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I. Introduction

Response to the request of 21 November 2005 from the Secretary General of the Council of Europe, regarding the effective implementation in Danish law of certain provisions of the European Convention on Human Rights.

By letter of 21 November 2005 the Secretary General of the Council of Europe has (in accordance with Article 52 of the European Convention of Human Rights) requested an explanation of the manner in which Danish law ensures the effective implementation of the provisions of the European Convention on Human Rights. In the request reference is made to recent reports suggesting that individuals, notably persons suspected of involvement in acts of terrorism, may have been apprehended and detained, or transported while deprived of their liberty, by or at the instigation of foreign agencies, with the active or passive cooperation of High Contracting Parties to the convention or by High Contracting Parties themselves at their own initiative, without such deprivation of liberty having been acknowledged.

First of all, it should be noted that pursuant to generally recognized principles of international law deprivation of liberty of persons in Denmark may only be made by Danish public authorities. No foreign authorities can perform such acts in Denmark except where international law would contain specific provisions to that effect. This fundamental rule of international law is also reflected in Danish constitutional principles. Any international agreement providing exception to this principle would require a fundamental constitutional scrutiny to determine if it would be in conformity with the Danish Constitution and would – if it exceptionally would be considered constitutionally possible – in any case require approval by the Danish Parliament (Folketinget).

Furthermore, it should be noted that the wording of the request is very broad and that Danish legislation contains numerous rules concerning

deprivation of liberty that appear not to be relevant in the context of the request (for instance rules governing when psychiatric patients can be deprived of their liberty). For this reason the Danish Government has tried to identify areas of the Danish legislation that appear to be relevant when answering the part of the request that concerns Danish legislation. In this connection the Danish Government has identified the rules relating to deprivation of liberty under Danish criminal procedural law, the rules relating to extradition, the rules relating to unlawful deprivation of liberty, the rules relating to acts of violence and torture and the rules relating to complicity as relevant. Furthermore, the Danish Government has identified the Danish rules on complaints against the police in connection with criminal acts committed by police personnel on duty and the general rules on investigation, indictment and trial in connection with criminal offences as relevant. Finally, the Danish Government has identified the Danish rules concerning compensation in consequence of criminal proceedings and the rules relating to crime victims' right to compensation as relevant.

In cases where a person within the Danish territory is charged with a crime, whether this crime is committed abroad or within the Danish territory, Danish authorities must adhere to the rules on deprivation of liberty under Danish criminal procedural law. The rules that are contained in the Administration of Justice Act can be summed up as follows:

II. *Arrest*

Under Danish criminal procedural law, coercive measures may only be taken in case of an offence or a suspected offence. Certain coercive measures may be taken even though charges has not yet been preferred, whereas other coercive measures, such as pre-trial detention, imply that the police has preferred a charge against the person against whom the measure is aimed.

Pursuant to Section 755 (1) of the Administration of Justice Act, any person who is reasonably suspected of a criminal offence subject to public prosecution may be arrested by the police if arrest is deemed necessary to prevent further criminal offences, to secure the person's presence for the time being or to prevent his association with others. However, no arrest may be made if, in the nature of the case or the circumstances in general, deprivation of liberty would be a disproportionate measure, cf. section 755 (4).

The phrase 'reasonably suspected' implies that the suspicion must be better founded than the certainty required to prefer a charge. The suspi-

cion must normally be based on certain specific grounds, such as possession of items originating from a crime or identification by a witness.

An arrest shall be made as leniently as allowed by the circumstances, cf. Section 758 of the Administration of Justice Act, and a detainee shall not be subjected to other restrictions of his liberty than those required by the purpose of the detention and considerations of order.

Pursuant to Section 760 of the Administration of Justice Act, any person who is arrested shall be released as soon as the grounds for the arrest have ceased to apply. An arrested person shall be brought before a judge within 24 hours of the arrest if he has not been released before.

Section 760 of the Administration of Justice Act is worded as follows:

Section 760
"Any person who is arrested shall be released as soon as the grounds for the arrest have ceased to apply. The hour of his release shall appear from the report.
(2) An arrested person shall be brought before a judge within 24 hours of the arrest if he has not been released before. The hour of the arrest and arraignment shall be recorded in the court records.
(3) If an arrest has been made concerning a criminal offence for which custody is not applicable, the prisoner shall be released before the closing of the court hearing.
(4) If an arrest has been made for a criminal offence for which custody is applicable, or in pursuance of section 756 hereof, and the court finds that the prisoner shall not be released forthwith, the court, if it finds that on the basis of the insufficiency of the information available, or if for some other reason it finds that it cannot immediately decide on the question of custody, may decide that he shall remain under arrest until further notice. The order of the court shall contain the circumstances resulting in the remand. During the remand, section 765 hereof shall apply correspondingly. The accused shall have an opportunity to state any information that he wishes to be provided.
(5) If he has not been released before, the accused shall be brought before a judge again, who within 3 x 24 hours after the end of the first court hearing shall decide whether the accused shall be released or detained in custody or be subjected to measures in accordance with section 765 hereof.

III. Remand in custody

The Danish rules on remand in custody are laid down in Part 70 of the Administration of Justice Act.

According to the provisions of Part 70 of the Administrations of Justice Act (Sections 762-779), a person charged may only be held in pre-trial detention by court order. No one may be held in pre-trial detention for a period exceeding four weeks at a time. Furthermore, the measure of pre-trial detention may not be applied if the deprivation of liberty would be disproportionate to the disturbance so caused to the life of the person charged, the importance of the case and the sanction to be expected if the person charged is found guilty (the principle of proportionality)."

Sections 762-779 of the Administration of Justice Act are worded as follows:

Section 762

"A person charged can be remanded in custody where there is a reasonable suspicion that he has committed an offence subject to public prosecution if, under the law, the offence may result in imprisonment for one year and six months or more, and where:

(i) according to the information obtained on the person charged, there are definite grounds to presume that he will evade prosecution or enforcement; or

(ii) according to the information obtained on the person charged, there are definite grounds to fear that, if at large, he will commit new crime of the nature mentioned above; or

(iii) due to the circumstances of the case, there are definite grounds to presume that the person charged will obstruct prosecution, in particular by removing clues or warning or influencing other persons.

(2) A person charged may also be remanded in custody when there are strong grounds for suspecting that he has committed:

(i) an offence subject to public prosecution which, under the law, may result in imprisonment for six years or more, and it is deemed necessary for law enforcement reasons, according to the information obtained on the gravity of the offence, that the person charged is not at large; or

(ii) a violation of section 119(1), section 123, section 134 a, sections 244 to 246, section 250 or section 252 of the Criminal Code if, according to the information obtained on the gravity of the offence, the offence can be expected to result in a sentence of imprisonment for not less than 60 days, and it is deemed necessary for law enforcement reasons that the person charged is not at large.

(3) Custody cannot be applied if the offence can be expected to result in a sentence of a fine or imprisonment for a period not exceeding 30 days, or if the deprivation of liberty would be disproportionate to the inconvenience so caused to the life of the person charged, the importance of the case and the legal consequence to be expected if the person charged is found guilty."

Section 763

"Where there is reasonable suspicion that a person has violated terms fixed in a suspended sentence in accordance with Part 7 or Part 8 of the Danish Criminal Code, in a conditional pardon, or release on parole, he may be detained in custody, if the court finds that the violation is of such a nature that there is a question of enforcement of a prison sentence or commitment to an institution; and

(i) if on the basis of the information available about the person there are definite grounds to assume that he will evade the consequences of the violation of the terms; or

(ii) if on the basis of the information available about the circumstances of the accused there are definite grounds to believe that, if set free, he will continue to violate the terms, and considering the nature of the violations, it is deemed necessary to detain him in custody to prevent such violations.

(2) This shall apply also if there is reasonable suspicion that a person has violated provisions fixed in a judgment or in an order in accordance with sections 68, 69, 70, or 72 of the Danish Criminal Code."

Section 764

"Upon the request of the police, the court shall decide whether an accused shall be taken into custody.

(2) An accused who is present in this country shall be questioned in court about the charge against him and shall have an opportunity to argue his case before the decision is made, unless the court finds that for special reasons the arraignment must be considered useless or harmful to the accused. If an order about custody has been made without the accused having had an opportunity to argue his case in court, he shall be brought before the court within 24 hours after he has set foot in this country, or the obstacle for his arraignment has ceased.

(3) In the court hearing held to decide on the question of custody, the accused shall have access to assistance from a defence attorney. If the accused is present in court, he shall be given an opportunity to consult with the defence attorney before he is questioned.

(4) The ruling of the court is made by way of an order. If the accused in taken into custody, the order shall contain the specific circumstances that form the basis for the court's decision that the requirements of custody have been met. If the accused is present in court, he shall be notified immediately about the provisions on custody that the court has applied, and about the grounds for custody mentioned in the order, and about his right to appeal. A transcript of an order under which an accused is taken into custody shall be handed over to him upon request."

Section 765

"Where the conditions to apply custody are met, but if the purpose of custody may be obtained by less radical measures, the court makes an

order about such measures in lieu thereof subject to the consent of the accused.
(2) The court may thus decide that the accused shall
(i) subject to supervision fixed by the court;
(ii) comply with specific conditions concerning his place of dwelling, work, spending of leisure time, and association with specific persons.
(iii) placing at an appropriate home or institution;
(iv) subject to psychiatric treatment or treatment against addiction to alcohol, drugs, etc., if necessary in a hospital or in a special institution;
(v) report at the police station at fixed intervals;
(vi) deposit his passport or other identification documents;
(vii) provide financial security by way of a money-bond to be determined by the court to secure his presence at court hearings and enforcement of a judgment, if applicable.
(3) In case of decisions in pursuance of subsection (1) and (2) hereof, the provisions of section 764 hereof shall apply correspondingly.
(4) If the accused evades appearance in court or enforcement of the judgment, the court, after those whom the decision concerns have, as far as possible, been given an opportunity to speak, may by an order decide that a money-bond provided in pursuance of subsection (2)(vii) has been forfeited. Forfeited money under a bond shall fall to the Treasury, provided always that the victim's claim for damages shall be covered from the amount. Under special circumstances, the court may for up to six months after the order decide that forfeited money under a bond that has fallen to the Treasury, shall be repaid in part or in whole.
(5) After negotiation with the Minister for Social Affairs and the Minister of Health, the Minister of Justice may lay down rules about granting permission for leave, etc., to persons who are placed in an institution or a hospital, etc., in pursuance of subsection (2)(iii) or (iv), if no decision is made on this subject otherwise. In this connection, the Minister of Justice may determine that decisions made in pursuance of these rules may not be brought before a higher administrative authority."

Section 766
"The court may at any time undo orders made by it about custody or measures in lieu of custody."

Section 767
"Apart from cases where the person charged is not present in this country, the order shall fix a term for the length of custody or measure. The term must be as short as possible and may not exceed four weeks. The term can be extended, but not by more than four weeks at a time. The extension shall be made by order, unless the person charged consents to extension. Until a judgment is delivered by the court of first instance, the rules of section 764 shall apply correspondingly to court hearings and orders about extension of the term of custody. If a person charged who

has been remanded in custody or subjected to another detention measure waives his right to be present in court, or if the court finds that his presence in court will involve disproportionate difficulties, his presence may be dispensed with.
(2) If the term fixed under subsection (1) hereof expires after commencement of the trial, the custody or measure shall continue without any further extensions until judgment is delivered in the case. Upon expiry of the term fixed prior to commencement of the trial, the accused may request the court to terminate custody or any measure in lieu according to section 766 or 768. If, upon expiry of the term, the accused requests the court to terminate custody or any measure in lieu, the court shall decide such request within seven days. If the court does not grant the request, the accused can only make a new request after 14 days following the court's decision. Any question of a possible termination of custody imposed under section 762(2) must be decided by a judge or a division not involved in the trial, cf. section 60(3), unless one of the conditions in the second sentence of section 60(3) is satisfied. By court decision, a request from the accused can be considered in writing if the decision is made by a judge or division not involved in the trial.
(3) If an extension order extending the term of custody or other detention measure beyond three months is appealed, the appeal shall be heard orally upon request. When an appeal has been heard orally once, the superior court shall decide whether a subsequent request for an oral hearing shall be granted. The provision in the last sentence of subsection (1) hereof shall apply correspondingly."

Section 768
"Detention in custody or measures in lieu hereof, shall if necessary be terminated by a court order if prosecution is dropped or the conditions for instituting proceedings no longer exist. If the court finds that the necessary speed has not been used to proceed with the matter and that custody or other measures are not reasonable, the court shall terminate the custody or measure."

Section 769
"An order about custody or other measures shall have effect only until the matter is decided in a trial. Upon request, the court shall after the decision make an order about whether the defendant awaiting an appeal, if applicable, or until enforcement can be implemented, shall be taken into custody or remain in custody or be subjected to measures in lieu hereof. In the decision on this, the provisions of sections 762, 764-766, and 768 shall apply correspondingly, unless the defendant accepts to remain in custody or to be subjected other measures. If the accused has been detained in custody or been subjected to other measures before the trial, but the court does not find that there is any basis to continue custody or other measures, the court may upon request of the prosecution

decide that detention in custody or other measures shall be in force until a decision on the question of custody is made by the superior court before which the case or the question of custody has been brought.
(2) If the decision made in the case is brought before a higher court, or if in pursuance of subsection (1) hereof, a decision is made to apply custody or other measures after the decision, the question about the continued application hereof shall as soon as possible be submitted to the superior court before which the decision is brought. The rules of section 762, 764(1), (3), and (4), 765, 766, 767(1)(i-iv), and section 768 shall apply correspondingly to the superior's court decision on the question of custody or other measures."

Section 770
"A remand prisoner is subject to the restrictions only that are necessary to secure the purpose of the custody or to maintain order and security in the remand prison.
(2) Remand prisoners shall be placed in remand prisons (local prisons), to the extent possible at the place where the criminal proceedings are pending. Placing outside a remand prison may take place for health reasons or in pursuance of section 777 hereof."

Section 770a
"Upon request of the police, the court may decide that a remand prisoner shall be excluded in whole or in part from association with other inmates (solitary confinement), where:
(i) custody was decided pursuant to section 762(1)(iii); and
(ii) there are definite grounds to presume that custody is not in itself sufficient to prevent the detainee from obstructing prosecution, including by influencing other persons charged through other inmates or by influencing others by threats or in another similar way."

Section 770b
"Solitary confinement may only be implemented or continued if:
(i) the purpose cannot be obtained by less radical measures, including by placing the detainee in a local prison other than that in which specific other inmates are placed, or in any other way preventing the detainee from associating with such inmates, or by imposing check of letters and visits or a visit ban;
(ii) the measure, including the particular burden that it may cause because of the detainee's young age, physical or mental infirmity or other personal circumstances, is not disproportionate to the importance of the case and the legal consequence to be expected if the detainee is found guilty; and
(iii) the investigation is carried out at the particular speed required at custody in solitary confinement, including by making use of the possibilities of securing evidence under section 747."

Section 770c
"If the provisional charge concerns an offence which, under the law, cannot result in imprisonment for four years, solitary confinement may not occur for a continuous period of more than four weeks.
(2) If the provisional charge concerns an offence which, under the law, can result in imprisonment for four years or more, but not imprisonment for six years, solitary confinement may not occur for a continuous period of more than eight weeks.
(3) If the provisional charge concerns an offence which, under the law, can result in imprisonment for six years or more, solitary confinement may not occur for a continuous period of more than three months. The court may decide in exceptional cases that solitary confinement shall be extended beyond three months if continued solitary confinement is required for essential considerations of investigation, irrespective of the length of the period of solitary confinement.
(4) If the detainee is under 18 years of age, solitary confinement may not in any case occur for a continuous period of more than eight weeks."

Section 770d
"Court decisions on solitary confinement shall be made by separate order. If the court makes a decision on solitary confinement, the court must state in its order the specific circumstances supporting its finding that the conditions of section 770a to 770c on solitary confinement or continued solitary confinement are satisfied.
(2) In court decisions on solitary confinement, the rules of section 764(2) to (4), section 766, section 767(1) and sections 768 and 769 shall otherwise apply correspondingly. At implementation of solitary confinement, the first term of the measure may not exceed two weeks. If the detainee is under 18 years of age, the term of solitary confinement may not be extended by more than two weeks at a time."

Section 770e
"If solitary confinement is extended beyond eight weeks, the appeal shall be heard orally upon request. If the decision on solitary confinement is upheld, subsequent appeals of continued solitary confinement shall also be heard orally upon request if, by the order appealed, the solitary confinement is extended beyond eight weeks since the last oral hearing of an appeal of extended solitary confinement. In other cases the appellate court shall decide whether a request for an oral hearing shall be granted. The provision in the last sentence of section 767(1) shall apply correspondingly."

Section 771
"A remand prisoner is allowed to receive visits to the extent allowed by the rules governing order and security in the remand prison. The police

may, considering the purpose of the detention in custody, oppose to visits paid to the remand prisoner or may demand that visits shall be supervised. If the police deny visits, the remand prisoner shall be notified of this, unless the judge makes an order otherwise for the purpose of the investigation. The remand prisoner may demand that the police's refusal of visits or demands for supervision be brought before the court for a decision. The remand prisoner shall always have the right to unsupervised visits from his defence attorney.
(2) When special circumstances speak in favour thereof, the management of the institution may with the consent of the police grant remand prisoners leave with escort for a short period."

Section 772
"A remand prisoner has a right to receive and send letters. The police can look through letters before receipt or mailing. The police shall hand over or send the letters as soon as possible, unless the contents could be damaging to the investigation or maintenance of order and security in the remand prison. If a letter is detained, the question of whether the detention should be maintained shall be brought before the court immediately. If the detention of mail is upheld the sender shall be notified immediately unless, for the purpose of the investigation, the judge makes a decision otherwise.
(2) A remand prisoner has the right to unsupervised exchange of correspondence with his defence attorney, the Minister of Justice, the Director of the Prison Service and the Parliamentary Ombudsman. The Minister of Justice may lay down rules about remand prisoners' right to send sealed letters to other public authorities or individuals."

Section 773
"If the police decide that out of regard to the purpose of the custody detention, other restrictions shall be made with regard to a remand prisoner's rights, the remand prisoner may demand that the question of maintenance of the restrictions be brought before the court for a decision."

Section 774
"Neither the staff of the institution or others are not allowed to carry out any kind of investigation concerning remand prisoners."

Section 775
"Disciplinary punishment can be imposed on remand prisoners in the form of confinement in a special cell for up to two weeks or seizure of wage payments. The said disciplinary punishments may be used together.
(2) The provisions of sections 65 and 66 of the Act on Enforcement of Sentences, etc., on the use of handcuffs and security cell shall apply correspondingly to remand prisoners."

Section 776

"The Minister of Justice shall lay down detailed rules on the treatment of remand prisoners. As regards detainees held in solitary confinement by court order, the Minister of Justice shall lay down specific rules on more staff contact, extended visiting rights, special right to individual tuition and certain types of work as well as offers of regular and long consultations with a priest, doctor, psychologist or a similar person. The Minister of Justice shall also lay down rules on other assistance granted to remand prisoners to limit the occupational, social and personal inconveniences caused by the custody."

Section 777

"A remand prisoner may, subject to court approval, be placed in an institution for persons serving a prison sentence or safe custody, or in a hospital, etc., cf. sections 68 and 69 of the Criminal Code, if the remand prisoner himself, the public prosecutor and the management of the institution consent thereto. If required for health reasons or considerations for the safety of others, such placement may exceptionally be effected without the remand prisoner's consent. In the institution, the remand prisoner must be treated according to the rules applicable to persons placed there by judgment. The remand prisoner may not leave the institution without court approval, except in the cases referred to in section 771(2)."

Section 778

"Remand prisoners' complaint of prison personnel's conduct shall be submitted to the prison governor in question (local prison governor) or to the Directorate of the Prison Service. If the complainant does not succeeded in his claim or if no final decision is made within two weeks of submission of the complaint, the complaint may be brought before the court at the venue of the remand prison (local prison).

(2) The court may reject to initiate an inquiry if the complaint is found obviously unfounded, if it concerns matters of insignificant importance, or if it is filed more than four weeks after the incident complained of took place. The court's inquiry shall be made in accordance with the rules of section 1019b, section 1019 e(1), and (3)-(5), section 1019f ((2), and section 1019 g. The judge shall make a decision on an interview with the complainant and witnesses and procurement of statements from experts and other evidence.

(3) When is inquiry is finished, the court shall submit a report on the findings which shall be sent to the complainant, to the party whom the complaint concerns, and to the prison governor (local prison governor), and to the Directorate of the Prison Service."

Section 779

"(repealed)"

IV. Extradition

A foreign authority that wishes a person within the Danish territory, who abroad is charged with a crime, detained on remand with a view to extradition from Denmark, must present the Danish authorities with an extradition request. In such cases the Danish authorities must act according to the Danish Extradition Act (Consolidated Act No. 833 of 25 August 2005). The Danish authorities can only extradite the person concerned if the conditions in the Extradition Act are met.

According to Section 1 of the Danish Extradition Act a person, who abroad is charged with a crime or convicted for an offence, can be extradited from Denmark. However the Act does not apply to extraditions from Denmark when the special rules on extradition between the Nordic states are applicable.

The basic condition for extradition to states *outside* the European Union appears from sections 2-10. Section 2 and 2a has the following wording:

Section 2
"(1) The Minister of Justice, acting under an agreement with a state outside the European Union, may decide that a Danish national can be extradited for prosecution in that state,
if the person in question has in the two years preceding the criminal act resided in the state seeking his extradition and the act constituting the offence for which the extradition is sought is punishable under Danish law by a period of imprisonment of at least one year, or
if the act is punishable under Danish law by a period of imprisonment of longer than four years.
(2) If, in relation to a state outside the European Union, one of the agreements specified in paragraph 1 does not apply, the Minister of Justice may adopt a decision on the extradition of a Danish national for prosecution if the conditions in paragraph 1 are otherwise met and this is indicated by special law-enforcement reasons."

Section 2a
"An alien can be extradited for prosecution or execution of a judgment in a state outside the European Union if the act is punishable under Danish law by a period of imprisonment of at least one year. If the act is punishable under Danish law by a shorter period of imprisonment, the person can nevertheless be extradited if an agreement to that effect has been concluded with the state in question."

According to Section 3 extradition for prosecution may only be decided, if a decision on arrest or imprisonment has been made for the concerned act in the foreign state. Extradition for the execution of a judgment can, unless otherwise specified in the agreement with the foreign state, only take place, 1) if the judgement holds a term of imprisonment for minimum 4 months or 2) if the convicted person according to the judgement or a decision made under the provisions of the judgement, is to be placed in a institution for a period that can amount to 4 months.

The basic condition for extradition to *Member States of the European Union* appears from Section 10a, which has the following wording:

Section 10a

"(1) The extradition of persons for prosecution or execution of a judgment in a Member State of the European Union for an offence that, under the law of the Member State that has requested the extradition, is punishable by imprisonment or a detention order for a period of at least three years can be effected on the basis of a European arrest warrant although a corresponding act is not punishable in Danish law. In the case of the following acts:

(1) participation in a criminal organisation,
(2) terrorism,
(3) trafficking in human beings,
(4) sexual exploitation of children and child pornography,
(5) illicit trafficking in narcotic drugs and psychotropic substances,
(6) illicit trafficking in weapons, munitions and explosives,
(7) corruption,
(8) fraud, including that affecting the financial interests of the European Communities,
(9) laundering of the proceeds of crime,
(10) counterfeiting currency, including of the euro,
(11) computer-related crime,
(12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
(13) facilitation of unauthorised entry and residence,
(14) murder, grievous bodily injury,
(15) illicit trade in human organs and tissue,
(16) kidnapping, illegal restraint and hostage-taking,
(17) racism and xenophobia,
(18) organised or armed robbery,
(19) illicit trafficking in cultural goods, including antiques and works of art,
(20) swindling,
(21) racketeering and extortion,
(22) counterfeiting and piracy of products,
(23) forgery of administrative documents and trafficking therein,

(24) forgery of means of payment,
(25) illicit trafficking in hormonal substances and other growth promoters,
(26) illicit trafficking in nuclear or radioactive materials,
(27) trafficking in stolen vehicles,
(28) rape,
(29) arson,
(30) crimes within the jurisdiction of the International Criminal Court,
(31) unlawful seizure of aircraft/ships,
(32) sabotage.
(2) Persons can be extradited for prosecution in a Member State of the European Union for acts that are not covered by paragraph 1 under a European arrest warrant if the criminal act in the Member State renders the person liable to a period of imprisonment of at least one year and a corresponding act is punishable under Danish law.
(3) Persons can be extradited for execution of a judgment in a Member State in the European Union for acts that are not covered by Section 1 under a European arrest warrant if the judgment has sentenced the person to prison or a detention order of not less than four months and the corresponding act is punishable under Danish law.
(4) A person can be extradited for prosecution or execution of a judgment for a number of offences although the conditions in paragraphs 1-3 are met in the case of only one of those offences."

According to the Danish Extradition Act decisions on whether a person can be extradited from Denmark or not is made by the Danish Ministry of Justice. If the Ministry of Justice finds the conditions for extradition fulfilled and decides to extradite the person concerned, the latter can request the lawfulness of the Ministry's decision examined by the courts.

V. Unlawful acts of deprivation of liberty and complicity

As it follows from the above within the Danish territory only the Danish Ministry of Justice is competent to decide on the extradition of a person with a view to prosecution in another country (the decision can be tried by the courts). Furthermore, within the Danish territory only the Danish police can arrest a person who on reasonable grounds is suspected of a criminal offence indictable by the state. In this context it should be noted that the Danish Security Intelligence Service (PET) is part of the Danish police and that PET in relation to arrest and detention on remand is subject to the same legislation as other parts of the Danish police.

There are a few exceptions to the aforementioned rule on the authority to arrest, one being section 755(2) of the Administration of Justice Act

according to which the same authority belongs to any person who comes upon someone during or with immediate connection to the perpetration of a criminal offence that is indictable by the State. In these cases the detainee must as soon as possible be handed over to the police with information about the time and grounds for the arrest. Finally, within the Danish territory only the Danish Courts can, when a number of conditions are met, decide to detain on remand an accused.

Thus, a deprivation of liberty (arrest, detention on remand) that takes place within the Danish territory with a view to prosecution abroad would be unlawful according to Danish law if it was unacknowledged by the Danish authorities and thus had taken place without the criminal procedural rules in the Administration of Justice Act being observed.

Unlawful deprivation of liberty is a criminal offence cf. Section 261 of the Danish Criminal Code whether the deprivation of liberty is conducted by a private person, police personnel or by an official of a foreign agency.

Section 261 of the Criminal Code is worded as follows:

Section 261
"Any person who deprives another person of liberty shall be liable to a fine or imprisonment for any term not exceeding 4 years.
(2) If the deprivation of liberty has been effected for the purpose of gain or if it has been of long duration or if it consisted any person being unlawfully kept in custody as insane or mentally deficient or being enlisted for foreign military service or being taken into captivity or any other state of dependence in any foreign country, the penalty shall be imprisonment for any term not exceeding 12 years."

VI. Acts of violence and torture

Acts of violence and torture are also criminal offences cf. Sections 244-247 of the Criminal Code. The primary provisions in this context are worded as follows:

Section 244
"Any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to imprisonment for any term not exceeding 3 years."

Section 245
"Any person who commits an assault of a particularly heinous or brutal or dangerous character or who is guilty of cruelty shall be liable to im-

prisonment for any term not exceeding 6 years. If such an assault has caused significant damage to another person, or to the health of another person, it shall be considered a particularly aggravating circumstance.
(2) Any person who, in circumstances other than those covered by Subsection *(1)* above causes damage to another person or to the health of another person shall be liable to imprisonment for any term not exceeding 6 years."

VII. Instigation, aiding and abetting

According to Danish law complicity to a criminal offence, including unlawful deprivation of liberty and acts of violence is a criminal offence. This follows from section 23 of the Criminal Code which states that the penalty in respect of an offence shall apply to any person who has contributed to the execution of the wrongful act by instigation, advice or action. The punishment may be reduced in certain cases, but the accomplice can only avoid punishment altogether if he under certain conditions prevents the completion of the offence or takes steps which would have prevented its completion had it not, without his knowledge already been unsuccessful or averted in some other way.

VIII. Remedies in connection with unlawful deprivation of liberty committed by police-trained personnel while on duty

The body of rules for processing complaints against police personnel etc. consists of three parts in the Danish Administration of Justice Act. Part 93 b and Part 93 c regulate processing of complaints against police officers' conduct and processing of criminal proceedings against police officers and Part 93 d concerns the Police Complaints Board. A copy of the relevant provisions in English is enclosed.

The scheme for processing complaints against police officers entered into force on 1 January 1996. The most important element of the scheme is that the Regional Public Prosecutors will deal with complaints regarding the conduct of police officers, investigate criminal cases involving police officers and decide which charge(s), if any, should be brought. The rules apply to police personnel with police authority, i.e. police-trained personnel and the police attorneys. The rules apply only to incidents that have occurred while a police officer is on duty. The decision of whether an incident has occurred while a police officer was on duty is based on a specific assessment. Basically, the Regional Public Prosecutor will handle all aspects of inquiries and investigation, so that police personnel will only be involved in the consideration of these cases

to a very limited extent. Another important element is the introduction of Police Complaints Boards. The Board consists of one lawyer and two laymen, and it supervises the Regional Public Prosecutor's processing of cases comprised by the scheme. The scheme is limited to complaints about conduct and criminal proceedings involving police personnel. A third element of the scheme is an extended access to assign a lawyer. This applies both to the complainant and to the officer complained against in cases of complaints about conduct, and to the injured party and the police officer in criminal cases involving police personnel.

Complaints about the conduct of police personnel, criminal proceedings involving police officers, and cases where the Regional Public Prosecutor initiates investigations if a person has died or has been seriously injured as a consequence of police interference, or while the subject was in police custody are comprised by the scheme.

The enclosed publication in English "Police Complaints Board Cases in Denmark" contains a thorough description of the rules for handling complaints concerning the police. It was drafted in 2002, but the rules have not been changed significantly since then. Furthermore the relevant parts of the Administration of Justice Act in English are enclosed.

IX. Remedies in connection with unlawful deprivation of liberty committed by police-trained personnel while off-duty, by officials of foreign agencies and by private persons

Criminal offences, including unlawful deprivation of liberty, committed by police-trained personnel while off-duty, private persons and officials of foreign agencies are subject to the general rules on investigation, indictment and trial contained in the Administration of Justice Act. It follows from the said act that reports about criminal offences are submitted to the police and that the police upon report or by own virtue initiates investigation, when there is reasonable suspicion that a criminal offence indictable by the state has been committed. Furthermore, it follows from the act that the purpose of the investigation is to clarify if the conditions for imposing criminal liability or other criminal legal consequence exist and to procure information for the disposition of the case, as well as to prepare the case for trial proceedings. It is also stated that the police, as soon as possible prepares a report about the undertaken interrogations and about other investigative measures unless such information exists in another form. Apart from these and other general provisions the act contains detailed provisions on a number of different investigative measures, such as interrogation, invasions of the secrecy of communication etc., search, seizure and disclosure. The act also contains provisions

on the procedures in relation to indictment and on the procedures to be followed during the trial. Unfortunately, an English copy of these provisions does not exist, but a Danish copy of the provisions is enclosed (Consolidated Act No. 910 of 27 September 2005 and Act No. 1398 of 21 December 2005 amending the before mentioned consolidated act).

X. Compensation in consequence of criminal proceedings

According to section 1018a of the Administration of Justice Act, a person, who has been arrested or detained on remand in the course of criminal proceedings and in accordance with criminal procedural law, has a right to compensation for the damage he has suffered in this connection, if charges are dropped or if he is acquitted, without this being due to him being irresponsible on account of mental illness. Compensation is awarded for economical damage and for damage for pain and suffering, disruption or destruction of profession and other circumstances. Even if the abovementioned conditions for awarding compensation are not met, compensation can be awarded if the deprivation of liberty that has taken place during the proceedings is not proportional to the result of the prosecution, or if it is deemed reasonable for other reasons. Compensation can be reduced or denied if the accused has caused the measures himself.

XI. Compensation to victims of violations of the Criminal Code

The Danish state awards compensation and damages for personal injury inflicted by violations of the Criminal Code where any such violation is committed within the Danish territory. Please find enclosed in English a copy of the Consolidated Act No. 688 of 28 June 2004 on state compensation to victims of crime.

XII. Immunity

The competence of a state to exercise jurisdiction within its own territory is limited by inter alia the rules of international law concerning immunity.

In Denmark the rules concerning immunity are not regulated by means of explicit legislation. Instead Section 12 of the Danish Criminal Act provides that the application of the provisions in the Criminal Act shall be subject to the applicable rules of international law. This implies, that Denmark in accordance with her international law obligations cannot

take legal proceedings against criminal activity committed by a person or an entity that enjoys immunity.

In accordance with the Vienna Convention of 1962 on Diplomatic Relations, diplomatic agents enjoy immunity from the criminal jurisdiction of the receiving state. Moreover, Heads of States and other persons holding special positions of trust within a State enjoys immunity in accordance with customary international law. As a consequence of her international law obligations, Denmark would not under the Danish Criminal Act be able to prosecute a person, which enjoys immunity.

If a person, who does not enjoy immunity, commits an offence within the territory of Denmark he would be subject to the rules of the Danish Criminal Act, which as explained above contains rules that *inter alia* makes it an offence to deprive others of their liberty.

XIII. Unlawful deprivation of liberty during the period from 1 January 2002 until the present

The Secretary General has requested an explanation as to whether, in the period running from 1 January 2002 until the present, any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency.

The Danish Government has no knowledge of any such cases of unlawful deprivation of liberty.

XIV. Official investigation

Regarding the request for providing information on whether any official investigation is under way and/or any completed investigations, the Danish Government has not instigated an official investigation.

This decision should be seen in strict connection with the fact that all relevant information has already been offered by the Danish Government during several meetings in the Foreign Affairs Committee of the Parliament, Parliamentary debates and through the written answers to the large amount of Parliamentary questions that have been posed on this matter.