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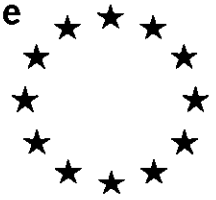

CPT/Inf (96) 14

Responses of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Denmark from 2 to 8 December 1990

The Danish authorities have requested the publication of these documents. The CPT's report on its visit to Denmark from 2 to 8 December 1990 has already been made public (CPT/Inf (91) 12).

Strasbourg, 21 March 1996

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FROM 2 TO 8 DECEMBER 1990

MINISTRY OF JUSTICE
Legal Department
SLOTSHOLMSGADE 10
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BSA-0367
No. 19DFK.1990-62-8.
DK 1216 Copenhagen,

23 JAN. 1992

President of the European
Committee for the Prevention
of Torture and Inhuman or
Degrading Treatment or Punishment
Council of Europe
B.P. 431 R6
67006 Strasbourg, Cedex
France

The Danish authorities received your letter of 18 July 1991 on 23 July 1991 together with the report from the Committee for the Prevention of Torture concerning its visit to Denmark.

The Danish authorities have studied the very detailed and comprehensive report with great interest and find that the report will contribute to further improving the situation.

Referring to Article 146, we are pleased to enclose herewith an interim report, which comprises the comments of the Danish authorities upon the Committee's recommendations, observations and requests for additional information contained in Appendix 1 to the Committee's report.

The Danish authorities are of course interested in continuing the excellent cooperation with the Committee and are prepared to go further into detail in case any part of the report should give the Committee occasion to wish such discussions.

The Danish authorities will submit a final report within 12 months of receipt of the Committee's report in compliance with the Committee's request. The final report will brief the Committee on the measures expected to be taken after the transmission of the provisional report.

If the Committee should wish so, we shall be ready to help the Committee with a translation of the report.

Hans Engell

Johan Reimann

RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

A. Prisons

1. General

a. Recommendations

R. 1 **the placing of remand prisoners in isolation and the prolongations 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);**

According to the general rules of Danish law as laid down in the Administration of Justice Act, 1984, the court may only order isolation if required for the purpose of the remanding, for instance with a view to preventing the accused person from being able through other prisoners to influence other persons accused in the case or to influence other persons through threats or other similar acts.

On the commencement of the isolation the first time limit must not exceed 2 weeks. Complete isolation must not take place for a consecutive period of more than 8 weeks unless the charge concerns an offence which may under the legislation in force result in a conviction for a term of imprisonment of 6 years or more. In connection with these gross offences there is no express upper limit.

Furthermore, there is a proportionality rule under which isolation must not take place if the purpose can be achieved by means of less restricting measures or if the intervention is disproportionate to the importance of the matter and the legal consequences which can be anticipated if the accused is found guilty. Another factor which should be taken into account is the strain which isolation may involve due to the young age of

the accused or his physical or psychological condition.

In 1990 the share of persons in isolation out of the total number of remand prisoners was on average 13.7 per cent per week. Only 1 out of 7 remand prisoners is thus kept in isolation.

In the same year 21.5 per cent of all remand prisoners were kept in isolation for a short or longer period of time. Only about 1 out of 5 remand prisoners is thus isolated during (part of) the term of imprisonment.

The share of persons kept in isolation in relation to the total number of remand prisoners has fallen significantly in recent years from 44.2 per cent in 1981 (2,544 cases) to 31.6 per cent in 1984 (1,631 cases) and as mentioned 21.5 per cent in 1990 (1,139 cases).

The number of prisoners isolated for a longer period of time is rather low. During the past 5 years an average of 19 persons have been isolated for more than 6 months.

A standing committee (the Criminal Justice Administration Committee) has in its report from April 1991 on solitary confinement in other European countries stated that the Danish rules on the conditions for resorting to isolation must be considered to be among the strictest in Europe.

On this basis the state of law in Denmark as regards solitary confinement must today be said to be in accordance with the recommendations of the Committee for the Prevention of Torture.

R.2 **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);**

The decision to resort to isolation of remand prisoners for considerations of the investigation of criminal activities may be taken only by the court and thus not by the police, the prosecution or the prison authorities. The first period of so-

litary confinement must not exceed two weeks. Further prolongation may only take place for a maximum period of 4 weeks at a time. Solitary confinement may only take place for a consecutive period of more than 8 weeks in cases where the charge concerns a crime which may lead to a term of imprisonment of 6 years or more.

Decisions to keep prisoners in solitary confinement are taken by the court by an order which must state the reasons, i.e. the concrete facts must be stated on the basis of which the conditions for resorting to solitary confinement are alleged to be satisfied.

In connection with an appeal to the Danish High Court against decisions concerning solitary confinement for more than 3 months oral procedure may be claimed.

Against this background the conclusion is that the Danish legislation is in accordance with the recommendation of the Committee.

R.3 **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 prisoners. 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);**

At the proposal of the Health Committee of the Ministry of Justice and after consultation of the doctors in the prison system and the National Board of Health a circular has been issued which covers all institutions within the system and under which the staff shall without delay notify the doctor/prison nurse in all cases where a prisoner wants a doctor to be called.

When the prison doctor examines a remand prisoner kept in

isolation at his own request, at the request of the prison staff or in connection with a routine rotation the doctor will pay attention to both physical and mental diseases or disturbances of the remand prisoner. It is also possible for the doctor to submit a declaration to the prison authorities, or if need be, to the prosecution, counsel for the defence and the court, in which he states whether and to what extent a diagnosed psychopathological symptom can be assumed to have been provoked by or been aggravated by the solitary confinement and how the prognosis of the remand prisoner can be expected to be in the case of continued isolation. However, the Department of Prisons and Probation emphasises that the medical secrecy basically means that this declaration may not without the (isolated) prisoner's consent be forwarded to other non-medical authorities. The doctor is not to state specifically whether a person kept in isolation can "endure" or "not endure" continued isolation as the doctor might thus come into a situation in which he makes legitimate the use of compulsion of the penal system which would be incompatible with medical ethics. The medical reports will, however, be an element of the proportionality balancing which the court will always have to make when considering the question of solitary confinement, cf. paragraph 770 b of the Danish Administration of Justice Act.

R.4 **detailed instructions to be given to the police as regards recourse to prohibitions/restrictions concerning prisoners' correspondence and visits, and an obligation to state reasons in writing for any such measures introduced (paragraph 29);**

It follows from paragraph 770 of the Danish Administration of Justice Act that a remand prisoner shall be subject only to such restrictions as are necessary in order to satisfy the purpose of the remanding or in order to ensure safety and order in the remand prison.

Under paragraph 771 of the Danish Administration of Justice Act a remand prisoner may receive visits to the extent

permitted by considerations of safety and order in the remand prison. With reference to the purpose of remanding the person concerned the police may object to the prisoner receiving any visits or require such visits to be supervised. If the police refuse to let a prisoner receive visits, the remand prisoner must be notified hereof unless otherwise decided by the judge in consideration of the investigation of the case. The remand prisoner may require that the refusal by the police to permit visits or the requirement of supervision shall be brought before the court for its decision. A remand prisoner is always entitled to unsupervised visits from this defence counsel.

According to paragraph 772 of the Danish Administration of Justice Act a remand prisoner has the right to receive and send letters. The police may check letters before they are given to the prisoner or before letters are sent from the prison. The police shall hand over or send letters as quickly as possible unless they contain information which might be detrimental to the investigation or the maintenance of safety and order in the remand prison. If a letter is held back, the question of holding back the letter should be brought before the court for its decision. In this situation judicial review is compulsory. If the decision to hold back a letter is upheld, the sender shall be informed without delay unless otherwise decided by the judge for considerations of the investigation.

A remand prisoner has the right to uncontrolled correspondence with a number of authorities, etc.

If the police decide that other restrictions should be made in the rights of a remand prisoner in order to ensure the purpose of the process of remanding, it follows from paragraph 773 of the Danish Administration of Justice Act that the remand prisoner may request that the question of the continuance of such restrictions should be brought before the court for its decision.

In cases where the court makes a decision the reasons for such decision must also be stated, cf. paragraph 218 of the Danish Administration of Justice Act.

In connection with the rules laid down in the Danish Ad-

ministration of Justice Act the Order on remand prisoners and the circular issued by the Department of Prisons and Probation, no. 220 of 19 December 1980, on the right of remand prisoners to correspondence and to receive visits etc. lay down administrative regulations concerning the treatment of remand prisoners.

In the opinion of the Ministry of Justice the right to judicial review under the rules laid down in the Danish Administration of Justice Act in cases where considerations of the investigation justify restrictions in the rights of remand prisoners and the detailed regulation in the Administration of Justice Act as regards the conditions for such measures and the administrative regulations issued by virtue hereof guarantee remand prisoners a satisfactory legal position.

R.5 **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);**

The above-mentioned proposals from the working party concerning the use of security cells, i.e. the proposals to have a permanent guard and to use an observation form, have been implemented as per 1 May 1991. As from that date any prisoner who is fixed to his bed shall have a permanent guard, i.e. a prison officer, unit officer or other qualified staff assigned to this task who shall not at the same time have other duties to perform than that of taking care of the prisoner who has been fixed. To the widest possible extent, the institutions shall ensure that the permanent guard is an experienced, permanent member of the staff, preferably with a good knowledge of the

person who has been fixed.

In connection with the most recent amendment to the circular an observation form has been introduced in which a note should be made every time the staff has supervised the prisoner. It is presumed that a note is made at least every 15 minutes.

As regards legislation in this field the working party set up by the Criminal Law Council concerning an act on enforcement of sentences found in its report from June 1989 that the use of security measures, including the placing in security cells, are measures of such a serious nature that regulations on these matters should be incorporated into an act on enforcement of sentences, etc. In accordance with this view, paragraphs 60 and 61 of the bill lay down more detailed rules on these matters and paragraph 107 deals with the possibility of trying decisions to use security cells in court.

R.6 **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 (paragraph 48 and 105);**

As stated in the report, p. 72, par. 22 the Department of Prisons and Probation changed the rules on health examination of prisoners in 1990. The new rules mean that prisoners (except persons serving a term of lenient imprisonment) are offered an interview with a doctor or a registered nurse on his admission, among other things, with a view to checking the state of health of the prisoner, and in this connection to find out whether a proper medical examination is needed. If the prisoner himself wants to be examined by a doctor, this wish must be complied with. These rules apply to both remand prisoners and persons admitted to serve a term of imprisonment.

The Department of Prisons and Probation finds that the present Danish rules are fully adequate, with reference, among

other things, to the generally improved state of health in this country and the easy access to medical assistance for all citizens today.

It should further be mentioned that this reform of medical services away from disease-oriented medical examinations towards more general health-improving measures is in accordance with the general development in Denmark. Against this background it is found fully acceptable, both professionally and in terms of resources, that the introductory interview may also be undertaken by a registered nurse.

The Department of Prisons and Probation is aware of the fact that certain risk groups such as for instance alcohol and drug abusers may have special health problems and that the health staff needs to pay special attention to any health problems of these groups.

The department thus finds it completely without problems to continue the present scheme which has been introduced after discussions in a committee with representatives from both the National Board of Health, the Danish Medical Association, the Council of Danish Nurses and other medical and health experts.

R.7 **the conditions on which Boards of visitors may carry out their inspections to be reviewed, with a view to strengthening the Board's role (paragraph 60);**

The background for the Committee's recommendation seems to be an acknowledgement of the fact (from the Copenhagen Prisons) that the access of the Boards of visitors to the institutions is under the rules now in force subject to certain restrictions laid down by the prison administration. By way of example, it is mentioned that an inspection visit may not take place without prior notification, that inspections shall be carried out by the Board as a whole and that interviews may only take place with prisoners selected by the governor of the prison. Furthermore, the committee states that there seems to be problems with follow-up on cases brought up by the Boards of

visitors (paragraph 59) both on the part of the prison administration and the Department of Prisons and Probation.

These assumptions of the Committee must to some extent be based on a misunderstanding. It is clearly assumed (the "travaux préparatoires" of paragraph 779 of the Administration of Justice Act) that the Boards of visitors may make unnotified visits and this is also the case in actual practice (also in the Copenhagen Prisons). Furthermore, no administrative restrictions can be made as regards which prisoners the Boards can interview and this is also not the case in the Copenhagen Prisons. According to paragraph 30 (2) of the Order on remand prisoners these remand prisoners shall have the right to talk to members of the Boards of visitors when they are present in the institution. Remand prisoners also have the right to uncontrolled correspondence with the Boards of visitors (the Circular on correspondence paragraph 9, (1) 3).

But it is correct that the Danish Administration of Justice Act only gives the members the right to visit institutions **together**. As the Boards are composed of two members only,it is hard to imagine that this requirement should give rise to problems in actual practice.

The Department of Prisons and Probation is not aware of any general problems as regards the follow-up of cases raised by the Boards of visitors.

As stated previously to the Committee the frequency of inspection visits to the prisons and institutions outside Copenhagen varies considerably. The department is willing to call upon the Boards of visitors to make more frequent inspection visits to all prisons at regular intervals. Such an initiative will be taken in the early months of 1992.

R.8 **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);**

As regards prisoners in local goals and in the Copenhagen Prisons a guide exists on custody in remand prison which is available in 12 languages. The guide gives a description of the most important rules for remand custody. The guide is in the process of being revised with a view to making it easier to read and more detailed.

As regards establishments for convicted persons a collection of the most important rules for serving a sentence of imprisonment has been translated into English (Rules on Custodial Treatment). Furthermore, some prisons have to a varying extent prepared information material in foreign languages. The Department of Prisons and Probation has found that the need for material in foreign languages is biggest for remand prisoners who are coming directly from the "outside", while convicted persons have typically obtained a certain knowledge about the prison system and will have received guidance from the staff and the other prisoners about the rules applying in the prison.

On the basis of the recommendation of the Committee the Department of Prisons and Probation has, however, initiated the preparation of a written guide for convicted persons with the most important rules concerning the serving of a term of imprisonment. This guide will be translated into a number of the most relevant foreign languages.

R.9 **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);**

A working party set up by the Criminal Law Council has at the proposal of the Department of Prisons and Probation, inter alia, proposed that decisions of a far-reaching nature may be brought before a court or an independent complaints board. Paragraph 107 of the Bill prepared by this working party lists 19 types of final administrative decisions which can be tried by

the court or an independent body. The proposal of the working party is presently being considered by the Criminal Law Council and it is not possible to say at this stage when the consideration of the report will be concluded and when a Bill will be put before the Folketing (the Danish Parliament).

R.10 **the possibility of establishments for convicted prisoners being inspected by independent bodies to be studied (paragraph 104);**

The powers of the Boards of visitors are today limited to remand prisons (local gaols and Copenhagen Prisons) where the need is considered to be biggest because the persons remanded in these institutions have a more limited contact with the surrounding world and fewer possibilities for company than in establishments for convicted persons.

The idea of setting up regional Boards of visitors, contact committee or similar bodies to follow the activities of these establishments and thus extend the contact with the surrounding world is not a new one, but an idea which has been considered on several occasions, for instance in connection with the work of various committees (the planning committee, the employment committee).

But in this situation the Department of Prisons and Probation is ready to reconsider the possibility of establishing some form of regional supervision and contact body for the establishments for convicted persons. In 1992, an initiative will be taken for having a discussion of this matter with the relevant authorities.

R.11 **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);**

Where adult family members are deprived of liberty, the

practice today is to place them together in the Institution at Sandholm under the prison system. In cases where only the husband is deprived of liberty the wife will typically stay in the Red Cross paragraph of the Sandholm Institution. In the event that the prisoner is subjected to restrictions concerning correspondence and visits, the husband is allowed to be with his wife and his children, if any, under the surveillance of the police in a building near the Institution at Sandholm. In case the prisoner is not subjected to any restrictions on correspondence and visits, the wife - and children, if any - is allowed to see the husband in the Institution at Sandholm under the prison system where facilities have been fitted up as a visiting room.
Otherwise, everything possible is done in order to expedite the procedure with the police so that the separation is as short as possible.

The desirability of not separating families must, in the opinion of the Danish authorities be weighed against the inconveniences connected with the deprivation of liberty so that such deprivation is limited to include as few persons as possible. In particular, it is generally considered undesirable to imprison children. Reference is made to the principle of Article 37 c of the U.N. Convention on children's rights.

b. <u>Comments</u>

C.1 **desirability of clarifying the authorised means of recourse to physical force (paragraph 22);**

The rules concerning recourse to physical force against convicted prisoners are laid down in Circular of 15 April 1988 with attached accompanying letter. The Circular stipulates, among other things, the forms of physical force (hand force, truncheon and tear gas) that may be used and the conditions of using the individual means of force. The Circular further contains particular rules regarding the use of truncheons. Only

rubber truncheons of an approved type may be used.

All prison officers etc. undergo a 30-hour self-defence training as part of their basic training. This training is completed by way of an examination which has to be passed in order to obtain permanent employment. The training programme includes among other things instruction of all authorised ways of taking hold of the prisoner and authorised ways of using a truncheon. The training is to a wide extent linked together with training in solution of conflicts, etc. with a view to learning how best to avoid the use of force in the best possible manner.

At the moment, the Department of Prisons and Probation and the Staff Training Centre of the prison system are considering the possibility of carrying through a more systematic in-service training through a follow-up on the training of staff who runs a particular risk of having to use force. A working party is expected to be set up to deal with this issue within very short.

C.2 **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);**

The Department of Prisons and Probation endorses the Committee's statements concerning the placing of persons in security cells with fixation. The department likewise agrees that every prisoner who is placed in a security cell and fixed to his bed ought to undergo medical supervision within the shortest delay, for the purpose, among other things of established whether the disturbed state of mind that has caused him being placed in a security cell is due to a mental illness. The rules applicable are in compliance with this.

The Department of Prisons and Probation does not find that the placing in a security cell with fixation as such ought

to take place "under the strictest possible medical supervision", as such medical supervision might be understood to mean that the use of force is made legitimate by medical doctors which is incompatible with medical ethics. For the sake of clearness, it must be added that if a person who is fixed to his bed in a security cell wishes to contact a doctor, - or if the staff finds that the convicted prisoner should be examined by a doctor - the doctor should be called immediately, of course.

On the other hand, the Department of Prisons and Probation has chosen to build on the other alternative pointed out by the Committee.

Reference is made to point R.5 in this connection.

C.3 **importance of prisoners having ready access at all times to toilet facilities (paragraphs 41 and 94);**

For a number of years considerable funds have been used for the improvement of toilet and washing facilities in Danish prisons and local goals. Especially as far as the old institutions are concerned, these renovations have been made in recognition of the fact that facilities which were standard facilities at the time at which they were built do not come up to the requirements of today. Thus, it is the view of the Department of Prisons and Probation that today adequate facilities have, in the main, been established in the institutions of the prison system so that all prisoners have ready access to toilet facilities at all times.

Prisoners in open prisons have free access to toilet facilities day and night. For reasons of security, this is not possible in closed prisons where nightly visits to the toilet in the main parts of the closed prisons require a prison officer to be called. The department is of the opinion that the present arrangement functions perfectly and it has been noted that no complaints were made to the Committee for the Prevention of Torture regarding the present arrangement.

In connection with new buildings or whenever there is a possibility making of thorough renovations, it is the policy of the department, however, to establish toilet facilities in connection with each individual cell wherever possible. This has been done in the new local gaol in Helsingør and is expected to be done in connection with the renovation of the south wing of the Western Prison.

C.4 **desirability of extending the new type of regime at Blegdamsvejens Prison to other establishments (paragraph 45);**

In Blegdamsvejens Prison, a new structure has been introduced. This means that the basic staff has increased responsibility and competence to solve the problems of the inmates. In the remaining part of the Copenhagen Prisons a similar structure is expected to be introduced within the next few years.

A similar structure has already been fully introduced in 6 open prisons (i.e. Jyderup, Møgelkær, Kragskovhede, Sdr. Omme, Søbysøgård and Renbæk) and 1 closed prison (Ringe). The so-called AUF-structure has been commenced in the closed prison in Nyborg. The planning work in Vridsløselille (closed prison), Horserød and Nr. Snede (open prisons) has been put in hand and is expected to be completed by 1992. The planning work in Horsens and Herstedvester (closed prisons) is expected to be put in hand in 1992. In Kærshovedgård and Gribskov (establishments for lenient imprisonment) considerations regarding the introduction of an AUF-like structure have been initiated.

Several concrete pilot projects and an overall review of the situation have been initiated in the prison sector with the purpose of introducing similar structures also in the local gaols.

The Department of Prisons and Probation has recently considered it to be one of its main tasks to introduce the new structure in the prison system and, to some degree, also in the local gaols and has invested considerable efforts and sub-

stantial resources in this project.

In the light of this, the department is very satisfied with the Committee for the Prevention of Torture's appreciation of the new structure.

C.5 **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);**

In a way, the possibility of holding meetings both with spokesmen and with all inmates, or groups of inmates, already exists within the present administrative rules.

According to the proposal on a code of the enforcement of prison sentences the influence of the inmates shall basically be exerted through elected representatives (spokesmen). Meetings between the administration of the institution and all the inmates, or groups of inmates, may only replace the discussions between the managements and the spokesmen if the inmates do not wish to elect any representatives.

The proposal is being considered by the Committee on Criminal Law Reform at present. At this moment it is not possible to foresee anything about when a bill may be introduced; however an adoption of this provision will mean that the flexible arrangement will be codified.

C.6 **importance of keeping persons placed in custody under paragraph 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);**

Aliens held under paragraph 36 of the Aliens Act are as a main rule placed in the Institution at Sandholm if they are asylum seekers while other aliens are placed in a special de-

partment in the Western Prison. As mentioned under point R 17, it is being planned to move this department to a building outside the wings of the Western Prison. This would ensure that these prisoners are held separately from the other inmates and offer improved possibilitiies of differentiating the regime. As far as the placement of asylum seekers is concerned, there has already been an extension of the Sandholm Institution and it may be further considered, if required, to increase the capacity in case the number of places is generally too low.

C.7 **desirability of taking account, as specified in sub-section 36 (2) of the Aliens Act, of the particular situation of persons held under paragraph 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);**

The Committee has underlined the desirability of taking account of the particular situation of persons detained under paragraph 36 of the Aliens Act, so that paragraphs 770 - 776 and 778 of the Administration of Justice Act as stated in paragraph 36 (2) of the Aliens Act are applied with the necessary relaxations.

In this connection, the Committee has pointed out that restrictions with regard to the possibilities of contacting members of the family - especially in relation to asylum seekers - should be limited as much as possible. At the same time, the Committee has noted the need to prevent an incarcerated person from obstructing the identity investigations carried out by the police.

The National Commissioner of the Danish Police has stated that restrictions on correspondence and visits are applied only in case there are reasonable grounds for fearing that the police identity investigations are obstructed by the procurement of false identity papers and the like.

C.8 **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);**

The Department of Prisons and Probation agrees with the Committee that the ordinary rules for (medical) treatment of mentally ill persons should - so far as possible - also be applicable in the Institution at Herstedvester - it being underlined that compulsory treatment of mentally ill persons can under no circumstances take place in any other prison, nor in the Hospital of the Western Prison. The department is thus in agreement with the Committee that for example the rules on information on the treatment, attempts at obtaining the consent of the (mentally ill) inmate and the time for consideration thereof, if any, etc. should also apply to the Institution at Herstedvester, which, in actual fact, is also the case. The very fact that an inmate is deprived of liberty must however have as a result that a vast number of the provisions of the Act on Coercive Measures in Psychiatry cannot apply to the Institution at Herstedvester. Especially as far as the use of solitary confinement and restraint is concerned, it is the view of the Department of Prisons and Probation that the Committee's comments on this matter will involve serious ethical problems for the doctors working in this establishment. The issue has been debated with the Danish Medical Association and there is agreement that the use of solitary confinement and restraint should take place exclusively on the responsibility of the prison administration, so that the doctors who work in the prison do not risk being in conflict with the Tokyo Declaration. The use of force under a penal system will often be based upon considerations of safety and order, that is to say that considerations which will be in evident conflict with medical tasks and medical obligations to be safeguarded.

All prisoners in the Institution at Herstedvester

subjected to the use of force will be supervised by a doctor, during the day by one of the permanent doctors of the establishment, and outside normal working hours by the general practitioner on call in the area, however in such a manner that the nurse on duty will try to contact the consultant over the telephone and perhaps call the consultant in case of special problems. The doctor will then brief the (judicial) director of the institution who will take a stand on the continued use of force. By so doing it is ensured that doctors will not come into any ethical conflict. The doctor may bring the decision of the prison director before the Department of Prisons and Probation. In case the department dismisses the doctor's complaint, the doctor may bring the case before an independent body, the National Health Board, and ultimately his professional body, the Danish Medical Association.

It is the view of the Department of Prisons and Probation that the organisational structure referred to above on the one hand ensures that prison doctors - who are "doctors at risk" - do not come into ethically difficult conflicts and, on the other hand, ensures that medical professional views are given importance according to the nature of the actual case.

c. Requests for information

I.1 **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 following statistics have been enclosed herewith concerning remand prisoners in solitary confinement:

1) A survey of the number of remand prisoners held in solitary confinements per year during the period 1981 - 1990 compared with the total number of remand prisoners, cf. Enclosure A.

2) A survey of the number of solitary confinements served over the period 1983 - 1990 according to the length of the confinements, cf. Enclosure A1.

3) A survey of the number of solitary confinements served in 1990, broken down according to the length of the solitary confinements, cf. Enclosure B.

4) Similar surveys for the January and April quarters 1991, cf.

Enclosures C and D.

The surveys comprise any form of solitary confinement following the decision of the court. It is observed that it is not possible to prepare statistics containing information on the type of solitary confinement (in full or in part), as this information is not recorded in the material that forms the basis of the statistics. In practice, partial solitary confinement following the decision of the court is used only to a very limited extent.

I.2 **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);**

The Committee will be briefed on the results of the scientific study initiated with regard to the possible deleterious effects on mental health of solitary confinement when they are available. The study was begun recently and is scheduled to comprise a period of 2 years.

The Committee will further be briefed in due course on the initiatives that may be taken on the basis of the results of the study.

I.3 **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 general statistics concerning the use of security cells and means of restraint referred to by the committee have been prepared especially for the use of the working party referred to above concerning the use of security cells. The study relates to a 6-month period during which the working party has thoroughly studied the individual placements in security cells, comprising fixation to the bed. Similar detailed statistics are not available for 1990 and 1991.

For your information, the existing statistics for 1990, the first six months of 1991 and the second and third quarters of 1991 concerning the placement in security cells, etc. have been enclosed, broken down on the various types of institution and the length of the placements, cf. Enclosure E. It is observed that the statistics from the second quarter of 1991 and onwards also contain information on the number of placements in security cells which have been connected with fixation to the bed.

I.4 **the outcome of the examination of the provisions of the Bill on the enforcement of sentences concerning the disciplinary powers of prison governors (paragraph 110);**

The working party's proposals are being considered by the Criminal Law Council. At present it is not possible to say when a Bill will be introduced in the Folketing.

I.5 **the frequency of transfers of prisoners classified as dangerous (paragraph 112);**

Prisoners comprised by the Circular of 2 May 1989 on prison conditions for certain specified prisoners basically ha-

ve to be removed between the institutions concerned at 2 - 6 month intervals. Attention is drawn to the fact that dangerous prisoners are basically treated in accordance with the general regime in closed prisons. Only the few dangerous prisoners who have proved to be in risk of escape in having used weapons, the taking of hostages or similar dangerous methods in connection with the escape from the prisons are subjected to the special regime in the maximum security cells. The Circular has been applied in 4 cases. In approximately two years and nine months, these 4 persons have been transferred 3, 5, 6 and 7 times respectively for reasons of security.

One of the prisoners has been released, two are no longer placed under the said Circular, and the last one has gradually had the regime eased considerably and will probably soon be fully exempted from the special regime.

As far as the reference to paragraph 29 of the report (on prisoners in solitary confinement) is concerned, it is observed that prisoners who are comprised by the Circular of 2 May 1989 have the same access to medical examinations as all other prisoners, including remand prisoners in solitary confinement. Reference is made to this in the comments on paragraph 29. The doctor's declaration, if any, will be submitted to the prison authorities and the Department of Prisons and Probation which - upon consultation with representatives of the closed institutions of the prison system - makes the decision on the continued placement under the special set of rules, including any relaxations of the restrictions.

I.6 **the outcome of the examination of the provisions contained in the Bill on the enforcement of the sentences concerning the transfer of the prisoners classified as dangerous (paragraph 112);**

The working party's proposals are being considered by the Criminal Law Council at the moment. At present it is not possible to say when a Bill will be introduced in the Folke-

ting, if the occasion should arise.

I.7 **any steps envisaged with a view to reducing the length of detention on remand (paragraph 113);**

The provisions on detention on remand are laid down in Part 70 of the Administration of Justice Act. It follows from this that detention on remand can take place solely when there is a specific suspicion that a person has committed an offence of a serious nature as specified in the Administration of Justice Act.

The decision on detention on remand is made by the court through an order. The accused person must in this connection be given access to assistance by a defence counsel and normally also has the right to attend the court meeting in person.

The court lays down a time limit for the length of the detention on remand. Under the provisions of the Administration of Justice Act, this time limit has to be as short as possible, and may not exceed 4 weeks. The time limit may be extended, the maximum period being 4 weeks at a time, however. Also in connection with an extension of the period will the court evaluate whether the special conditions under the Administration of Justice Act are still satisfied, for example whether the regard for the investigation still makes it necessary to deprive the person concerned of liberty or whether a mental examination of the person accused, for example, makes it necessary to commit the person concerned to an institution with a view to this, cf. paragraph 809 of the Administration of Justice Act.

It is the view of the Ministry of Justice that the courts should also in practice try to limit the length of the detention on remand - in so far as this is possible at all - in compliance with the above-mentioned provisions.

2. Copenhagen Prisons

a. Recommendations

R.12 **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 prison system has in co-operation with a private consultancy firm initiated an analysis of the reception procedure in the Police Headquarters Prison with a view to reducing the risk of emergency situations. A report of the analysis has been finalized and is to form the basis for the carrying through of specific training courses for the staff to enable them to deal with emergency situations, etc. Further, a seminar has been held and working parties who are to submit proposals for the solution of these problems have been set up.

R.13 **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 Department of Prisons and Probation agrees that the use of truncheons has to be limited as much as can possibly be done.

According to information from the Copenhagen Prisons, truncheons have been used only on two occasions during 1990 and 1991. One of these cases has been included in the judicial review in progress.

As far as the rules are concerned, reference is made to the notes on the general comments (C.1).

R.14 **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);**

The possibility of open air exercise poses a problem to prisoners placed in solitary confinement as the very placing in solitary confinement is illusory if the prisoner can get in contact with other prisoners. Thus this makes it necessary that any stay outside the cell takes place in company with a prison officer and in the so-called star-shaped yards. These star-shaped yards have now been abolished in most institutions. So far, however, it has not been possible to establish individual, big areas for exercises at the Western Prison, one of the reasons being the restricted area available in proportion to the number of prisoners in solitary confinement.

Naturally, the Department of Prisons and Probation will still give its attention of the possibilities of alternative solutions as a supplement to the present traditional arrangement. In this connection, it is observed that in order to improve the opportunities of prisoners in solitary confinement for physical exercise two exercise cells have been established exclusively for this category of prisoners.

R.15 **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);**

R.16 **a proper flow of information between the staff of establishments that accommodate persons considered as suicide risks to be ensured (paragraph 52);**

The Department of Prisons and Probation endorses the Committee's comment to the effect that the decisive element of the prevention of suicides among prisoners may well be the establishment of a good and trusting contact between the prisoners and the staff, so that the staff through talks with and observations of a prisoner is in a position to notice whether he is a potential suicide. The training of prison officers also includes a series of subjects - such as psychology and conversation methods - aiming particularly at teaching the students partly to establish a viable and constructive contact with the prisoners, partly to identify certain simple, basic indications that a prisoner has psychological problems. The department is aware that there may be a need to train the staff in identifying persons with threatening suicidal behaviour, including training in taking an attitude to these persons in the manner recommended by the Committee. However, in the opinion of the department, focusing to a too high degree on well-known symptoms of threatening suicidal behaviour during the training might pose a danger because this implies a risk of neglecting other, more vague and unspecified symptoms that could also be a sign of threatening suicidal behaviour, or the risk that sufficient importance is not attached to such behaviour. Finally, it should be pointed out that the introduction of the so-called AUF-structure in the prisons implies, among other things, that the individual prison officer becomes a contact person for a small number of prisoners, and in doing so the staff will get a better possibility of noticing signs of psychological problems in a prisoner.

To conclude, it should be mentioned that the Department of Prisons and Probation has supported an independent medical doctor in carrying through a study of all suicides committed in Danish prisons and local gaols over a 10-year-period, or a total of 61 suicides. The department has requested the Staff Training Centre to make use of the report as an inspiration for the training courses at the basic education level.

R.17 **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 900m, 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);**

The Department of Prisons and Probation has jointly with the Copenhagen Prisons prepared certain plans for the establishment of a block for aliens who are detained under the Aliens Act. This block, which is to be placed outside the wings of the Western Prison but within the walls will ensure that these prisoners are kept separated from the other prisoners and offer better possibilities of adapting the regime to this particular group of prisoners.

With this plan of a new block in the Western Prison there will be no need at present of additional capacity in the Western Prison for persons who are detained under the Aliens Act. Further, a new arrangement has been established as a result of which the number of asylum seekers in the Copenhagen Prisons has been limited as they are transferred to the Institution at Sandholm at an earlier date than has been the case so far. Thus, there is no immediate need of fitting up a building in the Copenhagen area for this purpose out of regard for the police investigations.

R.18 **prisoners held in the Sandholm Institution to have access to toilets during the night (paragraph 68);**

Prisoners in the prison section of the Sandholm Institution are normally given free access to visit the toilet during the night as the doors of the prisoners' rooms are usually unlocked at night. Furthermore, it may be observed that there are 8 toilets available for the 60 persons who are placed in the Sandholm Institution. It is the view of the department

that the conditions function reasonably.

b. Comments

C.9 **the lighting in the observation cells at the Western Prison might prevent the prisoner from sleeping (paragraph 40);**

The background for the permanent faint light in the observation cells is to prevent the staff that has to supervise the prisoner every hour from waking the prisoner by having to put the light on in the cell.

The Department of Prisons and Probation realises that a too strong lighting in the observation cells may prevent the prisoners from sleeping and that lighting which is on all the time has to be as faint as possible at all. However, the lighting may not be so faint as to prevent the supervising staff from ensuring that everything is in order.

By this request, the night lighting has been further turned down in the observation cell in which a 15 watt light bulb had actually not been installed.

C.10 **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);**

The Department of Prisons and Probation shares the opinion that the waiting cells in the Police Headquarters Prison should be used only for very short periods. During the autumn an outline has been prepared for a general improvement of the conditions in the Police Headquarters Prison. This draft has made it a precondition that the waiting cells are to be completely abolished and that the procedure in connection with the reception of persons to be imprisoned is to be reorganised so that the need for waiting cells ceases to exist. The improvements, which are a project in the total order of DKK 4 - 5

million, are expected to be finalized during 1992.

C.11 **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);**

The Department of Prisons and Probation completely endorses the Committee's recommendation that the possibilities of transferring prisoners who are mentally ill to adequate institutions should be improved and the Department of Prisons and Probation has at meetings with the Minister of Health and the Danish Medical Association pointed out the need to establish the required number of hospital beds in psychiatric hospital and institutions so as to be able to receive prisoners from the Western Prison, for example.

The department is aware that the staff at the Western Hospital, including the nursing staff, should receive training to enable them to offer the necessary care and treatment of mentally ill prisoners who, after all, ought to be in the hospital and has therefore held a course in psychiatry for prison nurses. The department, on the other hand, finds it to be in conflict with Danish practice and traditions to make a major extension of Western Hospital so as to be in charge of prolonged care and treatment of mentally ill prisoners - mentally ill persons ought to be transferred to the ordinary psychiatric wards.

C.12 **desirability of supplementing the training of Western Prison staff by language courses, following the example of the Sandholm Institution (paragraph 55);**

A very large part of the staff of the prison system is capable of communicating in one or more principal languages. In

connection with the recruitment of prison officers, etc. weight is attached to their language skills, inter alia, including especially the possibility of employing staff who has a good command of one or more other languages. The basic training of prison officers includes English as an optional subject.

Beyond this, the prison system has not found it possible to implement a more systematical language lessons of the prison staff. The background for this is, among other things, the very high number of different languages involved. However, the prison system is ready to meet relevant wishes from the staff to participate in language courses.

Instead, the Department of Prisons and Probation is considering the possibility of extending the existing interpretation arrangements. Thus, efforts are made to establish an improved interpretation service which implies that the interpreter who was present during the interviewing by the police of an arrested person of foreign nationality should, as far as this is possible, be present in connection with the imprisonment, or if this is not possible, at least explain the meaning and the background of the imprisonment to the person in question.

The Copenhagen Prisons have further prepared a guide on the procedure in connection with imprisonments in a vast number of languages, just as the police have prepared a guide in 16 languages which, among other things, informs the person in question of the background for the deprivation of his liberty and of his rights.

As far as the teaching of Danish for prisoners speaking a foreign language is concerned, lessons in Danish are offered in most closed prisons for the purpose of enabling the prisoners to manage in everyday life during prolonged periods of imprisonment. In the State Prison of Nyborg, lessons in Danish used to be offered. Since there has turned out to be a greater need for English courses here, such courses are now being offered instead, however.

The scope of the language course in the various prisons has been adapted to the number of prisoners speaking a foreign

language.

To a certain extent, English combined with Danish is offered to prisoners of foreign nationality.

C.13 **desirability of making the necessary changes at the Sandholm Institution within the shortest delay so as to permit the reception of children (paragraph 67);**

Prisoners have the possibility of having their children with them during the serving of their sentence until the children have completed their first year. If it is compatible with the welfare of the child, the child may stay beyond this date which, in practice, is allowed only in one prison, generally speaking. There, a special family division has been fitted out where children can be brought up to the age of three years approximately. The Ministry of Justice does not find it appropriate that children may be brought into the Sandholm Institution, one of the reasons being the physical surroundings. A separation, if any, of parents and children should therefore, as mentioned under point R.11, in cases where there are two parents, be anticipated by not depriving both parents as far as possible of their liberty and by trying to ensure that the separation is limited to the widest possible degree by ensuring frequent contacts between the family members. In case it is necessary to expand the prison section for asylum seekers deprived of liberty, the Department of Prisons and Probation will consider the expediency of establishing a special family division.

c. Requests for information

I.8 **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 this (paragraph 19);**

The judicial review that has been initiated has not been completed as yet. The Department of Prisons and Probation will in due course inform the Committee about the outcome of the investigation and any measures that might be taken as a result of this review.

I.9 **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);**

The judicial review that has been initiated has not been completed as yet. The Department of Prisons and Probation will in due course inform the Committee about the outcome of the investigation and any measures that might be taken as a result of this review.

I.10 **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);**

A survey of the use of security cells and means of restraint in the four institutions under the Copenhagen Prisons,i.e. the Western Prison, Blegdamsvejens Prison, the Police Headquarters Prison and the Institution at Sandholm for imprisoned asylum seekers, cf. Enclosure F.

I.11 **the results of the pilot projects to provide prisoners at the Western Prison with more sports opportunities and to give them their own cell key, and information on any other programme implemented in this field (paragraph 44);**

The project for sports activities for the prisoners in the Western Prison was commenced on 1 January 1990. The prisoners make frequent use of the facilities offered, i.e. table tennis, badminton, fitness centres, etc. and the Western Prison is extremely aware of the importance of the prisoners being activated during their stay in prison, including especially physical exercise. The other project referred to, giving the prisoners their own cell key consists of a double-key system where the prisoners are given an opportunity of letting themselves out and keeping other prisoners out of their cells. This, of course, is not the case if the staff has locked the cell door (double lock). This project has not been carried into effect as yet, but the Western Prison intends to commence an experimental arangement in a common ward in the eastern wing of the Western Hospital.

I.12 **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 vith a view to changing the prison regime (paragraph 55);**

The prison system has held three courses of this nature in 1990 for the staff of the Copenhagen Prisons and the Institution at Sandholm. The courses which were arranged in co-operation with and with the participation of the Danish Refugees' Council were about the specific problems connected with refugees, including cross-cultural talks, emergency treatment, religion, etc. In the autumn of 1991, a similar course was held for new staff in the Copenhagen Prisons and the Institution at Sandholm, just as further course activities have been agreed for 1992, including follow-up courses. Further, two courses were held in 1991 about immigrants, and an additional number of courses on this subject are being prepared.

In addition to these educational activities a number of

initiatives have been implemented which jointly could improve the conditions in the Copenhagen Prisons. The project in the Police Headquarters Prison and improved interpreter service, etc. have already been mentioned, cf. point R.12 and C.12. Within short a thorough renovation and modernisation of the Police Headquarters Prison will be commenced, and rebuildings of the rest of the Copenhagen Prisons are under consideration. These measures are to be regarded as a supplement to the ongoing restructuring of the Copenhagen Prisons, which involves a change in the staff structure, among other things.

I.13 **the results of the judicial review initiated in July 1990 after the judgment of 2 April 1990 of the High Court of Copenhagen and on any measures which the Danish authorities intend to take as a result of this investigation (paragraph 55);**

The judicial review after the judgement of the City Court of Copenhagen that has been initiated has not been completed as yet. The Department of Prisons and Probation will in due course inform the committee about the outcome of the investigation and any measures that might be taken as a result of the investigation.

I.14 **developments with regard to the envisaged extension of the medical service of the Institution at Sandholm (paragraph 71);**

The planned extension of the permanent health staff in the Sandholm Institution has been finalized, so that the doctor's working hours have been extended from 3 to 6 hours weekly, and the nurse's working hours from 10 to 15 hours weekly.

3. The Institution at Herstedvester

a. Recommendations

R.19 **with regard to the treatment of patients without their consent, a provision aimed at 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) to be included in the intended new Act on the enforcement of sentences (paragraph 78);**

R.20 **with regard to the conditions of detention of mentally disturbed prisoners, the extent to which the other Parts 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-a-vis the local and national "patientklagenævn"), judicial remedies, etc., to be determined (paragraph 78);**

The Department of Prisons and Probation has noticed that the Committee has stated that at no point in time during its visit to the Institution at Herstedvester did it receive any complaints of "physical ill-treatment or inhuman or degrading treatment", just as the Committee does not itself mention any conditions or situations which might give cause for suspicion thereof.

The Committee further states that treatment, and compulsory treatment, if any, of prisoners who are mentally ill or mentally deviant is such a delicate area that these issues call for special careful guarantees of the rules of laws for the prisoners - an attituted that is endorsed by the department.

As will appear from the recommendation of the Health Committee for example the main task of the Institution at Herstedvester, is to receive convicted prisoners in need of

psychiatric/psychological treatment. In addition to this, the establishment receives prisoners from other institutions under the prison system who show signs of psychiatric disorder for observation and treatment, if needed.

Criminals who are mentally ill are normally not punished in Denmark; they are sentenced to psychiatric treatment and transferred to the ordinary psychiatric treatment system. It is likewise a fundamental philosophy that prisoners who are mentally ill and who are in need of hospitalization are to be committed to a psychiatric ward in the same way as prisoners who develop physical diseases are to be admitted to ordinary hospital wards. Thus it is not the idea, and never has been, that Herstedvester in principle is to house mental patients. Due to its special status as observation ward for the other institutions under the prison system, this institution will, however, occasionally receive prisoners who turn out to be psychotic. If it is a matter of short psychoses, e.g. psychoses caused by narcotics the person in question might with advantage receive final treatment in this institution; however, if it is a matter of protracted mental disorders the person in question should be transferred to the psychiatric treatment system.

It is still the firm belief of the Department of Prisons and Probation that psychotic prisoners should not be housed in the institutions of the prison system but should be treated within the ordinary psychiatric hospital service. Both the Danish Medical Association and the Danish Psychiatric Association agree on this view. Reference is moreover made to the enclosed articles concerning interviews with Peter Kramp, the psychiatric consultant to the prison system, cf. enclosure K.

The Institution at Herstedvester thus is, and should - in the view of the prison system - continue to be a <u>prison</u> in which prisoners who do not suffer from any mental disease but have psychiatric problems in other respects are offered psychiatric/psychological treatment. The department therefore finds it natural that the institution should be headed by a legally qualified person, but of course in such a manner that the senior consultant alone is responsible for the medical treat-

ment, cf. letter of 12 February 1985 from the National Board of Health, referred to in the 2nd clause of paragraph 77 of the Committee's report.

As stated above, the Institution at Herstedvester will receive from other institutions under the prison system prisoners who turn out to be psychotic and who for one reason or other cannot be immediately transferred to an ordinary psychiatric ward. In these situations there may on rare occasions be need for medicamental compulsory drug treatment (8 times in 5 years).

The Health Committee recommended that the issue of compulsory treatment in the Institution at Herstedvester should be regulated in an act on enforcement of sentences. At present no stand has been taken on the issue of implementing future legislation on the enforcement of sentences so the department has decided to set up a working party to consider how and to what extent the rules on compulsory treatment in the Act on the Deprivation of Liberty and other Coercive Measures in Psychiatry may be applied in the Institution at Herstedvester.

The issues has been debated between the Danish Medical Association and the Department of Prisons and Probation and there is agreement that in some situations it may prove necessary - and correct also from an ethical point of view - to initiate compulsory treatment in the Institution at Herstedvester, on condition that the person who is subjected to the compulsory treatment is given guarantees of the rules of law corresponding to the conditions for patients who have been admitted to a psychiatric ward and receive compulsory treatment, that the resources for medical treatment and care are consistent with the general standards of psychiatric hospitals, and finally on condition that the prisoner is transferred to a psychiatric ward as soon as possible for continued treatment.

In principle, the Department of Prisons and Probation can fully endorse the recommendation in the first clause of paragraph 78.

The Committee further recommends (second clause of paragraph 78) that it should be considered whether a series of

other rules from the Act on deprivation of liberty and other coercive measures in psychiatry should be applicable to the Institution at Herstedvester, and in such manner that these rules do not apply only to mentally ill persons but also to prisoners who are not mentally ill but who are mentally deviant in another way.

To this should be added that the rules in the Act on deprivation of liberty and other coercive measures in psychiatry quite predominantly concern mentally ill persons. A large part of the clientel in the Institution at Herstedvester are persons with severe character deviations, marked for example by a tendency to affective reactions, violent behaviour, etc. The majority of the clientel is thus not psychiatric patients in the sense that they would fit in with what is seen in a psychiatric ward. It is the view of the Department of Prisons and Probation that the guarantees of the rules of law and possibilities to complain concerning the use of force otherwise effective within the prison system offer adequate protection for these prisoners against the abuse of power, humiliating treatment, etc. and that there is consequently no need for introducing a set of "parallel" guarantees of the rules of law. Last but not least, it would in the view of the department clearly be in conflict with the Tokyo Declaration if for instance a doctor would have to be present and approve of a severe character deviant who had assaulted another inmate or a member of the staff being fixed to his bed for pure security reasons.

R.21 **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);**

It is correct that women prisoners in the Institution at

Herstedvester form a very small group of about 6 women only out of 130 prisoners. Basically, the women may participate in all joint activities such as work, education, leisure-time activities, etc. and this, of course, should be in such manner as to safeguard their physical and psychological integrity. On two previous occasions, the Department of Prisons and Probation has at the actual request of a prisoner studied whether the women prisoners felt annoyed by the male prisoners and if they wanted a change of procedure in connection with the joint activities. None of the women, apart from the person concerned who was the occasion for the study, wished any changes.

The recommendation of the Committee gives occasion for the department to point out that more than a third of the total staff of the institution are women. Especially as far as the uniformed staff is concerned, 30% are women.

However, the department has at the said request asked the Staff Training Centre to take into consideration when planning their courses that the staff ought to be capable of envisaging the problems that may arise in institutions with a mixed clientel of women and male prisoners.

R.22 **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);**

It would not be justifiable to place women in the barracks in the Institution at Herstedvester. It would not be possible to safeguard their integrity, one of the reasons being that one of the main ideas with this ward is that it has no staff. So when a woman qualifies for transfer to more open conditions, she will be transferred to an open prison.

b. <u>Comments</u>

c.14 **desirability of studying ways of enabling the prisoners from Greenland to maintain appropriate links with their own society**

(paragraph 90);

The Ministry of Justice agrees with the Committee that it is difficult for prisoners from Greenland to adapt to the conditions in Denmark. The Ministry of Justice has in full agreement with the authorities in Greenland proposed that the transfer of Greenlanders to the Institution at Herstedvester should be terminated when it is financially possible to establish a closed institution in Greenland. This is in accordance with the proposal in a report from 1990 concerning criminal policy issues in Greenland. Until the proposal can be realized, the prison system tries continously to improve the conditions for the Greenland prisoners as much as possible. The Department of Prisons and Probation has decided to increase the appropriation for travels for visits in accordance with the said report so that the Greenland prisoners have more opportunities for visiting their relatives or receiving visits from Greenland just as measures will be taken to increase their possibility for contacting their families over the telephone.

C.15 **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);**

In connection with the carrying through of the principles of the AUF-report on the future meals system it has been planned that the Institution at Hestedvester, to the widest possible extent, is to introduce an arrangement where the prisoners supply themselves with meals like that operating in Nyborg Prison and a vast number of other prisons. The idea is thus that in future, Greenlanders will be given the opportunity to do their own shopping and prepare their own meals similarly with the way in which it is done by the prisoners in Nyborg. The existing system with the possibility of preparing Greenland meals is to be adapted to the new system. Today, the Greenland prisoners may have Greenland meals twice a week. The intro-

duction of a system where Greenlanders and a substantial part of the other prisoners in the Institution at Herstedvester supply themselves with meals is expected to take place during 1992-1993.

c. **Requests for information**

I.15 **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);**

No Bill has been tabled in Parliament so far.

4. **Nyborg Prison**

a. **Recommendations**

R.23 **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);**

During the summer of 1990, the prisoners in Nyborg Prison abolished the system of prisoners' spokesmen. This decision was made entirely by the prisoners. Since then there have been no elected spokesmen. During the entire period there has, however, been some communication between the prison administration and the prisoners via the leisure-activities committee.

The management of the prison has on several occasions in various ways tried to motivate prisoners to re-establish the system of prisoners' spokesmen or establish another form of formalized co-operation. It has now been agreed with a number of prisoner representatives to initiate discussions in a small working group consisting of 3 prisoners and 3 representatives of the prison staff regarding the various wishes submitted by

the prisoners. The idea is in this way to have a more thorough discussion of the prisoners' proposals and the possibilities of meeting these proposals before the prisoners' wishes are sent for actual discussion with the prison administration.

The Department of Prisons and Probation agrees with the Committee that it is important to have satisfactory means of communication between the prisoners and the prison administrations and believes that the efforts to find a local solution will be successful.

b. **Comments**

C.16 **the success of the envisaged diversification of prison duties will depend upon adquate human resources being made available (paragraph 95);**

The new AUF-structure has now been carried through in Nyborg Prison. Generally, this structure means that the basis staff (the prison officers) are given much greater responsibility and competence in connection with the solution of the prisoners' problems. The former, traditional hierarchial system is to be replaced by a very flat decision model. This will release staff resources which, among other things, may be used for an upgrading of the work with the treatment of clients and other activities of importance for the prisoners.

The new AUF-structure will also attach importance to the use of staff resources in areas and at point of times where and when the prisoners are present.

In Nyborg Prison - as in other prisons where the AUF structure has been introduced and functions satisfactorily, the necessary staff resources have been made available in order to ensure that the new tasks implied are being fulfilled.

C.17 **importance of an on-going information programme for prisoners concerning AIDS (transmission risks and means of prevention) (paragraph 106);**

The Department of Prisons and Probation quite endorses

the observations of the Committee for the Prevention of Torture on the importance of providing continued information on AIDS. This is the reason why the department has continously submitted written information concerning AIDS and HIV infections to prisoners as well as staff in the institutions of the prison system ever since this problem emerged in Denmark. The information activities take place in close co-operation with the AIDS-Secretariat of the National Health Board. A permanent working group consisting of representatives of the department, the institutions and the staff organizations has been charged with the following up on the information activities.

In addition to the written information, oral information is provided to the prisoners in the individual institutions. These activities are in the charge of a number of key persons who on special courses receive background information on AIDS and the precautions to be taken against AIDS. They learn how to communicate this information and at the same time they receive information material for educational purposes and are instructed in assisting the individual prisoners. Special AIDS campaigns have been organised in many institutions.

The prison system has a special AIDS adviser who functions as a adviser to the prison system in questions relating to HIV/AIDS, and offers special assistance to the Copenhagen Prisons in contacting and assisting the HIV-infected prisoners or prisoners who have contracted AIDS.

C.18 **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);**

Reference is made to the observations under A.8.

Furthermore, it may be added that Nyborg Prison has declared its willingness to have the guide that is given to the prisoners upon reception together with the most important local rules translated into a number of the most relevant foreign

languages.

C.19 **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);**

Reference is made to the observations under point C.12.

c. **Requests for information**

None.

B. Police stations

a. Recommendations

R.24 **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);**

As regards the physical conditions at the police stations visited by the Committee, these were found to be of an acceptable standard considering that the persons under arrest stay in the cells concerned for a few hours only.

The Ministry of Justice, of course, is in agreement that persons arrested whose stay at the police stations is of such a duration as to create a need in that respect are to be adequately provided with food and/or beverages. The physical surroundings at the police stations concerned , however, are so that no special kitchen facilities have been established with a view to preparing meals for the persons under arrest. In practice, food and beverages for the persons under arrest are

bought externally, if needed. It is the view of the Ministry of Justice that this arrangement functions satisfactorily - also in consideration of the fact that persons under arrest typically stay only for a short while at the police stations concerned.

R.15 **arrested persons to have the right to inform immediately their next of kin or another third party of their arrest (paragraph 126);**

R.26 **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 (e.g. such delay or refusal to be recorded in writing together with the reasons therefore and to require the approval of a senior officer or public prosecutor) (paragraph 126);**

The Committee finds that the right to immediately inform a relative or another person of the arrest to be such a fundamental guarantee against improper treatment that this right should be ensured by statutory law.

In this connection, the Ministry of Justice would refer to the rules provided by paragraph 758 of the Administration of Justice Act, from which it appears that the person arrested - with the exemptions referred to - shall not be subjected to other restrictions in his liberty than necessitated by the purpose of the arrest and the regard for security and order. Report 728/1974 on arrest and detention in custody states in respect of this provision as follows:

"It is the view of the Committee that considering the short duration of the arrest, it is not required to lay down statutory rules on the treatment of the arrested person. The Committee realises that the arrested person may need assistance in some respects, for instance in informating a near relative, employer or lawyer, if any, and also in taking care of his personal effects. In the above rule, the draft gives a direction

to the effect that the arrested person may get in contact with the outside world in so far as this is compatible with the purpose of the arrest and the regard for law and order. The more detailed regulation of this could be made by way of instructive regulations. The Committee considers it to be a matter of course that the police inform the person who has the custody of the juvenile, or another third party who is in charge of the actual care of the person concerned, upon the arrest of persons under the age of 18, cf. Circular No. 174 of 4 August 1966, point 50, issued by the Chief Public Prosecutor. Likewise, arrested persons above this age should - if no decisive regards for the further investigation prevent this - have the right, possibly over the telephone, to inform their families and, according to circumstances, employer, lawyer or any other third party. It may sometimes be reasonable to let a police officer give such information."

The Ministry of Justice shares the view expressed by the Committee, and the Ministry thus does not find any need for laying down further provisions in the Administration of Justice Act regarding the arrested person's right to inform his relatives, etc. as this issue must be deemed to be sufficiently regulated under paragraph 758. However, the Ministry of Justice is prepared to consider whether - as has also been considered by the Committee - it might be appropriate to lay down instructive regulations to this effect.

In cases, where the arrested person is brought before the court with a view to being remanded in custody, the court may, if due to the insufficiency of the information available or for any other reason, it does not find itself immediately capable of deciding on the issue of remand in custody, decide that the arrest is to be prolonged for 3 x 24 hours, cf. paragraph 760 of the Administration of Justice Act. In these cases where the arrest is of prolonged duration, it might be left with the court (upon request) to take a stand on the question of the arrested person's access to contact his relatives or another persons during the continued detention in the same manner as if he had been remanded in custody. In con-

nection with a revision of the provisions of the Administration of Justice Act in this area the Ministry of Justice will consider proposing the inclusion of express provisions to this effect.

R.27 **the possibility for an arrested person to have access to a doctor (including one of this own choice) to be expressly provided for in respect of all stages of police custody (paragraph 128);**

For the same reasons as those stated above concerning the information of relatives, etc. the Ministry of Justice does not find any need to include express rules in the Administration of Justice Act regarding the access to medical assistance.

In the opinion of the Ministry of Justice it must be regarded as a matter of course that the arrested person is given medical treatment whenever needed either by taking him to the casualty department of a hospital or by calling for a doctor to the police station, according to what is deemed most appropriate in the specific situation.

There is nothing to prevent the arrested person from choosing a specific medical doctor, and such express wish should, of course, be complied with whenever this is practicable and safe. However, it is the Ministry of Justice's evaluation that the guarantee against torture and bad treatment on the part of the police - which might be implied in the access to medical examination - must be considered to be completely adequate under Danish circumstances, also in case the physical examination cannot in exceptionally cases be carried out by a doctor of the patient's own choice.

Finally, it is observed that Notification II, no. 55, issued by the national Commissioner of the Danish police on the detention in custody of persons under the influence of alcohol lays down express provisions regarding physical examinations by medical doctors of the condition, etc. of persons detained in custody.

R.28 **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);**

The Ministry of Justice is of the opinion that the Administration of Justice Act contains quite detailed rules concerning interviews. It thus follows from paragraph 752 of the Administration of Justice Act that interviews may not be prolonged for the mere purpose of obtaining a confession. In connection with interviews of a certain duration the prosecution statement must state the times at which the interview begins and ends. Report 622/1971, page 46, states as follows regarding the investigation in criminal cases: "Stating the time at which the interview begins and ends (including breaks of prolonged duration) in the prosecution statement provides a considerable security against abuse or any accusation of abuse". In practice, the time is normally stated in every interview, as it is not always possible to anticipate the length of the interview at the commencement of the interview, cf. the annotated edition of the Administration of Justice Act, volume III, page 86. Further, the names of all those present at the interview will generally appear from the prosecution statement.

It further follows expressly from the provisions of paragraphs 750-52 of the Administration of Justice Act that the police may make interviews but are not allowed to order any one to make statements, nor may any force be used in order to make any one make statements. Any person is, however, under obligation to state his name, address and date of birth to the police upon request. The most essential contents of the statements are taken down in the prosecution statement, and, to the extent possible, a verbatim record must be made of particularly

important parts spoken by the person making the statement. The person being questioned must be given the opportunity to read the interview. Any corrections or additions on the part of the person interviewed are to be included in the prosecution statement. The person interviewed is informed that he is under no obligation to sign the prosecution statement. Before the police interview an accused person must be expressly informed of the contents of the charge and that he may remain silent. Questions to an accused person may not be asked in a manner as if anything that has been denied, or has not been admitted, is assumed to have been confessed.

In the opinion of the Ministry of Justice, there is no need for laying down further detailed rules on the procedure in connection with police interviews.

It must to a certain extent be left to the police officer who undertakes the interview in the actual situation - and within the framework of the said provisions of the Administration of Justice Act - to deem whether a break in the interview should be made because the person being questioned is tired or hungry etc. In this connection it is pointed out that a defence counsel will often attend the interview and the person being questioned may otherwise refuse to make any further statements at any time.

However, in connection with a revision of the provisions of the Administration of Justice Act, if any, the Ministry of Justice will consider proposing the following wording: "... which are of a certain duration ..." to be deleted in paragraph 752 (4), second clause, of the Administration of Justice Act so that the provision will have the following wording: "The prosecution statement shall state the time at which the interview begins and ends." By so doing, the Committee's wish for such a rule will be complied with and the wording of the provision will be brought in accordance with the general practice followed today, cf. above.

As regards the place of the interview of a person arrested, this will most often be in the premises of the police station or in a local goal; according to circumstances, there

may, how-ever, be occasion to make at least shorter interviews at the scene of the crime or perhaps in another place. It is not the Ministry of Justice's evaluation that there has been any need, in practice, for more detailed regulations as regards the place in which an interview may take place.

To this should be added that very detailed rules on the procedure at interviews might necessarily contain exemption clauses which in special cases would open up the possibility of deviating from the rules laid down. Both the regard for the police and the regard for the accused or the witness may, according to circumstances speak in favour of deviating from too detailed rules. Also a witness or an accused person may have an interest in prolonged interviews in order thereby to get it over. In this connection also the regard for a limitation of the total length of the deprivation of liberty could in special cases speak in favour of prolonged interviews. In the view of the Ministry of Justice, legal technical reasons speak in favour of a system like the present one where the Administration of Justice Act lays down the overall framework for the interview in preference of a system with very detailed rules combined with exemption clauses.

Furthermore, reference is made to Report no. 622/1971 on the investigation in criminal cases, etc., page 10, which states as follows:

"In chapter 68 of the draft, the Committee has listed a number of rules regarding the police interviews which correspond to the provisions which have so far expressly only been applicable to court interrogations but which, in all essentials, have also been complied with in police interviews.

The Committee has considered introducing further provisions to ensure that police interviews take place as provided for in the Act. Certain foreign legal systems thus have rules to the effect that interviews are to be made in the presence of a witness.

The Committee finds that the laying down of too detailed rules for the police investigations involves a risk of bringing development to a deadlock and no real guarantees would be at-

tained by such rules. Altogether, it may be called in question whether an improvement of the guarantees of the rules of law may be expected through the drafting of new rules about the procedure at police interrogations. The guarantee that the police exercise their powers with due regard for citizens' guarantees of the rules of law depends, in the opinion of the Committee to a smaller degree on the formal rules set up for police interrogations and other investigations than on the professional and ethical standards impressed on the police during their education at the police college and practical training, on the tradition for police investigations in Denmark, and on the fact that the investigative work is headed by legally qualified chief officials ".

The Ministry of Justice endorses the Committee's findings.

R.29 **possibility of introducing a system of electronic recording of police interviews, offering all appropriate guarantees, to be explored (paragraph 130);**

In the opinion of the Ministry of Justice an arrangement where interviews of the accused are tape recorded offers both advantages and drawbacks.

Paragraph 751 (3) of the Administration of Justice Act contains a provision to the effect that "phonetic recordings of statements may only take place if the accused is informed of this". The purpose of this provision is thus to protect the accused against tape recordings of interviews without his knowledge.

The purpose of tape recording interviews of the accused and witnesses must be to use the recordings as evidence in court, for example during criminal proceedings against the person in question. So, in some cases, tape recordings of interviews may certainly be disadvantageous for the accused, for example if he makes insecure, hesitating, evasive statements or a slip of the tongue. Further, it may be more difficult for the

accused to deny his former statements if they are tape recorded.

On the other hand, systematic tape recordings of all the interviews may contribute to ensuring that all interviews are carried through in compliance with the rules of the Administration of Justice Act. Both the accused and the police may be interested in having subsequent documentation for what has come to pass during the interview. The police, for example, will be able to clear themselves of an accusation that important passages of the statement have been left out in the interview record or that the statement made by the person being questioned has been distorted. The applicable provisions of the Administration of Justice Act that the person accused has access to read his statement, to have any corrections and additions included and to sign the record also imply a guarantee in that respect, of course.

The Ministry of Justice will consider having the Criminal Justice Administration Committee examine whether it will be appropriate to introduce an arrangement with tape recordings of interviews.

R.30 **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 kind and/or lawyer telephoned and when visited by them; when fed; when interrogated; when charged; when transferred; when released, etc.) (paragraph 132);**

The Ministry of Justice finds it immediately doubtful whether very considerable advantages will be attached to such "custody record". The information that may subsequently turn out to be of relevance will most often appear from the prosecution statement and the recordings made in the local goals such as daily reports and case record notes etc. in which all activities such as visits, leaves, transport, medical

examination, etc. are recorded. Specifically, as regards the handing out of meals, no notes are made as there are regular meal times, however, in such a manner that if a detainee has been away for an interview by the police he will have a meal when he comes back to the local goal. The regard for fixing a proper order of priority of the tasks to be undertaken by the police and the staff at the local goal thus speaks against producing also a routine and separate custody record which would contain an overall account of these circumstances.

However, the Ministry of Justice is prepared to give further consideration to this issue in concert with the Department of Prisons and Probation and the police.

b. **Comments**

- None

c. **Requests for information**

I.16 **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);**

Cases concerning the conduct of the official duties by the police staff occur partly as complaints submitted by the public and partly as reports proper of criminal offences or disciplinary for internal reasons.

In 1990, 331 complaints of the police officers related to their performance of duties were submitted and referred to the Local Councils under Part 93 b of the Administration of Justice Act.

In the Local Councils, 256 cases were concluded in 1990 in the following manner:

Withdrawal before consideration by the Local Councils	39
Dismissed by the Local Councils	66
Submitted to local chief of police	137
Referred to the Public Prosecutor for examination	11
Referred to criminal proceedings	3

It is observed that there is no identity between cases registered and cases decided in 1990 as some of the decisions concern cases from 1989 just like some of the cases from 1990 are still pending at the end of the year.

Further, in 1990 a total of 148 disciplinary cases were brought against police officers for non-criminal related offences. The number of these cases, main classifications and status of the case appear from the attached enclosure G.

Finally, in 1990 charges were brought against police officers in 37 cases - 26 of which related to their performance of duties - for violation of the Danish Criminal Code which automatically implies that disciplinary cases were brought parallel with the criminal proceedings.

The number of these cases, the nature of the charges, and the status of the case appear from enclosure I.

I.17 comments of the Danish authorities on the allegations made concerning the manner in which asylum seekers are questioned by the police (paragraph 117);

In point 17 of the report it is stated that the way in which the police question asylum seekers leaves them with the impression of being unwished.

In this point, reference is made to point 65 of the re-

port, from which it appears that asylum seekers detained in the Sandholm Institution have complained of the way in which the police question the prisoners and the negative and suspicious attitute shown by the police towards the prisoners, which affected the prisoners' possibility of corresponding with and having contact with their families.

The prisoners in this particular institution at the Sandholm Institution are all asylum seekers who are imprisoned because their identity and/or itinerary in Denmark have not been sufficiently documented.

The task of the police in this connection is to establish a number of factual circumstances with a view to establishing the identity and/or itinerary of the asylum seekers in question which first and foremost depends on a thorough questioning of the individual asylum seeker. In this connection it is necessary to ask critical questions to each individual asylum seeker. These critical questions are, as mentioned above, an indispensable part of the police investigations and do not reflect any prejudiced or negative attitude to the individual asylum seeker.

In this connection, it can be mentioned that the National Commissioner of Police has carried through a series of courses for the police staff which in particular concern the issue of cultural clashes in relation to the police work with persons of foreign nationality.

As regards the question regarding restrictions on correspondence and visits, reference is made to the comments on C 7 (points 57, 66 and 70 of the report). It should be observed, however, that the Administration of Justice Act provides rules regarding the procedure in connection with disputes between the police and the prisoner in these questions, including judicial review.

In point 117, it is stated that the reason why the asylum seekers feel badly treated by the police should be a pressure against the police from the public opinion and the lack of resources in the Directorate for Aliens. In the view of the National Commissioner of Police and the Ministry of Justice

there is no basis for these allegations.

Finally, point 117 states that the asylum seekers should have been asked to sign a declaration in connection with their deportation from the country stating that their departure is voluntary .

The National Commissioner of the Danish police has stated that if an asylum seeker withdraws an application for asylum in Denmark, a written declaration is made to that effect. An asylum seeker will not have to sign any declaration to the police in case of compulsory deportation, however.

I.18 **the time as from when a person taken into police custody enjoys a right of access to legal advice (paragraph 127);**

Part 66 of the Administration of Justice Act contains rules concerning the accused and his defence. A copy of paragraphs 729 - 741 has been enclosed herewith, cf. enclosure J.

It follows among other things from paragraph 732 (2) of the Administration of Justice Act that a request for appointment of a public defence counsel may be made by the accused and by the police as well. The Minister of Justice lays down rules concerning guidance of the accused as regards the right to request the appointment of a defence counsel. The prosecution statement must indicate that the accused has received due guidance, and the police will ensure that the matter is brought before the court.

Detailed rules are laid down about the guidance of the accused as regards his right to request the appointment of a public defence counsel in Order No. 467 of 26 September 1978 issued by the Ministry of Justice.

It follows from this order that when the charge concerns an offence which pursuant to law may result in a more severe sentence than fines, the police will guide the accused of his access to request appointment of a public defence counsel. Such guidance may, however, always be omitted when the charge only concerns a violation of the Road Traffic Act.

The guidance must be given at the same time as the accused is informed that he does not have to answer any questions, cf. paragraph 752 (1). The prosecution statement must indicate that the accused has received due guidance, cf. paragraph 732 (2), point 3 of the Administration of Justice Act.

The police take care that the request made by the accused for appointment of a defence counsel is brought before the court.

The request made by the accused for appointment of a defence counsel does by virtue of said order not prevent the interrogation from being commenced or continued without the presence of the defence counsel if the accused is willing to make statements.

The request for appointment of a defence counsel thus does not have any suspensive effect in itself. However, the accused may refuse to make any statements until the appointment has been made, cf. paragraph 752.

If an accused person who is under arrest requests the appointment of a defence counsel and does not wish to make statements without the defence counsel being present, the police may in case they do not find that the interrogation can be postponed call one of the attorneys referred to in paragraph 733 (1) of the Administration of Justice Act who have been taken on by the Ministry of Justice to act as public defence counsel. The attorney who has been called will be in charge of the task of defence counsel until the question of appointment has been decided by the court.

Furthermore, it follows form paragraph 71 of the Danish Constitution (Grundloven) that any person who is arrested shall be brought before a judge within 24 hours of his arrest unless he is released before. The accused person who is brought before the court for such "preliminary examination" must always have access to assistance from a public defence counsel and he shall be given access to talk with his defence counsel prior to the interrogation, cf. paragraph 764 (3) of the Administration of Justice Act.

In Report no. 830/1978, page 17f. it is emphasized with respect to the appointment of a defence counsel in connection with the preliminary examination "that the accused may often be in need of assistance not only during the court meeting but also prior to the meeting. It may be of essential importance also for the defence counsel for the planning of the defence to have talked with the accused prior to the court meeting. The defence counsel should therefore be informed in time for him to have the opportunity to talk with the accused and examine the reports, etc." The very appointment of a defence counsel earlier on during the period of arrest - which might be necessitated in cases which comprise serious crime - may be made by virtue of paragraph 732.

I.19 **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);**

As regards the right to contact a defence counsel, etc. reference is made to the reply to point I.18.

As regards the defence counsel's access to talk with the accused, it can be stated that the access, as referred to in the reply to point I.18, for an accused person who is brought before the court for a preliminary examination to the assistance of and consultation with a defence counsel is supplemented by the provisions of the Department of Prisons and Probation's Circular No. 220 of 19 December 1980 on the access for remand prisoners to correspondence and visits, etc. Under paragraph 12 (4) of the said Circular, the remand prisoner always has the right to have visits from his defence counsel, and paragraph 17 (3) lays down that visits by the defence counsel always are in private.

On the other hand, there are no regulations in the Administration of Justice Act or any administrative regulations to the effect that a wish from an accused person - whether the

person in question is under arrest or at large - to contact an attorney-at-law before the police interview is to be complied with. It follows from "Kommenteret Retplejelov" (the annotated edition of the Danish Administration of Justice Act), vol. 4th ed, from 1989, in Note 14 to paragraph 752 that such wish normally has to be respected. The background for not inserting a provision on this issue appears from report 622/1971, page 46, in consequence of which the Committee has doubted the advisability of including such a provision in the Act as well as other provisions regarding who an accused person should be entitled to contact because special considerations may, in exceptional cases, require a deviation from such provisions.

The Committee does not specifically define these exceptional cases but probably thinks of situations where the perpetuation of testimony is imperative for the police before the accused in the interview is given more detailed knowledge of the information available in the matter and consequently the possibility of warning any other offenders in the case or influencing witnesses. It is true that a defence counsel will not be entitled to assist the accused in destroying evidence etc. in this manner but the defence counsel could feel pressed to fail in his duty or allow himself to be taken in as described in the judgment in"Ugeskriftet for Retsvæsen 1983", page 251, about an attorney-at-law who in his capacity as defence counsel for a person arrested received 2 letters from the said person and forwarded them without any police censorship.

The consequence in this exceptional case of an accused wishing to talk in private with a defence counsel before making any statement only results in a short postponement of the interview until the perpetuation of testimony has been completed, but not that the interview is forced through without the accused having discussed the case with his defence counsel.

The right of the defence counsel by virtue of paragraph 745 to be present at the police interview does not imply any right for the accused to consult with his defence counsel on the immediate answering of questions asked. The provision does, however, not prevent a discussion between the accused and the

defence counsel as to whether the accused should use his right under paragraph 752 not to make any statements.

It should be added that pursuant to the rules of the Administration of Justice Act the defence counsel has the right to make himself acquainted with the material provided by the police. If this material may be copied without any inconvenience a copy will be sent to him. The defence counsel must not hand over the material received to the accused or any other person without the consent of the police.

When an interrogation, identification parade or other investigative measures of a similar nature are presumed to be used in evidence during the trial, the police will inform the defence counsel before this is done so as to enable him to be present. If the defence counsel cannot be informed, only investigative measures which cannot be deferred may be carried out, and the defence counsel must without delay be informed of any measures taken.

If the regard for foreign States, the security of the State or the clearing-up of the case or any third party, in exceptional cases makes this necessary, these rules may be deviated from, or the police may order the defence counsel not to pass on any information received from the police.

The defence counsel has the right to be present at the police interviews of the accused and the right to ask further questions. At request, the defence counsel must be informed of the time for these interrogations. If the accused is remanded in custody, and an order on solitary confinement has been made, the accused may not be interrogated without his defence counsel being present unless both the accused and the defence counsel give their consent.

As stated above, the accused may not consult with his defence counsel about the immediate answering of questions asked.

The court settles any dispute regarding the lawfulness of the police investigative measures and the rights of the accused and the defence counsel, including requests from the defence counsel or the accused for additional investigative measures. The decision is made at request by a court order.

The defence counsel is informed about all court meetings and is entitled to be present at these meetings. If it is not possible to inform the defence counsel, only court meetings that cannot be deferred may be held. Regarding court meetings held with a view to obtaining the prior order of the court for the carrying out of measures under parts 69 - 73 and 75b, this rule may, however, be deviated from, if the regard for foreign States, the security of the State or the clearing-up of the matter or any third party, in exceptional cases, makes this necessary. The decision is made by the court at the request of the police. The defence counsel may only pass on information received during the court meeting with the prior consent of the court.

The defence counsel is entitled to submit comments and have these briefly included in the records of the court; it is for the judge, however, to decide at which point of time during the court meeting this can take place.

Finally it may be mentioned that in cases where the police ask for the order of the court for intervention in the secrecy of communication (part 71 of the Administration of Justice Act) an attorney-at-law must be appointed for the person on which such intervention has bearing prior to the decision of the court. This attorney-at-law has the right to be informed of all court meetings regarding the case and to be present at all these meetings and to acquaint himself with the material produced by the police; likewise he must be given the opportunity to make statements.

Reference is further made to the reply to point I.20.

I.20 **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);**

The Administration of Justice Act distinguishes between partly the elected defence counsel, cf. paragraph 730 of the Administration of Justice Act, partly the appointed defence

counsel, cf. paragraph 731 of the Administration of Justice Act.

Any person charged with a crime is entitled to elect a defence counsel to assist him, cf. the fuller particulars of paragraph 730.

Under paragraph 731 of the Administration of Justice Act a public defence counsel will always have to be appointed in a number of cases unless the accused has elected his own defence counsel.

Part 91 of the Administration of Justice Act contains rules about the costs involved in criminal proceedings.

Under paragraph 1012 of the Administration of Justice Act the court will make the decision on damages for costs involved in the judgments or in connection with the order if the case is concluded without any judgment being delivered.

It is stated in paragraph 1007 (2) of the Administration of Justice Act that remuneration for the elected defence counsel does not concern the public authorities; the court may, however, in exceptional cases, when according to the particular circumstances of the case it is deemed reasonable that the accused has elected the person in question to act as defence counsel award a remuneration from the public authorities which may not exceed the amount that would have been awarded an appointed defence counsel.

The question of remuneration of an appointed defence counsel is decided by the court in accordance with the general provisions of part 91 of the Administration of Justice Act.

The main rules are that if the accused is found guilty, he is under obligation to refund the public authorities the necessary costs involved in the hearing of the case, cf. paragraph 1008 (1). If the accused is acquitted, he is not obliged to defray any costs, cf. the fuller particulars of paragraph 1010 (1).

In cases where a public defence counsel is to be appointed for the accused under paragraph 731, the appointment is made irrespective of whether the person himself is capable of paying for the defence counsel's assistance. In the first place

the remuneration is defrayed by the public authorities which are entitled to a refund by the accused at a later date according to the above provisions of Part 91 of the Administration of Justice Act.

A person in the custody of the police who does not know any attorney-at-law himself will have one of the attorneys-at-law taken on by the Ministry of Justice to be appointed as public defence counsel appointed, cf. paragraph 733 of the Administration of Justice Act.