into the prison by two visitor friends. The delegation observed that the prisoner was properly treated by the staff, who acted firmly but reasonably.

##### c. Conditions of detention

###### *i. physical conditions*

94. From the delegation's own observations as well as the absence of complaints by the prisoners, the CPT was able to conclude that the physical conditions of detention at Nyborg Prison were satisfactory. The size and facilities of the cells corresponded on the whole with those already described for other prisons.

During the day, prisoners are able to use the toilets and showers as they wish. At night, prison staff must be called to enable access to the toilets. Some prisoners have keys to their cells, which presumably resolves the question of access to toilets at night. **The CPT would once more emphasise the need for prisoners to have ready access to toilet facilities 24 hours a day.**

More generally, the CPT's delegation noted the highly satisfactory state of repair and cleanliness, as well as the congenial layout, of the prison.

*ii regime*

95. The various facilities for activities and for recreation, as well as for outdoor exercise and visits, do not give rise to any special comments. The prison governor and staff told the delegation that, in their view, the prison's role was to help the prisoners to overcome their lack of education and training.

Some allegations were nevertheless made to the effect that the training and work facilities were underused due to a lack of instructors and other staff.

This was confirmed in substance by the prison personnel, who were concerned by envisaged staff cuts (apparently 20 officers were to be transferred to the Copenhagen Prisons). The 140 officers to remain at Nyborg were expected to perform other duties involving more contacts with the prisoners. Surveillance duties were to be reduced from 90% to 20%, the remainder being devoted to social activities, leisure activities, workshop activities and help and advice for prisoners. While welcoming this measure, the staff expressed their concern about its actual implementation with a reduced number of officers.

**The CPT wishes to underline that the success of the envisaged diversification of prison duties is clearly dependent upon adequate human resources being available.**

96. The CPT's delegation was favourably impressed by the meals system in force. With the exception of sick prisoners who were unable to work and those placed in isolation, prisoners were not provided with their meals by the prison authorities but instead bought their own groceries in the prison's supermarket with their wages, their purchases being charged to an account. The supermarket was a branch of a local supermarket with local staff, selling products at the same price as the special offers available in the community.

The CPT's delegation observed that this system operated to everyone's satisfaction; the prisoners particularly appreciated being able to prepare meals at the desired time in each unit's modern kitchens. **Such a system might, for instance, provide an answer to the dietary problems experienced by Greenlanders in the Herstedvester Institution (see paragraph 88).**

97. As regards information given to prisoners, the staff indicated that prisoners received on their arrival an information document setting out the establishment's rules. The document was available in Danish and English, but in no other foreign language. The CPT's delegation was told during its discussions with the national authorities that in establishments for convicted prisoners there was no guide similar to the instruction issued in July 1980 by the Ministry of Justice explaining the main rules governing periods of detention on remand. The prison governor said that prisoners could come to consult all relevant rules in his office.

**The CPT recommends the Danish authorities to study the possibility of following the example set by the above-mentioned instruction of 1980, in establishments for convicted prisoners.**

*iii. disciplinary questions*

98. The CPT's delegation heard some complaints concerning the allegedly very strict nature of the disciplinary regime.

In this connection, the delegation was informed that between 1989 and August 1990, the situation in Nyborg Prison was in fact very tense owing to the presence of prisoners belonging to the "Hell's Angels" group (subsequently transferred to Vridsløselille Prison). The staff had to deal with various incidents and disorders up to July 1990, traces of which were still visible to the CPT's delegation in December 1990 (graffiti, damage, etc). The establishment's governor informed the CPT's delegation of the difficulties experienced with these prisoners, who adopted a bullying attitude towards the other prisoners and were aggressive towards the staff.

These difficulties obviously had repercussions on the disciplinary regime and the punishments imposed between 1989 and mid-1990 (as well as causing some prisoners to apply for voluntary isolation). One of the leaders of the "Hell's Angels" was placed in solitary confinement for nine months.

At the time of the delegation's visit the prison's atmosphere, and hence the prison and disciplinary regime, were still affected by these events. An improvement of the situation can only be brought about by re-establishing constructive relations and trust between staff and prisoners.

*iv. relations between the prisoners and authorities of Nyborg Prison*

99. A complaint frequently made to the CPT's delegation related to the lack of communication between the prison governor and the prisoners. It was alleged that, although the prisoners wished to talk to the governor, he was not prepared to meet them.

Apart from the staff on duty in the various units, the prisoners saw only the governor's representative, once a week, during his tour of the various units (this system had just been introduced.) The abolition, on 26 July 1990, of the system of prisoners' spokesmen was also the subject of complaints from the prisoners, who claimed that they had been deprived of their channel of communication with the prison authorities.

100. These matters were extensively discussed during the CPT delegation's talks with the prison governor, who said that he was in favour of the system of spokesmen but that his staff had advised him not to reintroduce it because of the recent incidents in the prison (the "Hell's Angels" group had used the system to create disorder). He said he was ready to reconsider the question but that things were complicated by the fact that, before accepting a solution, the prisoners wished to confer together. It was obvious that the prison staff were apprehensive about permitting groups of prisoners to meet.

The CPT is of the opinion that dialogue is an essential means of creating an atmosphere of mutual confidence (which is clearly lacking at present in Nyborg Prison) and of avoiding conflict.

**101. The CPT therefore recommends the Danish authorities to improve means of communication between the prisoners and authorities in Nyborg Prison, either by considering the possibility of reintroducing the system of prisoners' spokesmen or by seeking other arrangements that would suit both prisoners and staff.**

v. *complaint procedures*

102. The current regulations provide prisoners with an internal avenue of appeal to the Department of Prisons and Probation against a decision by the prison authorities. After being sent through the prison governor in a sealed envelope, the appeal is considered by the Department, which returns it to the prison authorities for comments.

The CPT has taken note of the various possibilities that exist for prisoners to complain to the Ombudsman and the Standing Parliamentary Legal Committee. Nevertheless, there is no specific independent body (such as the Boards of Visitors in remand prisons) competent for establishments holding convicted prisoners with the power to visit the place of detention and receive prisoners' complaints.

103. The CPT's delegation heard several complaints about the present system: some claimed that it took too long to consider complaints, others that the Department of Prisons and Probation invariably supported the prison authorities' point of view without any serious investigation. Another complaint was that, during inspections of the prison by the responsible national services, prisoners did not have the impression of dealing with bodies separate from the prison authorities.

104. The CPT considers it desirable for complaint procedures to include a possibility for prisoners to raise their grievances before an independent body.

Similarly, and without wishing to cast any doubt on the impartiality of the national services entrusted with the carrying out of inspections, it is of the view that local inspections by specific independent bodies represent a fundamental safeguard as regards the treatment of persons deprived of their liberty.

**The CPT therefore recommends the Danish authorities to review the complaint procedures applicable in establishments for convicted prisoners, like Nyborg Prison, with a view to supplementing them by an element which is independent of the Department of Prisons and Probation. The CPT also recommends the Danish authorities to study the possibility of establishments for convicted prisoners being inspected by independent bodies, following the example of the Western Prison.**

vi. *medical care*

105. Medical consultations in the prison are given by two doctors, who each spend a total of six hours a week in the prison, accompanied by a part-time psychiatrist and three nurses. The talks with the prisoners did not reveal any particular complaints about medical care. However, some foreign prisoners apparently had difficulties, for linguistic reasons (see paragraph 107 below), in explaining their health problems and obtaining suitable treatment at the right time. The CPT's delegation met two prisoners in such a situation and, with their consent, reported their cases to the prison governor, who said that he would immediately take the necessary measures.

This problem is in fact closely linked to the question of the medical examination of prisoners on their arrival in an establishment. The CPT considers that the system introduced by the circular of 29 March 1990 (see Appendix 2 to the report, paragraph 22) is particularly disadvantageous for persons who, for one reason or another, are not in a position to state clearly their problems.

**In this connection the CPT recalls the recommendation it has made under paragraph 48.**

106. The prison governor and the staff informed the delegation that there was a significant problem of illegal drug trafficking within the establishment. One consequence of this was that numerous prisoners had become fearful of AIDS. Prisoners complained that there was a lack of information on this subject, which in turn had led to wild rumours spreading throughout the prison. The staff told the delegation that the provision of information about AIDS was the responsibility of the head nurse, and that an information booklet had been distributed. However, no follow-up information was given.

**The CPT considers that an on-going information programme for prisoners concerning AIDS (transmission risks and means of prevention) is most important, in particular in a prison facing important drug-related problems.**

*vii. foreign prisoners*

107. As already mentioned, Nyborg Prison is used for accommodating foreigners who have no family in Denmark and no special link with the country. As a result, its situation is undoubtedly somewhat different from that of other establishments for convicted prisoners. The CPT's delegation met several foreign prisoners who were unable to communicate with the staff and other prisoners as they did not speak Danish, English or German. It was possible to talk to them through fellow-prisoners acting as interpreters. Apart from the various difficulties encountered in daily life owing to the language barrier (see also above with regard to medical care), some of these prisoners were in a state of deep moral distress owing to the isolation forced on them by their inability to communicate.

Some complaints were also made about the absence of specific facilities for religious services.

108. This question was discussed with the prison staff, who did not think that there were too many difficulties, as 80% of the prisoners spoke or understood Danish and/or English. For the remaining 20%, an interpreter was called in in cases of absolute need; otherwise the staff "made do" with the resources at their disposal. The CPT's delegation was able to see for itself the efforts made by the staff to communicate with the prisoners concerned.

**109. The CPT nevertheless believes that there is some room for improvement in this area:**

- **firstly, the example set by remand establishments, where the relevant excerpts from the prison rules and other texts have been translated into a considerable number of languages, might usefully be followed (see paragraph 53);**
- **secondly, the Danish authorities might consider providing prisoners and prison officers at Nyborg Prison (as well as at other establishments for convicted prisoners where foreign prisoners are kept) with better opportunities for learning Danish and foreign languages respectively.**

**5. Related matters of interest to the CPT**

a. Disciplinary matters

110. The CPT has noted that it is foreseen in the Bill on the execution of sentences (Article 107) that certain decisions of prison governors in the disciplinary field (for example, placing in solitary confinement for more than 7 days) shall be referable to the courts. **The CPT would like to be kept informed of the outcome of this planned reform.**

b. Transfer of prisoners classified as dangerous

111. This question is currently dealt with in a circular of 12 May 1989, which provides that the Department of Prisons and Probation may transfer at two-monthly intervals any prisoners classified as dangerous. These prisoners are kept in solitary confinement. Provisions on the matter are also included in the Bill on the execution of sentences (Bind III, pp. 631 et seq).

During its visit to Denmark, the CPT's delegation heard allegations that it was the practice for such prisoners to be transferred every three months to another prison and that this had adverse effects on the physical and mental state of the prisoners.

112. The CPT is fully aware that certain prisoners are extremely difficult to handle, and that the transfer of such a prisoner can sometimes prove necessary. However, it should be stressed that the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical well being. It should be added that a prisoner in such a position will also have difficulty in maintaining appropriate contacts with his family and lawyers. Clearly the practice of transferring prisoners is one that must be handled with the greatest of care.

**The CPT would like to receive information on the frequency of transfers of prisoners classified as dangerous. It would also like to be informed of the outcome of the examination of the provisions on this subject contained in the Bill on the execution of sentences.**

**With regard to the placement of such prisoners in solitary confinement, the CPT refers to paragraph 29 above.**

c. Length of detention on remand

113. The CPT was struck by the length of the period during which persons could be held in custody on remand. During its visit, the CPT's delegation came across numerous cases where the period of detention on remand varied from six months to over two years, often associated with a lengthy period of solitary confinement.

This question was raised with Mr A JENSEN, the Attorney General, who explained, inter alia, that there were many complex cases requiring lengthy investigations, in the course of which it was essential to avoid any risk of collusion, destruction of evidence, or escape.

While recognising the pertinence of Mr Jensen's remarks, **the CPT would like to be informed of any steps that are envisaged with a view to reducing the length of detention on remand.** As regards the placement of prisoners in solitary confinement, reference should be made to paragraph 29 above.



**B. Police stations**

114. The CPT's delegation visited the Copenhagen Police Headquarters, the police station at Store Kongensgade and the police station at Copenhagen Airport, Kastrup.

Only the visit to the Police Headquarters was announced to the authorities in advance. Despite the absence of prior notice and even though the police officers concerned (for example, those at Store Kongensgade) were not always aware of the CPT's presence in Denmark, the delegation was given a satisfactory reception at the places visited.

a. Treatment of persons under arrest

115. The CPT's delegation found no evidence of ill-treatment of detainees in the three police stations visited. Further, in the course of its visit to Denmark the delegation did not hear any serious complaints about the manner in which persons had been treated while in police custody.

116. The talks with representatives of the Danish Police Union revealed that in 1989 there had been 30 complaints of police misbehaviour in the Copenhagen area and 274 complaints in the country as a whole. However, few of these complaints, it was said, had resulted in criminal or disciplinary proceedings. The representatives explained that this was the result of the special attention paid to the recruitment and training of police officers (between four and four and-a-half years' training at the police college, together with periods of practical experience).

**The CPT would like to receive up-to-date statistics on the number of complaints of police misbehaviour made and the number of cases in which disciplinary and/or criminal proceedings were instituted, with particulars of any penalties imposed.**

117. Reference has already been made (paragraph 65 above) to the allegations concerning the manner in which asylum seekers are questioned by the police authorities. It was claimed, in particular, that the form of questioning gave asylum seekers the impression of being undesirable and that when they were deported, they were asked to sign a statement to the effect that their departure was voluntary. This was explained to the CPT's delegation as being the result of pressure placed on the police by Danish public opinion, as well as of the fact that the immigration department was short of qualified staff and could not give adequate support to the police.

**The CPT would like to receive the comments of the Danish authorities on the above-mentioned allegations.**

b. Conditions of detention

i. *physical conditions*

118. The police station at Store Kongensgade has seven cells (2.30 m long, 2.16 m wide and 2.74 m high) and 4 waiting cells (3.3 m long, 2 m wide and 2.50 m high).

Two of the cells were equipped with a bed, table and chair (they were mainly used for keeping remand prisoners in isolation pending their appearance before the nearby court); the others with a hard plinth. In one of the cells there was a mattress and blanket. The cells were illuminated by daylight as well as by artificial lighting. The 4 waiting cells contained a wooden bench (in two of them there were blankets) and had no natural lighting. The walls were covered with graffiti. None of the cells had a wash basin or toilet; a sanitary annex (toilet, a shower and two wash basins) was apparently made available to arrested persons as soon as they asked to use it. All the cells had a ventilation system and an alarm bell.

119. Although rudimentarily equipped and in need of renovation, the cells were in a satisfactory state of cleanliness. The CPT's delegation was told that in case of need blankets were supplied to persons under arrest. As a general rule, with the exception of weekends, the average length of stay in the cells was in the order of four or five hours. This was confirmed by an examination of the arrests register. At the time of the delegation's visit there was one person under arrest, obviously completely drunk. The delegation did not seek to talk to him.

120. At the Copenhagen Police Headquarters, the delegation saw the rooms for persons waiting to be questioned by the Headquarters' officers. They were in a satisfactory state of cleanliness, but were small, equipped only with a bench and a blanket, and illuminated solely by artificial lighting. They are used only for very short periods, persons placed in police custody being usually kept in the Police Headquarters Prison.

121. The police station at Kastrup, by virtue of its location, deals with many foreigners, whether or not asylum seekers, who are apprehended at the airport. The detention cells which the delegation saw may be described as cubicles, furnished merely with a bench and without any sanitary equipment or windows. The CPT's delegation also saw the transit area, divided into two parts: one part had been converted into an office for police officers responsible for questioning would-be immigrants, the other into an oblong room containing a low table and a four-five place sofa. The delegation was told that these premises in the police station and the transit area were intended only for short periods of detention (a few hours). Someone who needed to be kept under arrest for a longer time would be transferred to the Police Headquarters Prison.

*ii. arrangements for meals*

122. In none of the three police stations visited were there any special arrangements for providing arrested persons with food and drink. The reason given for this was that persons arrested stayed for only a very short time in these various places. At the Store Kongensgade police station, it was stated that there were no instructions on the subject and that, in case of need, a police officer went to the nearest shop and bought sandwiches and beverages.

In the transit hall of Kastrup airport, the delegation noticed that two persons apprehended (a 60 year old father and his 27 year old daughter, from Lebanon) had been waiting for at least three hours without receiving any food or drink (the delegation saw them in the late afternoon of 5 December 1990).

**The CPT recommends that the Danish authorities make arrangements to ensure that, when the circumstances so require, persons kept under arrest at police stations and in the transit area of the airport can be given something appropriate to eat and drink.**

*c. Fundamental safeguards granted to persons in police custody*

123. The legal provisions dealing with the fundamental guarantees for persons held and interrogated by the police are set out in Appendix 2 to this report.

124. In the context of legal safeguards against the ill-treatment of persons detained by the police, the CPT attaches particular importance to three rights: the right not to be held incommunicado; the right of access to legal advice; the right to be examined by a medical doctor of one's choice.

*i. notice of arrest*

125. As far as the CPT's delegation could see, notification of someone's arrest to his next of kin or other third party of his choice is not expressly guaranteed by law. Notification was at the discretion of the police, who assessed the risk of collusion or obstruction of the investigation. As a rule, an arrested individual is not allowed to telephone in person; this is done on his behalf by the police. The two Lebanese in the transit hall of Kastrup airport had not been allowed to contact the two members of their family in Denmark.

126. The right to inform a next of kin or other third party of one's arrest is a fundamental safeguard against ill-treatment and as such should be guaranteed by law. Naturally, the exercise of this right could be made subject to qualifications designed to protect the course of justice.

**The CPT recommends:**

- **that persons arrested by the police should have the right to inform immediately their next of kin or another third party of their arrest;**
- **that any possibilities for the police exceptionally to delay or refuse contact with a third person should be clearly circumscribed and made subject to appropriate safeguards (e.g. such delay or refusal to be recorded in writing together with the reasons therefor and to require the approval of a senior officer or public prosecutor).**

*ii. access to legal advice*

127. Access to and the presence of a legal advisor are statutorily guaranteed to persons under arrest (see Appendix 2 to the report, paragraph 7). Similarly, the police are required to inform the person concerned of his rights in this respect.

**In this connection, the CPT would like to put the following questions:**

- **does a person taken into police custody enjoy a right of access to legal advice as from the moment that he is apprehended (as distinct from the moment when the first interrogation takes place)?**
- **what is the precise content of the right to legal advice: to contact a legal advisor? to be visited by a legal advisor? to consult with him in private? to have him present during interrogations? etc.;**
- **what happens if a person in police custody states that he wishes to have legal advice but that he does not know of a lawyer and/or is not in a position to pay for a lawyer's services?**

*iii. access to a medical doctor*

128. The CPT's delegation was informed that a person arrested could ask to be seen by a doctor of his choice (though this was rarely done). However, in the event of an allegation of ill-treatment, a doctor would be called from the Forensic Medicine Institute. It was also pointed out that as soon as a person in police custody was placed in an establishment under the authority of the Prison Administration and Probation Department, the normal prison regulations applied (see Appendix 2, paragraph 22).

**The CPT recommends that the possibility for an arrested person to have access to a doctor (including one of his own choice) should be expressly provided for in respect of all stages of police custody.**

*iv. conduct of interrogations*

129. With the exception of the guiding principles laid down in the Administration of Justice Act, police officers have no detailed instructions regarding the way in which interviews should be conducted and recorded.

During its visits to the various police stations, the CPT's delegation was told that it lay with the police officers responsible for questioning to assess the need to interrupt the interview according to the state of fatigue or hunger of the person questioned. It should also be recalled that as regards suspected criminal offences, the legal advisor of the arrested person has the right to be present during interrogations.

**130. The CPT recommends that the Danish authorities draw up a code of practice on police interrogations addressing inter alia the following questions: the permissible length of an interview; eating and rest periods between interviews; places in which an interview may take place. The code should also provide that a record be systematically kept of the times during which a person is interviewed, regardless of the length of the interview, and of the persons present during each interview.**

**Further, the CPT recommends that the Danish authorities explore the possibility of introducing a system of electronic recording of police interviews, offering all appropriate guarantees.**

*v. custody records*

131. In the course of its visits to the different police stations, the delegation observed that certain aspects of a person's police custody were recorded in the arrest book and in his individual file (time of and reasons for arrest; start and end of interviews save those of short length, transfers to the Police Headquarters Prison, a court or another police service; release). However, no record was kept of a number of other aspects (e.g. time when the arrested person was informed of his rights; request by the arrested person to have legal advice; time when a third party was informed of the person's arrest; requests for access to a medical doctor; any waiving of his rights by the arrested person).

132. The CPT considers that the fundamental safeguards granted to persons in police custody would be usefully supplemented if a single and comprehensive custody record were to exist for each person detained by the police, on which would be recorded all aspects of his custody and action taken regarding them (when arrested and reasons for arrest; when told of rights; signs of injury, mental illness, etc.; when next of kin and/or lawyer telephoned and when visited by them; when fed; when interrogated; when charged; when transferred; when released, etc.). For various matters (for example, items in the person's possession, waiving or invoking rights), the signature of the prisoner should be obtained and, if necessary, the absence of a signature explained. Further, the detainee's legal advisor should have access to such a custody record.

**The CPT recommends that the Danish authorities endeavour to develop such a single and comprehensive custody record.**



#### IV. RECAPITULATION AND CONCLUSIONS

133. The CPT's delegation found no evidence of torture in the prisons and police stations visited.

134. In a number of respects, the CPT's delegation formed a positive opinion of the establishments visited in Denmark (for example, visiting arrangements and possible types of visits; hygiene in the establishments; training opportunities; libraries for prisoners; possibility for prisoners in certain establishments to express their opinions on the general conditions of detention through spokesmen, etc.).

##### A. Prisons

135. The CPT's delegation heard certain allegations of severe physical ill-treatment concerning two foreign prisoners in the Copenhagen Prisons. The CPT wishes to be informed of the findings of the investigations initiated by the Danish authorities in the two cases. The CPT was struck by the similarity between these alleged cases of severe ill-treatment, and wondered whether there might not be certain underlying problems. In this connection, it noted the suggestions put forward by the Governor of the Copenhagen Prisons and recommends that they be implemented (for example, specific training courses for prison staff).

136. The prison visits carried out by the delegation gave rise to three main areas of concern for the CPT.

Firstly, at the Western Prison the CPT's delegation was able to observe at first hand the practice of the solitary confinement of remand prisoners ordered by judicial decision. Numerous allegations were made as regards the adverse effects of such confinement. The CPT wishes to underline that, in certain circumstances, solitary confinement could amount to inhuman and degrading treatment, and that in any event all forms of solitary confinement should be as short as possible. The question of solitary confinement is currently being examined by the Danish authorities. The CPT, for its part, has formulated several recommendations designed to strengthen the protection of prisoners in this area. Emphasis is placed in particular on the importance of the respect of the principle of proportionality between the requirements of the investigation and placement in solitary confinement (a measure which can have very harmful consequences for the persons concerned), of an effective periodic judicial review of the solitary confinement, and of the proper medical examination of a prisoner subject to such a measure.

Secondly, the CPT's delegation heard severe criticism of the manner in which the so called "special security cells" were used and more particularly of the use of means of restraint in such cells. The CPT is of the opinion that the aim should be to restrict the use of means of restraint to situations resulting from clearly defined exceptional circumstances. Further, there should be strict medical supervision or custodial surveillance in such cases. It noted that the Danish authorities had already taken certain measures as a result of the report of the working party set up by the Ministry of Justice to look into the use made of such cells. The CPT has recommended the implementation of certain important suggestions of the working party not taken up in the ministerial circular of 29 September 1990 (for example, the continued surveillance of the prisoner by an appropriately trained prison officer).

Thirdly, following the visit to the Herstedvester Institution, the CPT's delegation was concerned about the uncertainty as to exactly what type of regime was to be applied to prisoners and the sharing of responsibility between medical and prison staff. In this respect the CPT has made two recommendations which should help to clarify the status of the institution and which relate to the application of Act No. 331 of 1989 to mentally disturbed prisoners held there.

The CPT wishes to stress that it considers that the ordinary law concerning the treatment of mentally ill people should be applicable to such persons held in prisons, and that the placement in solitary confinement of a mentally ill prisoner and the recourse to means of restraint can be considered as acceptable only if the treatment of such a prisoner is under the entire and sole responsibility of medical personnel.

137. With regard to the situation of detained asylum seekers, the CPT considers that there is some room for improvement. In particular, the CPT attaches importance to avoiding, as far as possible, the splitting up of asylum seekers' families. It has suggested, inter alia, that the necessary changes permitting the reception of children at Sandholm Institution be made as soon as possible.

More generally, the CPT would stress that it is important to bear in mind that persons placed in custody under Section 36 of the Aliens Act are not deprived of their liberty due to suspicion of having committed a criminal offence, and that the conditions under which they are held should reflect this fact.

138. The physical conditions of detention were acceptable in all the establishments visited.

139. As far as regimes are concerned, the CPT considers that the Blegdamsvejen Prison deserves particular mention. It provides a striking example of the way in which a different psychological approach can transform the atmosphere of a prison, even one which does not, on the face of it, possess adequate resources.

The CPT's delegation also formed a positive view of the Sandholm Institution, in particular as regards the relaxed atmosphere and the good relations between staff (specially trained in foreign cultures and languages) and asylum seekers.

The CPT was, nevertheless, led to formulate a number of recommendations and comments on various aspects of the conditions of detention in the establishments visited (for example, outdoor exercise for prisoners placed in solitary confinement at the Western Prison; situation of foreign prisoners at the Western and Nyborg Prisons; improvement of communication between staff and prisoners at Nyborg Prison; situation of female inmates and of Greenlanders at the Herstedvester Institution; medical screening of prisoners on reception; suicide prevention).



140. The CPT has always considered that two significant means of preventing ill-treatment are the possibility for prisoners to complain to an independent body and the inspection of places of detention by such a body.

It noted that local gaols such as the Western Prison can be inspected by Boards of Visitors. Nevertheless, the CPT had some doubts about the effectiveness of these boards, on account of the statutory restrictions placed on their access to the places they are responsible for inspecting. The CPT has recommended that the conditions on which the boards may carry out their inspections be reviewed. The CPT has also recommended that a system of inspection by independent bodies should be extended to establishments for sentenced prisoners.

Further, it has recommended that the complaint procedures applicable to prisoners in the latter establishments should include an element which is independent of the Department of Prisons and Probation.

## **B. Police stations**

141. During its visit, the CPT's delegation found no evidence of ill-treatment of persons in police custody.

142. With regard to the physical conditions in the police stations visited, save for the arrangements for providing arrested persons with food and drink, the CPT's delegation found that they were of an acceptable level, taking into account the fact that arrested persons only stay in the cells concerned for a few hours at most.

143. As regards fundamental safeguards against ill-treatment (the right not to be held incommunicado, the right of access to legal advice and the right to be examined by a medical doctor of one's choice), the CPT has recommended that the right to inform immediately one's next of kin or another third party of the arrest and the right of access to a medical doctor (including one of the detainee's own choice) be expressly guaranteed.

Similarly, the CPT has formulated a certain number of other recommendations relating to the period of police custody (the drawing-up of a code of practice on police interrogations; the possibility of introducing a system of electronic recording of police interviews, etc.).

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144. Finally, the CPT would like to reiterate its appreciation of the manner in which its delegation was received at the various establishments visited in Denmark, as well as of the co-operation shown by the authorities at all levels.

**C. Action on the CPT's recommendations, comments and requests for information**

145. The various recommendations, comments and requests for information formulated by the CPT are summarised in Appendix 1 to this report.

146. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 2, of the Convention, the CPT requests the Danish authorities:

- i) to provide within six months an interim report giving details on how it is intended to implement the CPT's recommendations and, as the case may be, providing an account of action already taken;
- ii) to provide within twelve months a follow-up report providing a full account of action taken to implement the CPT's recommendations.

The CPT trusts that it will also be possible for the Danish authorities to provide in the above-mentioned interim report reactions to the comments formulated in this report as well as replies to the requests for information made.

## APPENDIX 1

### **SUMMARY OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### A. Prisons

##### 1. General

##### a. Recommendations

- the placing of remand prisoners in isolation and the prolongation of such a measure to be resorted to only in exceptional circumstances and strictly limited to the actual requirements of the case, in accordance with the provisions of the Administration of Justice Act (paragraph 29);
  - an effective periodic judicial review of solitary confinement to be ensured and in case of prolongation of this confinement, the reasons for such prolongation to be set out in writing (paragraph 29);
  - a medical doctor to be called without delay when requested by a prisoner held in solitary confinement or a prison officer on the prisoner's behalf, with a view to carrying out a medical examination of the prisoner. The results of this examination, including an account of the prisoner's physical and mental condition as well as, if need be, the foreseeable consequences of prolonged isolation, to be set out in a written statement and to be forwarded to the competent authorities (paragraphs 29 and 112);
  - detailed instructions to be given to the police as regards recourse to prohibitions/restrictions concerning prisoners' correspondence and visits, and an obligation to state the reasons in writing for any such measures to be introduced (paragraph 29);
  - the suggestions of the working party set up by the Ministry of Justice with a view to examining the use made of special security cells, concerning i) the continued surveillance of the prisoner by an appropriately trained prison officer exclusively assigned to the task either from outside the cell or inside, as well as the recording in detail every quarter of an hour of the observations made and ii) the introduction of specific legislation in view of the importance of the matter, to be implemented (paragraph 38);
  - every newly-arrived prisoner to be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. Save in exceptional circumstances, this interview/examination should be carried out on the day of admission (paragraphs 48 and 105);
- (local prisons)
- the conditions on which Boards of visitors may carry out their inspections to be reviewed, with a view to strengthening the Boards' role (paragraph 60);

(establishments for convicted prisoners)

- the possibility of following in establishments for convicted prisoners the example set by the 1980 Instruction from the Ministry of Justice, explaining the main rules governing periods of detention on remand, to be studied (paragraph 97);
- the complaint procedures applicable in establishments for convicted prisoners to be reviewed with a view to supplementing them by an element which is independent of the Department of Prisons and Probation (paragraph 104);
- the possibility of establishments for convicted prisoners being inspected by independent bodies to be studied (paragraph 104);

(asylum seekers)

- the families of asylum seekers to be allowed as far as possible to remain together, and that even if it is absolutely necessary to separate the families' members for a certain period, contact to be maintained between them (paragraphs 56, 66 and 67);

b. Comments

- desirability of clarifying the authorised means of recourse to physical force (paragraph 22);
- importance of limiting the use of means of restraint to situations resulting from clearly defined exceptional circumstances, and of having any recourse to such means placed under the strictest possible medical supervision or custodial surveillance (paragraph 38);
- importance of prisoners having ready access at all times to toilet facilities (paragraphs 41 and 94);
- desirability of extending the new type of regime at Blegdamsvejen Prison to other establishments (paragraph 45);
- desirability of introducing a certain flexibility into the circular of 15 March 1978 on inmate participation in discussion of questions of organisation, on the lines suggested by the Criminal Law Council (paragraph 46);
- importance of keeping persons placed in custody under Section 36 of the Aliens Act in conditions fully reflecting the fact that their detention is not due to a criminal offence (if possible, they should be held elsewhere than in a remand prison) (paragraph 57);
- desirability of taking account, as specified in sub-section 36 (2) of the Aliens Act, of the particular situation of persons held under section 36 by ensuring that the provisions on detention conditions in the Administration of Justice Act are applied with the necessary adjustments (paragraphs 57, 66 and 70);
- importance of applying the ordinary law concerning the treatment of mentally ill people to such persons held in prisons, and of having the recourse to a measure of solitary confinement of a mentally ill prisoner and to means of restraint placed under the entire and sole responsibility of medical personnel (paragraph 80);

c. Requests for information

- up-to-date statistics on the number of remand prisoners held in solitary confinement, on the type of solitary confinement in each instance and on its length (paragraph 30);
- the conclusions of the scientific study financed by the Ministry of Justice which was due to begin on 1 May 1991, with a view to evaluating the possible effects of placement in solitary confinement on the mental health of prisoners, and any measures which the Danish authorities intend to take as a result of that study (paragraph 30);
- general statistics for 1990 and the first half of 1991 on the recourse to special security cells and means of restraint in Denmark (paragraph 35);
- the outcome of the examination of the provisions of the Bill on the execution of sentences concerning the disciplinary powers of prison governors (paragraph 110);
- the frequency of transfers of prisoners classified as dangerous (paragraph 112);
- the outcome of the examination of the provisions contained in the Bill on the execution of sentences concerning the transfer of prisoners classified as dangerous (paragraph 112);
- any steps envisaged with a view to reducing the length of detention on remand (paragraph 113);

2. Copenhagen Prisons

a. Recommendations

- the idea of the Governor of Copenhagen Prisons according to which specific training courses should be made available for the staff of the Police Headquarters Prison to enable them to deal with emergency situations and provide desperate or emotionally highly disturbed individuals with the necessary help, to be implemented (paragraph 21);
- the use of rubber truncheons at the Police Headquarters Prison to be strictly limited to the cases mentioned in the circular of 15 April 1978 on the use of force on prisoners (paragraph 22);
- the possibility of improving the exercise arrangements for prisoners in solitary confinement at the Western Prison to be studied, with a view to providing them with proper opportunities for open air exercise (paragraph 47);
- prison staff at the Western and Police Headquarters Prisons to be given specific courses on interpersonal communication skills and on the identification of persons with suicidal tendencies, and to receive clear instructions on the special precautions to be taken vis-à-vis persons identified as suicide risks and on the precise steps to be followed in the event of a suicide attempt (paragraph 52);

- a proper flow of information between the staff of establishments that accommodate persons considered as suicide risks to be ensured (paragraph 52);
- careful consideration to be given to the suggestion by the Director of Copenhagen Prisons to build outside the Western Prison a new bungalow-type structure of about 900 m<sup>2</sup> providing 40 places for persons detained under the Aliens Act who have to remain in Copenhagen for the purposes of the police investigation (paragraph 54);
- prisoners held in the Sandholm Institution to have access to toilets during the night (paragraph 68);

b. Comments

- the lighting in the observation cells at the Western Prison might prevent the prisoner from sleeping (paragraph 40);
- importance of the waiting cells at the Police Headquarters Prison being strictly reserved for their purpose, namely a short holding period of a few hours (paragraph 42);
- desirability of either providing the Western Prison with more nursing staff qualified in psychiatric nursing or facilitating the admission of prisoners with psychiatric problems to duly equipped institutions more capable of meeting specific needs (paragraph 49);
- desirability of supplementing the training of Western Prison staff by language courses, following the example of the Sandholm Institution (paragraph 55);
- desirability of making as soon as possible the necessary changes at the Sandholm Institution to permit the reception of children (paragraph 67);

c. Requests for information

- the findings of the judicial investigation into the allegations of severe ill-treatment of a young Gambian, and any measures which the Danish authorities intend to take as a result of it (paragraph 19);
- the findings of the enquiry concerning the allegations of severe ill-treatment of a Tanzanian national, and any measures which the Danish authorities intend to take as a result of it (paragraph 20);
- statistics for 1990 and the first half of 1991 on the recourse to special security cells and means of restraint in the three Copenhagen prisons visited, these statistics to show the reason for the use of means of restraint and the period during which they were applied in each case (paragraph 35);
- the results of the pilot projects to provide prisoners at the Western Prison with more sport opportunities and to give them their own cell key, and information on any other programme implemented in this field (paragraph 44)

- information on the practical implementation of the training of prison officers in foreign cultures introduced as a result of an inspection carried out at the Western Prison, as well as on the measures taken with a view to changing the prison regime (paragraph 55);
- the results of the judicial investigation initiated in July 1990 after the judgment of 2 April 1990 of the county court of Copenhagen, and on any measures which the Danish authorities intend to take as a result of it (paragraph 55);
- developments with regard to the envisaged extension of the medical service of the Institution at Sandholm (paragraph 71);

### 3. The Herstedvester Institution

#### a. Recommendations

- with regard to the treatment of patients without their consent, a provision aimed at making the provisions of Chapter 4 of the Act No. 331 of 1989, on deprivation of liberty and other coercive measures in psychiatry, applicable to the institution (for example along the lines of the Section 43 proposed by the Criminal Law Council) to be included in the intended new Act on the execution of sentences (paragraph 78);
- with regard to the conditions of detention of mentally disturbed prisoners, the extent to which the other chapters of the same Act are to apply to the institution, for example, as regards recourse to physical coercion, the keeping of registers on the use of means of restraint, counselling about treatment, complaint procedures (*vis-à-vis* the local and national "patientklagenæven"), judicial remedies, etc., to be determined (paragraph 78);
- steps to be taken to ensure that women prisoners are able to participate in joint activities in circumstances which safeguard their physical and psychological integrity. In this connection, staff to be made aware of the problems with which women may be faced in such an institution and to be trained to deal with them in an appropriate manner, without leaving the prisoners to settle their difficulties on their own (paragraph 82);
- the possibility of enabling both men and women meeting the necessary conditions to enjoy access to the semi-open regime operating within the Institution to be studied (paragraph 86);

#### b. Comments

- desirability of studying ways of enabling the prisoners from Greenland to maintain appropriate links with their own society (paragraph 90);
- possible introduction of a meals system like that operating in Nyborg Prison, with a view to meeting the dietary problems experienced by Greenlanders (paragraphs 88 and 96);

#### c. Requests for information

- any proposals for amending Act No. 331 of 1989 to be submitted to Parliament for the 1994/95 parliamentary year (in accordance with Section 46 of that Act) (paragraph 79);

#### 4. Nyborg Prison

##### a. Recommendations

- the means of communication between prisoners and the prison authorities to be improved, either by considering the possibility of reintroducing the system of prisoners' spokesmen or by seeking other arrangements that would suit both prisoners and staff (paragraph 101);

##### b. Comments

- the success of the envisaged diversification of prison duties will depend upon adequate human resources being made available (paragraph 95);
- importance of an on-going information programme for prisoners concerning AIDS (transmission risks and means of prevention) (paragraph 106);
- the example set by remand establishments, where the relevant excerpts from the prison rules and other texts have been translated into a considerable number of languages, might be followed at Nyborg Prison (paragraph 109);
- desirability of providing prisoners and prison officers at Nyborg Prison (as well as at other establishments for convicted prisoners where foreign prisoners are kept) with better opportunities for learning Danish and foreign languages respectively (paragraph 109);

##### c. Requests for information

- none

#### B. Police stations

##### a. Recommendations

- persons kept under arrest at police stations and in the transit area of the airport to be provided with something appropriate to eat and drink, when the circumstances so require (paragraph 122);
- arrested persons to have the right to inform immediately their next of kin or another third party of their arrest (paragraph 126);
- any possibilities for the police exceptionally to delay or refuse contact with a third person to be clearly circumscribed and made subject to appropriate safeguards (eg. such delay or refusal to be recorded in writing together with the reasons therefor and to require the approval of a senior officer or public prosecutor) (paragraph 126);
- the possibility for an arrested person to have access to a doctor (including one of his own choice) to be expressly provided for in respect of all stages of police custody (paragraph 128);



- a code of practice on police interrogations to be drawn up, addressing inter alia the following questions: the permissible length of an interview, eating and rest periods between interviews, places in which an interview may take place. The code should also provide that a record be systematically kept of the times during which a person is interviewed, regardless of the length of the interview, and of the persons present during each interview (paragraph 130);
- possibility of introducing a system of electronic recording of police interviews, offering all appropriate guarantees, to be explored (paragraph 130);
- steps to be taken to develop a single and comprehensive custody record showing all aspects of each detainee's custody and action taken regarding him (when arrested and reasons for arrest; when told of rights; signs of injury; mental illness etc.; when next of kin and/or lawyer telephoned and when visited by them; when fed; when interrogated; when charged; when transferred; when released, etc) (paragraph 132);

b. Comments

- none

c. Requests for information

- up-to-date statistics on the number of complaints of police misbehaviour and the number of cases in which disciplinary and/or criminal proceedings were instituted, with particulars of any penalties imposed (paragraph 116);
- comments of the Danish authorities on the allegations made concerning the manner in which asylum seekers are questioned by the police (paragraph 117);
- the time as from when a person taken into police custody enjoys a right of access to legal advice (paragraph 127);
- the precise content of the right to legal advice: to contact a legal advisor? to be visited by a legal advisor? to consult with him in private? to have him present during interrogations? etc. (paragraph 127);
- the situation of a person in police custody who wants to have legal advice but does not know of a lawyer and/or is not in a position to pay for a lawyer's services (paragraph 127).



## APPENDIX 2

### **LEGAL FRAMEWORK AND FUNDAMENTAL GUARANTEES RELATING TO DEPRIVATION OF LIBERTY**

#### **A. Deprivation of liberty**

1. In the Danish legal system, deprivation of liberty may result from the commission of a criminal or administrative offence. A person may also be deprived of his liberty on administrative grounds unconnected with the commission of an offence; for example, those specified in the 1983 Aliens Act as amended in 1986, and in various texts relating to the treatment of persons suffering from mental disorders. Another administrative reason for the deprivation of liberty may be the need to isolate persons suffering from contagious diseases.

2. Article 71 of the Danish Constitution lays down the inviolability of individual freedom as a constitutional principle to which exceptions are allowed only in statutorily prescribed situations.

In the criminal field, this constitutional provision requires (paragraph 3) that any person arrested ("der anholdes") should be brought within 24 hours before a judge, who has a maximum of three days to decide, giving reasons, whether the person should be set free unconditionally, set free on bail (a possibility that is now obsolete) or placed in remand custody (on this point, see also Chapter 69 of the Administration of Justice Act).

Outside the criminal field, Article 71 of the Constitution also provides that the legality of deprivation of liberty which is not by order of a judicial authority and which is not warranted by the aliens legislation may be referred to the courts. This provision is amplified in the Administration of Justice Act (Chapter 43a "Examination (Judicial) of administrative deprivation of liberty", regarding time limits, access to a lawyer, etc) (1)<sup>7</sup>.

3. Decisions concerning deprivation of liberty under the Aliens Act may be taken by the Chief of Police. An appeal may be lodged with the Ministry of Justice. Article 37 of the Aliens Act specifies that the decision of the Chief of Police must be referred to the courts within 3 x 24 hours if the person concerned has not been released earlier.

As for the grant of asylum, decisions on the subject are a matter for the aliens directorate, with a possibility of appeal to the refugees board ("flygtningenaevn").

Under Article 52 of the Administration of Justice Act, and Article 63 of the Constitution (2)<sup>8</sup>, certain final decisions may be referred to the courts after all other remedies have been exhausted.

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<sup>7</sup> However, this right is said to have proved of little value in practice (see "The Danish System of Criminal Justice"; Vagn Greve and others; 1984, p. 137).

<sup>8</sup> With regard to the application of Article 63 of the Constitution to decisions taken under the Aliens Act, see Decision of the European Commission of Human Rights on the admissibility of application no. 12097/86 (Veronika Magdalena Künzi-Brenzikofer and others v. Denmark). In the context of the examination of this application, the Commission recalled that it considered Article 63 of the Danish Constitution as a domestic remedy which had to be exhausted in pursuance of Article 26 of the European Convention on Human Rights. Cf however, footnote 1 on page 65 concerning the effectiveness of the judicial supervision of the legality of administrative acts.

4. If there is reasonable suspicion that a person has committed a criminal offence, that person may be remanded in custody ("varetaektsfengsling") provided that the offence is punishable by a custodial sentence of more than one and a half years (Article 762 of the Administration of Justice Act) (3)<sup>9</sup>. The decision to remand a person in custody is a judicial one and is appealable. The length of the remand period is governed by various provisions of the same Act (Articles 762, 764 and 767).

Under these provisions, a remand in custody may be ordered initially for a maximum period of four weeks; this period can be renewed repeatedly. The CPT's delegation encountered a large number of persons who had been held on remand for periods varying between 6 months to more than 2 years. It considered this matter all the more noteworthy as a remand period was often accompanied by a fairly lengthy solitary confinement measure. This point is dealt with in greater detail in paragraphs 23 et seq of the report.

5. The Danish Criminal Code also includes a number of provisions on deprivation of the liberty of persons suffering from mental disorders. The two revisions of the Code, one in 1973 and the other in 1975, are of importance in this respect. Article 16 of the Criminal Code establishes the principle of the criminal irresponsibility of any person who, at the time of the commission of the offence, was suffering from a mental illness or was in a state of a similar nature or in a state of pronounced mental deficiency. Article 68 (1) provides that in the event of the acquittal of an accused on the basis of Article 16, the court may order such other measures as it deems necessary for the prevention of future offences. Such measures may vary from placement in a specialised centre/ psychiatric hospital/institution for mentally deficient persons to placement in "safe custody" in cases where the offence committed is homicide, rape or some other sexual offence, aggravated theft, etc (see Article 70 of the Criminal Code).

Such measures may also be ordered judicially "in lieu of punishment, if the offender was, at the time that the punishable act was carried out, in a condition resultant upon inadequate development or an impairment or a disorder of his mental abilities, although not of the character ..." referred to in Article 16.

It should also be noted that, under Article 777 of the Administration of Justice Act, a person on remand in custody may be placed, with the approval of the courts, in the above-mentioned institutions (for the aforesaid reasons) with his consent as well as that of the prosecutor and the management of the institution. In exceptional cases, such a placement may be effected without the consent of the person concerned, for health reasons or in the interests of other people's safety.

6. A recent law of 24 May 1989 revised the rules on deprivation of liberty and other coercive measures in psychiatric (non-criminal) cases. Amongst other things, orders for automatic placement and detention in psychiatric institutions may be referred to the courts.

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<sup>9</sup> Young people under the age of 15 may not be remanded in custody.

**B. Fundamental guarantees afforded to persons deprived of their liberty**

**i. During police custody**

7. Access to a legal advisor and his presence are statutorily guaranteed to persons under arrest as from the moment they are questioned for the first time by the police (Chapters 66 and 67 of the Administration of Justice Act). The police are required to inform such persons of this right before carrying out any interrogation. Various provisions of the Administration of Justice Act regulate the activities of the legal advisor and the information available to him (such as access to his client's file, access to information in police possession, and limits within which such information may be transmitted to the client). If the person arrested does not request the assistance of a legal advisor, the police may make the request on his behalf. The courts may designate a legal advisor (4)<sup>10</sup>.

8. There are no laws or regulations on the question of access to a doctor during police custody. However, at the request of the person under arrest, a doctor will be called in. This may be a doctor of his choice. In the case of allegations of ill-treatment, a doctor will be designated automatically.

9. Some rules for the police concerning the conduct of interrogations appear in various legislative texts (the Criminal Code; the above-mentioned Act on the Administration of Justice). Under Articles 750 and 752 of the Administration of Justice Act, the police may not compel anyone to make a statement, or resort to coercion, or ask perfidious questions to obtain evidence (5)<sup>11</sup>. In the case of criminal offences, the police are required to inform the arrested person explicitly of the charges against him and of the fact that he is not required to testify ; further, as already indicated, the presence of the legal advisor is authorised during interrogations. Save short interrogations, the police must record in writing the times at which the interrogation began and ended.

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<sup>10</sup> Free legal aid may be granted to an accused.

<sup>11</sup> Article 147 of the Criminal Code provides that if a person whose duty is to enforce the punitive power of the State uses unlawful means to obtain a confession or statement or unlawfully carries out an arrest, imprisonment, search or seizure (see also Article 148), he may be sentenced to up to three years imprisonment.

## ii. During imprisonment

- remand in custody

10. The rights of persons remanded in custody ("Varetaegts-arrestant") are the subject of Articles 770-774 of the Administration of Justice Act. The treatment of such persons is also specified in a number of Ministry of Justice circulars (6)<sup>12</sup>. Amongst other things, persons remanded in custody are entitled to send uncensored letters to their legal advisors, to the Ministry of Justice, to the Prisons Administration Directorate, to the Parliamentary Ombudsman and to certain other authorities, such as the European Commission of Human Rights, consular or diplomatic bodies etc (see Article 8 of the Ministry of Justice circular of 19 December 1980 as amended by the circular of 7 December 1987 on the right of persons remanded in custody to correspond and receive visits). Moreover, Article 12, paragraph 4, of the above-mentioned circular provides that persons remanded in custody have an unqualified right to receive visits from their legal advisors.

Apart from these cases, the police may exercise supervision over the correspondence and visits of a person remanded in custody (surveillance/ retention of letters; prohibition/surveillance of visits). Such measures may be referred to the courts for verification of their merits.

11. At the request of the police, the court may combine an order for remand in custody with an order for solitary confinement, either total (prohibition of any form of communication with other detainees) or partial (prohibition to communicate with certain detainees or certain categories of detainees). The legal basis of such a measure is to be found in Articles 745 and 770-773 of the Administration of Justice Act (partially amended in 1984). The duration of a solitary confinement order may not exceed 8 weeks at a time (unless the foreseeable penalty is a prison sentence of more than six years) (7)<sup>13</sup>; however, the order may be renewed.

Recourse to a solitary confinement order may be considered necessary because of the risk of collusion or of an attempt to influence others connected with the investigation. The reform initiated on this matter in 1984 was aimed in particular at limiting the recourse to, and the length of, detention in solitary confinement.

Other restrictions may also be judicially imposed, such as on the reading of newspapers or the watching of television.

12. Lastly, recourse to disciplinary sanctions (eg. fines, solitary confinement) and the use of means of physical coercion (security cells, handcuffs) in order to prevent violent or suicidal behaviour are the subject of detailed regulations in the Administration of Justice Act as well as in several Ministry of Justice circulars. On the whole, these regulations are similar to those applicable to convicted prisoners.

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<sup>12</sup> In July 1980 the Ministry of Justice published an instruction for persons detained in local prisons, outlining the main rules governing stays in prison within the context of remand in custody. The instruction was published in various languages: English, Finnish, French, German, Greenlandic, Serbo-Croat, Russian, Spanish, Turkish, "Urdu" and "Farsi". There is no similar guide for convicted persons.

<sup>13</sup> The first period of detention in solitary confinement may not exceed two weeks.

- execution of the sentence

13. The Ministry of Justice has issued a large number of orders/circulars regulating the conditions under which sentences are served. These texts comprise detailed instructions on various subjects such as detention in isolation, the use of security cells, body searches, the use of handcuffs, recourse to force, and medical examinations. The main provisions are to be found in a circular on treatment in detention (as subsequently amended) based on Article 43 of the Criminal Code (Bekendtgørelse 1973-06-21 no. 422 on handling af personer, der anbringes i forvaring).

### C. Supervision of the treatment of persons deprived of their liberty

14. Provision is made for the supervision of the treatment of persons deprived of their liberty through inspections and visits carried out by a series of bodies with varying powers. These include inspections by the authority responsible for prisons, the Ministry of Justice and Director General of the Department of Prisons and Probation (or their deputies). Such inspections are apparently frequent. Visits to local prisons by the "dommerrejser" ("judges' round") may also be organised by the Department of Prisons and Probation (about 6 times a year) for judges, legal advisors, police officers etc, during which conversations may take place with the prisoners. Inspections may also be carried out by boards of visitors (2 members elected for four years per county), whose jurisdiction covers remand establishments and whose functions include ensuring respect for prisoners' rights. Any abuses observed are reported to the Ministry of Justice, which is responsible for examining them.

According to the information gathered on the spot by the delegation, the boards of visitors can receive complaints in writing from prisoners. However, this possibility is not specified in any of the circulars dealing with prisoners' rights of complaint.

15. The Ombudsman is empowered to make visits ex officio to places where persons are deprived of their liberty (between 1980 and 1987 he inspected all prisons, and recently he turned his attention to psychiatric institutions).

In this connection mention should also be made of the Parliamentary committee to which complaints may be made by persons deprived of their liberty on administrative grounds. The Standing Parliamentary Legal Committee as well as individual MP's may also carry out visits.

16. Although there is no statutory provision for health authorities to carry out regular visits to places of detention, it is nevertheless apparent from various texts (law of 13 June 1973 on medical officers; various Ministry of Health circulars) that, in a series of cases, medical supervision is exercised over the treatment of persons in such establishments.

17. Under a recent reform of the Administration of Justice Act, which came into force on 13 June 1990 (insertion of a new Article 21a.), in specific individual cases an investigation may be conducted by one or more judges ("dommerundersøgelse") on the initiative of the Ministry of Justice. This new investigative process is described as a "court of enquiry" ("undersøgelsesrett"), although it is not empowered to take any binding decisions. The result of the investigation is recorded in a report, which must be published by the Ministry of Justice (with the exception of cases involving, for example, state security). This new procedure has already been invoked.

**D. Remedies in the case of alleged ill-treatment**

18. The Danish Constitution does not have a provision expressly prohibiting torture and ill-treatment (8)<sup>14</sup>. Provisions on this subject are to be found in the ordinary laws, in particular the Criminal Code (Articles 241-250, Chapter 25: offences against the person). These provisions also govern cases where public officials transgress the limits of force permitted by the proper application of laws.

Article 244 renders all types of wilful bodily injury punishable. Acts of ill-treatment committed with the intention of causing injuries of varying degrees of gravity are punishable under Article 245 of the Criminal Code (prison sentence of up to 8 years). If the victim becomes disabled or is prevented (either permanently or for a long or indefinite period) from discharging his occupational obligations or performing the tasks of everyday life, the offender is liable to a term of imprisonment of between one and 12 years.

Moreover, those responsible for applying the laws may be affected by several other provisions of the Criminal Code, including: Article 252 (imminent danger to the life or health of others); Article 260 (unlawful coercion); Article 261 (unlawful deprivation of freedom); and Article 266 (threats).

Lastly, Chapter 16 of the same code enumerates a series of provisions on offences committed by a person in the performance of his duties. In particular, Article 154 stipulates that the penalty applicable *inter alia* to offences involving assault and deprivation of freedom may be increased by up to one half if the offence was committed in the performance of a public duty or mission.

19. As far as the police are concerned, it is also possible to approach the local board set up in each police district ("politikreds"), whose task is to examine complaints about police behaviour (Articles 115 and 115a of the Administration of Justice Act) which are not manifestly ill-founded or trivial. Each case is investigated by the prosecutor of the competent court, who sends a report to the local board. If the latter considers that the case is sufficiently proven, the report is forwarded to the Chief of Police for action; it is also sent to the complainant and may be published. The local board is not empowered to take any decision on the merits of the complaint or impose any penalties; the disciplinary and/or criminal enquiries are carried out in accordance with the ordinary procedural rules of the Administration of Justice Act (Chapter 93b, Articles 1019-1019n).

20. Detained persons (whether remanded in custody or serving a sentence) may address petitions, complaints or communications to the Department of Prisons and Probation. They must be informed of their right to make complaints as soon as they arrive at the prison. Various Ministry of Justice circulars (of 15 September 1975, 28 July 1977 and 29 March 1979) spell out the procedure to be followed in this matter. The Department of Prisons and Probation's decisions are subject to judicial review (Article 778 of the Administration of Justice Act, as regards persons on remand; Article 63 of the Constitution as regards sentenced persons).

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<sup>14</sup> For the reasons, see the explanations provided by Denmark's representatives during the examination of Denmark's initial report by the United Nations Committee against Torture, doc. CAT/C/SR. 13, paragraphs 41-45.



21. Lastly, anyone may refer a decision or act by an authority to the Ombudsman, after all other remedies have been exhausted. The Ombudsman may call on the competent authorities to initiate an investigation or judicial/ disciplinary proceedings (9)<sup>15</sup>. He may also examine cases on his own initiative without having received a complaint beforehand.

## **E. Recent and planned reforms**

### **i. Recent reforms**

22. The question of medical examinations for persons in custody was recently the subject of attention. In a circular of 29 March 1990 (concerning medical examinations on admission to establishments under the authority of the Department of Prisons and Probation, including remand and detention centres) which came into force on 1 May 1990, the Ministry of Justice laid down that anyone sent to prison must as soon as possible after his arrival in the establishment be offered the possibility of talking to the prison doctor or a nurse. The conversation should, in particular, be aimed at evaluating the need for a medical consultation; if such a need is found to exist, the doctor is obliged to carry out a medical examination of the prisoner. Prior to this reform, a prisoner had in every case to be seen by a prison doctor as soon as possible after his arrival at the establishment.

According to Article 8, paragraph 2, of the circular of 12 September 1978 on remand in custody, persons held on remand are entitled to contact a private doctor or a specialist of whom they were previously patients (unless the police object for reasons linked to the investigation). However, according to the relevant case law, responsibility for the treatment lies with the prison doctor.

### **ii. Planned reforms**

23. An important reform aimed at the adoption of an Act on the execution of sentences is at present pending before Parliament. It is, inter alia, proposed that certain decisions of prison governors, in particular in the disciplinary field, should be referrable to the courts (or, according to a minority opinion, to a board specially set up for the purpose). Moreover, it is proposed that treatment without consent of patients held at the Herstedvester Institution be subject to the provisions of Law No 331 of 1989 (non penal deprivation of liberty in the field of psychiatry).

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<sup>15</sup> It would seem that the Ombudsman seldom makes use of this possibility.



### **APPENDIX 3**

#### **LIST OF AUTHORITIES AND ORGANISATIONS MET BY THE CPT'S DELEGATION**

##### **A. Ministries**

###### **Ministry of Foreign Affairs**

- Mr B. KIMBERG, Ambassador, Permanent Under State Secretary for Foreign Political Affairs;
- Mr M. KOFOD, (liaison officer of the CPT), Head of the Human Rights Division of the Ministry of Foreign Affairs

###### **Ministry of Justice**

- Mr P. LUNDBAEK ANDERSEN, Permanent State Secretary for Justice;
- Mr C. TRØNNING, Deputy Permanent State Secretary for Justice;
- Mr K. HAGEL-SØRENSEN, Deputy Permanent State Secretary for Justice;
- Mr A. TROLDBORG, Director General of the Department of Prisons and Probation;
- Mr W. RENTZMANN, (liaison officer of the CPT), Deputy Director General of the Department of Prisons and Probation;
- Mr J. REIMANN, Head of Division in the Ministry of Justice;
- Mr P. KRAMP, Psychiatric Consultant in the Department of Prisons and Probation;
- Mr F. SCHYDT, Director General of the Directorate for Immigration;
- Mr C.C. DUUS, (liaison officer of the CPT), Deputy National Commissioner of Police.

###### **Ministry of Health**

- Mr S. LOIBORG, (liaison officer of the CPT), Head of Division in the Ministry of Health

B. Other authorities

- Mr H. GAMMELTOFT-HANSEN, Parliamentary Ombudsman;
- Mr A. JENSEN, Attorney General;
- Mr P. EEFSSEN, Commissioner of Police for Copenhagen;
- Mrs E. RASMUSSEN, representative of the Danish Bar Association;
- Mr J. Kr. GØTTRIK, President of the Danish Medical Association.

C. Trade unions

- Mr F. STEEN MUNCH and Mr S. MØLLEA ANDERSEN, representing the Danish Union of Police (Dansk Politiforbund);
- Mr P. LUNK, President of the Copenhagen branch of the Union of Uniformed Prison Officers;
- Mr J. SØREN, shop steward at the Western Prison of the Danish National Council of Nurses.

D. Local authorities responsible for inspecting the treatment of persons in custody

- Mrs K. STORGAARD and Mrs L. ELAHI, members of the Board of Visitors, Council of the City of Copenhagen.

E. Non-governmental organisations

The CPT's delegation met representatives of the following non-governmental organisations:

- Association for a better penal policy (K.R.I.M.);
- Association of physicians for human rights (Danske Læger for Menneskerettigheder);
- Association of friends of refugees (Landsforeningen for danske Flygtningevenner).