ARTICLE1

I. GENERAL OBSERVATIONS

This is the fifth periodic report submitted by Denmark in pursuance of article 40 of the International Covenant on Civil and Political rights. The report is drawn up in accordance with the consolidated guidelines for State reports under the Covenant, doc. CCPR/C/66/GUI/Rev.2. It deals with changes in legislation and administrative practise etc. relating to the material provisions of the Covenant since the submission of Denmark's fourth periodic report, doc. CCPR/C/DNK/99/4, in December 1998.

The report should be read in continuation of Denmark's fourth periodic report to which reference is also made regarding issues where no significant developments have taken place. Reference is also made to Denmark's periodic reports to other UN treaty bodies where relevant as well as to the general description in the Core Document on Denmark, HRI/CORE/1/Add.58.

The report has been compiled and edited by the Ministry of Foreign Affairs on the basis of contributions from the relevant ministries and agencies of the Government of Denmark. Separate annexes are appended regarding implementation of the Covenant in Greenland and the Faeroe islands respectively. They have been drafted in cooperation with the Home Rule Governments.

For further information on Danish legislation against terrorism, please refer to Denmark's reporting to the Counter Terrorism Committee.

II. INFORMATION RELATING TO SPECIFIC PROVISIONS OF THE COVENANT

Article 1

THE GREENLAND HOME RULE ARRANGEMENT

Greenland is a geographically separate and well-defined part of the Danish Realm covering an area of 2,175,600 square kilometers. As of 1 January 2006, the total population of Greenland amounted to

56,901 of whom 50,397 or 89% were born in Greenland and 6,504 were born outside Greenland. According to Statistics Greenland, 6,030 of the persons born outside Greenland were born in Denmark. January 2006 figures show that 13,130 born in Greenland lived in other parts of the Realm. The population of Greenland is almost exclusively made up of an indigenous people with a language and culture distinct from the Danish.

The Greenland Home Rule Arrangement was established by Act no. 577 of 29 November 1978 relating to Greenland Home Rule. Before the Home Rule Act entered into force on 1 May 1979, a consultative referendum on it was held in Greenland on 17 January 1979. Of the votes cast, 70.1% were for and 25.8% against the introduction of Home Rule.

In pursuance of Section 1 of the Act, Greenland is a separate community within the Kingdom of Denmark. At the request of the public authorities of Greenland, Denmark in 1997 ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. This Convention applies to the indigenous people of Greenland. By ratifying the Convention the Danish Government declared that the Home Rule Act for Greenland fulfils the obligations of the Convention.

Together with the Danish Constitutional Act, the Home Rule Act of 1978, which is based on an assumption that national solidarity would be maintained, defines Greenland's constitutional position in the Kingdom of Denmark. In pursuance of the Danish Constitutional Act, two Members of the Danish Parliament (Folketinget) are elected in Greenland.

The Home Rule authorities in Greenland consist of an elected assembly, the Greenland Parliament (Landstinget), and an administration run by the Greenland Home Rule Government (henceforth the Government of Greenland) (Landsstyret). The Home Rule Act does not contain any precise rules on the composition of these bodies. It leaves it to the Government of Greenland itself to adopt the relevant provisions.

The Home Rule Act recognizes the Greenlandic language as the principal language. The Danish language must also be taught thoroughly. Both languages may be used in public affairs. In 1985 a separate Greenland flag was recognized by an Act.

Possibilities for the Transfer of Power to the public authorities of Greenland and Subsidy Financing

The Home Rule Act's schedule of fields of affairs that may be taken over by the public authorities of Greenland has now been almost exhausted. The transfer of the health service in 1992 was the last major transfer of a field of affairs. However, there are still sub-fields within the broad definitions of fields in the schedule to the Home Rule Act, which may be transferable, for example working environment legislation.

The Home Rule Act is based on the principle that legislative power and the power to make appropriations must go hand in hand, but also with possibilities for taking over fields of affairs, partly for own financing and partly with State subsidy financing.

When fields of affairs are taken over with a State subsidy (in pursuance of Section 5 of the Home Rule Act), the subsidy is fixed by negotiation between the Danish Government and the Government of Greenland and on the basis of the expenses defrayed by the State for the tasks in question. The takeovers are based on Acts passed by the Danish Parliament, which define the overall framework for the field in question. Under these framework Acts, the Greenland public authorities have the regulatory and administrative power in these fields.

In these fields financed by subsidies, the Danish public authorities retain overall responsibility and the Minister is responsible for ensuring that the Greenland public authorities observes the frameworks established in the concrete Enabling Act. On the other hand, the Minister's responsibility goes no further than this.

The annual block subsidies are paid as one subsidy to co-finance the fields taken over under Section 5 of the Home Rule Act. Within the framework of the Enabling Act by which a field of affairs is transferred to the public authorities of Greenland, the Greenland public authorities thus have considerable freedom to prioritize their tasks as they wish.

When fields of affairs are taken over without a State subsidy (in pursuance of Section 4 of the Home Rule Act), this is based on the Greenland public authorities' decision to that effect. In these fields, the Greenland public authorities take over legislative responsibility and the administrative powers, while also taking over the expenses associated with the field of affairs (self-financing). The power to make appropria-

tions has passed to the Greenland public authorities and there is, therefore, no Danish ministerial responsibility in these fields.

In connection with the implementation of the Home Rule Act, it was also assumed that fields other than those stated in the schedule to the Home Rule Act could be transferred to the Greenland public authorities following agreement between the Danish public authorities and the Government of Greenland if future developments made this relevant.

The Act (Section 7) thus allows the Danish public authorities, after negotiation and with the consent of the Government of Greenland, to decide by means of an Act that fields of affairs that are not stated in the schedule are to be transferred. The provision also explicitly states that a decision on which fields of affairs may be transferred by means of an Act "must be made out of consideration for national unity and ensuring that the Greenland public authorities have extensive influence in fields that particularly affect Greenland's affairs".

The affairs that have not been taken over by the Greenland public authorities in pursuance of the Home Rule Act of 1978 or subsequent legislation falls under the aegis of the Danish public authorities (the Danish Government and the Danish Parliament).

The Home Rule Act contains a number of hearing mechanisms and cooperation procedures that are designed to safeguard the interests of Greenland. In practice, Government Bills that affect or may be implemented in Greenland are submitted to the Greenland public authorities for comments before they are brought before the Danish Parliament. Corresponding hearing procedures apply to administrative regulations and draft treaties.

Raw Materials Arrangement

The Home Rule Act states cf. Section 8 (1) that the resident population of Greenland has fundamental rights to the natural resources of Greenland.

A central element of the Home Rule Act is that a special arrangement is stipulated for the field of raw materials. This arrangement involves joint decision-making powers for the State and the Government of Greenland, making it possible for either party to oppose (eventually to veto) a development policy or specific resolutions considered by the party as being undesirable.

In pursuance of the existing Act relating to mineral raw materials in Greenland, any revenue of up to DKK 500 million (per annum) must be shared equally between the State and the Government of Greenland. The distribution of any revenue above this amount is determined by negotiation between the Danish Government and the Government of Greenland.

As at 1 July 1998, the management of raw materials was transferred to the Government of Greenland by agreement between the Danish Government and the Government of Greenland. The joint decision-making powers under the Home Rule Act were not amended and the legislative power in this field remains with the Danish Parliament.

Deliberations on enhanced home rule for Greenland

In 2000, the Government of Greenland appointed a commission to deliberate on the options for enhancing Greenland's independence within the framework of national unity and based on the principle of equilibrium between rights and obligations. The Commission published its report in 2003. The Greenland Parliament subsequently debated the report, approved the proposals of the Commission and laid down the framework for the negotiations with the Government concerning the terms of reference for a joint Greenlandic/Danish Autonomy Commission.

Following the request of the Government of Greenland for such a joint parliamentary commission to be appointed to work on enhanced Greenlandic home rule, the Danish Government and the Government of Greenland signed the terms of reference for a Greenlandic-Danish Autonomy Commission on 21 June 2004.

In accordance with the terms of reference, the Commission will, on the basis of Greenland's existing constitutional status and in accordance with the right of self-determination of the people of Greenland under international law, deliberate and make proposals for how the Greenland public authorities can take over further powers, where this is constitutionally possible. The Commission will base its work on the principle of equilibrium between rights and obligations. The Commission will deliberate and make proposals for a new arrangement concerning the economic situation between Greenland and Denmark.

The Danish Government and the Government of Greenland agree that the people of Greenland are entitled to decide for themselves whether Greenland wants independence, and that the new arrangement

does not affect this in any way. If the occasion should arise, independence will have to be implemented in the form of an independence agreement being concluded pursuant to the provisions of Section 19 of the Danish Constitutional Act. The Commission's proposal for a new arrangement must contain a clause on Greenland's accession to independence in accordance with those provisions.

THE FAROES HOME RULE ARRANGEMENT

The Faroes are a geographically separate and well-defined part of the Danish Realm covering an area of 1,399 square kilometers. As of 31 December 2006, the total population of the Faroes was 48,378.

The Faroes Home Rule Arrangement was established by Act no. 137 of 23 March 1948 relating to Faroes Home Rule. In pursuance of Section 1 of the Act, the Faroes are a selfgoverning community within the Kingdom of Denmark.

The Danish Constitutional Act, the Home Rule Act of 1948 and Act no. 578 of 24 June 2005 relating to the takeover of affairs and fields of affairs by the Faroese public authorities define the constitutional position of the Faroes within the Kingdom of Denmark. In pursuance of the Danish Constitutional Act, two Members of the Danish Parliament (Folketinget) are elected in the Faroes.

The main purpose of introducing Home Rule was to transfer power and thus responsibility from Danish political authorities to Faroese political authorities in recognition of the special position of the Faroes from national, historical and geographical points of view within the Kingdom of Denmark. The Faroese public authorities thus manage those social tasks taken over from the State, have legislative power in the fields of affairs taken over and have independent financial responsibility for performing these tasks.

The Home Rule Government in the Faroes consists of an elected assembly, the Faroes Parliament (Lagtinget), and an administration established by this assembly, the Faroes Home Rule Government (henceforth the Government of the Faroes) (Landsstyret). The Home Rule Act does not contain any precise rules on the composition of these bodies. It leaves it to the Home Rule Government itself to adopt the relevant provisions.

The Home Rule Act recognizes the Faroese language as the principal language. However, Danish must be taught meticulously and well. Danish may be used in public affairs just like Faroese. Moreover, a separate Faroese flag is recognized.

Possibilities for the Transfer of Power to the Faroese Public Authorities

Since its introduction in 1948, the Faroese public authorities have taken over legislative and administrative power in a significant proportion of the areas that affect the daily lives of Faroese citizens.

With the Act no. 578 of 24 June 2005 relating to the takeover of affairs and fields of affairs by the Faroese public authorities, which entered into force on 29 July 2005, the possibilities available to the Faroese public authorities under the Home Rule Act to take over fields of affairs were expanded significantly.

The Takeover Act thus makes it possible for the Faroese public authorities to take over all affairs and fields of affairs apart from the Constitution, citizenship, the Supreme Court, foreign, security and defense policy and foreign exchange and monetary policy. Such fields of affairs will therefore have to be taken over under the provisions in the Takeover Act.

The Faroese public authorities decide the time at which fields of affairs, etc. are taken over under the Takeover Act. Certain fields of affairs (including the police, the legal system, the Established Church (the Evangelical-Lutheran Church of Denmark), aliens require a high degree of preparation, for which reason the time for taking over these fields of affairs, etc. is decided by the Faroese public authorities after negotiation with the Danish public authorities.

The Faroese public authorities have legislative and executive power for the affairs and fields of affairs taken over.

The affairs that have not been taken over by the Faroese public authorities in pursuance of the Home Rule Act of 1948 or the Takeover Act fall under the aegis of the Danish public authorities (the Danish Government and the Danish Parliament).

The Home Rule Act contains a number of hearing mechanisms and cooperation procedures that are designed to safeguard the interests of the Faroes. In practice, Government Bills that affect or may be imple-

mented in the Faroes are submitted to the Faroese public authorities for their comments before they are brought before the Danish Parliament. Corresponding hearing procedures apply to administrative regulations and draft treaties.

The Financing of Fields of Responsibility under the Aegis of the Faroese Public Authorities

Following agreement with the Government of the Faroes and in pursuance of legislation, the State subsidizes fields of affairs taken over under Section 9 of the Home Rule Act (i.e. within the fields of social welfare and health).

The annual block subsidies established by an Act are paid as one subsidy to co-finance the areas taken over under Section 9 of the Home Rule Act. Within the framework Acts by which the fields of social welfare and health are transferred to the Home Rule Government, the Faroese public authorities thus have considerable freedom to prioritize their tasks as they wish.

For the affairs ect., which the Faroese public authorities take over under the Takeover Act, the Faroes also take over the expenses and real assets that are directly connected hereto. Therefore, it will not be possible, under the Act, to provide State co-financing for these fields of affairs, etc. The affairs and fields of affairs that have already been taken over under Section 9 of the Home Rule Act are not affected by the Takeover Act, and the Danish Government and the Government of the Faroes will therefore be able, now and in the future, to agree block subsidies for those fields.

Foreign Relations in relation to both Greenland and the Faroes

Under the Danish Constitutional Act, the Danish public authorities have the power to enter into international obligations (treaties) and are responsible for the conduct of foreign policy. Accordingly, the Home Rule Acts stipulate that it is the Danish public authorities which have the final decision on issues concerning the Kingdom of Denmark's foreign relations. Rules have also been laid down governing consultation with the Greenland Government respectively the Faroese Government and their right to take part in negotiations specifically relating to Greenland respectively the Faroes. Cooperation relating to foreign affairs has now been extended through the acts on the conclusion of international agreements by the Greenland Government respectively the Government of the Faroes. Cooperation relating to foreign affairs and security in relation to Greenland has been extended through the Itilleq Declaration of 14 May 2003 and in relation to the Faroes in the Famjin Declaration of 29 March 2005, cf. below.

It is the policy of the Government to modernize the Danish Realm and, as part of this, to involve Greenland and the Faroes in foreign-policy decisions, which particularly affect Greenland respectively the Faroes.

After negotiations with the Government of Greenland and the Government of the Faroes, Act no. 577 of 24 June 2005 concerning the concluding of agreements under international law by the Government of Greenland respectively Act no. 579 of 24 June 2005 concerning the concluding of agreements under international law by the Government of the Faroes were implemented and entered into force on 26 June 2005 respectively den 29 July 2005. With the Acts, the Government of Greenland and the Government of the Faroes have been given the opportunity, on behalf of the Kingdom of Denmark, to negotiate and conclude international agreements with foreign states and international organizations, which relate entirely to fields of affairs taken over by the Greenland respectively the Faroese public authorities.

The arrangements shall not apply to agreements under international law affecting defense and security policy, or agreements which are to apply to Denmark or which are negotiated within an international organization of which the Kingdom of Denmark is a member.

The Government of Greenland and the Government of the Faroes may decide to act jointly in connection with international-law agreements which relate to both Greenland and The Faroes when the other conditions of the Acts are met.

The Authorization Acts also allow Greenland and the Faroes to apply in their own names for membership of international organizations that allow entities other than states and associations of states to attain membership (typically associate membership), where this is consistent with the constitutional status of Greenland and the Faroes. Following a request by the Government of Greenland respectively the Government of the Faroes, the Government may decide to submit or support such applications.

The powers of the Danish Government and the Danish Parliament in the area of foreign policy under Section 19 of the Danish Constitutional Act are not limited by the provisions in the Authorization Acts.

In order to reinforce foreign policy cooperation, the Danish Government and the Government of Greenland signed a joint declaration of principle in 2003 on the involvement of Greenland in foreign and security policy (the Itilleq Declaration). The Danish Government and the Government of the

Faroes have signed a similar joint declaration of principle on the participation and involvement of the Faroes in foreign and security policy in spring 2005 (the Famjin Declaration).

In addition the Government of Greenland respectively the Government of the Faroes must be consulted prior to the ratification of international agreements that are incumbent on Greenland respectively the Faroes.

Apart from special areas, for example relating to human rights, it will normally be possible to accede to international agreements with effect solely for Denmark, so that Greenland and the Faroes independently can make decisions on the extent to which the agreement concerned should apply to Greenland respectively the Faroes.

The legislative power acquired by the Government of Greenland and the Government of Faroes in connection with the takeover of fields of responsibility are limited by treaty obligations and other international obligations. The Greenland Government and the Faroes Government must also ensure that their legislation is in accordance with the international obligations that are incumbent on Greenland respectively the Faroes. The transfer of legislative and executive powers to the Greenland public authorities and the Faroes public authorities means that cooperation of the Home Rule Authorities may be necessary for Denmark to fulfill its international obligations.

Unilateral declaration by the Government of the Faeroes:

THE POLITICAL AND LEGAL STATUS OF THE FAROES

Declaration by the Government of the Faroes with regard to Article 1

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." This is stated in both Covenants of 1966, and reconfirmed as a general principle in the 1993 Vienna Declaration and Programme of Action. These provisions and the consistent practice of states and international organisations constitute the legal basis for the right of self-determination that the People of the Faroes have and retain, including the option of independence if and when the People so decide.

The Faroes were settled in the beginning of the ninth century by Norwegian Vikings. These Norsemen came both directly from Norway and via the British Isles according to the Icelandic sagas. Archaeological and genetic evidence support this.

They founded an independent Nordic nation, which had its own political and legal structure fully based upon Old Norse traditions, in which the *Ting* (parliament) was the supreme seat of power.

Over the centuries, and still today, the People of the Faroes have kept their own national, historic, linguistic and cultural identity.

The Kingdom of Norway and the Kingdom of Denmark entered into a union in 1380 through an inter-Nordic regal marriage that was formally enshrined in the Treaty of Bergen of 1450. In 1814, this union was abolished by the Treaty of Kiel, which instead set up a new union between the Kingdom of Norway and the Kingdom of Sweden. Pursuant to the Treaty of Kiel, the treaty-provided-relationship between the Faroes and the Kingdom of Norway was now replaced by an identical relationship with the Kingdom of Denmark.

After 1814, the Faroes can be classified as an overseas colony or protectorate under the King of Denmark. They were not regarded as an integral part of the Kingdom of Denmark.

The Danish authorities sought a gradual political and legal integration of the Faroes into the Kingdom of Denmark during the democratisation process of the Kingdom of Denmark in the second half of the nineteenth century. Notwithstanding this development, the Faroes fully preserved their status as a distinct territory and jurisdiction. At no point have the People of the Faroes approved such integration.

During the Second World War, all links between the Faroes and the Kingdom of Denmark were abolished and the Faroes, which were defended by British forces, were responsible for all their internal and external matters.

In 1946, a referendum was organised in the Faroes in which the People of the Faroes for the first time in history were asked to determine their future. The People decided at this referendum – which was formally approved of by the Danish authorities – to establish the Faroes as an independent state.

As soon as the Parliament of the Faroes had recognised this decision, the Danish authorities dissolved the Parliament and a general election was ordered. The newly elected parliament accepted a negotiated settlement, which was based upon a home government arrangement that entered into force in 1948.

In 2005, the Government of the Faroes and the Government of the Kingdom of Denmark agreed on a new negotiated settlement that is composed of two new arrangements, which in concert establish full internal self-government as well as a certain degree of external self-government. This settlement is not seen or understood to be an exercise or replacement of the right of full self-determination.

Prime Ministers of the Kingdom of Denmark have on several occasions and also most recently declared that the Faroes shall be established as an independent state as soon as the People of the Faroes so decide. These declarations are reiterated in a corresponding decision by the Parliament of the Kingdom of Denmark in 2001.

A new Constitution of the Faroes has been prepared and the Constitutional Committee of the Faroes submitted a draft proposal on 18 December 2006. The new Constitution will *inter alia* contain provisions with regard to a future referendum in respect of secession of the Faroes from the Kingdom of

Denmark. This new Constitution will enter into force if and when endorsed at a referendum by the People of the Faroes.

In summation, the People of the Faroes have and retain their inalienable and sovereign right to self-determination under international law."

Appendices (set out in ANNEX D):

Act No. 11 of 31st March 1948 on the Home Government of the Faroes

Act No. 79 of May 12th 2005 on the Assumption of Matters and Fields of Responsibility by the Faroese Authorities

Act No. 80 of May 14th 2005 on the Concluding of Agreements under International Law by the Government of the Faroes

Article 2

Concerning incorporation of the Covenant (follow-up to para. 8 of the concluding observations).

The Incorporation Committee, which was set up in 1999 to examine the advantages and disadvantages of incorporating the general human rights conventions in domestic law, concluded its work in October 2001.

In its report, the Incorporation Committee emphasised that not only conventions that have been implemented in Danish law by being transformed or incorporated are relevant sources of law. Conventions that have not been the subject of a specific act of incorporation can also be invoked before and applied by Danish courts and other law-applying authorities. This means that also the unincorporated conventions are relevant sources of law.

The Incorporation Committee recommended, for the time being, incorporation in domestic law of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Incorporation Committee was also in agreement not to recommend incorporation of the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women at present, on the grounds that incorporation of human rights conventions

should initially apply only to a limited number of conventions in order to allow for the attainment of a better basis of experience. In the view of the Committee, the three first mentioned conventions should enjoy higher priority in this regard. With regard to the other conventions mentioned, the Committee emphasised that no individual complaints procedure had been established (or had been established only recently) and that there are as yet insufficient aids to interpretation.

The Government has taken note of the recommendation of the Incorporation Committee. However, the Government has decided not to incorporate any of the abovementioned conventions into Danish law, including the International Covenant on Civil and Political Rights. This decision is based on several considerations.

Firstly, the wording of the conventions does not place any obligations on the States to incorporate them into domestic law. When ratifying the conventions, the Danish Government followed its standard procedure and assessed whether domestic law and practice were in conformity with the provisions of the relevant conventions or whether any changes of domestic law and practice were necessary prior to ratification. After ratification, the Government has also continuously taken steps to ensure that Danish law and practice is in conformity with the conventions, for instance when drafting new legislation. Hence, the Government is of the opinion that even though the conventions in question, including the International Covenant on Civil and Political Rights, have not been incorporated into Danish law, Denmark fully respects the obligations undertaken.

Secondly, the human rights conventions that Denmark has ratified are all relevant sources of law regardless of the method of implementation, as emphasised by the Incorporation Committee. Conventions that have not been explicitly implemented by specific acts of law because harmony of norms has been ascertained, can be and are in fact invoked before and applied by the Danish courts and other law-applying authorities.

One example of a case where the High Court made reference to the International Covenant on Civil and Political Rights in its ruling is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 2002 p. 2591. The case concerned a Greenlandic regulation whereby a person must be member of an employee organisation in order to obtain tariff regulated public aid in the event of unemployment or illness. The court held that the regulation was not contrary to article 22 of the Covenant, as there were other social

laws that enabled employees to seek social aid in the event of unemployment or illness – the only difference being that this aid was not tariff regulated but administered on a case-to-case basis.

Another example is printed in the Weekly Law Review (*Ugeskrift for Retsvæsen*) 2002 p. 1789. In this case the Supreme Court held that a Danish law requiring taxi drivers to have Danish citizenship in order to obtain a taxi licence was not contrary to article 26 of the Covenant.

Considering that the existing state of law in Denmark ensures that the International Covenant on Civil and Political Rights and other ratified, but unincorporated, UN human rights conventions are relevant sources of law and are applied by the courts and other law-applying authorities, the Government finds that it is neither legally necessary, nor politically desirable to incorporate the conventions into Danish law. Incorporation would only be of symbolic character, since it would not change anything with regard to the existing state of law in Denmark.

Effective remedies (follow-up to para. 13 of the concluding observations)

The International Covenant on Civil and Political Rights can be invoked directly before the Danish Courts and other law applying authorities. Thus, anyone with an arguable complaint of a violation of the Covenant can bring it before the courts in order to obtain a decision on the merits.

Reference is made to the cases cited above under the section concerning the incorporation of the Covenant.

Review of bills by the Ministry of Justice

The Law Department of the Ministry of Justice, which *inter alia* has the task of advising other ministries regarding the drafting of legislation, carries out a technical review of all of the government's bills before they are introduced to Parliament.

In addition to assessing the technical structure of a bill, the Law Department also reviews the bill's content. The bill is assessed in relation to the Danish constitution, universal principles of law, EC law and central acts such as the Danish Administration of Justice Act, the Danish Access to Public Administration Files Act, the Danish Public Administration Act and the Danish Criminal Code. In this connection

the bill's compatibility with international human rights conventions is also reviewed to the extent that this is relevant. The result of this review is often reflected in the general observations of the bill.

The guide on UN complaint procedures

The Ministry of Justice has published a guide in Danish on how to bring a case before the UN's Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, and the Committee on the Elimination of Discrimination Against Women. The guide is *inter alia* based on the UN's High Commissioner of Human Rights' Fact Sheet No.7/Rev.1, regarding Complaint Procedures.

The guide contains background information regarding the UN and the protection of human rights, as well as chapters on the kind of complaints individuals can bring before the different UN committees, who can bring a complaint, admissibility of cases and the effect of a complaint. The guide also contains information on costs, what information has to be provided, the procedure, the 1503 procedure and on the applicability of the convention in Greenland and the Faeroe Islands.

Danish translations of the Conventions in question and the optional protocols that Denmark has ratified are enclosed in the guide together with the Model Complaint Form, the Complaint Guidelines and the Danish Act nr. 940 of 20 December 1999 on legal aid for initiating and handling complaints before international human rights bodies.

The guide can be downloaded from the website of the Ministry of Justice and the Ministry also sends copies for free upon request.

Cases of violation of section 266 b of the Danish Criminal Code (follow-up to paras. 16-22 of the fourth periodic report)

Section 266 b of the Criminal Code (straffeloven) prohibits the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination. According to subsection 2 of section 266 b, it shall be considered an aggravating circumstance if the conduct is characterized as propaganda.

Since the fourth periodic report, section 266 b has been amended by Act No. 433 of 31 May 2000 and Act No. 218 of 31 March 2004. The amendment in 2000 involved abandonment of the criminal sanc-

tion "mitigated imprisonment". The amendment in 2004 involved insertion of the word "particularly" in front of "aggravating circumstance" in subsection (2) of section 266 b. This amendment, which entered into force on 2 April 2004, did not aim at changing the way punishment is meted out.

In December 2006 the Director of Public Prosecution issued a new instruction (Instruction No. 9/2006), which replaced Instruction No. 4/1995. According to the new instruction, the Director of Public prosecutions is notified of all cases concerning section 266 b. According to the instruction all cases regarding section 266 b where the police decide to dismiss a complaint under section 749 (2) of the Administration of Justice Act or to discontinue an investigation under section 749 (2) of the Administration of Justice Act have to be submitted to the District Public Prosecutor with a recommendation regarding the decision. If the complaint is dismissed or investigation is discontinued the Director of Public Prosecution has to be notified and furnished with a copy of the decision. Cases where the police decide to bring charges also have to be submitted to the Director of Public prosecution through the District Public Prosecutor with a recommendation regarding the question of indictment.

The nature of the cases differs widely, and the decisions are motivated, *inter alia*, by the fact that the person who allegedly made the statements, etc., cannot be identified, that the statements made are not of such a nature as to be covered by section 266 b of the Criminal Code (the "aggravated" criterion), or that there was no *mens rea* to have the statements disseminated to a wider circle.

Among the cases where the report was dismissed in 2006 is the matter of *Jyllands-Posten*'s article "Mohammed's Face", where on 15 March 2006 the Director of Public Prosecutions endorsed the District Public Prosecutor of Viborg's decision in pursuance of section 749 (2). As will appear from the decision, section 266 b of the Criminal Code - having regard to the principle of liberty of expression - must be given strict interpretation. The decision is enclosed as Annex C.

Case law regarding section 266 b is described in, *inter alia*, Denmark's periodic reports to the Committee on the Elimination of Racial Discrimination, ref. the 14th report, (CERD/C/362/Add.1) (paras. 140-141), the 15th report (CERD/C/408/Add.1) (paras. 31-32), and the 16th and 17th reports (CERD/C/496/Add.1) (paras. 76-77).

The statistics concerning violations of section 266 b from 2001 to July 2006 may be summarized as follows:

Year	Number of cases prosecuted	Number of persons indicted in the cases prosecuted	Number of cases where charges were with-drawn	Number of persons against whom charges were with-drawn
2001	7	8	6	6
2002	10	17	7	9
2003	6	7	6	10
2004	3	4	4	4
2005	3	3	2	2
2006 (18 July)	4	4	4	4

It should be emphasized that the relevant year of the decision to prosecute made by the Director of Public Prosecutions is decisive for the classification in the table above.

The Director of Public Prosecutions does not compile statistics of the cases thus notified. In 2004, however, the public prosecutor's office received notification of 16 cases that had been dismissed, whereas in 2005 the number of cases was 20.

Regarding section 266 b (2) of the Criminal Code

In recent years, the Director of Public Prosecutions has in a number of instances brought charges for violations of section 266 b (2) of the Criminal Code about increased sentence in cases where statements covered by section 266 b (1) of the Criminal Code are in the nature of propaganda activity. These cases concern notably the dissemination of discriminatory statements via the Internet.

On 3 December 2003, the Supreme Court pronounced sentence (Weekly Law Review 2004, p. 743) in a case against a politician for violation of section 266 b (2), cf. subsection (1), of the Criminal Code. Over

a period of about two months, the politician had made statements covered by section 266 b of the Criminal Code on an Internet website. The Supreme Court determined the sentence at 20 days of imprisonment suspended, thus increasing the High Court's sentence of 20 daily fines of DKK 500.

Section 81 no. 6 of the Criminal CodeSection 81 no. 6 was inserted into the Criminal Code by Act No. 218 of 31 March 2004. This provision now spells out explicitly that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual inclination, etc., of other individuals.

According to the preparatory works on which this amendment is based, the provision must be interpreted in the light of section 266 b of the Criminal Code. The preparatory works further show that application of the provision is not restricted to certain types of crime or cases where the perpetrator's motive has been one of threatening, insulting or degrading an individual or a group of persons. Depending on the circumstances, the provision may also be applied to, for example, economic crimes - if they are committed in order to support a racist organisation of which the perpetrator is a member.

The Ministry of Justice has decided to establish a new reporting system with reference to decisions in criminal cases where the crime has been committed on account of the victim's race, national or ethnic background, religious beliefs or sexual orientation. The more specific details are yet to be decided.

Section 81 no. 7 of the Criminal Code

Act No. 1400 of 21 December 2005 amended the Criminal Code to the effect that in sentencing according to section 81 no. 7 it should generally be considered an aggravating circumstance that the offence was committed on the ground of the aggrieved party's lawful statements in the public debate. The object of the provision is to enhance the statutory protection against infringements levelled against the citizen's use of his right to express himself freely and publicly.

The provision will apply only where the offence was committed on the ground of the aggrieved party's lawful statements. Thus, it is not applicable to situations where the offence was committed on the ground of statements that are contrary to section 136 (1), section 266 b, or section 267 of the Criminal Code.

In connection with the amendment to the Act, the Director of Public Prosecutions has established a reporting system under which chief constables and district public prosecutors must notify the Director of Public Prosecutions of all sentences where the fixing of the sentence was based on sentencing factors covered by section 81 no. 7 of the Criminal Code. This system will be in force until the end of August 2007. The Director of Public Prosecutions is to submit a report on the use of the provision to the Ministry of Justice by the end of 2007.

The Act on Prohibition against Discrimination on the basis of Race etc.

Instruction No. 9/2006 by the Director of Public Prosecution referred to above in connection with art. 266 b of the Criminal Code also applies to the Acvt on Prohibition against Discrimination on the basis of Race etc.

Section 78 of the Constitution

Section 78 (2) of the Constitution provides that associations that operate or seek to achieve their objectives by means of violence, incitement to violence, or similar punishable influencing of persons who hold different beliefs can be dissolved by judgment. In addition to associations subject to section 78 (2) of the Constitution, associations having illegal objectives may be dissolved by application of section 78 (1).

Thus, Danish law makes it possible to dissolve associations having illegal objectives, including associations whose objective is racist activity contrary to the law.

In the light of section 78 of the Constitution, the Director of Public Prosecutions has examined whether grounds existed for dissolving the Islamic association known as Hizb ut-Tahrir. The investigation was motivated primarily by a specific criminal case against a spokesman for that association charged with violation of section 266 b of the Criminal Code.

By a sentence passed on 14 March 2003, upon review of an appeal, the Eastern Division of the High Court convicted the spokesman of violation of section 266b (2), cf. subsection (1), of the Criminal Code of having distributed a flyer that included, in relation to a reference to Israel and Jews in general, the following quotation from the Koran: "And kill them wherever you find them and expel them from where they expelled you". The said flyer was signed Hizb ut-Tahrir and thus appeared to be a flyer distributed on behalf of that association.

The examination showed that in no instance other than the above criminal case against the spokesman for Hizb ut-Tahrir were there sufficient grounds to assume that persons linked with Hizb ut-Tahrir had committed punishable offences in Denmark on behalf of the association. Thus, there was no evidential basis for establishing that, as a general part of its activity, Hizb ut-Tahrir had applied unlawful means or carried out unlawful activities.

It was therefore reasonable to assume that in any proceedings to dissolve Hizb ut-Tahrir on the basis of section 78 of the Constitution, if instituted, it would not be possible to establish the necessary proof that Hizb ut-Tahrir had an illegal objective as covered by section 78 (1) of the Constitution or operated by means of, or sought to achieve its objective by, violence, incitement to violence, or similar punishable influencing of persons who hold different beliefs as provided in section 78 (2) of the Constitution.

The Director of Public Prosecutions has also - on the background of section 78 of the Constitution - examined if there might be a basis for seeking to dissolve the "Group of Paedophiles" by virtue of section 78 of the Constitution. On 7 December 2005, the Director of Public Prosecutions recommended to the Minister of Justice that, in an action for injunction under section 78 of the Constitution, it would not be possible to show that the "Group of Paedophiles" was an association, nor could it be proven - if it was indeed an association - that the "Group of Paedophiles" had an unlawful object. It was thus reasonable to assume that an action pursuant to section 78 of the Constitution would not be successful. The Minister of Justice endorsed the Director of Public Prosecutions' recommendation.

Education and training of the police, etc. (follow-up to paras. 23-32 of Denmark's fourth periodic report)

At all levels of the police training system (basic training, further training and leadership and management training programmes) there continues to be substantial focus on the subjects of human rights, ethics, morals and attitudes, psychology, sociology and cultural sociology. Tuition in these subjects is given both as individual parts of the curricula and as elements of the tuition in the regulations that govern police activities and in which conventions on human rights and various recommendations have been implemented or are reflected. Within the area of human rights the Police College (*Politiskolen*) is cooperating closely with the Danish Institute for Human Rights (*Dansk Institut for Menneskerettigheder*) and the Rehabilitation Centre for Torture Victims (*Rehabilitieringscentret for Torturofre*). Members of these institutions also carry out much of the actual tuition in the subject.

In connection with the forthcoming reform of police education and training programmes, the scope of the above general subjects, which sustain the police profession, will be enhanced.

The subject of psychology continues to cover a substantial number of lessons in the basic training curriculum (166 lessons). The position of the subject has been further strengthened by the creation of two permanent posts for psychologists at the Police College, as well as by the production of a textbook on psychology for police.

Furthermore, a sociologist was recently attached to the Police College with a view to strengthening the position of the subjects of sociology and criminology as well as enhancing the interaction of these subjects with those of psychology and civics.

The exercise of police powers in relation to particular social groups, e.g. ethnic minority youngsters, the mentally ill and alcohol and drug abusers may be difficult and conflict-ridden. Against this background, the following training initiatives have been implemented:

- The Centre for Youth Research (*Center for Ungdomsforskning*) has conducted and published a research project in a major police district in Denmark (Elsinore Police). The focus of the research project was "Conflict at street level – when ethnic minority youth meet the police" (*Konflikt på gadeplan – når etnisk minoritesungdom og politi mødes. Roskilde Universitetscenter, Institut for Uddannelsesforskning, Center for Ungdomsforskning, 2003*). The research was conducted in cooperation with the police and was supported financially by the Danish Ministry of Justice. The research project report has been distributed to all police districts in Denmark.

  Based on the recommendations of the research project, the Danish Police College organised local training days within police districts where problems with ethnic minority youth are substantial and frequent. During the training days the Police College was supported by one of the authors of the report from the research project. More than 400 officers from 17 police districts have so far participated in the training days.

  As a follow-up, another research programme has been launched. The objective of the research is to establish whether, in ethnic minority families where elder brothers have criminal records,

their younger brothers will be subject to damaging socialisation. If such adverse socialisation is found, functional crime prevention initiatives may be established in relation to those of the younger brothers who are within impressionable reach and thus contribute to the process of integration.

- Within the framework of the labour market training programmes, three courses have been established, in partnership with the police, concerning the exercise of public authority and conflict management. A three-day course on the exercise of authority in relation to the mentally ill and addicts is directed at operational police staff, and a course on "changes in the role of authority – professional ethics and values", which also covers three days, is directed at all employees in the Danish Police. Finally, a five-day course "Conflict management during the exercise of operational authority" is directed at persons who exercise operational authority, including employees of the police service.

The relations of the police to victims of crime and socially vulnerable persons, and police treatment of these groups, are also included in Police College training programmes. In this field, the Police College cooperates with a number of public bodies and NGOs. One is the Centre for Victims of Rape (*Center for Voldtægtsofre*), where all probation officers receive three hours of tuition. Another one is the National Organisation of Shelters for Battered Women and their Children (*Landsorganisationen af Kvindekrisecentre*), including the centre at *Røntofte* in Elsinore Police District, where all probation officers receive another three hours of tuition. During this, the leader of the centre and some of the women housed there exchange views with the students. In addition, the Police College has entered into cooperation with the Danish Centre for Research on Social Vulnerability (*Videns- og Formidlingscenter for Socialt Udsatte*).

In recent years, a series of one-day seminars on human rights have been conducted for legal staff within the police and the Prosecution Service. The contents of one of the main elements comprised the articles of the European Convention on Human Rights pertaining to the use of force, remand in custody, detention in police cells, self incrimination and equality of arms.

The following refers, in particular, to the Copenhagen Police Service:

The Copenhagen Police Service continues to attach great importance to the education of police staff in the improved understanding of and cooperation with ethnic minorities.

In that connection, Copenhagen police officers have been instructed, on an ongoing basis, in the application of the Act Prohibiting Discrimination based on Race, etc. (Consolidation Act No. 31 of 12 January 2005). In 2000, the Copenhagen Police Service - in collaboration with the Documentation and Counselling Centre against Racial Discrimination - drafted a leaflet giving advice and guidance on how the police should deal with crime reports from persons who are refused access to restaurant establishments due to their race, colour or national or ethnic origin. In the spring of 2001, the leaflet was introduced to all police stations of the Copenhagen Police Service at meetings held between the heads of the uniformed branch and the criminal investigation department, the heads of training, and police union representatives, etc.

In the spring of 2005, instruction in the application of the Act Prohibiting Discrimination based on Race, etc., was followed up by a campaign launched in collaboration between the Copenhagen Police Service and the Copenhagen City Authority. The dual focus of the campaign was 1) the prevention of discrimination in city night life and 2) attitude training for young people with a non-Danish ethnic background aiming to communicate a set of guidelines for young people's night life conduct. Furthermore, in 2004 and 2005 the Copenhagen Police Service has conducted conflict resolution seminars where police officers who are in direct touch with ethnic minority groups are trained in resolving such conflicts as may arise when ethnic minority youngsters meet the police. Similar seminars will henceforth be held on an ongoing basis.

Finally, police officers from two police stations of the Copenhagen Police Service are taking lessons in Arabic.

Differential treatment in the Labour Market

The Act on Prohibition of Differential Treatment in the Labour Market, etc (cf. Consolidated Act No 31 of 12 January 2005) prohibits direct and indirect discrimination because of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, employers are not allowed to discriminate employees as regards access to vocational education and training, continued training and retraining. The same prohibition applies to people providing guidance and training as well as people involved in work placement activities and

people who are involved in the formulation of rules and decision making concerning the right to perform activities in professional trades and membership of workers' and employers' organisations.

In connection with the implementation of the EU anti-discrimination directives (2000/43/EC and 2000/78/EC) in Danish legislation two amendments of the Differential Treatment Act were introduced in 2004. Parts of the directives were implemented by means of Act No. 253 of 7 April 2004, which introduced protection against discrimination because of religious conviction as well as a shared burden of proof in cases about differential treatment. Furthermore the Danish Institute for Human Rights was given access to make statements in cases about discrimination because of race or ethnic origin. After the adoption of Act No. 1417 of 22 December 2004 the Differential Treatment Act also provides protection against discrimination because of age and disability.

Since 1998 there have been three Danish court-cases concerning questions of indirect discrimination on the grounds of religion where Muslim women wanted to wear headscarves on job. The first case printed in the Weekly Law Review (*Ugeskrift for retsvæsen*) 2000 p. 2350 concerned a practical trainee working in a department store. The employer rejected to employ the woman as a trainee. The High Court found that the employer had infringed the discrimination act and awarded the employee a compensation of 10.000 Dkr. The second case (not published), concerned an employee at a chocolate factory wishing to wear a scarf instead of a hat as required according to company safety regulations. The employer was acquitted by the High Court. However, afterwards the employee and the employer jointly designed a head cover which met the safety requirements of the company as well as the religious needs of the employee. In the third case printed in the Weekly Law Review (*Ugeskrift for retsvæsen*) 2005 p. 1265, the Supreme Court dealt with the same issue and found that the company regulations, which banned any kind of head cover and required a neutral appearance in a large supermarket-chain, were legitimate and did not constitute indirect discrimination on the grounds of religion. The Supreme Court thus acquitted the employer.

Two other cases have dealt with the issue of direct or indirect discrimination on the grounds of religion. In the first case printed in the Weekly Law Review (*Ugeskrift for retsvæsen*) 2001 p. 83 a Muslim pupil accused an educational centre (AMU center) for discrimination on the grounds of religion, when he was expelled for not following instructions about areas where to pray. The instructions had been laid down due to disputes between different groups of pupils to secure order. Despite the clear instructions the pupil continued to pray in the public areas. The educational centre was acquitted on the grounds

that the pupil had violated the clear instructions and the High Court did not find that the actions of the educational centre could be considered as discrimination on the grounds of religion.

In the second case printed in the Weekly Law Review (*Ugeskrift for retsvæsen*) 2001 p. 207 it was considered that the employer (Herning Musikskole) unlawfully had dismissed an employee on the grounds of his religious convictions and thus infringed the Act on prohibition of discrimination on the labour market etc. According to article 7 in the Act the employee was awarded a compensation of 75.000 Dkr.

The first case on discrimination on the grounds of disability has been before a local court, which reached a decision in July 2006. The decision has been appealed to the High Court.

Act on Integration of Aliens in Denmark.

The Act on Integration of Aliens in Denmark (the Integration Act), which entered into force in 1999, aims to ensure that refugees and immigrants become contributing members of the Danish Society on an equal footing with Danish nationals and that newly arrived refugees and immigrants gain employment and achieve self-reliance as soon as possible.

A key element of the Act is that local authorities must offer an introduction programme to all newly arrived foreigners who are 18 years old or more and covered by the Act. The introduction programme lasts up to three years and has a duration of at least 37 hours a week, including preparations. During the introduction period refugees and immigrants are offered an introduction allowance if they are not self-reliant or maintained by others.

The introduction programme must contain Danish lessons and a combination of employment generating schemes seeking the gradual integration of the foreigner into the Danish labour market, i.e. guidance and upgrading, job-training schemes, employment with a wage subsidy and mentoring.

The Act has been amended several times since the fourth periodic report. Only some of these amendments are reported here . New and more flexible labour market training activities have been introduced. This new step-by-step approach ensures that unemployed persons are able to gradually acquire the skills necessary to gain employment. The specific contents of the introduction programme must be specified in an integration contract between the local municipality and the individual immigrant or refugee. The integration contract aims to promote commitment and compliance of both the municipality and the individual refugee or immigrant. A new declaration on integration has also been introduced.

The Declaration aims to underline the responsibility of the individual foreigner for his or her integration into the Danish society.

To further encourage newly arrived settlers in Denmark – Danes and foreigners alike - to enter the labour market the Government in 2002 introduced a new qualifying principle for access to full social benefits in the event of unemployment. This principle implies that all persons who have not resided in Denmark for at least 7 out of the preceding 8 years are entitled to a starting allowance. The amount received on starting- and introduction-allowance is somewhat lower than the amount received on normal cash allowance. The allowance ensures that all newly arrived in Denmark are entitled to financial aid of at least the level of the state educational support that university students receive while under education.

The allowance has been fixed at a level at which the incentive to seek employment is considerably enhanced.

Act on Danish courses for adult aliens and others

Under the Act on Danish courses for adult aliens and others, cf. Act No. 375 of 28 May 2003, the local authorities must offer Danish courses (Danish as a second language) to adult aliens who live and are registered in the civil register as residents of the municipality. The offer comprises a Danish course for up to three years after the first enrolment in a course. For aliens covered by the Integration Act, Danish courses are free.

The object of Danish courses is to assist adult aliens, on the basis of their individual background and integration goals, in acquiring the necessary Danish language proficiency and knowledge of Danish culture and society to enable them to participate and contribute to society on an equal footing with other citizens.

Promotion of human rights within the educational system.

It is an overall aim for basic education in Denmark that students acquire an insight into Danish culture and an understanding of other cultures. Schools prepare students for participation in decision making, co-responsibility, rights and duties in a society based on freedom and democracy. School education and basic daily life are thus built on intellectual freedom, equality and democracy.

The aim is is to incorporate human rights on a general level in education. In addition, the Ministry of Education prescribes that education in human rights must be specifically included in a number of subjects, such as history and social studies. Consequently, in the Executive Order No. 332 of 29 April 2004 on Teacher Training, human rights are part of the elementary knowledge and learning of the subject of educational theory and practice. The courses form part of the efforts by the Ministry of Education to disseminate knowledge of human rights, including the International Covenant on Civil and Political Rights.

See also below under art. 3.

Article 3

Protection against discrimination on the grounds of race and ethnic origin (follow up to para 14 (b) of the concluding observations).

In order to strengthen protection against discrimination on the grounds of race and ethnic origin, new legislation has been adopted and existing legislation has been amended.

In May 2003 the, Act on Equal Ethnic Treatment was adopted. It aims to ensure a high level of protection against racial discrimination and to implement in Danish law the non-employment aspects of the EU Racial Equality Directive.

The Act on Equal Ethnic Treatment includes a prohibition against discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social benefits, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations, whose members carry out a particular profession. The Act also includes a prohibition against harassment on the grounds of race and ethnic origin.

The Act includes provisions on shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies that when there is a prima facie case of discrimination, the burden of proof in court cases must shift back to the respondent when evidence of such discrimination is brought forward. The Act also stipulates that victims of discrimination are entitled to compensation for non-pecuniary damage in case of breach of the prohibition of racial discrimination.

As regards the equality of treatment for ethnic minorities, specific powers have been assigned to the Danish Institute for Human Rights and specific funding has been allocated to the Institute for this purpose. Thus, with the establishment of the Danish Centre for International Studies and Human Rights, cf. Act No. 411 of 6 June 2002, the Danish Institute for Human Rights was established as the Danish body for the promotion of equal treatment as required by Article 13 in the EU-directive on Racial Equality (2000/43/EU). In accordance with the requirements of Article 13 of the Directive, the Danish Institute for Human Rights has been given the authority to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination.

The Parliament subsequently decided to further expand the powers of the Institute for Human Rights within the field of ethnic equality by granting the Institute the authority to handle individual complaints on racial discrimination both within and outside the labour market. Thus the Act has moved beyond the specific requirements of the Directive

The Danish Institute for Human Rights has been assigned the power to review individual complaints and express its opinion as to whether the prohibition of discrimination and the prohibition of victimisation has been violated. The Institute for Human Rights in June 2003 set up a Complaints Committee for Ethnic Equal Treatment Complaints to review such complaints. The Complaints Committee may recommend that victims of discrimination are granted free legal aid in accordance with the Danish Administration of Justice Act. There are no fees for bringing a case before the Committee.

As of April 2007 a total of 289 cases had been brought before the Complaints Committee since its establishment in 2003, including 40 cases, which were taken up *ex officio* . The Committee has decided 63 cases on their merits. In 28 cases no breach was found to have taken place, while a breach of the prohibition of unequal treatment on the grounds of race or ethnic origin was found in 11 cases or in 17,5 % of the total number of cases.

In 2 of the cases, in which a breach was found, the Committee recommended that the complainant should be granted free legal aid.

One case decided by the Complaints Committee has been brought to court. On 29 November 2005 the Copenhagen City Court found however that the complainant had not been a victim of unequal treatment because of racial or ethnic origin and this conclusion was confirmed by the Eastern High Court in the appeal case on 27 June 2006.

A victim of discrimination may freely decide whether he or she wants to bring the case directly before the courts or to complain to the Complaints Committee under the Institute for Human Rights. However, the main rationale behind the establishment of a complaints body is to provide victims of discrimination with a flexible, inexpensive and swift alternative to the ordinary courts. On the basis of a decision from the Complaints Committee of the Institute, the victim of discrimination may decide whether or not to bring the case before the courts.

The Government intends to take protection against discrimination even further by submitting a bill during 2007 for the establishment of a new and stronger Complaints Board on Equal Treatment. The new Complaints Board shall have competence within all fields of discrimination covered by Danish anti-discrimination legislation (racial, social, national or ethnic origin, gender, colour of skin, religion or faith, polirical observation sexual inclination, age or disability).

In the fourth periodic report reference was made to The Danish Board for Ethnic Equality. The Board was closed on 31 December 2002 following the enactment of Act No. 411 of 6 June 2002 establishing the Danish Centre for International Studies and Human Rights. As the Institute of Human Rights was given the mandate as a specialized body to promote ethnic equal treatment, the Danish Board for Ethnic Equality's mandate was secured in the new Institute.

In November 2003, the Danish Government presented an 'Action Plan to promote Equal Treatment and Diversity and Combat Racism'. The action plan contains a series of new initiatives to promote equal treatment and diversity. One of several compelling reasons for the Government's decision to publish an action plan promoting equal treatment and diversity was the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in September 2001. The world conference declaration and programme of action to combat racism, urges states to establish national policies and action plans to fight racism. The 'Action Plan to promote Equal Treatment and Diversity and Combat Racism' of November 2003 is appended to Denmark's 16-17th periodic report to CERD, ref. doc. CERD/C/496/Add.1.

5.1 million DKK (app. 684,000 Euro) were earmarked for implementation of the Action Plan when it was issued. The Action Plan does, however, not only contain specific initiatives but also a set of principles. Therefore, initiatives that form part of the Action Plan or are in line with the principles contained in the Action Plan are often funded by other and additional funds.

One example is an awareness raising campaign entitled 'Show Racism the Red Card'. The campaign is conducted by the Danish trade union for professional football players 'Spillerforeningen' and the NGO MixEurope. The campaign was launched in spring 2006. At the first event of the campaign on May 7 2006, the professional football players in the national league held up the banner "Show Racism the Red Card" on the stadiums before the matches began. The campaign includes a range of initiatives directed towards schools and private companies. Professional football players visit companies to discuss racism and discrimination and to establish informal agreements with them to encourage the employment of more people with a different ethnic origin than Danish. The campaign also involves cooperation with the Trade Union for Teachers in Denmark (Danmarks Lærerforening) on the development of teaching materials about racism and discrimination. The professional football players involved in the campaign are also visiting schools to discuss these themes with the pupils, in order to raise awareness among the children of the unacceptability of racism. The Ministry of Integration has provided a total amount of 3.5 million DKK (app. 469,000 Euro) in support for the campaign activities in 2006-2008.

The anti-discrimination policy is supplemented by a broader aim to promote tolerance and dialogue. In the spring of 2006, Dkk. 4 mil (app. 535.000 Euro) were allocated for projects organised by local authorities and organisations in civil society to strengthen local dialogue on fellowship and diversity. One example is the Day of Dialogue in Copenhagen March 31st 2007, bringing together citizens of Copenhagen in a variety of cultural activities and debate. A further DKK 6 mill (app. 800.00 Euro) have been allocated to continue the support for the dialogue facilitating projects in 2007 and 2008.

As to the question of the effectiveness of the Danish efforts to fight for increased tolerance and against discrimination, recent studies on attitudes and perceived discrimination seem to indicate that tolerance in the Danish society is rising and that discrimination is in decline. A survey, conducted by the research company CATINÈT from May 2006, shows that in 2000, 42.7 pct. of immigrants and refugees in Denmark felt that they were subject to more discrimination than Danes in general. In 2006 the percentage has declined to 29.5 pct.

Furthermore, a report of the European Monitoring Centre on Racism and Xenophobia (EUMC) from March 2005 on Majorities' Attitudes towards Minorities in Europe (Euro-barometer) shows that the resistance among the majority population to a multicultural society in Denmark has fallen consistently since 1997 and is below average in comparison with the EU-15.

Gender equality

Efforts are made to secure women and men de facto and de jure equality. Women and men have the same rights, obligations and possibilities in all areas of society. This is also stated in the Gender Equality Act paragraph 1: "The purpose of this Act is to promote gender equality, including equal integration, equal influence and equal opportunities in all functions in society on the basis of women's and men's equal status."

For detailed information on Danish work on gender equality, please refer to the annual report, which the Minister for Gender Equality presents to the Parliament before 1 March each year. The perspective and action plan for years 2002-2004 can be found at the web-page www.lige.dk under the English publications menu.

Denmark has presented its 6th periodic report to the CEDAW Committee, doc…CEDAW/C/DNK/6. The report contains a thorough description of progress achieved in the field of gender equality covering the period 2000-2004.

Violence against women.

Violence against women is considered an infringement of the victim's personal freedom and human rights. A key aspect of the activities to combat violence against women is to improve gender equality.

Acts of violence are punishable under articles 244-249 of the Criminal Code. These provisions cover acts of violence irrespectively of the gender of the victim (except for article 245a, which deals with female genital mutilation)

On 20 April 2005 Minister for Social Affairs and Gender Equality launched a new four year action plan to stop men's domestic violence against women and children. The Government has earmarked DDK

64 million for the activities in the coming four years. Additional DDK 8 million has been allocated to strengthen the efforts towards helping children living in families where violence occurs.

In its action plan for 2005–2008, the Government will focus on:

- Support to victims
- Activities aimed at perpetrators
- Activities aimed at professionals
- Knowledge and information.

The action plan covers women, children, perpetrators and professionals. It also envisages information campaigns aimed at the population in general. Experience from implementing the 2002–2004 action plan indicated that special attention must be given to particularly exposed groups and to prevention.

In particular, the action plan will focus on:

- Ethnic minority women
- Children and young people
- Men

An English translation of the action plan to stop men's domestic violence against women and children 2005-2008 can be found at the web-page www.lige.dk under the English publication menu. An annual status on the implementation of the action planis being published. The status for 2005-06 is, however, only available in Danish at the web-site www.lige.dk. A description on initiatives from 2000-2004 can be found in the 6th periodic report to CEDAW, doc. CEDAW/C/DNK/6."

Trafficking in women

In 2000, a cross ministerial working group with the purpose of developing initiatives to combat traf-ficking was created. In December 2002 the Government presented a new 3-year plan of action on combating trafficking in women 2003-2006. An amount of DKK 30 million has been allocated for the plan of action.

The intervention areas in the action plan focus on:

- Support for the victims
- Preventive initiatives

Specific activities implemented under the action plan are:

- A "safe house" for victims of trafficking. Victims of foreign nationality, who are subject to expulsion, are allowed to stay in Denmark for 30 days, or in some cases longer. Victims, who collaborate with the relevant authorities and organisations in Denmark on a prepared return to their country of origin are allowed to stay in Denmark for up to 100 days. During their stay, the women are offered counselling and medical treatment, while their return to the country of origin is prepared. From October 2003 till April 2006, 72 women have stayed in the safe house.

- An International network of NGOs, in order to make sure the victims can be received by an organisation in their home country. The network consists of more than 100 organisations.

- Teams of field workers (cultural mediators) perform outreach work in the streets and in massage parlours.

- Information material regarding rights and health care in Denmark is produced in 11 languages.

- A hot line has been established. The field workers have received a similar amount of calls from women on their mobile phones.

- An embassy network is being created. 11 meetings with embassies from countries of origin have been completed. All embassies have appointed a contact person and a seminar was held in May 2005. A status on the Governments initiatives was in sent to the embassies in June 2006.

- All activities are documented and monitored by a knowledge centre.

An English version can be found at the web-page www.lige.dk, under the English publication menu.

In 2005-2006, focus was on better coordination between the implementing partners and the authorities. The activities are spread out to a larger part of the country and new options for the protection of victims are tried. The police have appointed a focal point for trafficking in each police district (54 in total). The police have also employed a coordinator on trafficking, who is responsible for training the focal points and acting liaison between the NGO's and the police.

In August 2006 the Minister for Gender Equality launched a public campaign targeted at men, in order to create awareness about the situation of trafficked women. The campaign was published in cinemas, in public news-papers, national television and as "flush-ads" in cafes and restaurants. The campaign ran for three weeks, and led to an increase in the calls to the hotline. 21 persons called in with tips on "something suspicious". The tips are all being investigated by the police.

An amendment to the Action Plan with initiatives for child victims was published in September 2005. The amendment underlines the importance of the identification process as well as the rights of the child, such as the provision of a legal guardian, in accordance with the UN Convention on the Rights of the Child. The initiative focuses on child victims trafficked for the purpose of sexual exploitation whilst an emergency preparedness scheme is in place for child victims trafficked for theft and illegal labour. The scheme makes it possible to house and care for a small number of child victims of trafficking in Copenhagen. According to law, it is also possible for Danish authorities to house foreign citizens without legal stay permit under the age of 15 in a safe house/secured place. That way, the victims will be removed from the environment and be out of reach of the criminal networks.

On 1 March 2007 the Government presented a new 4 years action plan to combat trafficking in human beings 2007-2010. An English translation will be published at www.lige.dk. DKK 70 mio. have been earmarked for new initiatives in the action plan.

Promoting gender equality among ethnic minorities

To meet the requirement of gender equality, ethnic minorities need to know that gender equality is an integral part of Denmark's democracy and understand what gender equality actually entails. Another precondition is that culture and traditions not be used as an excuse for neglecting gender equality.

The lack of gender equality often becomes especially conspicuous in work related to ethnic minorities, which is why these problems are the focal points of many different Government initiatives for various areas, e.g. employment, education, social services and integration.

In October 2004, the Minister for Gender Equality directed focus to young ethnic minority girls, specifically their opportunities for choosing education and jobs. A conference entitled "They did it, how about you?" was organised. The conference presented female role models who had all found a satisfying place for themselves in the labour market. The many young girls at the conference stressed that starting up dialogues among themselves will not suffice; dialogues with their parents are also a must.

In 2005 the Minister for Gender Equality has held two dialogue meetings at local schools in Copenhagen and Aarhus on various themes that impact on young people's choice of education and jobs. The first meeting targeted mothers and daughters from ethnic minorities and the other one fathers and sons. Both children and parents were actively involved in the dialogue.

In 2005 the Minister for Gender Equality published a survey of gender barriers blocking men and women, boys and girls from ethnic minorities' access to education, work and associations. The report focuses on barriers to integration in relation to education, work and association work among women and men with ethnic cultural backgrounds. Available research results indicate that men run into the highest barriers in the educational system, while women encounter them in the labour market and in associations.

The Government followed-up on the report with an action plan aimed at breaking down barriers, named "Employment, participation and equal opportunities for all" The aim is to break down gender-barriers to ethnic minorities' participation in society and it sets out a wide range of actual initiatives aimed at enrolling more young girls and boys in educational programmes, in employment and in associations. Gender equality and integration of both women and men in the educational system and labour market are pivotal to Denmark's economy, the cohesion of Danish society and the individual's free and equal opportunities.

There are initiatives concerning labour market, education and associations involving several ministries. In 2006 the Minister for Gender Equality launched several initiatives, including for example:

- Support to photo project and teaching material "Immigrant women's life in Denmark" with focus on successful integration of women
- Pilot projects in three municipalities with family mentorship aiming at participation in associations
- Two new research projects aiming at gender, culture and men from ethnic minorities´
- 30- 35 dialogue meetings in clubs, mosques, langue schools among men from ethnic minorities'

In 2007 the Minister for Gender Equality started the new year with a new campaign:"Why not?", which focuses on breaking down gender based barriers. The campaign was launched by sending more than 1000 campaign packets with information, films and posters to professionals working with ethnic minorities. A new home page was also opened:www.hvorfor-ikke.dk.

The Danish Centre for Information on Women and Gender Research, KVINFO's mentor network offers young ethnic minority women the possibility of finding a mentor. Throughout 2004, the network has been lauded for its ability to create optimum possibilities and results for ethnic minority women, garnering the Integration Award for the category "the public labour market". As an element of the rate adjustment pool compromise, KVINFO's mentor network received DKK 2 million annually in the years 2003-2006.

Many adult ethnic minority women know little about their rights as women in Denmark. This is why the Minister for Gender Equality in 2005-2006 has initiated an information campaign targeted at ethnic minority women, especially first generation immigrants. In addition to providing information on rights related to finances, divorce, child custody, violence and family planning, the campaign explains general gender equality in Denmark. The campaign has visited 15 language schools and more than 1500 women and their teachers have participated. A part of the campaign is a small publication on 8 languages telling about women's rights in Denmark.

In the coming years, the Government will aim special efforts at preventing domestic violence, forced re-education trips to countries of origin and forced marriages as well as providing ethnic minority women with knowledge about their rights and opportunities in Denmark.

Forced re-education trips constitute a problem for young girls and boys who are sent back to their parents' native countries for extended periods of time. The primary problem for girls is that the self-esteem they have gained from growing up in Denmark can contrast strongly with the reality they meet

in a country where the predominant attitude is that women are subjugated men. Young boys may experience repercussions just as unfortunate and thus have difficulty succeeding in a gender-mixed education environment and labour market, while also obtaining the impression that they need not consider women as equals. Young people who are to function in Denmark must have an understanding of men and women as equals. This may be hard for young people, who are sent back to their parents' native countries for forced re-education and taught norms that are not based on the equality of women and men.

Since adopting the "Government's visions and strategies for improved integration" in June 2003, the Government has launched a range of initiatives against re-education trips: Benefits are not paid to recipients of social assistance, nor is start help assistance, child allowance or family allowance while the child stays outside Denmark, and children's age limit for family reunion has been lowered from 18 to 15. Schools and day-care institutions must contact the local authority if they discover that a child is staying or is presumably staying outside Denmark. At a meeting between the Minister for Gender Equality, the Minister for Integration and ethnic representatives and organisations in December 2004, the "Roadmap for efforts against forced re-education trips" was presented and debated. The roadmap sets out many initiatives, including a survey to determine whether local authorities are applying. The roadmap sets out many initiatives, including a survey to determine whether local authorities are applying the new legislative tolls as well as the scope of the trips and their impact on the children. In addition, information material will be prepared for children, parents and schools.

Gender equality in the labour market.

Women's participation in the labour market is almost the same as that of men, and the employment rate for women is almost the same as the employment rate for men.

In 2005 the participation rate was 79.4% for men and 73.1% for women. These participation rates show that both women and men are very active in the labour market. In Denmark great emphasis is placed on ensuring that women are also able to work when they have young children.

Extensive sanctions in the form of large compensation sums are imposed in cases of differential treatment in the labour market, particularly in relation to pregnancy and childbirth. In cases concerning dismissal because of pregnancy and maternity leave, the burden of proof is reversed and in all other cases of gender-based discrimination there is a shared burden of proof.

In 2002 a Gender Equality Board was established to review cases on gender-based discrimination. Awareness of the Board has gone up over the past few years and the number of cases about gender-based differential treatment submitted to the Board is therefore increasing.

The greatest challenges in terms of advancing equality in the labour market are to reduce pay differences between women and men and to break down the gender-segregated labour market.

Initiatives in this area are taken on an ongoing basis. The social partners (trade unions and employers' organisations) are involved in them, since the most important work in this respect takes place in the workplace.

Women in top management.

Women constitute 4% of top executives in the private corporate sector. At the executive level immediately under top executives, women account for 7%. This is not satisfactory. By recruiting managers from the entire pool of talent - and thus also women - companies optimise their competitiveness. The Minister for Gender Equality therefore works closely with the private sector to ensure that activities are targeted at increasing the proportion of women in executive positions.

On 8 March 2004, Carlsberg Breweries hosted a conference on "Female talent and sustainable business", organised by the Minister for Gender Equality and the Confederation of Danish Industries.

As a result of the conference the Minister for Gender Equality set up a network for private sector companies working to enhance the number of women in management. The network has been a huge success and now consists of over 125 private sector companies.

In May 2006 the Minister for Gender Equality financed a report on attitudes towards female managers. The report followed up on a similar report from 2003 and showed among other things that men still more often than women are encouraged to apply for managing positions and that women and men are evaluated as equally good leaders.

In June 2006 the Minister for Gender Equality and the Confederation of Danish Industries hosted a conference 'TopLederCamp'. 36 male and female top executives were locked up for 30 hours to come

up with new ideas and strategies on how to enhance the number of top executive women. The participants generated five overall propositions, amongst other a network of "ambassadors" promoting female top executives and company politics on 'career-breaks' (e.g. maternity and paternity leave) The Department of Gender Equality is now cooperating with the Confederation of Danish Industries on further development of the propositions.

The Minister for Gender Equality is also cooperating with the State Employer's Authority establishing a mentor network for public and private sector companies. This is a first initiative combining the two sectors, so that the companies can draw from each other's experience.

Discrimination against women in applications of asylum (follow up on para 14 (a) of the concluding observations).

In the Danish asylum procedure male and female applicants are treated on an equal footing. There are no rules or practice providing for discrimination of women and there are no accounts that any of the rules or practices should have such effect.. Each adult applicant with individual grounds for applying for asylum has his or her own case.

However, if there are special circumstances related to the grounds for the asylum application, which indicate that special attention should be given to gender sensitive questions, the authorities will do so.

When the Immigration Service considers a case concerning a female asylum applicant, a female interview official is always appointed to carry out the personal interview, and – if possible – a female interpreter is appointed as well. Regarding interviews at the Danish Refugee Council in cases where the Immigration Service regards the case as manifestly unfounded, the Danish Refugee Council seeks to ensure that female applicants are interviewed by female interviewers assisted by female translators. This is in particular the case for single female asylum seekers and/or where information on the case indicates that the asylum seeker is a victim of rape or other forms of sexual assault. In cases where female asylum seekers refer to rape or other forms of sexual assault a female translator will be used not only but the Danish Refugee Council, but also by the Refugee Appeals Board and the Immigration Service.

Article 4

No new relevant information

Article 5

No new relevant information

Article 6

The rate of legally induced abortions (pr. 1000 women) has decreased from 23,7 (27.884) in 1975 to 12.2 (15.048) in 2005, which almost amounts to a diminishing by 50 per cent of the abortion rate. Except for one year the abortion rate in 2004 is the lowest since passing the act on legal abortions in 1973. In spite of the decrease there has been a slight increase in the number of adolescents between 15-19 years who have had an abortion from 2002 to 2004. The age-related abortion rates for the 15-19 years old, however, has been unchanged from 2004 to 2005. This means that the same share of adolescents between 15 and 19 years have had a legally induced abortion even though the actual number of abortions in this group has increased slightly. In 1999 the Ministry of Health launched a Plan of Action to reduce the Number of Induced Abortions. The action plan was terminated in 2003, but the government granted 14 mill Dkr. from 2004-2007 to continue the activities which were introduced in the first period. The plan of action focuses on: improved prevention, counselling of women who consider legal abortion, qualifying professionals and research.

In 2005 The National Board of Health made an evaluation of the implementation and impact of the action plan. According to the evaluation it is difficult to say whether the plan has contributed to the observed decrease in abortion, since there has been a decrease in the number of induced abortions even before the plan was introduced. However the evaluation concludes that the action plan very likely has contributed to the constant fall. The evaluation examines every single activity in the action plan. The major conclusion is, that in the future the focus should be on larger projects. Furthermore these should be directed towards groups at risk, i.e. women who have just given birth, adolescents and ethnic groups

Article 7

Visit by the Committee for the prevention of Torture of the Council of Europe (follow-up to paras. 65-66 of Denmark's fourth periodic report).

From 28 January to 4 February 2002, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe made its third periodic visit to Denmark. The Committee visited a number of police establishments, prisons and psychiatric establishments. According to the subsequent report by CPT, the cooperation from the Danish authorities during the visit was excellent.

On the basis of the Committee's recommendations, Denmark submitted a preliminary report to the Committee in May 2003 and a final report in August 2003. Furthermore, a few points have been subject to the continued dialogue that is assumed to go on between the Committee and the member states.

Concerning the specific content of the initiatives made in the light of the Committee's recommendations, reference is made to the above mentioned reports and the subsequent dialogue in winter and spring 2004. The relevant documents are available at the website of the Parliament, www.ft.dk.

In June 2006, the Ministry of Justice furthermore gave the Standing Committee on Criminal Law Matters a mandate to evaluate the need for a self-contained provision in the Criminal Code relating to torture. The Committee's first meeting will be held in October 2006.

The use of force by the police, etc. (follow-up to paras. 67-84 of Denmark's fourth periodic report)

On 1 April 2004, a new Act on police activities came into force. The purpose of the Act was to provide a complete and up-to-date legal basis for police operations.

The Act includes a chapter on the use of force by the police - including an exhaustive list of purposes, which may lead to the use of force. The use of force must be necessary and justifiable and furthermore in reasonable proportion to the interest which is to be protected.

This chapter furthermore includes provisions on the concrete use of specific forcible means such as firearms, truncheons and gas, and the use of police dogs. The chapter on the use of force by the police has been further elaborated in an executive order from the Ministry of Justice. This order includes general provisions on the use of forcible means and also provisions listing the conditions that must be met in order to make use of the specific means of force.

These legal instruments are complemented by detailed guidelines issued by the National Commissioner of Police.

In 2005, the National Commissioner of Police received 238 reports on the use of firearms, covering the firing of a total of 34 shots, 21 of which were warning shots and 13 shots were aimed at a person or a vehicle. In nine cases, individuals were hit by the shots fired by the police.

Furthermore, in 2005, the National Commissioner received 10 reports on the use of gas fired from rifles, and one report on the use of gas released from spray cans.

In 2005, the National Commissioner of Police received 336 reports on the use of truncheons

Complaints concerning the police (follow-up to para. 4 of the concluding observations)
In Denmark's 4th periodic report, there is a reference to the system of police complaints boards, which was introduced in 1995. In connection with the evaluation of the system in 1998 and 1999, a number of authorities and organisations directly affected by it were consulted about their experience with regard to the operation of the police complaints board system. Based on the consultation response, the Ministry of Justice informed the Parliamentary Legal Affairs Committee, by letter of 2 July 1999, that the Ministry was of the opinion that, essentially, the system of police complaints boards worked satisfactorily and that, at that point in time, there was no need to change the rules governing the handling of complaints against the police, and that the Ministry therefore intended to carry on the system in its existing form.

At the annual meeting of the police complaints boards in January 2002 and again in January 2006, stock was taken of the first years of the police complaints board system. The conclusion was that the system is operating satisfactorily. It was, however, also concludedthat there might be a need for a certain streamlining of the administrative routines for the casework, including in particular the processing of road traffic cases (automatic traffic control) and petty offences in the field of road traffic.

In the light of th the 2002 conclusion, *inter alia*, the Director of Public Prosecutions issued a Circular on 30 September 2002 laying down guidelines for a simplification of the police complaints board system. Thus, the Circular includes simpler rules for the processing of cases concerned with automatic traffic control as well as the handling of so-called 'notice cases' (behavioural cases).

Furthermore, on 11 October 2006, the Ministry of Justice set up a broad-based committee tasked with reviewing and evaluating the current system for dealing with complaints against the police and processing criminal cases against police officers.

From the terms of reference of the Committee it appears, for example, as follows:

*"**2.** In recent years, renewed criticism, particularly with reference to specific individual cases, has increasingly been levelled against the complaints system, claiming that it does not sufficiently promote the unbiased handling of complaints against the police. The lengthy processing time in certain cases has also been the subject of criticism in certain cases.*

Overall, the Ministry of Justice maintains its opinion that the present complaints system, including the regional public prosecutors' cooperation with the police complaints boards, is working satisfactorily. However, it is essential that the public also have full confidence in a system that ensures professional, correct handling of the cases in every respect, within an acceptable timeframe.

The current rules on the treatment of complaints against the police, etc., have now been in force for more than a decade, and a number of lessons have been learned regarding the practical application and impact of the rules.

On this basis the Ministry of Justice has decided to set up a committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers.

***3.** The Committee has been asked to review the rules of the Danish Administration of Justice Act dealing with complaints against the police, criminal cases against police officers and police complaints boards (Part 93- b - 93 d of the Danish Administration of Justice Act) with a view to considering whether, based on the experience gained, etc., the current complaints system is working satisfactorily or whether it should be modified. The Committee should consider whether, within the overall framework of the current complaints system, public confidence in the efficiency of the system in handling cases regarding police officers can be further bolstered – e.g. by strengthening the authority of the police complaints boards –*

or whether, in the light of foreign experience with other complaints systems, for example, more extensive modifications should be made to the complaints system.

The Committee should focus on the importance of ensuring that, as far as possible, the complaints system supports the speedy conclusion of cases being processed, and the Committee is requested to consider proposals that promote such a solution.

It is presumed that the recommendations of the Committee can be implemented within the framework of the general legislation applying to civil servants.
To the extent the Committee finds that it is required to amend the law, the Committee shall make proposals for statutory provisions."

The Committee has started its work and is expected to submit its report before the summer of 2008.

Furthermore, a copy of "Police Complaints Board Cases in Denmark" is enclosed, which contains a description in English of the rules regarding processing of police complaints. The brochure was published in 2002, and no major changes to the rules have since been made. The brochure can be downloaded from the internet on the following address:
http://www.rigsadvokaten.dk/media/police_comp_03412_72.pdf
From 1997, the number of complaints lodged with the police complaints boards has risen from 645 in 1997 to 934 in 2005. Thus, the number of cases is approaching the level reached in 1996 (1013). The increase in the total number of cases is partially due to a rise in the number of road traffic cases (from 100 in 1997 to 252 in 2005).

Out of the total number of complaints received in 2005, 367 were concerned with the conduct of police officers and 567 were reports of criminal offences committed by police officers. Of the latter 567 cases, 252 were traffic-related cases. The number of investigations under section 1020a (2) of the Administration of Justice Act concerning persons who have died or were seriously injured as a result of police intervention ranged in the period from 1997 to 2004 from six in the years 1997 and 2004 to 17 in 2001.

Of the total number of 387 decisions made in cases concerning the conduct of police officers in 2005, nine cases were found to justify criticism, while in seven cases the criticism was considered unfounded,

but regrets were expressed about the matter. Finally, out of the total number of decisions concerning criminal offences committed by police officers (579), there was a basis for prosecution in 189 cases (176 of them traffic-related cases), while regrets were expressed about the matter in four cases in which there was no basis for prosecution.

Torture as a basis for refugee status and subsidiary protection.

In situations where an individual has been exposed to torture and where violations threatening the individual fall within the Refugee Convention, he or she is granted refugee status with reference to the Refugee Convention, cf. section 7(1) of the Aliens Act.

Act No. 365 of 6 June 2002, which entered into force on 1 July 2002, amended section 7(2) of the Aliens Act. According to this amendment, a residence permit with protection status will be issued to a foreigner who risks the death penalty or being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin.

The wording aligns itself to the wording of Article 3 of the European Convention on Human Rights, according to which, *inter alia*, no person may be subjected to torture or exposed to inhuman treatment or punishment. The reference to capital punishment is relevant to the implementation of the second Protocol to ICCPR and the 6th and 13th additional protocols to ECHR.

According to the explanatory memorandum to section 7(2) of the Aliens Act, it is presupposed that the immigration authorities will comply with relevant case law of the European Court of Human Rights when applying the provision

Furthermore, it is stated in the explanatory memorandum to section 7(2) that Denmark, in addition to the provisions of the European Convention on Human Rights, has an obligation to respect a number of other conventions of relevance to the provision.

This applies, *inter alia*, to Article 3 of the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture) and to Article 7 of the International Covenant on Civil and Political Rights.

The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty is also of relevance in this respect.

The Danish Immigration Service and the Refugee Appeals Board will generally consider the conditions for issuing a residence permit under section 7(2) to be fulfilled when there are specific and individual factors rendering it probable that the applicant will be exposed to a real risk of receiving the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return to his country of origin.

Following a decision of the Danish Refugee Appeals Board of June 2004 regarding a Ugandan national, the Human Rights Committee stated on 9 December 2004 its views that it would be contrary to Article 7 of the International Covenant on Civil and Political Rights to return to Uganda a Ugandan national who had been expelled from Denmark for drug offences. The Government requested the Committee to reconsider the case on the basis of further material submitted. The request was denied, and against that background, the asylum application in question was remitted for renewed consideration by the Board that originally made the decision in the case. The case was reconsidered by a different panel of the Board on 10 November 2005 and the appellant was give another opportunity to state why he feared being returned to Uganda.

The Refugee Appeals Board maintained its finding but due to the media coverage of the case, the Refugee Appeals Board considered that the appellant might have attracted the attention of the Ugandan authorities in such a way that there would be a concrete and actual risk that the appellant would be subjected to outrages falling within section 31(1) of the Aliens Act in case of his return to Uganda. For this reason the Refugee Appeals Board decided that the appellant could not be returned to Uganda or deported to another country in which the appellant is not protected against being sent back to Uganda. The Refugee Appeals Board therefore quashed the decision of the Danish Immigration Service that the appellant may be returned to Uganda.

The decision of the Refugee Appeals Board was sent to the UN Human Rights Committee in December 2005. In a letter to the Danish UN mission in Geneva, the UN High Commissioner for Human Rights stated:

"The Secretariat wishes to inform the State party of the Committee's Decisions in the context of the examination of replies from States parties to follow-up to the Committee's Views during the 87th session, which took place from 3 to 28 July 2006. The Committee decided that the decision with respect to the case of ... (communication No. 1222/2003), is satisfactory."

Revised Act on a Biomedical Research Ethics Committee System and the Processing of Biomedical Research Projects The Act contains provisions implementing part of the European Parliament and Council Directive 2001/20/EC of 4 April 2001 on the approximation of the laws, regulations and administrative provisions of the member states relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use.

The purpose of the Act is to lay down the legal framework for the scientific/ethical evaluation of biomedical research projects. A research ethics committee is responsible for ensuring that biomedical research projects are carried out in a responsible manner, and that the rights, safety and wellbeing of trial subjects participating in a biomedical research project are protected, while at the same time creating the possibility of developing new, valuable knowledge.

The committee may only grant authorisation to initiate and continue a biomedical research project if the legally competent trial subject has given his or her informed consent. The trial subjects involved in the project must receive written and verbal information about the content, foreseeable risks and benefits of the project and the information must clearly state that trial subjects may at any time withdraw their consent.

Furthermore, the committee may only grant authorisation to research project involving minors, individuals under guardianship, or permanently legally incompetent adults if surrogate consent has been obtained from the holder of custody, the guardian, or the closest relative and the general practitioner, respectively. The surrogate consent shall reflect the best interest of the trial subject.

If the nature of a project, which does not involve medical products, means that it can only be implemented in emergency situations where the trial subject is unable to give his/her informed consent and it is impossible to obtain surrogate consent, the project may be implemented if it may in the long term

improve the health of the subject. The investigator shall as soon as possible thereafter attempt to obtain informed consent or surrogate consent.

Regional committees monitor that the biomedical research projects are carried out in accordance with the authorisation given.

Article 8

Community Service (follow-up on paras. 88-92 of Denmark's fourth periodic report).

In its third periodic report, Denmark has described the community service scheme.

The rules of community service have since been amended by Act. No. 274 of 15 April 1997 and Act No. 230 of 4 April 2000. Concerning the specific content of Act. No. 274 of 15 April 1997, reference is made to the fourth periodic report.

Act No. 230 of 4 April 2000 extended the use of community service to include shorter custodial sentences (7-60 days), especially with a view to drunken driving. This was carried out by the means of an amendment of section 63 of the Danish Criminal Code (straffeloven). The amendment also had in view to widen the use of community service in general. The intention was to extend the group of offenders that can be sentenced to community service, including in particular cases of theft and other offences against property. This means that offenders who have so far received prison sentences now to an even greater extent can be given community service orders instead. These rules have been in force since 1 July 2000.

Act No. 230 of 4 April 2000 has caused a dramatic increase in the number of community service orders issued. The previous period from 1997 also saw a rise. Apart from traffic offences the number of community service orders since 1997 was 767 (1998), 983 (1999), 1113 (2000), 1410 (2001), 1778 (2002), 2011 (2003), 2125 (2004) and 2180 (2005). The number of community service orders in connection with traffic offences was 2149 (2002), 2011 (2003), 1999 (2004) and 1945 (2005). The total number of community service orders in 2002-05 was 3916, 4022, 4124 and 4125 respectively.

Article 9

Custody on remand in solitary confinement (follow-up on paras. 97-101 of Denmark's fourth periodic report)

In May 2000, the Parliament passed a bill to amend the Administration of Justice Act (retsplejeloven) and the criminal code. Reference is made to Act No. 428 of 31 May 2000. The main purpose of the act, which entered into force on 1 July 2000, was to impose severe restrictions on the use and duration of custody on remand in solitary confinement. The amendment is based on the report put forth by the Standing Committee on Administration of Criminal Justice (Strafferetsplejeudvalget) in 1998 (report No. 1358/1998). Concerning the specific content of the report, reference is made to the fourth periodic report.

Act No. 428 of 31 May 2000 clarified and tightened up the rules in the Administration of Justice Act concerning the implementation and upholding of solitary confinement. The time limits for solitary confinement were also reduced.

In respect of offences that carry a punishment of less than four years' imprisonment, the former time limit was reduced from eight weeks to four weeks. In respect of offences carrying a punishment of imprisonment above four years and below six years the time limit of eight weeks was maintained. In respect of offences that carry a punishment of imprisonment for six years or more – where no time limits used to apply – a time limit of three months has now been laid down. This limit may only be exceeded if essential considerations of clearing up the case necessitate continued solitary confinement regardless of the period for which the remand prisoner has been in solitary confinement so far.

To ensure that the use of solitary confinement in excess of three months is very limited, an arrangement has been made according to which the prosecution must notify the Director of Public Prosecutions before demanding solitary confinement continued in excess of three months. The purpose of this arrangement is to ensure that the Director of Public Prosecutions has a comprehensive view of the number of cases, where solitary confinement is extended beyond three months

Following the passing of the above mentioned bill in May 2000, the Ministry of Justice requested the Standing Committee on Administration of Criminal Justice to initiate a continuous information retrieval with a view to the procurement of an evaluation by the end of 2005. The purpose of this evalua-

tion is to ensure that the amendment has had the desired result. In June 2005, the Ministry of Justice furthermore requested the Standing Committee on Administration of Criminal Justice to look into new ways of reducing the duration of custody on remand without disregarding the need for effective investigation. The Standing Committee on Administration of Criminal Justice was also asked to evaluate the feasibility of establishing a ceiling on the maximum time a person can be charged or held in custody on remand. The Ministry of Justice has requested this evaluation to be submitted prior to the summer of 2007.

The Ministry of Justice also requested the Standing Committee on Administration of Criminal Justice to look into new ways of further reducing the use of solitary confinement. This evaluation was submitted in the beginning of 2006, cf. report nr. 1469/2006.

Following the submission of the report the Parliament has passed a bill (Act No. 1561 of 20 December 2006) introducing the amendments suggested by the Committee into the Administration of Justice Act. The main purpose of the amendments is to maintain the decrease in the number of solitary confinements that has been obtained by the amendment of the Administration of Justice Act in 2000 and to obtain a further limitation in the duration of solitary confinements.

Act No. 1561 of 20 December 2006 tightens up the rules for implementation and continuation of solitary confinement of detainees under the age of 18 years, cf. Section 770 b, Subsection 2. It also introduces shorter time limits for solitary confinement. For detainees under the age of 18 years the time limit of eight weeks previously applicable is reduced to four weeks, cf. Section 770 c, Subsection 5. The new time limit can only be exceeded if the investigation concerns an offence of intentional violation of Parts 12 or 13 of the Danish Criminal Code (terrorism etc.). Furthermore, the question of continuation beyond four weeks must be submitted to the Director of Public Prosecutions for his approval, before the request is submitted in court, cf. Section 770 d, Subsection 3. If the approval of the Director of Public Prosecutions has not been obtained, the court cannot comply with the request for continuation.

For detainees of the age of 18 years or more the time limit of four weeks previously applicable is reduced to fourteen days regarding offences that, under the law, may result in imprisonment for one year and six months or more, but less than 4 years, cf. Section 770 c, Subsection 1. The time limit of eight weeks previously applicable is reduced to four weeks regarding offences that, under the law, may result in imprisonment for 4 years or more, but less than 6 years, cf. Section 770 c, Subsection 2. The time

limit of three months previously applicable is reduced to eight weeks regarding offences that, under the law, may result in imprisonment for 6 years or more, cf. Section 770 c, Subsection 3. Furthermore, the possibility of exceeding this time limit in exceptional cases is limited further by introducing an additional criterion. Thus, the time limit can only be exceeded if 1) continued solitary confinement is required for essential considerations of investigation, irrespective of the length of the period of solitary confinement (existing criterion) and 2) the offence can be expected to result in a sentence of imprisonment for not less than 2 years (new criterion). Moreover, the question of continuation beyond eight weeks must be submitted to the Director of Public Prosecutions for his approval, before the request is submitted in court, cf. Section 770 d, Subsection 3. If this approval has not been obtained, the court cannot comply with the request for continuation.

The Act also sees an introduction of a maximum time limit of six months that can only be exceeded if the investigation concerns an offence of intentional violation of Parts 12 or 13 of the Danish Criminal Code (terrorism etc.) or a violation of sections 237 (murder) or 191 (serious drug offences) of the Danish Criminal Code, cf. Section 770 c, Subsection 4.

Furthermore the courts are required to state more specifically in its order the grounds for its decision to place someone in solitary confinement. The access to oral hearing of appeals on solitary confinement is extended, cf. Section 770 e and the access to pre-trial court examination of the person charged and of witnesses for the purpose of lifting the solitary confinement after such securing of the evidence, cf. Section 747.

Finally requests for continuation of solitary confinement must always be submitted in writing, cf. Section 770 d, Subsection 3.

Control of the duration of custody on remand (follow-up to para. 102 of Denmark's fourth periodic report)

The rules for custody on remand are laid down in the Administration of Justice Act (retsplejeloven) chapter 70. According to this chapter, custody on remand can only take place by the court's decision. Custody on remand can take place for a period up to four weeks at a time. No absolute limit for the total length of custody on remand exists, though it is a ground rule for all cases of custody on remand that the loss of liberty must not be disproportionate to the importance of the case, the anticipated legal

consequence or the interference that the accused has been subjected to (the ground rule of proportionality).

To ensure that custody on remand is of the shortest possible duration, the Director of Public Prosecutions in June 2000 (Notice No. 2/2000) decided that the police must notify the District Public Prosecutor of all cases in which the remand prisoner has been held in custody for more than three months. The notification, which is made on a special form, is submitted initially as soon as the prisoner has been detained in custody for more than three months. The notification will form the basis of the District Public Prosecutor's possible discussions with the Chief of Police/Commissioner of the Copenhagen Police on the planning of the case and further processing.

The Chief of Police/Commissioner of the Copenhagen Police must also notify the district public prosecutor of any subsequent extensions of the time-limit for remand custody which are based on an order made by the district court as the first instance. The notification filed with the district public prosecutor by the Chief of Police/the Commissioner of the Copenhagen Police must include a statement of the grounds that have necessitated a request for extension of the period of remand custody; also, a transcript of the extension order must be attached.

In cases where charges are brought before the district court, the Chief of Police/the Copenhagen Commissioner of Police must send a copy of the indictment to the district public prosecutor - stating the date when the case has been, or is expected to be, scheduled for trial. If a case has not been scheduled or cannot be scheduled for trial within two months after charges have been brought, the reasons for this must be given.

When the district court has pronounced sentence, the chief of Police/the Copenhagen Commissioner of Police will as soon as possible fill in a special form and send it to the district public prosecutor along with a transcript of the sentence.

In addition, the District Public Prosecutor must inform the Director of Public Prosecutions once every year of the number of remand prisoners detained for more than three months prior to first instance sentencing.

In 2005, the Director of Public Prosecutions informed the prosecution service and the police ("Rigsadvokaten Informerer" No. 8/2005) that the annual reports from the District Public Prosecutors during the period had shown an increase in the number of prolonged custodies on remand. The Director of Public Prosecutions reacted by requesting the research unit of the Ministry of Justice to undertake a thorough investigation into the grounds of this increase. Upon the completion of the investigation in January 2006, the research unit concluded that the statistical material brought about by the above mentioned notification arrangement was inadequate to give an exact explanation for the grounds of the increase. The research unit, however, pointed towards the retrieval of (mental) examinations and statements as elements playing a significant part for the length of custody on remand. The Director of Public Prosecutions has informed the prosecution service and the police ("Rigsadvokaten Informerer" No. 14/2006) that new guidelines for the notification arrangement are being prepared to ensure the quality of the statistical material in the future. The Director of Public Prosecutions has requested a similar investigation relating to 2005 and will evaluate whether the development necessitates new initiatives in order to secure that the duration of custodies on remand is kept to a minimum.

The rights of the detainee (follow-up to paras. 112-114 of Denmark's fourth periodic report)

In continuation of the reporting on the rights of detainees contained in Denmark's 4th periodic report, it may be added that on 20 June 2001 the Ministry of Justice issued a Circular to replace the previous Circular of 20 January 1997. In addition to the guidelines then existing on the rights of detainees, the Circular of 20 June 2001 now includes directions to provide detainees with a set of written guidelines on their rights.

Deprivation of liberty and other restraints in psychiatry

The Danish Psychiatric Act was amended by the Danish parliament in June 2006, and the amendments entered into force on 1 January 2007. All alterations introduced since the previous amendments in 1998, including the changes from June 2006, have been combined in Consolidated Act no. 1111 of 1 November 2006 on the application of restraint in psychiatry.

The aim of the amendment of the Danish Psychiatric Act is to strengthen the legal status of patients and the protection of patients' legal rights in a number of areas relating to the application of restraint in psychiatry, and to reduce the use of restraint in some areas.

Deprivation of liberty of asylum seekers

Deprivation of liberty is only exercised on such grounds and in accordance with such procedures as are established by law. Provisions on grounds for deprivation of liberty have been amended since the fourth periodic report. These amendments were introduced to enhance the possibility of expelling rejected asylum seekers and other aliens without legal stay in Denmark.

Asylum seekers who have been expelled under section 25a(1) of the Aliens Act (aliens who have stayed in Denmark for up to six months and been convicted of assault, theft, unlawful possession of euphoriant drugs, etc.) may be deprived of liberty during the remainder of the examination of the asylum application, cf. section 36(3) of the Aliens Act. However, this will not apply in cases where deprivation of liberty is deemed to be particularly burdensome for the asylum seeker.

An asylum seeker may be deprived of liberty if he substantially obstructs the examination of the asylum application by his conduct, cf. section 36(4) of the Aliens Act. Liberty may be deprived to ensure efficient examination of the asylum application and possible expulsion from Denmark.

In order for Denmark to comply with its international obligations and with a view to a general principle of proportionality, deprivation of liberty may only be decided as long as the examination of the asylum application is not unnecessarily lengthy without it being due to the asylum seeker, and only if less intervening measures, such as a duty to report to the police, are insufficient to ensure efficient examination of the asylum application and possible return from Denmark. It is therefore a condition that the examination of an application from an asylum seeker who is deprived of liberty under section 36(3) or section 36(4) is expedited as fast as possible by the immigration authorities.

An alien who does not assist in effectuating his return may be deprived of liberty to ensure that he provides the necessary information for the return and for the procurement of travel documents, etc., cf. section 36(5). Rejected asylum seekers may only be deprived of liberty if less intervening measures, such as a duty to report to the authorities, are not sufficient to ensure this purpose, cf. section 36(6).

The specific application of section 36(5) and (6) of the Aliens Act is described in the explanatory memorandum to the Bill introducing the sections. International conventions, including Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the European Convention on Human Rights, have been taken into account.

Authority has been introduced to deprive the liberty of an alien who cannot be returned and who fails to comply with a reporting duty imposed by the police, if it is necessary to determine whether it has now become possible to return the alien, cf. section 36(7)

Article 10

Act on enforcement (follow-up on paras. 118-120 of Denmark's fourth periodic report) In May 2003, a new statutory rule concerning the treatment of inmates excluded from association for reasons of order and security came into force. The rules are a result of the work in a working group set up by the Department of Prisons and Probation in March 2001. Up to this point, the provisions on enforcement of punishment were laid down, partly in a few provisions in the Criminal Code (straffeloven), partly in two orders and a considerable number of circulars. The act constitutes an overall legislative regulation of enforcement of punishments, etc.

The act must be seen in connection with Act No. 433 of 31 May 2000, which implemented the amendments necessitated by the act on enforcement in the Criminal Code and the Danish Administration of Justice Act. Act No. 433 brought about the abandonment of mitigated imprisonment and an opportunity for a life time inmate to obtain conditional release after serving twelve years of imprisonment. In connection with this arrangement the act on enforcement contains an obligation administratively to decide the issue of life time inmates' conditional release anew not later than one year after a refusal. The act furthermore enables the life time inmate, who has served fourteen years of his sentence, to have the administrative refusal tried in the district court. The act regulates the selection of imprisonment, including the criteria for incarceration in maximum security prison, low security prison and county gaol respectively. Laying down that convicted persons below the age of eighteen must be placed in an institution unless only imprisonment is compatible with the enforcement of the law, the act also extends the possibility of serving a sentence outside prison or county gaol.

The act includes a legislative regulation of inmates' rights and duties during their term in prison. This applies, for example, in respect of the right of association with other inmates, influence, work, education and training, leisure-time activities as well as welfare and health assistance.

The act also regulates issues of importance to the inmates' possibilities of contact with society outside the prison, such as right of leave, visits, exchange of correspondence, telephone conversations, newspapers and books, etc., and the right to give statements to the media while in prison.

The act furthermore includes detailed regulation of the conditions for and the method of measures taken against inmates, i.e., the right to examine the inmate's body and room(s) where he spends his time (search), taking photographs and fingerprints, use of force, exclusion from association, disciplinary sanctions, etc., and rules that strengthen the inmates' prospects of getting compensation for undeserved interferences while in prison.

The act expands the inmates' possibilities of having certain decisions of vital importance tried by the district court. The administrative decisions, which the inmate can demand to be tried by the district court, include decisions that bear resemblance to criminal cases or are of vital importance to the inmate. This primarily includes decisions concerning duration of the term of punishment, retention of correspondence out of consideration for the injured party, disciplinary sanctions, confiscation, balancing of compensation, refusal of conditional release, imprisonment after conditional release, imprisonment of a person released on probation, refusal of compensation for undeserved imprisonment or detention in a punitive cell for more than seven days

In May 2005, the Danish Parliament passed a bill which amends the Act on enforcement. The amendments make it possible for persons who are sentenced to imprisonment for a term not exceeding 3 months for violation of the Danish Road Traffic Act to serve the sentence at home. The amendments have entered into force on 1 July 2005. In brief, the convicted person must remain at home during the period of serving his/her sentence except for the time allowed by the probation service for employment, training, participation in corrective-influence programmes and/or treatment for alcoholism etc., commuting to and from these activities, shopping for necessities and other similar tasks. A detailed schedule will be drawn up by the probation service, and monitoring is carried out principally by means of an electronic tagging device (a so called "foot shackle"). If the convicted person violates the rules prescribed for this form of sentence implementation, he/she will be removed from the programme instantly and transferred to prison for the remainder of the sentence.

In April 2006, the Act on Enforcement was amended in order to make the "foot shackle" arrangement available to all young offenders (below the age of 25) who have been sentenced to imprisonment for a

term not exceeding 3 months. Furthermore, the "foot shackle" arrangement was made available for persons who had been sentenced to imprisonment for a term not exceeding 3 months for violation of the Danish Road Traffic Act and other legislation, as long as the traffic violation has played the most significant part for the length of the sentence (Act No. 304 of April 2006).

Greenlanders in Herstedvester Institution (follow-up to paras. 121-123 of Denmark's fourth periodic report)

One of the hostels of the Prison and Probation Service in Greenland was changed into an open institution in 2002. Sentences of committal to a prison can therefore be enforced in five open institutions and in one hostel in Greenland.

The group of prisoners serving their sentences of committal to a psychiatrically managed institution under the Danish Prison and Probation Service in Herstedvester Institution has unfortunately increased within the last years. Currently 20 prisoners are serving their sentences in Herstedvester Institution, most of them accommodated in a special unit and the rest in another unit together with Danish prisoners.

A Greenlandic social worker and two interpreters are attached to the Greenlandic prisoners. Since October 2005, Greenlandic prison officers as part of their education have been stationed in Herstedvester Institution for 2-3 months. As a consequence there will normally always be Greenlandic prison officers in the institution.

In March 2007 the Ministry of Justice has announced that a proposal on a reform of the judicial system in Greenland has been presented to a member of the Greenland Home Rule. The reform is built on the proposals and recommendations made by the Commission on Greenland's Judicial System. The bills of the reform will be presented to the Greenland Home Rule in the near future and implies:

- that all prisoners convicted in Greenland as far as possible serve their sentences in Greenland,
- that a closed prison with a capacity of 30 prisoners including prisoners in safe custody will be built for that purpose,

- that the prison can be opened in 2012/2013 and that the objective is to close down the section in the Institution in Herstedvester where Greenlanders today are serving their sentences of committal to a psychiatrically managed institution in Denmark,
- that a prison capacity is established on the East coast of Greenland and that open prisons in general are complemented with semi-closed sections.

Commission on Greenland's Judicial System (follow-up to paras. 124-128 of Denmark's fourth periodic report)

In 1994, the Danish Government and the Greenland Government (det grønlandske hjemmestyre) set up the Commission on Greenland's Judicial System (Den Grønlandske Retsvæsenskommission) chaired by Per Walsøe, Supreme Court Judge, and totalling 16 members appointed by the Danish Government and the Greenland Government. The main task of the Commission has been to perform a thorough review and reassessment of the entire judicial system of Greenland and on that basis to make proposals for its revision.

The report on Greenland's Judicial System was handed over to the Government and to the Greenland Government in August 2004. The Ministry of Justice has submitted the report to the relevant institutions and organisations for comments. The Greenland Government commented on the report in May 2006 and, following that, the Ministry of Justice is currently drafting a new Special Criminal Code and a new Special Administration of Justice Act for Greenland. It is expected that the two drafts can be sent to the Greenland Government in autumn 2007 for their comment.

The Government will consider very carefully the proposal to build a new closed institution in Greenland and the other proposals from the Commission.

Legal training of Greenlandic district judges and lay counsels (follow-up to para. 6 of the concluding observations)

In 1995, the High Court of Greenland was divided into a trial division and a guidance division at the initiative of the Commission on Greenland's Judicial System. The guidance division provides legal support to the district courts in the form of guidance and assistance in questions concerning the exercise of their judicial powers.

The system of guidance has been extensively exploited by the district judges. Originally the guidance was intended to be of a general nature. Over the years, however, a firm practice evolved where district courts procured guidance for use in individual cases.

Altogether, a large number of initiatives have been launched to strengthen the professional skills of both district judges and clerks, such as frequent visits from the High Court judge, the assistant High Court judges and their clerks to the district courts, annual two-week meetings, courses and written guidance. As a special initiative, a pilot scheme on the training of district judges has been completed. To generally strengthen the defence, the Commission has recommended that an authorisation scheme be introduced. The scheme is intended to ensure that only laymen with sufficient professional qualifications are entitled to appear as defence counsel. The grant of authorisation is to depend on the individual layman's participation in a special defence counsel training programme to be completed by passing a test. During the autumn of 2000, the first class of lay counsel completed the training programme with a final examination.

To strengthen the defence in the individual case, a hotline scheme with a law office in Nuuk has been introduced at the initiative of the Commission. Lay counsel can contact this office at any time with a request for guidance in a specific case.

The Commission has also proposed that the defence be further strengthened by the establishment of a position as either public or private national defence counsel charged with the task of safeguarding an adequate defence, including to be in charge of the training of and guidance to defence counsel and to supervise their activities. Such a scheme would confer on the defence a position that will place it on the same professional level as the prosecutors, who for many years now have been local police officers trained and guided by the Chief Constable's Office. The national defence counsel is to be in charge of the defence counsel training required to obtain authorisation as defence counsel and is to take over the hotline as part of his guidance of the defence counsel. The position as national defence counsel can be established either as an independent office, possibly for a term of years, or as a private attorney attached to a law firm with its inherent possibilities of professional development.

The Commission has furthermore recommended that it should be possible in certain cases, in addition to the lay, authorised defence counsel, to appoint an attorney or other lawyer who will give the defence counsel out-of-court advice on the conduct of the case, but who is otherwise not supposed to appear in

the case. The difference from the hotline is that the files of the case will be sent to the lawyer and it will be compulsory to consult the lawyer. However, the responsibility for and the decisions concerning the conduct of the case will still rest with the lay, authorised defence counsel. By the High Court judge's decision, this scheme is also used already to some extent at the district courts. Finally it is proposed that the defence counsel has to be an attorney or another lawyer, also before the district courts, in a few, very special aggravated cases, such as a complex case of homicide.

As mentioned above under the section on the Commission on Greenland's Judicial System, the Greenland Home Rule has submitted its comments on the report in May 2006. Subsequently, the Danish Government in cooperation with the Greenland Home Rule will decide on the implementation of the various proposals and recommendations made by the Commission.

Children and juveniles (follow-up to paras. 129-136 of Denmark's fourth periodic report)

The existing special rules applying to placement of 15 – 17 year-old inmates have been revised in accordance with the information given in Denmark's fourth periodic report.

In accordance with the Convention on the Rights of the child, only a very few juveniles are placed in the Danish prisons and local gaols. The average daily number of juveniles between 15 and 17 in Danish prisons was 19 in 2003, 16,6 in 2004 and 20.4 in 2005. In 2006 the average daily number of juveniles between 15 and 17 in Danish prisons was 17,7 divided on 3,9 in closed prisons, 2,6 in open prisons and 11,2 in local jails.

In all cases where a juvenile under the age of 18 has been sentenced to serve in prison, it must be considered by the Prison and Probation Service whether there are reasons to place the juvenile in question in a treatment institution or the like pursuant to section 78 of the Sentence Enforcement Act. The basic idea is that these juveniles should be placed in a pension under the Prison and Probation Service or in an institution etc. outside of the Prison and Probation Service, unless decisive consideration to the enforcement of justice speaks against such placement.

The juveniles awaiting trial, who are not in a social institution or the like, will normally be placed in a local gaol, where the possibility to be together with other inmates is very limited. Apart from this there is a very small group of juveniles, who serve short sentences in local gaols.

Convicted juveniles, who have to be placed in a closed prison because of dangerousness, risk of escape or the like, will be placed in the State Prison of Ringe, which is a special prison for young men up to the age of 23 and women.

In the State Prison of Ringe, a special unit has been set up for young offenders who require special teaching and attitude training. This special unit has four places plus one acute-place and requires ten staff. The target group is those who are not receptive to measures organised within the ambit of ordinary social education work and not suited to serve their sentences in an ordinary prison environment. One characteristic of this category is a failure to learn ordinary standards of behaviour, expressed in a natural inclination constantly to break rules and cause conflict. The unit offers individual educational behaviour-correction treatment. The point of departure will be the individual inmate's situation, with a view to working with the development of the individual inside the prison environment. Individual treatment schedules will be prepared, and these will be followed up, maintained and adjusted daily.

Until January 1999, the rest of the juveniles, who were serving sentences and not placed in suitable homes or special institutions for therapy and care pursuant to section 78 in the Danish Act on Enforcement of Sentences etc. were all placed in the same open prison (without surrounding wall or fence) in a special unit, separated from the adults.

Partly because of the limited number of young inmates in this unit, partly because of bad influence between members of this small group, the young offenders became very isolated and the separate unit was closed in January 1999. Since then, this small group of young offenders has served their sentence together with adults in open prisons provided it is in the best interest of the young offender. The prison must in each individual case consider where it is in the best interest of the young offender to be accommodated. It should be taken into account, that it is a prerequisite, that serving together with other inmates is advisable, and that the young offender can be protected against bad influence from other inmates in the best possible way.

The Prison Probation Service has been granted funds for establishing a special open unit attached to Jyderup State Prison for 15-17-year-old offenders in 2007. Taking into consideration the problems associated with the special unit that was closed in 1999, the new unit will have a high prescribed number

of staff, including educationally trained staff, and will offer activities particularly suited for this young target group.

About half of the juveniles awaiting trial in a local gaol are placed at Copenhagen Prisons. The prison has assigned a prison guard as a young-inmates coordinator. Among his responsibilities is to interview the juvenile shortly after his or her arrival at the prison to learn about the juvenile's special needs. The coordinator uses his individual knowledge of the juveniles to plan the juvenile's stay in the prison, and together with a social worker to make plans for the inmate after his or her release. The coordinator is in charge of various special sports and educational activities for the juveniles. The coordinator also works closely together with the local social authorities. If a young inmate is placed in prison only to await transfer to a social institution, the coordinator is in charge of the transfer.

Concerning placement of asylum-seekers deprived of their liberty

No changes have occurred compared with the information in Denmark's fourth periodic report.

The use of physical means of restraint against inmates (follow-up to paras. 139-142 of Denmark's fourth periodic report)

The state and local prisons of the Danish Prison and Probation Service can use handcuffs as well as other means of restraint including, depending on the situation, manual force, truncheons, teargas and shields.

Use of handcuffs occurs mainly in connection with transportation of inmates to prevent escape. When used the measure must be necessary to avert threats of violence, to overcome violent resistance or to prevent suicide or other self-mutilation. Handcuffs can also be used to prevent escape, r to stop escaped prisoners, or to enforce an ordered measure when prompt accomplishment thereof is necessary and the inmate refuses or fails to comply with staff directions thereon. The total number of instances of handcuff use has decreased from 1.933 instances in 2004 to 1.484 instances in 2005.

By circular letter of 28 May 2001, the Department of Prisons and Probation approved the use of a transport belt with handcuffs as an alternative to the handcuffs. The transport belt with handcuffs is gentler to the inmate and is used, for example, during long transports by car or for transporting ill inmates.

In special situations, the personnel may have to use other means of restraint against inmates, for example, to prevent escape, prevent suicide/self-mutilation or to avert personal injury. Furthermore, restraints may be used to implement staff directions on the places where an inmate may spend his time. In about 89 percent of the cases, the restraint applied is manual restraint in the form of various approved holds. In 2005, restraints were thus used in 201 cases, nine cases of which was use of a truncheon, three cases of which was use of teargas and 10 cases of which was use of shields. In 2004, restraints were used in 211 cases, two cases of which was use of a truncheon, one case of which was use of teargas and 5 cases of which was use of shields. In 2006, restraints were used in 188 cases, 4 cases of which was use of truncheon, 4 cases of which was use of shield, and 2 cases of which was use of teargas.

The treatment of inmates excluded from association (follow-up to para. 12 of the concluding observations)

On August 15th 2003, a new statutory rule concerning the treatment of inmates excluded from association for reasons of order and security came into force. The rules are a result of the work in a working group set up by the Department of Prisons and Probation in March 2001. The working group had to consider the extent to which the amendment of the rules on pretrial detention in solitary confinement should rub off on the rules on compulsory solitary confinement of convicted offenders.

The working group found that the possibility of association with other inmates is of great importance to the inmates who have compulsorily been excluded from association for more than two weeks. For this reason the institutions should consider carefully in each case whether compulsory exclusion from association for more than two weeks can be combined with association with one or more co-inmates.

Following two weeks' exclusion from association, the staff must be particularly attentive to such inmates and must consider whether the inmate could be offered to work together with others or work in specially fitted rooms, individual tuition or leisure time activities together with staff. It should also be considered whether to suggest a consultation with a chaplain, doctor or psychologist.

The working group made special recommendations in respect of inmates compulsorily excluded from association for more than three months.

The working group found that the most expedient regime for inmates excluded from association on a long-term basis was the establishment of small high-security units (4-8 persons) with considerable physical security etc. which makes it possible to allow a high degree of liberty within the unit. The Department of Prison and Probation agreed with this. In order to limit the use of total exclusion from association to the widest possible extent, such a high-security unit has been established at the Vridsløselille State Prison accommodating 14 inmates, and on 1 February 2002 a corresponding unit accommodating 6 inmates was established at the Nyborg State Prison.

The establishment of these units has made it possible to suspend the very long-term exclusion from association of the prisoners who by the prison service are judged to be very dangerous and with regard to whom there is an extremely high risk of escape. Furthermore, the establishment of these units makes it possible in the future to limit long exclusions from association.

Two separate high-security units are fitted out in the new State Prison in East Jutland

The working group also recommended that inmates excluded from association for more than three months without any association with other inmates must be offered particularly well equipped cells, free computer for use in the cell and extended right to visits.

As a result of the recommendations of the working group, the new statutory rule concerning exclusion from association came into force on 15 August 2003. Regulations were added as to compulsory exclusion from association for more than two weeks and as to inmates compulsorily excluded from association for more than three months. The regulations are in accordance with the recommendations of the working group.

Article 11

No new relevant information

Article 12

Freedom of movement for asylum seekers and refugees (follow up to para 16)

Asylum seekers are normally accommodated in an accommodation centre while they have their case examined. The Danish Immigration Service provides and runs accommodation centres for asylum seekers in cooperation with the Danish Red Cross. In some situations asylum seekers are given permis-

sion to private accommodation. This may for instance be relevant for asylum seekers who have relatives living in Denmark.

Expenses for accommodation and necessary healthcare services are defrayed by the Danish Immigration Service until a residence permit is issued or the asylum seeker departs or is returned. This does not apply, however, if the asylum seeker resides lawfully in Denmark pursuant to a residence permit or if the asylum seeker has contracted marriage with a person living in Denmark, unless exceptional circumstances apply.

It may be noted that the provisions of the Integration Act regarding allocation to a municipality only applies to refugees who have been given a residence permit in Denmark and not to persons who are still in the process of applying for refugee status.

The system of housing of refugees is a balanced and equitable approach to the different criteria of ensuring expedient housing of refugees, freedom of movement, avoiding segregation and furthering integration of refugees in the Danish Society. The provisions ensure that refugees are provided with permanent housing as soon as possible after their arrival in the municipality, whereas previously refugees were often settled in temporary housing for up to one or two years.

The refugees are allocated to the municipalities under a quota system, which seeks to ensure equal distribution in the country. The refugees themselves request which municipality they wish to settle in. If there is an open quota in the municipality requested by the refugee, the request is generally accommodated.

In addition, the legislation on housing of refugees provides a possibility for housing refugees in a particular municipality on the basis of personal circumstances – for example close family ties - even in cases where the quota of the municipality does not allow for housing of additional refugees. If a refugee only requests housing in municipalities where there is no open quota and no special personal circumstances apply, the refugee will be allocated to a municipality with an open quota.

The system provides the municipalities with certainty for the planning of the introduction programme for the individual refugee, which contains Danish education and employment related activities for the

benefit of both the municipality and the refugee. The system furthermore seeks to avoid segregation and promote the integration of refugees and Danes in daily life in both smaller and larger municipalities

Once allocated to a municipality, the refugee can freely choose to move to another residence within the same municipality. A refugee is also free to settle in a different municipality if he wishes to do so, but in order for the refugee to continue his or her introduction programme in the new municipality, this municipality must accept responsibility for the introduction programme. If the new municipality refuses to assume responsibility for the introduction programme and the refugee decides to move anyway, this may have consequences for the refugee's access to introduction allowance and permanent residence permit. However, under certain circumstances the new municipality is obliged to assume responsibility for the continuation of the introduction programme, e.g. if the refugee has been offered employment in the new municipality and no reasonable transportation facilities exist from the municipality of residence to the municipality of employment. The refugee continues to have access to the labour market, educational facilities and other social and health services regardless of whether the new municipality assumes responsibility of the refugees' introduction programme.

The introduction programme has a maximum duration of three years and a refugee can always settle in any municipality without consequences for his or her social allowances upon completion of the introduction programme.

Article 13

Expulsion of aliens

Aliens lawfully in Denmark may only be expelled in pursuance of a decision reached in accordance with law. When expulsion is the result of a criminal case, the expulsion order is a part of the court sentence. In certain cases where the stay in Denmark is of a shorter duration, the expulsion may be decided administratively, cf. below.

In deciding on expulsion by court sentence or administratively, regard must be had to the question whether expulsion must be assumed to be particularly burdensome, in particular because of the foreigner's ties with Danish society; the foreigner's age, health, and other personal circumstances; the foreigner's ties with persons living in Denmark; the consequences of the expulsion for the foreigner's close relatives living in Denmark; the foreigner's slight or non-existent ties with his country of origin or

any other country in which he may be expected to take up residence; and the risk that the foreigner will be abused in his country of origin or any other country in which he may be expected to take up residence.

When a foreigner is convicted of a criminal offence, the judgment shall determine, if claimed by the prosecution, whether the foreigner must be expelled pursuant to the relevant provisions in the Aliens Act. In doing so, the court shall consider the above mentioned personal circumstances etc. of the foreigner. Also, the court shall consider whether expulsion is in conformity with Denmark's obligations under international law. If not, the court shall decide against expulsion.

Since the fourth periodic report there have been several changes in the rules concerning expulsion of aliens. The changes concern expulsion by sentence and administrative expulsion.

Act No. 458 of 7 June 2001 extended section 25 a of the Aliens Act on expulsion of aliens who have stayed in Denmark for up to 6 months, so that aliens who are sentenced to a fine for having acted violently or in a threatening manner to staff or residents at an accommodation centre, or aliens who have admitted the violation to the police or were apprehended during or in direct connection with commission of the offence, and in this regard has received a fine or a warning, may be expelled administratively. Moreover, aliens sentenced to a fine under certain provisions of the Criminal Code concerning violence and threats may be expelled administratively. The amendment finally implies that aliens sentenced to a fine for violation of section 10 of the Act on Arms and Explosives may be expelled administratively. The administrative decision is taken by the Immigration Service. The Ministry of Refugee, Immigration and Integration Affairs acts as appeals body.

Act No. 362 of 6 June 2002 aims to ensure compliance with the UN Security Council Resolution No. 1373 of 28 September 2001 on Mandatory Action to Fight Terrorism. In some cases the amendments go further than only to fight terrorism: the Act contains provisions regarding expulsion and exclusion from residence permits not only for terrorists, but also for perpetrators of other serious crimes.

Furthermore, the provision of section 25 of the Aliens Act on administrative expulsion of foreigners was extended to allow expulsion if the foreigner is deemed a danger to national security, or the foreigner is deemed a serious threat to public order, safety or health.

Act No. 386 of 28 May 2003 amending the Criminal Code and the Aliens Act extended the expulsion rules of the Aliens Act to comprise sentences for female circumcision.

Act No. 429 of 9 June 2004 amending the Aliens Act introduced the possibility of expulsion by judgment for duress in connection with contraction of a marriage, child abduction, or human trafficking.

To further combat crime committed by foreigners, Act no. 429 of 10 May 2006 amending the Aliens Act concerning rules on expulsion entered into force on 1 June 2006. The Act expands the list of crimes for which expulsion may be ordered. The Act also introduces suspended expulsion, which may be ordered in situations where the basic conditions for expulsion are met, but where expulsion is found to be particularly burdensome on the foreigner. A suspended expulsion is meant to have the effect of a warning to the foreigner in cases where there is an obvious possibility that he or she will be expelled if convicted for further offences at a later stage.

Legal counsel for asylum seekers (follow up on para 17 of the concluding observations)
Initial decisions on asylum are made by the Danish Immigration Service. A rejection of an asylum application by the Danish Immigration Service is appealed automatically to the Refugee Appeals Board. In cases where the asylum application is considered manifestly un-founded ("lack of substantiation"), the application as well as this assessment is submitted to the Danish Refugee Council, which is an independent NGO. If the Danish Refugee Council seconds the assessment that the application is manifestly un-founded, the Danish Immigration Service may resolve that the decision in an asylum-case cannot be appealed to the Refugee Appeals Board on the grounds that the application is considered manifestly un-founded. On the other hand, if the Danish Refugee Council does not agree with the assessment made by the Danish Immigration Service that the case is manifestly unfounded, and if the Danish Immigration Service maintains its decision that asylum should be refused, the case is automatically appealed to the Refugee Appeals Board.

All asylum seekers may contact legal counsel at any time. Assistance from an attorney free of charge will be granted for an appeal before the Refugee Appeals Board. Pursuant to section 55(1) of the Aliens Act, the Refugee Appeals Board may assign an attorney to the asylum seeker, if necessary, unless

the asylum seeker himself or herself has retained an attorney. In practice, the Refugee Appeals Board assigns an attorney to all asylum seekers whose cases are to be considered at an oral Board meeting.

In addition to this general right to have an attorney assigned, it is provided by Act No. 60 of 29 January 2003 amending the Aliens Act that an attorney will also be assigned to unaccompanied minor asylum seekers, in case it is intended to decide the child's case according to the 'manifestly un-founded' procedure.

A permanent scheme for the appointment of a representative of unaccompanied minor asylum seekers is established, so that the children are given a personal support person as soon as possible after their arrival in Denmark. The representative supports and provides guidance to the child in connection with the consideration of his or her application for a residence permit and will attend all integration meetings and interviews conducted by the immigration authorities. Reference is made to the third periodic report of Denmark (2003) to the Committee for the Rights of the Child, doc. CRC/C/129/Add. 3, para 289 p.76.

An attorney paid by the Treasury is assigned to aliens, including asylum seekers, who are deprived of their liberty pursuant to sections 35 and 36 of the Aliens Act in connection with their appearance in court.

Article 14

The processing times of national courts (follow-up on paras. 162-163 of Denmark's fourth periodic report)

The Danish Court Administration (*Domstolsstyrelsen*) has in the spring of 2005 in collaboration with the courts fixed objectives for the case processing times of the district courts in criminal as well as in civil cases. At the same time the Parliament has fixed specific objectives of case processing times in criminal cases concerning violence and rape.

Every six months the Court Administration elaborates the statistics of each district court's fulfilment of the objectives mentioned above. The annual report of The Danish Courts (*Danmarks Domstole*) and the individual reports of each district court also contain sections, which focus on the fulfilment of the ob-

jectives. Furthermore the Parliament receives regular briefings on the development of the case processing times.

The High Courts (landsretterne) fix their objectives themselves in criminal and civil cases. These objectives are regularly followed up.

In addition, the Court Administration regularly carries out reviews of the general satisfaction with the courts. These reviews also illustrate to which extent the courts fulfil the general objectives of The Danish Courts which were stated in 2001.

On 1 January 2007 a court-reform of came into force. The reform has resulted in a considerable organisational change of the judicial system. The number of district courts is hereafter reduced from 82 small local courts to 24 larger district courts. It is expected that the advantages of larger units and further professionalization in the long run will – among other things – have a positive effect on the case processing times.

The objectives for case processing times fixed in 2005 were renewed by the Court Administration in 2006. However, due to the reform, the objectives for 2007 are for now merely to uphold the 2006 level.

The awareness of the requirement of a hearing within a reasonable time is reflected in a number of sentences in criminal cases where the court, when determining the penalty has taken into account whether the duration constitutes a violation of the defendant's human rights. If so, the court has shortened the penalty or suspended it.

Denmark's reservation to article 14 (follow-up to paras. 164-168 of Denmark's fourth periodic report)

Upon ratification of the International Covenant on Civil and Political Rights, Denmark made a reservation in respect of article 14(5) concerning review of conviction and sentence in criminal cases. Denmark has also made a reservation in respect of article 2 of Protocol No. 7 to the European Convention on Human Rights. The background to Denmark's reservation is, *inter alia*, that under the present jury system the adjudication of the defendant's guilt in the High Court as the first instance cannot be reviewed by the Supreme Court. In criminal proceedings the Supreme Court can only decide on the sen-

tence, on any procedural errors during the High Court trial and on questions regarding interpretation of the law.

In June 2006, Parliament adopted legislation for a reform of the jury system. This legislation will enter into force on 1 January 2008. Under the new legislation, jury cases will be heard by the district courts in the first instance. Appeal of the district court judgment will lie with the High Court, which will be able to adjudicate on both the verdict and the sentence. This will introduce a genuine two instance procedure, which means that, as of 2008, Denmark will satisfy the requirement in article 14(5) of the Covenant also in respect of the most serious criminal cases.

According to the new legislation, both the issue of guilt and the sentence are to be decided upon jointly by the jurors and the judges. At the district courts the cases are to be heard by three judges and six jurors. At least four votes will be required from the jurors to find the defendant guilty. This means that the decisive influence of the jurors is retained in the assessment of the issue of guilt. In addition, at least two judges must vote for conviction. As a further innovation, the issue of guilt will be decided by a written order containing information on the votes and grounds for the result, including any dissenting votes. This would replace the present system whereby the jurors merely reply "yes" or "no" to the question "Is the defendant guilty?".

In appeal cases which have been heard at first instance with jurors and where the appeal concerns adjudication of the issue of guilt, the High Court will have three judges and nine jurors deciding on the case jointly. A conviction will require at least six juror votes and two judge

votes. Appeal to the Supreme Court will be possible if the Board of Appeal (Procesbevillingsnævnet) grants such leave (third instance leave).

Even after the entry into force of the new legislation concerning jury cases, there will still be a number of cases regarding misdemeanours where decisions of the district court cannot be reviewed by the High Court, unless the Board of Appeal grants such leave (second instance leave).

Public administration of justice (follow-up on paras. 169-173 of Denmark's fourth periodic report)

In July 2004, new rules on access to documents in civil and criminal proceedings entered into force. The new rules are based on a proposal submitted by the Standing Committee on Procedural Law (report No. 1427/2003).

The aim of the new rules is to widen the scope of public access to documents in judicial proceedings and to modernize the provisions of the Administration of Justice Act on public administration of justice in civil and criminal proceedings.

The main new feature of the new rules is a general right of access to judgments and orders in civil and criminal proceedings, subject only to exceptions e.g. in the interests of private individuals, crime detection, etc. Previously, only persons demonstrating a concrete, individual legal interest , as well as journalists, could claim access to judgments and orders. Another new feature is a wider access to documents for crime victims.

In order to balance the wider access to judgments and orders in criminal proceedings, any publication of judgments and orders in criminal proceedings must leave out the identity of the accused, victims and witnesses. This new requirement is targeted at publication of the actual text of judgments and orders in criminal proceedings and does not apply to other publications. Such other publications, e.g. a newspaper article about a criminal case, continue to be governed by the general rules on the protection of privacy, which does not necessarily preclude the publication e.g. of the identity of the accused.

Furthermore, in order to protect the accused and witnesses in criminal proceedings from unreasonable harassment, a prohibition against photographing and filming of those persons without their consent has been introduced, applicable when they are on their way to or from a court hearing. The existing prohibition against photographing and filming *during* court hearings, except when permission has been granted, continues to apply as well.

Article 15

Adjudication of war crimes (follow-up on para. 174 of Denmark's fourth periodic report).

Since the fourth periodic report, Denmark has made an agreement with the International Tribunal for the Prosecution of War Crimes committed in the Former Yugoslavia making it possible to transfer

persons sentenced by the Tribunal to Denmark for serving their sentences. As per October 2006, two people sentenced by the Tribunal have been transferred to Denmark to serve their sentence.

In 2002 the Aliens Act was amended in order to include a provision (section 45 c) whereby the immigration authorities were given the right to transfer information given to them by a foreign national seeking residence in Denmark to the prosecutor without the consent of the foreigner. The information may be used by the prosecutor to determine whether legal proceedings should be initiated against the foreigner. The provision concerns crimes committed in Denmark or abroad. Only crimes committed abroad will be reported to the Special International Crimes Office of the police. The amendment was introduced in order to ensure that persons who have committed serious crimes before entering Denmark do not obtain a safe haven as referred to in UN Security Council Resolution no. 1373 of 28 September 2001.

Article 16

No new relevant developments to report.

Article 17

Means of police investigation (follow-up on paras. 176-177 of Denmark's fourth periodic report)

In April 1999, the Parliament passed a bill to amend the Administration of Justice Act (retsplejeloven). Reference is made to Act No. 229 of 21 April 2000. By means of this act, which entered into force on 1 July 1999, a new chapter was inserted into the Administration of Justice Act. Reference is made to chapter 75a (§§ 812-819).

The chapter precisely determines the conditions to be satisfied before the police, as part of an investigation, can use the showing of photographs (§§ 812-816), confrontation (§ 817) and reporting a person wanted for inquiries (§§ 818-819).

The amendment is based on a report, mentioned in the fourth periodic report, which was put forth by the Standing Committee on Administration of Criminal Justice in 1995 (report No. 1298/1995).

The showing of photographs is organized in three groups.
1. The showing of photographs of the suspect (§ 812).
2. The showing of photographs of the injured party or other witnesses (§ 814).
3. The showing of photographs from the police collection (§ 815).
In regard to section 812, the individual has to be suspected on reasonable grounds of having committed an offence indictable by the state and the police may only show a photograph of the suspect in question if it is of considerable importance to the investigation. The decision to show the photograph is made by the police.

The showing of photographs of persons who are not suspects is governed by section 814. According to this section the police may only show pictures of injured parties or other witnesses who have not given their consent, if the investigation concerns a crime that can result in a prison sentence of minimum 1 year and 6 months. This provision also requires that the display of the picture be of decisive importance for the investigation. The decision to show the photograph is made by the courts. If the purpose will be forfeited by awaiting a court order, the police can make the decision. However, this decision must subsequently be submitted to the court within 24 hours. Before the court makes its decision the person in question has to be given the opportunity to voice his or her opinion on the matter.

As for the showing of photographs from the police archives, section 815 stipulates that the investigation has to concern a crime that can result in a prison sentence of minimum 1 year and 6 months. In addition, the individual on the photograph in question must within the last 5 years have been found guilty of a crime that can result in a prison sentence of minimum 1 year and 6 months or within the last 10 years have been found guilty of a crime that can result in a prison sentence of minimum 6 years. The decision to show the photograph is made by the police.

The principle of proportionality always has to be observed in cases regarding the showing of photographs (section 816).

The showing of a suspect outside the police (direct confrontation) may only – unless the individual has consented - take place if the individual on reasonable grounds is suspected for having committed an offence indictable by the state and the measure is presumed to be of significant importance for the investigation, cf. section 817 (1).

The showing of a suspect in a confrontation parade for persons outside the police may, however, only take place if the investigation concerns an offence, which under the law can result in imprisonment for at least 1 year and 6 months, cf. section 817 (2). The principle of proportionality also has to be observed. The decision regarding confrontation of the suspect is made by the police.

Section 818 contains rules regarding the release of a description or other information concerning a presumed offender. According to this provision the individual has to be suspected on reasonable grounds for having committed an offence indictable by the state. The publication also has to be of considerable importance to the investigation, i.e. either in order to establish the person's identity or in order to prevent further offences. Distinction is made between the issuing of a description with a view to the identification of the supposed offender (section 818 (1) and the publication of a photograph of the offender, cf. section 818 (2). In the latter case, there has to be probable cause to believe that the person has committed an offence that can result in a prison sentence of a minimum of 1 year and 6 months.

Section 819 regulates the police's use of means of mass media in their search of a suspect. This provision is subject to particularly restrictive conditions. According to the provision the police can institute a search for an individual, whose identity is known by the police, through the press, radio, television or by other means of public search, if there is a particularly substantiated suspicion that the individual has committed a offence, which under the law can result in imprisonment for at least 1 year and 6 months and it is presumed to be of crucial importance for the accomplishment of the criminal prosecution or to prevent further offences of similar seriousness.

In May 2002, the Danish Parliament passed a bill, which among others amended the Danish Administration of Justice Act (Act No. 378/2002 of 6 June 2002). The bill was part of the Government's "anti-terror package".

The bill that was passed included provisions on data interception (section 791 b of the Administration of Justice Act), allowing the use of so-called sniffer programs. The bill also made it possible, in cases concerning *inter alia* offences against the independence of and the safety of the state, offences against the Constitution and the supreme Authorities of the state, arson and homicide, to make repeated covert searches under one warrant (section 799(3) of the Administration of Justice Act). The bill also amended section 806 in the Administration of Justice Act on orders of disclosure enabling the police to make the decision to order disclosure of documents without any prior order of the court. The provisions on sei-

zure were also amended enabling the seizure of money and other assets to secure confiscation pursuant to section 77 a in the Criminal Code which allows for confiscation if there is reason to believe that the objects and other assets including money may be used in a criminal act if not confiscated. As a consequence of the bill, a number of additional changes were introduced, all of them aimed to alleviate a variety of practical problems related to the implementation of interceptions of communication. Thus, a duty was imposed on telecom companies and internet service providers to log traffic data of relevance to police interception of communication, etc.

In June 2006, a second anti-terror-package was introduced by Act No 542 of 8 June 2006. This act amends section 783 of the Administration of Justice Act, allowing the police to obtain an interception warrant that follows a person rather than the particular means of communication. As a result , the police only needs to obtain a single warrant in order to tap the telephone(s) of a suspect. It should be noted that the specific preparation for the prevention of impending acts of terrorism (or other serious criminal offences), the second anti-terror package introduced a provision into the Administration of Justice Act, section 791 a, that allows the police on the basis of a warrant to jam or cut off radio or telecommunication, in order to prevent violations of *inter alia* the Criminal Code's chapter 12 and 13.

The decision to jam or cut off radio or telecommunication has to be made by the courts, by the issue of a warrant (section 791 c (3) of the Administration of Justice Act). If the purpose will be wasted pending prior permission from the court, the police may make the decision to implement the measure (section 791 c (4) of the Administration of Justice Act). However, the matter must then be put before the court as soon as possible and not later than 24 hours after the implementation of the operation for a decision of whether it may be approved.

Act on treatment of personal data (follow-up to para. 178 of Denmark's fourth periodic report)
In Denmark's fourth periodic report, it is mentioned that the Government in 1998 introduced a bill on treatment of personal data. The Act on treatment of personal data was passed by Parliament in May 2000 and entered into force in July 2000. The objective of the act is to implement a more up-to-date general legislation on the treatment of personal data. It is furthermore an essential objective of the act to implement an EC Directive from 1995 on treatment of personal data. The act includes rules on the cases in which personal data may be collected, stored, registered, used and passed on.

Act on due process in case of use of coercive criminal justice measures by the public administration and the duty of disclosure.

In June 2004, Parliament adopted an act on due process concerning use of coercive criminal justice measures by the public administration and the duty of disclosure (lov om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter). The act entered into force in January 2005.

The act regulates a number of issues concerning cases in which an administrative authority has the authority to carry out coercive criminal justice measures outside criminal justice without a preliminary court order. The act also regulates cases in which citizens and private enterprises are obliged to impart information to an administrative authority.

The act contains rules on the procedure to be followed by the administrative authorities when applying coercive criminal justice measures outside criminal justice. Furthermore, the act includes rules on the administrative authorities' use of coercive criminal justice measures and duty of disclosure outside criminal justice in cases where it is suspected that a citizen or a private enterprise has committed a criminal offence.

The Act on Patients' Rights

The Act on Patients' Rights has been changed twice since 1997.

The first amendment from 2004 (Act No. 312 of 5 May 2004) is related to biobanks and self-determination over biological material removed during treatment. The amendment *inter alia* states that:

- A patient can decide that biological material taken from him or her during treatment must only be used for the treatment of the patient or for purposes related hereto.
- The minister for the interior and health establishes a database containing patients' declarations concerning the use of their biological material etc.
- A patient can decide that biological material from him or her during treatment shall be destroyed if the destruction does not conflict with vital public or private interests.
- Biological material taken from a patient during treatment must be returned to the patient if the patient so demands and has a special interest herein and if the return of the material does not conflict with vital public or private interests.
- A private company collecting biological material for the purpose of storage or production of medicine etc. must make a written agreement with the patient. The agreement shall contain in-

formation about the purpose and the manner of the storing of the biological material, economical issues such as the price for storage, the consequences of breach or annulment of the agreement or of bankruptcy etc.

All research projects involving human biological material taken from a patient during treatment must be approved by a scientific committee

The second amendment from 2005 (Act. No. 546 of 24 June 2005) entered into force on 1 January 2007 and is part of a larger change in the organisation of the Danish health care sector. The Act on Patients' rights is repealed and the patients' rights provisions is part of the Act on Health. One of the very few changes in the patients' rights provisions in this connection introduces access for health care staff in hospitals to communicate data to a patients' general practitioner without prior consent from the patient.

DNA testing of applicants for family reunion (follow up on para 15 of the concluding observations).

Under section 40 c of the Aliens Act, the immigration authorities may - for the purpose of assessing an application for family reunification - require an applicant and the person to whom the applicant is claimed to be related to submit to DNA testing with a view to establishing the family ties serving as the basis for a residence permit. DNA testing may only be required in cases where the relationship cannot otherwise be sufficiently documented. In all cases DNA testing will be required only after an assessment of the individual case, and only if the immigration authorities are satisfied that the other basic conditions for family reunification are fulfilled.

According to the explanatory memorandum to the Bill introducing section 40 c, the immigration authorities may require DNA testing if the documentation submitted in connection with an application for family reunification does not sufficiently establish the family ties between an applicant and the person residing in Denmark. This may be the case if no documentation is submitted, or if the authenticity of the submitted documentation cannot be sufficiently established – e.g. due to the conditions in the applicant's country of origin. DNA testing may also be used in cases where there is reason to suspect that family ties do not exist.

Fingerprints of asylum seekers.

According to section 40a(1) and (2) of the Aliens Act, fingerprints may be taken of an asylum seeker. Fingerprints may be taken of other aliens with a view to identification, or to issue or procure a travel document. Pursuant to section 40a(3) of the Aliens Act, fingerprints taken may be registered in a special data register kept by the National Commissioner of Police.

According to sections 40a(7) and (8) of the Aliens Act fingerprints taken pursuant to the provisions of the Administration of Justice Act or secured as evidence in criminal proceedings may, for the purpose of investigating a criminal offence, be compared with fingerprints registered in the data register. If no match is established there will be no further investigation of the fingerprint register of asylum seekers and unidentified aliens.

Fingerprints received as part of an international inquiry for a person may be compared with fingerprints of asylum seekers and unidentified aliens. Results of the search may be passed on to the international police cooperation organisation or the foreign police authority that issued the inquiry.

Section 40a(7) and (8) is intended to contribute to the fight against crime and in that connection to ensure that the police has complete and unimpeded access to search for and pass on information from the fingerprint register of asylum seekers and unidentified aliens for the investigation of criminal offences and for international inquiries for persons. The provisions are deemed necessary in order to ensure public order and safety and to prevent crime.

With a view to identification of a foreigner or with a view to issuing or procuring a travel document, the police may pass on, without the alien's consent, fingerprints registered in the data register mentioned above to representatives of the country of origin or of another country or to international police cooperation organisations, cf. section 40 a (9) of the Aliens Act.

The rules on the registration of fingerprints were amended most recently by Act No. 323 of 18 May 2005, which entered into force on 1. April 2006. The Act enables the EU Dublin Regulation and the EU Eurodac Regulation to be extended to Denmark. The Act amends section 40a(1) and (2) of the Aliens Act so that fingerprints may be registered in all cases falling within the EU Eurodac Regulation. These amendments imply, *inter alia*, that it is compulsory for all asylum seekers to have their fingerprints taken. Moreover, authority has been provided for the registration of fingerprints of all aliens who stay illegally in Denmark for the purpose of checking whether the alien has previously applied for asy-

lum in another EU Member State. These provisions provide measures to limit the possibilities of the foreigner to purposely avoid or suspend expulsion by not disclosing their identity to the authorities.

Photographs of asylum seekers.

According to section 40b(1) and (2) of the Aliens Act, a photograph may be taken of an asylum seeker. A photograph may be taken of an alien for the purpose of identification of issuing an identity card or other document of identification, or of issuing or procuring a travel document . The photographs may be registered in a special register kept by the National Commissioner of Police, cf. section 40b(3) of the Aliens Act.

According to section 40b(7) and 40 (8) of the Aliens Act, a photograph taken pursuant to the provisions of the Administration of Justice Act may, for the purpose of investigating a criminal offence, be compared with photographs registered in the above mentioned register.

A photograph received as a part of an international inquiry for a person may be compared with photographs registered in this register. Results of the search may be passed on to the international police cooperation organisation or the foreign police authority that issued the inquiry

Photographs may be passed on to the same extent as fingerprints under section 40a(9).

Article 18

The following information is also relevant to articles 3 and 26

Freedom and equality of religion (follow up on para 14c) of the concluding observations)

The Constitutional Act of 1849 brought a change in the relations between the State and religious communities. Until 1849 membership of the Evangelical Lutheran Church was compulsory, and this Church was the only legal religious denomination in Denmark except from a few, small Jewish, Reformed and Roman-Catholic congregations whose presence in Denmark was specifically recognized through royal decrees since 1682.

Constitutional provisions concerning Churches and religion

The Constitutional Act contains the following 7 provisions concerning the relations between the State and the Churches / religious communities in Denmark:

"§ 4. The Evangelical Lutheran Church shall be the Established Church of Denmark and, as such, it shall be supported by the State."

"§ 6. The King shall be a member of the Evangelical Lutheran Church."

"§ 66. The constitution of the Established Church shall be laid down by statute."

"§ 67. Citizens shall be entitled to form congregations for the worship of God in a manner according with their convictions, provided that nothing at variance with good morals or public order shall be taught or done."

"§ 68. No one shall be liable to make personal contributions to any denomination other than the one to which he adheres."

"§ 69. Rules for religious bodies dissenting from the Established Church shall be laid down by statute."

"§ 70. No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights, nor shall he for such reasons evade compliance with any common civic duty."

Every citizen in Denmark is guaranteed the right of religious freedom through sections 67, 68 and 70 of the Constitution.

The special position given in section 4 to the Evangelical Lutheran Church as the "Established" Church (in Danish: Den Danske Folkekirke, verbatim in English: The Danish People's Church) - henceforth the Established Church - is discussed further below.

All citizens in Denmark are free to form religious communities / congregations for the worship of God in a manner according with their convictions. The condition of § 67 in the Constitutional Act that they do not teach or do anything at variance with good morals or public order is a legal standard that is defined by legislation, e.g. the criminal code**.**

The public authorities do not register such communities or their members as such, and they are free to exist without any kind of contact with public authorities. Thus every community is entitled - without the permission of the State and only subject to the general building regulations - to build churches, temples or mosques to the worship of God.

Religious communities in Denmark other than the Established Church may be grouped into 3 categories:

The first category of religious communities comprises the so-called recognized religious communities. Before 1970, religious communities were recognized through royal decrees following the recommendation of the Minister for Ecclesiastical Affairs. The royal decree granted recognition of the religious community concerned and the right to celebrate religious ceremonies with legal effect according to civil law**,** such as naming by baptism and conducting marriages, the right to maintain their own ministerial records and the right to issue certificates. A total of 11 religious communities have been recognised by royal decree during the period from 1682 until 1958.

The second category consists of religious communities recognized after 1970 - the so-called approved religious communities. With the entry into force of the Danish Formation and Dissolution of Marriage Act the procedure regarding recognition of religious communities was changed. Section 16 of the said Act empowers the Ministry of Ecclesiastical Affairs to take administrative action to authorize the clergy of new religious communities to conclude marriages with legal effect according to civil law. The Ministry of Ecclesiastical Affairs also approves religious communities as such. The approval implies that the clergy of approved religious communities may expect to obtain authority to conclude marriages with legal effect according to civil law.

Since 1970 the Ministry of Ecclesiastical Affairs has approved more than 100 individual communities or religious denominations consisting of more communities, including Moslem, Buddhist, Hindu and

Old Norse congregations. A list of both recognized and approved religious communities and denominations can be found on the homepage of the Ministry of Ecclesiastical Affairs (www.km.dk).

The historically conditioned distinction between recognized and approved religious communities is insignificant in practice.

The third category comprises spiritual communities that do not wish to obtain approval or cannot be defined as religious communities. They enjoy full freedom to exist and practise their beliefs, but they do not enjoy the same rights as the recognized and the approved religious communities.

Effects of recognition/approval

A religious community only needs to be recognized / approved by the authorities if it wants to obtain special rights in the Danish society. It is possible for religious communities to obtain the following special rights:

Marriage authorization

According to the Danish Formation and Dissolution of Marriage Act the clergy of religious communities apart from the Established Church may be authorized by the Ministry of Ecclesiastical Affairs to conclude marriages with the same legal effect according to civil law as marriages concluded by the civil authorities. Before giving the clergy an authorization the Ministry shall look into whether the community applying for the authorization for its clergy can be defined as a religious community with worship in accordance with specific teachings and rites as its primary purpose. The Ministry makes its decision after recommendation from an independent advisory committee, whose members are scholars in the science of religion, theology and law.

Tax exemption and tax deduction.

All religious communities and activities in Denmark apart from the Established Church are financed through voluntary member donations.

Recognized or approved religious communities may obtain tax exemption by the tax authorities for deeds of gift issued to the religious community, taxation of foundation grants, tax on real property, inheritance tax, etc., and their members have the right to deduct their financial contributions to the religious community from their taxable income. The reduction of personal income taxes and other

taxes on these grounds implies an indirect financial support from the Danish society to the religious denominations apart from the Established Church, as the Church Tax that is paid by members of the Established Church does not entitle to any kind of tax reduction.

Burial grounds

According to legislation, cemeteries are open to all inhabitants of a given parish - members as well as non-members of the Established Church, and everyone have a right to be buried in the parish churchyard.

Burial grounds are operated by the Established Church. However, the municipal authorities operate the cemeteries in major Danish cities on behalf of the Established Church. The municipal authorities are empowered, at their own discretion, but subject to approval by the Ministry of Ecclesiastical Affairs, to establish municipal burial grounds without any connection to the Established Church.

The board for burial grounds operated by the Established Church or the municipal authorities on behalf of the Established Church may, with the approval of the Minister for Ecclasiastical Affairs, reserve special sections of a burial ground for the use of other religious communities. In all there exists 36 special sections, of which 6 are Mosaic, 14 Catholic and 15 Moslem. Their geographical positions can be viewed on the homepage of the Ministry of Ecclesastical Affairs (http://www.km.dk/begravelsespladser.html)

Religious communities apart from the Established Church may also establish their own cemeteries. The religious community must provide an area on which to establish the burial ground and defray the cost of its acquisition and construction. The permission is granted, provided that the Health Authorities declare the area concerned suitable for use as a burial ground, and that a planning permission is granted from the municipality. Furthermore, a set of by-laws must be established, containing rules regarding the management, use and supervision of the burial ground. In April 2006 a Moslem cemetery was established according to these rules.

The State and the Established Church

The special position given to the Established Church in the Constitutional Act was based on respect for the religious and cultural history of Denmark as well as on the fact that almost all citizens belonged to this church.

Today the Established Church still counts about 83 % of the entire population of Denmark as members, and it has maintained a position with closer relations to the State than other religious denominations in Denmark.

The relations between the State and the Established Church are particularly reflected in 4 ways:

- The Parliament ("Folketinget") is the legislator of the Church.
- The Ministry for Ecclesiastical Affairs is the highest administrative authority of the Church.
- The Established Church receives some direct financial support from the State. No other religious denomination receives direct financial support from the State.
- The Established Church is responsible for the basic registration of the Danish population, except in Southern Jutland.

Section 66 in the Constitutional Act stipulates, "The constitution of the Established Church shall be laid down by statute."

Several attempts have been made to draft a constitution for the Church, so that the Church could obtain a more autonomous position. But it has never been possible to reach the necessary political agreement. Therefore, in both theory and practice the words of § 66 are interpreted, as "the conditions of the Established Church shall be regulated through legislation". Different Acts adopted by the non-confessional Parliament regulate the matters of the Established Church. The Acts have not been translated into English.

80% of the expenditure of the Established Church is covered by the church tax, which is collected only from members of the Established Church and is not tax-deductible.

The Ministry of Ecclesiastical Affairs.

The Ministry is a government department. The Minister, who is not required to be a member of the Established Church, is politically appointed like all other members of the Danish Government and is responsible before Parliament. The Minister for Ecclesiastical Affairs presents most bills aiming at amendments of the legislation to the Parliament, but special committees, which represent different authorities and interest groups, very often prepare the amendments. The Ministry of Ecclesiastical

Affairs also issues administrative orders with more detailed rules implementing Acts adopted by the Parliament.

Financial support from the State to the Established Church

The Established Church receives direct financial support from the State. In 2006 financial support to the Church amounted to DKK 762,6 million. About 90 % of this amount is used for salaries and pensions for the clergy. The State subsidy pays the full salary for bishops, 40 % of the salaries for other clergy and the full pensions for all former clergy.

The financial support from the State should be seen in the context, that the Established Church is responsible in all aspects for the maintenance of a very large and very important part of the national Danish cultural heritage and for the public cemeteries in Denmark and that the Established Church is responsible for the basic civil registration of citizens in Denmark, except in Southern Jutland.

The financial support to the Established Church should also be seen in the context that other religious denominations may obtain exemption from taxes, and in the context that the members of other religious denominations may obtain reduction in taxes in connection with their financial contributions to the religious denomination, whereas contributions to the Established Church (the "Church Tax") are not tax-deductible.

The average value of the tax deduction for financial contributions to religious communities apart from the Established Church is 33% of the amount contributed. Thus the Danish State pays DKK 330 of a contribution amounting to DKK 1000.

The civil registration

Since 1645 the vicars of the Established Church (in many parishes assisted by lay parish clerks) have been taking care of the basic civil registration of citizens in Denmark, not in their capacity as clergy in the Established Church but in a secular capacity of local civil authority representing the State. For historical reasons the basic civil registration in Southern Jutland is the responsibility of the municipal authorities. The present computer based Register is fully integrated with the Danish Civil Registration System (CPR) under the Ministry of Interior Affairs and Health's Department and supplies this system with information about births, names and deaths. Thus the Danish Civil Registration System acts as

State civil register and as list of members of the Established Church. The members of the Established Church are the only persons in Denmark, who are officially registered as members of a religious community. Danish public authorities do not register information about membership of other religious communities.

It is possible to report the name of a child to the registration authorities in writing. Therefore, personal contact with a vicar (or with the lay parish clerk) is not necessary. Furthermore, since the end of 2005 it has been possible to report the birth of a child directly to a State authority, - the Ministry of Ecclesiastical Affairs, and since spring 2007 it is also possible to register the birth of a child directly on the internet. Therefore, direct contact or communication with clergy is completely voluntary.

Certificates from the Register are marked "Den danske folkekirke" (The Established Church) only for members of the church.

Educational costs

Persons, who want to be ordained as ministers in the Established Church, are normally required to have obtained the Master of Theology-degree from either the Faculty of Theology at the University of Copenhagen or the Faculty of Theology at the University of Århus. These faculties are, like the universities as such, financed by the State. The faculties are non-confessional academic institutions, independent from the Established Church, and they are open for all qualified students regardless of their confession.

A Master of Theology must also undergo training at the Pastoral Seminary before being ordained and employed as a minister of the Established Church. The Pastoral Seminary is owned, operated and financed by the Established Church. The Church also owns and operates a number of other educational institutions such as the 3 Schools of Church Music, where e.g. organists are educated, and in-service training institutions for vicars. These institutions are also solely financed by the Established Church out of Church Tax funds.

Article 19.

Concerning racial discrimination

On 21 December 2005, the Danish Parliament adopted an Act, which inserted a new provision into section 81 of the Criminal Code. The Act entered into force on 23 December 2005. The purpose was to make it an aggravating circumstance if an offence is based on the victim's lawful statements in the public debate.

Concerning freedom of expression and protection of privacy (follow-up to paras. 200-201 in Denmark's fourth periodic report)

In continuation of the reporting in Denmark's 4th periodic report concerning freedom of expression and protection of privacy, it can be added that in 1999 the Supreme Court (Weekly Law Review 1999, p. 1675) pronounced sentence in a case concerning three journalists who had obtained access to a place that was not freely accessible – the artificial island of Peberholm in the Sound (Øresund). The Supreme Court acquitted them on the ground that the journalists, who had procured access to a place that was not freely accessible as provided for by section 264 (1) (1) of the Criminal Code, had not committed any unlawful act - because their presence was motivated by a wish to describe an action aiming to generate debate about the conditions relating to the Øresund Link.

In addition, the Supreme Court has since, i.a., passed the following sentences concerned with issues relating to freedom of expression:

In 2002, in a private criminal case (Weekly Law Review 2003, p. 624), the Supreme Court convicted a chief editor of violating section 267 (1) of the Criminal Code, which deals with the dissemination of allegations likely to disparage someone in the esteem of his or her fellow citizens, by having been responsible for reporting in a daily newspaper that a woman had killed 12 persons. The Supreme Court found that the statements constituted a disparaging allegation, and that in the balancing of the consideration for the freedom of expression of the press against the protection of an individual from violation of his or her personal honour, the overriding concern must be the protection which the "presumption of innocence rule" contained in Article 6 (2) of the European Convention for Human Rights affords the individual citizen. The chief editor was therefore sentenced to pay day fines as well as compensation to the victim.

In 2003, (Weekly Law Review 2003, p. 2044) the Supreme Court acquitted the defendant, a politician, of violation of the personal honour of another person as provided for by section 267 (1) of the Crimi-

nal Code by having stated that he (the defendant) would certainly not like to be identified with a named politician's racist views. The Supreme Court emphasised, in particular, that the statement had been made in a relevant political context and must be perceived as not being aimed at the claimant's person but rather at the views expressed by the claimant. The Supreme Court indicated that the opposite result would be contrary to Article 10 of the European Convention for Human Rights as this provision is interpreted by the European Court of Human Rights.

The Supreme Court ruled in a case in 2004 (Weekly Law Review 2004, p. 1773), acquitting the chief editor of a daily newspaper of having printed a woman's statements about the question of guilt in a criminal case where the claimant had been acquitted of sexually molesting the woman's child. The Supreme Court found that not all forms of criticism of an acquittal through the final decision in a criminal case should be considered a wrongful allegation against the acquitted. Whether such criticism is punishable will depend on a specific assessment. The Supreme Court took into account that the statements were printed in a highly conspicuous and sensational way. On the other hand the Supreme Court also took into account that the name of the claimant was not mentioned, and that the reporting of the woman's reaction to the acquittal of the criminal charges was reasonably justified as being part of the public debate about the special problems of evidence and law and order in cases of child molestation. The Supreme Court was therefore reluctant, based on an overall assessment of the facts, to find the chief editor guilty of a disparaging allegation.

An employee of the Danish Defence Intelligence Service ("DDIS") was convicted by the High Court of Eastern Denmark on 23 September 2005 in an appeal case (Weekly Law Review 2006, p. 65) of violation of section 152 (1), cf. subsection (2), of the Criminal Code by having passed on to two journalists from *Berlingske Tidende* three confidential threat assessments from the DDIS. The High Court did not find that the defendant had been acting in justifiable safeguarding of the obvious interests of the general public; therefore, the High Court did not find that the defendant's act could justify impunity under section 152 e no. 2 of the Criminal Code.

In continuation of the sentence by the High Court of Eastern Denmark, charges were also brought - against the chief editor of *Berlingske Tidende* and the two journalists who wrote the articles about the threat assessments - of violating section 152 of the Criminal Code.

For cases involving infringement of personal privacy (section 264 d of the Criminal Code) please refer to the sentence pronounced by the High Court of Eastern Denmark on 24 September 2004 (Weekly Law Review 2005, p. 123), where fines were imposed on an editor and two journalists from a weekly magazine pursuant to section 26 (2) of the Media Liability Act as well as payment of compensation under section 26 of the Liability for Damages Act for violation of section 264 d of the Criminal Code by having, in the weekly magazine, described - *inter alia* - the private matters of two well-known sports-people. Section 264 d of the Criminal Code is subject to private prosecution.

Article 20

There are no current deliberations of withdrawal of the Danish reservation to article 20. Reference is made to para. 202 of Denmark's fourth periodic report and para. 125 of Denmark's third periodic report.

Article 21

No relevant news to report

Article 22

Reference is made to previous reports, since Danish legislation on the freedom of association has not been amended recently. However, following an amendment of the Act on Prohibition of Differential Treatment in the Labour Market of 7 April 2004 (cf. Act No. 253), it is now explicitly stated that the prohibition of discrimination because of race, skin colour, religion or faith, political conviction, sexual orientation, age, disability or national, social or ethnic origin also applies to any person deciding on membership of or participation in a workers' or employers' organisation as well as to the benefits enjoyed by the members of such organisations.

Section 78 of the Constitution concerning freedom of association

Section 78(2) of the Constitution provides that associations that operate or seek to achieve their objectives by means of violence, inciting violence or similar punishable influencing of persons who hold different beliefs can be dissolved by judgment. In addition to associations that fall within the scope of section 78(2) of the Constitution, associations with illegal objectives may be dissolved by application of section 78(1). Thus, Danish law makes it possible to dissolve associations with illegal objectives, including associations whose objective is racist activity contrary to the law.

The Director of Public Prosecutions has examined whether there is basis for dissolving the Islamic association Hizb ut-Tahrir against the background of section 78 of the Constitution. These examinations were prompted primarily by a specific criminal case against a spokesman for the association charged with violation of section 266b of the Criminal Code.

By a sentence passed on 14 March 2003, upon review of an appeal, the Eastern High Court convicted the spokesman of violation of section 266 b (2) compared to subsection (1) of the Criminal Code for having distributed a flyer that in connection with general reference to Israel and Jews contained the following quotation from the Quoran: "And kill them wherever you find them and expel them from where they expelled you". The flyer was signed Hizb ut-Tahrir and thus appeared to be a flyer distributed on behalf of the organisation.

The examination showed that in no case other than the mentioned criminal case against the spokesman for Hizb ut-Tahrir were there sufficient grounds to believe that persons associated with Hizb ut-Tahrir had committed punishable offences in Denmark on behalf of the association. Thus there was no evidential basis for establishing that, as a general part of its activity, Hizb ut-Tahrir had applied unlawful means or carried out unlawful activities.

Consequently, it had to be assumed that in proceedings to dissolve Hizb ut-Tahrir according to section 78 of the Constitution, if instituted, it would not be possible to establish the necessary proof that Hizb ut-Tahrir had an illegal objective as covered by section 78(1) of the Constitution or operated by means of or sought to achieve its objective by violence, inciting violence or similar punishable influencing of persons who hold different beliefs as covered by section 78(2) of the Constitution

Article 23

Illicit transfer and non return of children abroad.

In 2002 the Department of Family Affairs opened a homepage regarding child abductions in cooperation with the Ministry of Foreign Affairs and the Police. The purpose of the homepage is to ensure that information about child abduction is within easy reach for those who need it. Parents and other interested can find information about legislation and which authorities to contact if a child have been abducted. The homepage is in Danish and English. At the same time a Child Abduction Hotline was established. The Hotline, which is attached to the Department of Family Affairs, can be contacted outside normal working hours and during weekends. The Hotline staff can inform about which rules that apply in a current situation, authorities to contact, how the various authorities can help and about which precautions to take.

If a child has been illegally removed to any foreign country it has been possible since July 2003 to apply for legal aid to cover the cost of legal steps needed to recover the child.

Parental custody.

The fourth periodic report contains a description of the Act on Custody and Access (lov om forældremyndighed og samvær), which entered into force on January 1, 1996. Since then, the Act has been amended several times in order to strengthen the legal ties between parents and their children and to help parents solving problems related to custody and visitation rights.

According to the new Act on the Child (børneloven), unmarried cohabitants automatically obtain joint custody of a new-born child in connection with registration of paternity, if the parties declare that they cohabit, that the child is their joint child, and that they will jointly care and take responsibility for the child. At the same time it was determined, that joint custody continues after divorce, unless one of the spouses seeks the joint custody dissolved.

Furthermore a number of initiatives have been taken, which focus on finding amicable solutions in disputes on custody and visitation rights, which will benefit the child. This includes offering conflict mediation, etc. to parents as a tool for them in resolving their conflicts.

In January 2007 a new bill concerning the rules of custody and visitation rights was submitted to Parliament. The bill especially gives the rights and best interest of the child top priority in accordance with UNCRC and the recommendations from CRC. Further the bill states that both parents have common responsibilities for the upbringing and development of the child. This is reflected through introducing joint custody which can only be rescinded in case of weighty reasons in consideration of the child. The bill also focuses on finding amicable solutions. The act is intended to enter into force on 1 October 2007.

Legislation on names.

By Act no. 524 of June 24, 2005, a new Act on Names was adopted, which entered into force on April 1, 2006.

According to the Act it will now be mandatory for the competent authority in certain cases of name changes for a child to obtain a declaration from the parent, who does not have custody of the child. The Act also makes it possible for an adopted child to carry the name of its biological parents and/or the name of the adoptive parents, and the act increases the number of situations, where it is possible to carry a name in accordance with foreign name traditions.

Family reunification

Since the fourth periodic report on Denmark, the provisions of the Danish Aliens Act regarding family reunification have been amended. On 17 January 2002, the Government presented its ideas for "A new policy for Foreigners", which, among other considerations, rests on the fundamental consideration that the aliens policy must honour Denmark's commitments under international conventions.

Act No. 365 of 6 June 2002 (Bill No. L 152 of 28 February 2002) comprises the amendments of the Aliens Act and the Marriage Act that follow from the Government's new aliens policy. In order to strengthen efforts to ensure a successful integration of aliens into the Danish society, the Act involves *inter alia* several amendments regarding the conditions for reunification of spouses, including a general age requirement of 24 years for both parties before spousal reunification can be granted, extension of the so-called condition of ties to comprise Danish nationals living in Denmark, and changing the conditions so that the parties' aggregate ties with Denmark must be stronger than their aggregate ties with another country and not, as was previously the rule, just strong.

In order to attain spousal reunification the spouse residing in Denmark must provide a bank guarantee of DKK 50,000 (today DKK 56.567) to cover any public expenses for assistance to the foreign spouse, and may not have received any public assistance for sustenance within the last year before the family reunification. The former right to family reunification with parents over 60 years of age was abolished. The Act further involves the introduction of further conditions for the issue of permanent residence permits, e.g. the foreigner must have 7 years of lawful residence, and must have passed a test in the Danish language. Finally, the Act makes it a general requirement, among others, for the contraction of marriages that both spouses are lawfully resident in Denmark.

The condition that both spouses must have attained the age of 24 to be eligible for family reunification replaced the previous '25 year rule'. The rule is designed to reduce the risk of forced and arranged marriages. The older a person is, the better he/she can resist pressure from his/her family or others to contract a marriage against his/her own will. The rule also promotes better integration because it contributes to improved educational and work opportunities for young people. This condition applies to everybody, that is, all persons living in Denmark irrespective of ethnic origin, be they Danish nationals or resident foreigners.

The condition that the spouses' aggregate ties with Denmark must be stronger than their ties with any other country replaced a previous condition of ties. The purpose of the condition of ties is to ensure the best possible starting point for the successful integration of family members wanting to be reunited with their family in Denmark, while protecting young people against pressure from their family or others to enter into arranged or forced marriages with spouses from a country and with a cultural background distinctly different from the young people's own daily lives and cultural reality. The condition of ties applies to all persons living in Denmark irrespective of ethnic origin, be they Danish nationals or resident foreigners.

Act No. 1204 of 27 December 2003 on amendment of the Aliens Act implies that persons who have been Danish nationals for 28 years and persons who were born and raised in Denmark or arrived in Denmark as small children and have grown up in Denmark and have moreover had at least 28 years of lawful – substantially continuous – residence in Denmark need not satisfy the condition of ties as a condition for reunification with a spouse. The amendment also implies an enhanced effort against marriages contracted against a party's own desire.

Act No. 427 of 9 June 2004 introduces a deferred period in connection to reunification with a spouse, when the person living in Denmark within a period of 10 years from the time of application for family reunification has been convicted of a violent crime against a former spouse or cohabiter. The Act also implies a deferred period in connection to reunification with a child, when the person living in Denmark or this person's spouse or cohabiter within a period of 10 years from the time of application for family reunification has been convicted of a sexual offence or another violent crime against a child. Furthermore, a child cannot be given permission to be reunited with its parents in Denmark, if a reunification is obviously against the best interest of the child.

The Act includes several amendments to the conditions for reunification of children in order to prevent so-called re-education journeys (e.g. where often well-integrated children are forced back to the parents' country of origin in order to avoid that the child is influenced by Danish norms and values). This includes lowering the general age limit for reunification of a child from 18 years to 15 years and introducing a rule, which implies that if a child's residence permit has previously lapsed as a result of long term stays abroad, the child can only be reunited with his or her family if the welfare and the interests of the child speak in favour of such reunification.

The intended purpose is to send a clear signal to parents who are contemplating a re-education journey for a child of theirs, that such practise is not acceptable considering the best interest of the child and the child's integration in Denmark.

The lowering of the age limit also serves an integration purpose. Under-age foreigners, who are to live in Denmark, ought to come to Denmark as early as possible to spend the largest possible part of their childhood in Denmark. The lowering of the age limit is therefore also intended to counter situations where parents deliberately leave their children in their country of origin until the children are almost adults.

When required by the right to family life set out in the European Convention on human Rights, or when it is in the best interest of the child under the Convention on the Rights of the Child, a permit for family unification must be issued.

In specific cases where the applicant and one of the applicant's parents live in the country of origin or another country, and where the application is submitted more than 2 years after the point in time when

the parent living in Denmark has obtained a permanent residence permit or a residence permit with a possibility of permanent residence, it may be required that the child has or is able to obtain such ties with Denmark that there is a basis for successful integration in Denmark. The best interest of the child as laid down by the UN Convention on the Rights of the Child must be observed at all times.

Act No. 324 of 18 May 2005 follows up on the recommendations made by the Council of Europe's Commissioner for Human Rights in July 2004 with regard to *inter alia* an accentuation of the consideration of the unity of the family to be mentioned directly in the relevant provisions of the Aliens Act.

Act No. 402 of 1 June 2005 introduced further requirements for being granted spousal reunification. The amendment implies that, in future, as a condition for spousal reunification, the applicant and the person living in Denmark must sign a declaration stating that, to the best of their ability, they will involve themselves actively in a Danish course and the integration into the Danish society of the applicant and any accompanying children. According to another new rule the security, now of DKK 55.567, which the person living in Denmark must provide as a condition for spousal reunification, is reduced by half upon request when the reunited spouse has passed his or her final examination in the Danish language or has received a certificate proving his or her active participation in the Danish course after completion of the course.

Act. No. 89 of 30 January 2007 introduced among other things a new and simplified condition of maintenance in cases concerning spousal reunification. The Act abolished the former condition of maintenance and replaced it with a condition of self-support. According to the new rule it will no longer be decisive how much the family earns, but whether the family is self-supported or not. Families, which do not receive public assistance under the Act of Active Social Policy or the Integration Act will be considered self-supportive.

Article 24

Denmark established in 1994 The National Council for Children, which works to ensure children's rights and to bring focus on and provide information about children's conditions in the society. The council shall advise authorities on matters relating to children's conditions and include children's points of view in its work. Moreover, the Council shall assess the conditions under which children in Den-

mark live, in the light of the provisions and intentions set out in the United Nations' Convention on the Rights of the Child.

The Council is independent and interdisciplinary. Together the members represent a broad spectrum of knowledge concerning children's conditions of life and development, children's schooling, cultural and leisure life, children's health, children's legal status and children with special needs

Article 25

The right to vote in local elections

No changes in relevant legislation have occurred.

In the local and regional elections on 15 November 2005 there were 189.485 foreign voters, which corresponds to an increase of 22.387 voters compared with the local elections in 2001. The total number of voters at the local and regional elections in 2005 was 4.191.725.

Article 26

Ref. comments on articles 2 and 3 above.

Article 27:

Reference is also made to comments on art 3 above.

Denmark ratified the European Charter for Regional or Minority Languages of 5 November 1992 (Minority Languages Charter) on 8 September 2000. The Charter entered into force for Denmark on 1 January 2001.

At the time of the ratification, Denmark identified German as a minority language in the sense of the Charter and therefore declared that the Minority Languages Charter will apply to German in respect of the German minority in South Jutland.

The initial report of Denmark was transmitted to the Council of Europe in December 2002. The Committee of Ministers adopted its recommendations on Denmark on 19 May 2004.

The second report of Denmark was submitted in April 2006. The Committee of Experts carried out an on-the-spot visit to Denmark in October 2006. The Committee of Ministers is expected to adopt their recommendations during autumn 2007.

ANNEX A

GREENLAND

Article 1

Please ref. comments to art. 1 in the report

Article 2

Being part of Denmark, Greenland participates in a wide range of forums of international cooperation. Under the Greenland Home Rule system various types of legislation apply to Greenland:

(a) Danish Acts (abbreviated as DA) adopted by the Danish Parliament (Folketinget), regulating areas, which have not been transferred to the Greenland Home Rule Government;

(b) Acts adopted by the Greenland Parliament (abbreviated as GA), regulating areas which have been taken over by the Greenland Home Rule Government but in relation to which the economic implications are not covered by the Danish Government's block grants for the Greenland Home Rule Government;

(c) Greenland Parliamentary Regulation (abbreviated as GPR) adopted by the Greenland Home Rule Parliament, regulating areas, which have been taken over by the Greenland Home Rule Government. The financing of these areas forms part of the Danish Government's block grants to the Greenland Home Rule Government;

(d) Home Rule Order (abbreviated as HRO) issued by the Greenland administration;

(e) Prolongation Order (abbreviated as PO) used for the specific entering into force in Greenland of an existing DA. Some DAs apply to Greenland at the same time as they apply to Denmark;

(f) Danish Order (abbreviated as DO) is a Danish order, which is also in force in Greenland.

Greenland is not entitled to pursue an independent foreign policy. In this context, it should be mentioned that, since 1984 and in line with two other home rule areas in the Nordic area, Greenland participates in Nordic cooperation. This participation is carried out on a basis of equality in that the Danish Parliament has given seats in its Nordic Council delegation to two members of the Greenland Home Rule Parliament, and in that the members of the Greenland Home Rule Parliament attend the meetings of the Nordic Council of Ministers, which is the formal forum for intergovernmental cooperation between the five Nordic countries. The representatives of Greenland have no voting rights but are allowed to speak and submit proposals.

No legislation implies any kind of discrimination within the borders of Greenland in terms of race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. However, it should be noted that GA No. 27 of 30 October 1992 on the regulation of the increase in the labour force in Greenland contains provisions ensuring that the local population has a right of priority in relation to jobs where the supply of Greenland labour is adequate. An employer must therefore contact the local labour market office to apply for permission to employ non-local manpower in such positions. Such permission will be granted if no Greenland manpower or manpower with special affiliation with Greenland can be provided via a job centre. The Act places Greenland and other manpower on an equal footing in cases when a person not from Greenland has lived in Greenland for at least 7 out of the past 10 years or has a special affiliation with Greenland, for example through family ties. The Act should also be seen in the light of Greenland's special status in the Kingdom of Denmark, where Greenland is regarded as an area, which differs from the rest of Denmark in terms of language, culture and, in certain respects, development. Like developing countries Greenland has special needs relating to the education and employment of the native population.

Article 3

There are no rules and regulations in Greenland, which prevent certain groups of people from receiving public benefits or enjoying collective rights on the basis of gender.

The existing legislation in the area of equality is the following:

Greenland Parliamentary Act No. 7 of 11 April 2003 on equal status of women and men. The act contains provisions to the effect that public sector must work for equality and incorporate equality in all planning and administration and that there must be an equal representation of women and men in various committees and executive bodies. The act also contains provisions, which in revised form continues the provision in the Danish legislation on equal pay and equal treatment with regard to employment.

Greenland Parliamentary Act No. 8 of 11 April 2003 on amendment of Greenland Parliamentary Act No. 5 of 20 May 1998 on the Equal Status Council of Greenland. The amendment points out that the representatives in the Equal Status Council should represent organizations and groups working for the well being of children and families. The Act also contains new provisions on the composition of the Equal Status Council of Greenland reducing the membership of the Council.

Greenland Parliamentary Act No. 5 of 20 May 1998 on the Equal Status Council of Greenland

With the Greenland Parliamentary Act on equal status of women and men the awareness of the need for equal representation of man and women in various committees and executive bodies has increased.

In the fall of 2003, the Equal Status Council of Greenland held a conference and a course on the subject of "Women in Politics" with participation from all parts of Greenland. The general objective of the course was to encourage women to be more active in politics at all levels and to give insight into policy making. The above activities were sponsored by the Greenland Treasury.

Article 4

Greenland has no comments in relation to Article 4 of this Convention

Article 5

Greenland has no comments in relation to Article 5 of the Convention.

Article 6 – Article 22

Many of the rights and state obligations established by this Covenant are rights and obligations already laid down in the Danish Constitution, which also applies to Greenland. E.g. freedom of religion Article 18, freedom of opinion and freedom of expression 19, freedom of association Article 21, etc.

Judicial authority is exercised by the Greenland High Court in Nuuk, and by the local magisterial court in the 18 municipalities. The boundaries of the jurisdictions are the same as those of the municipalities.

The High Court is presided over by a High Court Judge. All cases brought before The High Court are tried by The High Court Judge, acting as presiding judge, and two lay assessors elected by the Greenland Parliament.

Judgements in the High Court acting as a court of first instance may be appealed to The Eastern High Court in Denmark and from there, in exceptional cases, to the Supreme Court.

In 1994, the Ministry of Justice in Denmark, in consultation with the Greenland Home Rule Government (Cabinet/Landsstyre) appointed a joint Danish and Greenland commission to review the Greenland justice system. The primary task of the Commission on Greenland's Judicial System also called the Commission on Greenland's Judicial System was to review the Administration of Justice Act for Greenland and the Greenland Criminal Code and to propose measures of modernization and adjustments where appropriate in accordance with international human rights standards.

The final report of the Commission on Greenland's Judicial System was handed over to the Danish Government and to the Greenland Home Rule Government in August 2004.

According to section 71 (a) of the Greenland Criminal Code, a person who publicly or with the intent to disseminate to a greater circle expresses or in any other way proclaims a statement by which a group of persons is threatened, ridiculed, or demeaned because of race, skin colour, national or ethnic origin or belief shall be sentenced. The Commission on Greenland's Judicial System proposes that the section should be amended to include "sexual orientation", corresponding to the parallel section of the Danish Penal Code. The report of the Commission on Greenland's Judicial System contains no other recommendations of specific relevance to article 4 of the convention.

The report of the Commission on Greenland's Judicial System contains a number of recommendations of possible relevance to article 2 of the convention. The Commission on Greenland's Judicial System recommends that a closed prison should be established in Greenland for inmates today serving their sentences in Herstedvester prison in Denmark. The commission also recommends that inmates serving sentences in prisons in Greenland should be offered correctional treatment / rehabilitation programmes. Such programmes have so far only been offered in Danish prisons. Furthermore, the commission recommends a number of initiatives, which will secure and consolidate the right to a fair trial, along with initiatives aimed at offering help and support to victims of crime. A number of these recommendations have already been brought into effect.

On 15-16 August 2005, the Greenland Home Rule Government (Landsstyret) held a conference on the recommendations of the Commission on Greenland's Judicial System. The aim of the conference was to inform and invite to a public debate about these recommendations, prior to the fall session of the Greenland Parliament (Landstinget), where Greenland Home Rule is to officially comment on the recommendations, as part of the standard consultation procedures between the Danish authorities and Greenland Home Rule Government. The conference was open to the public and part of the conference was radio transmitted. The conference was attended by both the Danish Minister of Justice and the Greenland Home Rule Government Minister of Justice.

Article 23

Danish family law applies to Greenland, but not all acts have been updated when family law in Denmark has been amended. In December 2006 the Government of Greenland asked for an overall update of family law in Greenland. In spring 2007 the ministry of Family and Consumer Affairs will make foplan for this work. The update will include rules on marriage, on parental responsibility and access, on illicit transfer and non return of children abroad and on names.

Article 24

In order to strengthen the rights and best interest of the child, the Greenland Parliament has passed new regulations on assistance to children and young persons. The regulations became effective 1 July

2005, involving the need of the child always to be the basis of decisions on assistance according to the regulations.

To ensure a targeted assistance to the child, an action plan must be set up when implementing assistance, including placement. This is a new element in the legislation. Besides, an early intervention and the requirements of action plans are measures of preventing problems from becoming heavier and more complex, thereby damaging the child more and making it harder to solve the problems.

Article 25

Regulations regarding elections to the Greenland Parliament are laid down in the Greenland Parliamentary Act No. 9 of 31 October 1996 on Election to the Greenland Parliament. All Danish citizens may vote, provided they are aged 18, are not disqualified by insanity, and have been permanent residents in Greenland for at least 6 month prior to election.

Reference is made to the fact that the Greenland Home Rule Government is a public government not an ethnic government, even though presently 99% of the members of Parliament and 100% of the Cabinet members are ethnic Greenlanders (of Inuit decent).

Elections to the Municipalities are laid down in the Greenland Parliamentary Act No. 10 of 31 October 1996. Eligibility to vote requires that the person has the age required to vote for the Danish Parliament (Folketinget); that the voter is either Danish citizen and has been resident in Greenland for at least 6 month prior to the election, or has been a permanent resident of the Realm for at least 3 years and has been resident in Greenland for at least 6 month prior to the election.

Article 26.

No development to report specifically in relation to Greenland.

Article 27

The Greenland Home Rule Act (Act No 577 of 29 November 1978) establishes in Section 9 (1) that Greenlandic (Kalaallisut, an Inuit dialect) shall be the principal language. Danish must be thoroughly taught and (2) that either language may be used for official purposes.

The church in Greenland, which is part of the Danish Established Church became an independent diocese with its own bishop 1 November 1993, based on the Greenland Parliamentary Act No. 15 of 28 October 1993.

Religious freedom in Greenland provides for the active presence of numerous religious organizations and associations, and other churches and sects.

Article 24

The information provided in the fourth report remains relevant. However, the paragraph on page 58 starting with 'Concerning work performed by children and young persons (follow-up on paragraph 135 of Denmark's third periodic report, cf. CCPR/C/64Add.11)' should be changed as far as Greenland is concerned.

The relevant information is now as follows: Greenland's Health and Safety at Work Act has been amended by Act No. 321 of 18 May 2005. The amendment updates Greenland's Health and Safety at Work Act of 1986 in that the provisions about young people under the age of 18 have been revised so that the rules in Greenland are now similar to the rules applying in Denmark. For example, the minimum age for employment has been raised from 10 to 13 years. The new rules came into force on 1 January 2006.

THE GREENLANDIC HOUSES, CF. CONCLUDING OBSERVATIONS, B.6 OF 31/10/2000 (CCPR/CO/70/DNK)

The Greenland Home Rule Government is obliged, by enactment of legislation (Act no. 580 of 29 November 1978) by the Danish Parliament, to maintain a special system of assistance for Greenlanders in Denmark. This is done in cooperation with local Danish authorities, and is administered locally through the so-called *Greenlandic Houses* and centrally by the Social Section of the Directorate at the Greenland Representation Office in Copenhagen.

The *Greenlandic Houses* are situated in Aalborg, Arhus, Odense and Copenhagen, each covering a region of Denmark. They receive subsidies from the Home Rule authorities and from the Danish municipality in which they are situated as well as from the Danish regional municipality in question. The most important responsibilities of the social offices of the houses are their services to the social and health administrations in the municipalities and regional municipalities in the following areas:

- Information on conditions in Greenland
- Assistance and advice concerning projects for Greenlanders who live in the area in question
- Assistance in individual cases to Greenlanders who are permanent Danish residents, including the assignment of interpreters
- Assistance in cases concerning persons who have been placed in Denmark by Greenlandic authorities for the purpose of child and youth care or rehabilitation

In addition, the *Greenlandic Houses* must act as consultative organs in relation to Greenlanders residing permanently in Denmark.

The *Greenlandic Houses* give advice to Greenlandic students in Denmark. They also carry out certain welfare activities in relation to Greenlanders who, following a sentence in a Greenlandic court of law, have been placed in a Danish institution.

In October 2003 the Danish Parliament granted DKK 20 mill for the period 2004-07 to projects helping Greenlanders in difficult social positions living in Denmark. The Greenlandic Houses cooperate with other public or private organisations establishing projects in order to help integrating this group of Greenlanders in the Danish society.

ANNEX B

THE FAEROE ISLANDS

Article 1

Please ref. comments on art. 1 in the report

Article 2

Pursuant to section 5 of the Home Government Act, the legislative and executive powers of the Faroes are obligated to follow international treaties and conventions, including the International Covenant on Civil and Political Rights. In the event that a law is found inconsistent with said Covenant, the legislation is deemed to be rescinded, pursuant to section 55 of the present Constitution of the Faroes.

Article 3

In Parliamentary Act No. 52 of 3 May 1994 concerning equality between women and men, certain rules are stipulated to ensure equity between women and men. In this Act, it is stipulated, *inter alia,* that:

> It is unlawful to discriminate against people, either directly or indirectly, because of gender. It is unlawful for employers to discriminate against their employees because of gender. Employees have the right to be absent from work during pregnancy, at birth and for a period after birth.
> All training materials used for teaching and the raising of children shall reflect an attitude of gender equity.
> All public committees, councils, representatives and the like, appointed by the executive shall be so constituted that both genders are equally represented.

At present, three women sit in the Faroese Parliament, out of a total of 32 members. On 20 October 2005, the Parliament approved the establishment of a committee to work on ensuring that women will play a greater role in the political decision-making process.

Article 4

It has not been necessary to apply this Article in the Faroes.

Article 5

Such cases are not likely in the Faroes

Article 6

Officially, the death penalty had been legal in the Faroes until 2003, when a new military penal code entered into force in the Faroes that repealed the authority found in other military penal codes to pass a sentence of death in time of war. Regarding civil crimes, the death penalty was abolished pursuant to the civil penal code of 1930.

The last execution was carried out in the Faroes in 1707.

Article 7

Concerning the corporal punishment of children, see the comments to Article 24.

Article 8

Is complied with in the Faroes.

Article 9

With regard to the rights stipulated in this Article, the judicial procedure code in the Faroes secures these rights.

Article 10

In the Faroes, there are two facilities where people can be deprived of their liberty. One is the psychiatric ward of the National Hospital, and the other is the jail in T6rshavn.

The psychiatric ward is subject to the independent oversight of the Ombudsman of the Parliament. The last oversight report of the Ombudsman is dated 24 October 2002.

The T6rshavn jail is subject to the independent oversight of the Ombudsman of the Danish Parliament. The latest report, with appendices, from the Ombudsman was on 10 August 2001.

In said reports, there are no relevant comments with regard to Article 10.

It is doubtful whether in all cases the T6rshavn jail, which is under Danish control, meets the condition of holding pre-trial detainees separate from other prisoners, as well as the condition that juveniles are kept apart from other prisoners and are given special treatment.

There is no authority granted under Faroese legislation to incarcerate anyone on account of ordinary contractual obligations.

In Danish Parliamentary Act No. 150 of 24 April 1963 regarding collection of maintenance, as amended by Act No. 280 of 8 June 1977, section 10 and section 11 include stipulations that individuals who owe maintenance to their spouses or children, can be imprisoned in order to pay down the support obligation. This provision of the Act has not been practised in the Faroes for many years.

Article 12

Legislation secures this in the Faroes.

Article 13

The area is administrated by Danish Authorities pursuant to Royal Decree No. 182 of 22 March 2001

regarding the entry into force for the Faroes of the Alien Act, which complies with said article of the present Covenant.

Article 14

The judicial procedure code and the penal code, where valid in the Faroes, are consistent with the referenced article of the present Covenant.

Regarding paragraph 2, it can be noted that section 16, subsection 1 of the Faroese Road Traffic Act, stipulates that the same punishment is applicable as that for driving under the influence of alcohol, if a person consumes alcohol and subsequently within a six-hour period drives a motor operated vehicle and, whether found negligent or not, is involved in or contributes to a traffic accident, or is pursued by the police. During debate on the issue in Parliament in 1982, it was determined that the stipulation did not violate the basic principle that everyone is considered innocent until proven otherwise according to the law in a court.

The principal language of the court in the Faroes, according to section 149, subsection 1 of the judicial procedure code, is Faroese, however, Danish may be used as well. In most cases, the judges are Danish, understand Faroese, but do not speak it. In the event that the accused does not understand Danish, an interpreter shall be provided, pursuant to the same provision.

It is quite probable that the accused may pretend to understand Danish in spite of not knowing the language completely and therefore the *de facto* language of the Courts is Danish. This happens especially in instances when the judge or the prosecutor is newly arrived from Denmark and has not been in the Faroes before. Efforts have been made to alter this situation by section 17a of the judicial procedure code, wherein authorization is granted to the Faroese court administrator to promulgate specific regulations that ensure that the judges receive training "in Faroese legislation, social conditions, culture, as well as oral and written Faroese". Such regulations have not been promulgated.

Article 15

Compliance is ensured in the Faroes pursuant to Royal Decree No. 136 of 25 February 2000 on the

entry into force in the Faroes of the law regarding article 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 16

No comments.

Article 17

The judicial procedure code of the Faroes ensures the rights referenced in this Article.

Article 18

Religious freedom is provided for in the Faroes, pursuant to Royal Decree No. 136 of 25 February 2000 on the entry into force in the Faroes of the law regarding the European Convention for the Protection of Human Rights and Fundamental Freedoms. Confer article 9.

In Parliamentary Act No. 125 of 20 June 1997 on public elementary education, as amended by Parliamentary Act No. 53 of 9 May 2005, section 41 stipulates that every eligible child have the obligation to attend school, if the child does not receive any other education equal to that generally required in the public elementary school system.

In said Act, section 2, subsection 23 stipulates that the public elementary school system shall, in agreement and co-operation with the parents, aid the pupil to obtain a Christian and moral upbringing. In section 6 of the same Act, the conditions under which children are excused from attending Christian studies in school are stipulated.

Article 19

Is complied with in the Faroes pursuant to Royal Decree No. 136 of 25 February 2000 on the entry

into force in the Faroes of the law regarding the European Convention for the Protection of Human Rights and Fundamental Freedoms. Confer articles 9 and 10.

Article 20 - 21

Cfr. Danish comments on these articles in this and previous reports.

Article 23

Danish family law applies to the Faroes, but not all acts have been updated, when family law in Denmark has been amended. On April 1 2007 the Danish Act on Custody and Access will enter into force in the Faroes, introducing conflict mediation and joint custody for unmarried couples and for married couples after divorce.

Article 24

Parliamentary Act No. 18 of 8 March 2005 on child welfare aims to ensure that children, who live under conditions that may harm their health and development, shall obtain the necessary help and care in good time, and shall receive the assistance necessary to help them obtain a safe and secure upbringing.

Parents in the Faroes have a limited right to inflict corporal punishment on their children. In January 2003, the Parliament put forward a bill to prohibit such punishment, but the bill was not passed due to legal technicalities.

Article 25

Compliance is ensured by the grant to all adults of the right to vote and be elected to Parliament and the municipal councils, as well as everyone has a right to receive social welfare benefits, pursuant to the legislation on social welfare.

Article 26

Is complied with pursuant to the Danish Parliamentary Act No. 289 of 9 June 1971 on the prohibition against discrimination because of race, etc., which entered into force in the Faroes pursuant to Royal Decree No. 382 of 12 August 1972.

Article 27

In the Faroes, there is only one large ethnic and linguistic minority, i.e. the Danes living in the Faroes. According to section 10, subsection 2, second sentence of the Home Government Act, it is not allowed by either legislation or administrative action to differentiate between Faroemen or Danes, and, pursuant to the same Act, section 11, subsection 1, Danes are allowed to use the Danish language in all interaction with the public authorities.

ANNEX C

Decision on Possible criminal proceedings in the case of Jyllands-Posten's Article "The Face of Muhammed" 1.

Introduction

This Memorandum contains a brief on the Director of Public Prosecutions' considerations on whether there is basis for instituting criminal proceedings in the case of Jyllands-Posten's article "The Face of Muhammed" published on 30 September 2005.

The matter is being considered as a result of complaints submitted against the decision by the Regional Public Prosecutor of Viborg on 6 January 2006 in which he decided to discontinue the investigation pursuant to section 749(2) of the Danish Administration of Justice Act with regard to a report filed by a private person with the Chief of Police of Aarhus.

In his decision the Regional Public Prosecutor stated that in assessing what constitutes an offence under both section 140 and section 266 b of the Danish Criminal Code, the right to freedom of expression must be taken into consideration and that on an overall assessment of the article he does not find that there is a reasonable presumption that a punishable offence to be prosecuted by the public has

been committed.

Several complaints have been submitted to the Director of Public Prosecutions about the Regional Public Prosecutor's decision. The complaints have been submitted by a number of organisations and individuals.

In the complaints, it is claimed that offences have been committed under both section 140 and section 266 b of the Danish Criminal Code, and that in the present concrete case, regard for the right to freedom of expression and the right of the press to cover current events cannot provide grounds for not considering the article to fall within the scope of the above-mentioned provisions.

2. The Article in Jyllands-Posten

The article in Jyllands-Posten was published in the newspaper's Friday issue on 30 September 2005 and was advertised on the front page of the newspaper with one of the drawings from the article. The drawing was accompanied by text explaining that the newspaper had invited members of the Danish Newspaper Illustrators' Union to draw Muhammed as they see him; that 12 of about 40 had responded to the invitation; and that the drawings are published under the illustrators' names. Furthermore, the front-page text states that "Some Muslims reject modern, secular society. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with secular democracy and freedom of expression, where one has to be ready to put up with scorn, mockery and ridicule."

The article, which was published on page 3 in the "KulturWeekend" section, is entitled "The Face of Muhammed" and laid out as a three-column text section surrounded by twelve drawings. The introduction to the article is headed "Freedom of expression", and from the by-line it appears that the article is written by Flemming Rose, culture editor. The introduction to the article is as follows:

"The comedian Frank Hvam recently admitted that he did not dare openly "to take the piss out of the Koran on TV". An illustrator who is to portray the Prophet Muhammed in a children's book wishes to do so anonymously. As do the Western European translators of a collection of essays critical of Islam. A leading art museum has removed a work of art for fear of reactions of Muslims.

This theatre season, three satirical shows targeted at the President of the USA, George W. Bush, are playing, but not a single one about Osama bin Laden and his allies, and during a meeting with Prime Minister Anders Fogh Rasmussen, Denmark's Liberal Party, an imam urged the government to use its influence over Danish media so that they can draw a more positive picture of Islam.

The cited examples give cause for concern, regardless of whether the experienced fear is founded on a false basis. The fact is that the fear does exist and that it leads to selfcensorship. The public space is being intimidated. Artists, authors, illustrators, translators and people in theatre are therefore steering a wide berth around the most important meeting of cultures in our time – the meeting between Islam and the secular society of the West, which is rooted in Christianity."

The following section with the heading "The Ridicule" is an extract from the article:

"Some Muslims reject modern, secular society. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with secular democracy and freedom of expression, where on has to be ready to put up with scorn, mockery and ridicule.
It is therefore no coincidence that people living in totalitarian societies are sent off to jail for telling jokes or for critical depictions of dictators. As a rule, this is done with reference to the fact that it offends people's feelings. In Denmark, we have not yet reached this stage, but the cited examples show that we are on a slippery slope to a place where no one can predict what self-censorship will lead to."

In the last column of the article under the heading "12 illustrators", it says: "That is why Morgenavisen Jyllands-Posten has invited members of the Danish Newspaper Illustrators' Union to draw Muhammed as they see him." Furthermore, it says that twelve illustrators, whose names are mentioned, have responded to the invitation and that their drawings are published.

The twelve drawings are as follows:

Drawing 1: The face of a man whose beard and turban are drawn within a crescent moon, and with a star, symbols normally used for Islam.

Drawing 2: The face of a grim-looking bearded man with a turban shaped like an ignited bomb.

Drawing 3: A person standing in front of an identity parade consisting of seven people, including a caricature of Pia Kjærsgaard [translator's note: leader of the Danish People's Party] and five men wearing turbans. The person in front of the line-up is saying: "Hmm ... I can't quite recognize him ... "

Drawing 4: A bearded man wearing a turban, standing with a halo shaped like a crescent moon over his head.

Drawing 5: Five stylised female figures wearing headscarves, with facial features depicted as a star and a crescent moon. The caption reads: "Prophet! You crazy bloke! Keeping women under the yoke!"

Drawing 6: A bearded man wearing a turban, standing with the support of a staff and leading an ass with a rope.

Drawing 7: A man with beads of sweat on his brow, sitting under a lighted lamp and looking over his left shoulder as he draws a man's face with a head covering and beard.

Drawing 8: Two bearded men wearing turbans and armed with a sword, a bomb and a gun, running towards a third bearded wearing a turban. He is reading a sheet of paper and gesturing them to hold off, with the words: "Relax folks! It's just a sketch made by an unbeliever from southern Denmark."

Drawing 9: A teenage boy with dark hair, dressed in trousers and a striped top printed with the text "The Future", standing in front of a blackboard, and pointing with a pointer at the Arabic text written on it. The text "Mohammed, Valby School, 7A" is written in an arrow pointing at the boy.

Drawing 10: A bearded man wearing a turban and carrying a sword, standing with a black bar covering his eyes. Standing at his sides are two women wearing black gowns, with only their eyes visible.

Drawing 11: A bearded man wearing a turban, standing on clouds with arms outspread, saying: "Stop, stop, we ran out of virgins!" Waiting in front of him is a row of men in tatters with plumes of smoke over their heads.

Drawing 12: A drawing of a man wearing glasses and a turban with an orange in it. The turban bears

the words "Publicity Stunt". The man is smiling as he shows a picture portraying a "matchstick man" with a beard and wearing a turban.

3. The Director of Public Prosecutions' Assessment

3.1 Introduction

The question of whether there is basis for instituting criminal proceedings in this case entails an assessment of whether the article in Jyllands-Posten must be considered a criminal offence under the provisions of section 140 and/or 266 b of the Danish Criminal Code. These provisions contain a restriction on the right freely to express opinions and must therefore be interpreted with due regard for the right to freedom of expression.

According to section 77 of the Danish Constitution, any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures can never be re-introduced. The general opinion is that this provision contains a protection of formal freedom of expression, including a prohibition against prior restraint. The provision does not protect substantive freedom of expression, that is to say the content of the expressions.

Article 10 of the European Convention on Human Rights (ECHR) does, however, protect formal as well as substantive freedom of expression.

According to Article 10(1) everyone has the right to freedom of expression. Article 10(1) also comprises expressions that may shock, offend or disturb. As the exercise of the freedom of expression carries duties and responsibilities, under Article 10 (2) it may i.a. be subject to restrictions and penalties as prescribed by law and which are necessary in a democratic society, i.e. be proportionate to the legitimate aim pursued.

The European Court of Human Rights (the Court) has held several times that freedom of expression is the foundation of a democratic society. In case of conflicts between the right to freedom of expression and protection of other rights comprised by ECHR, the freedom of expression of the press in particular carries great weight if it concerns a subject of general interest, as the press fulfils a central function in a democratic society.

Consequently, the Court attaches decisive importance to the regard for the freedom of expression when assessing the justification of interference with expressions that may offend religious feelings. However, at the same time, the Court has stated that there is a duty as far as possible to avoid expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.

In cases concerning the balance between the right of freedom of expression and the protection of religious feelings, the Court, according to its practice, leaves a wider margin of appreciation to the individual State, because in this area the national authorities also act to safeguard freedom of religion, another fundamental principle of the Convention, cf. Article 9.

On the other hand, the Court has also stated that persons who exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith.

As the Court's assessment is always made relative to the a State's specific interference with the right to freedom of expression, and in the light of the contents of the expressions and the context in which they have been made, it is not possible from the case law of the Court to infer a certain state of law regarding how the Court would weigh the regard for freedom of expression in relation to expressions that can offend religious feelings.

3.2. Section 140 of the Danish Criminal Code

Section 140 of the Danish Criminal Code provides that any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in this country shall be liable to imprisonment for any term not exceeding four months.

The provision belongs to the rules of criminal law, the interpretation of which varies depending on what is generally considered accepted usage or other form of expression in Danish society. In this connection, it should be noted that a direct and informal form of debate is not unusual in Den-

mark, where even offensive and insulting expressions of opinion are widely accepted.

It should also be noted that when adopted in 1930, section 140 of the Danish Criminal Code was intended to afford protection of the most serious offences against religious feelings and was furthermore implied in subsequent discussions by the Danish Parliament in 1973 and 2005 regarding the necessity for this provision. This has been reflected in practice as well, as since 1930 only three prosecutions have been brought for violation of this provision and the most recent of these cases from 1971 led to acquittal.

An assessment of the above described drawings and the article in relation to the provision of section 140 of the Danish Criminal Code entails a decision on whether they represent mockery or scorn of Islam's religious doctrines or acts of worship.

The other objective conditions in section 140 of the Danish Criminal Code must be considered as having been met, as violation, if any, of section 140 of the Danish Criminal Code has been made against "any lawfully existing religious community in this country". The article and the drawings were shown "in public" as they were printed in a daily newspaper, and the form of mockery or scorn, if any, by written expressions in a newspaper article and by drawings in the same is comprised by section 140 of the Danish Criminal Code.

As regards the question of whether the article contains mockery or scorn of "religious doctrines or acts of worship", it should first be noted that the expressions cover the internal and external religious life of a religious community; that is, the doctrines (a creed, if any, and the central texts of the religion) and the institutions, practices, persons and things (ritual acts, etc.) by which the acts of worship of the community take place. However, according to the legislative material in preparation of the Criminal Code, the concepts do not comprise religious feelings which are not tied to the society's religious doctrines or acts of worship, including doctrines of an ethical or a social nature, or the like.

The concept "mockery" covers ridicule and is an expression of lack of respect or derision of the object of mockery. "Scorn" is an expression of contempt for the object that is scorned. It must be assumed that these words imply ridicule or contempt with a certain element of abuse, just as it appears from the legislative material of the Criminal Code that punishment can be incurred only in "serious" cases.

The religious writings of Islam cannot be said to contain a general and absolute prohibition against drawing the Prophet Muhammed.

The basic assumption must be that, according to Hadith (the written narratives of the life of the Prophet and guidelines for the conduct to be shown by Muslims) in Islam, there is a prohibition against depicting human figures, which also includes depicting the Prophet Muhammed. Not all Muslims comply consistently with the ban on depiction, as there are pictures of Muhammed dating from earlier times as well as the present. However, in these cases the Prophet is depicted respectfully, in some instances without facial features.

It cannot then be assumed that a drawing of the Prophet Muhammed in general will be contrary to the religious doctrines and acts of worship of the religion as practised today, although certain groups within the religion comply fully with the ban on depiction. For that reason alone, a drawing of the Prophet Muhammed cannot in itself constitute a violation of section 140 of the Danish Criminal Code.

The drawings in question, which according to the headline illustrate "The Face of Muhammed", are not, however, where some of them are concerned merely a depiction of the Prophet Muhammed, but a caricature of him.

Depending on the circumstances, a caricature of such a central figure in Islam as the Prophet Muhammed may imply ridicule of or be considered an expression of contempt of Islamic religious doctrines and acts of worship. An assessment of whether this is the case must be seen in the light of the text accompanying the drawings.

In the article it is stated that fear of Muslim reaction in a number of concrete cases has led to self-censorship and to artists, authors and others avoiding expressing themselves about the cultural meeting between Islam and the secular, Western societies rooted in Christianity. The next paragraph states first, that some Muslims reject the modern, secular society, who demand a special position, insisting on special consideration of their own religious feelings. It then continues: "It is incompatible with secular democracy and freedom of expression, where one has to be ready to put up with scorn, mockery and ridicule. It is certainly not always agreeable and pleasant to watch, and it does not mean that religious feelings should be made fun of at any price, but that is a minor consideration in the present context."

In the following section it appears that on this basis Jyllands-Posten has invited members of the Danish Newspaper Illustrators' Union to draw Muhammed as they see him.

Based on this text, the basic assumption must be that Jyllands-Posten commissioned the drawings for the purpose of in a provocative manner to debate whether, in a secular society, special regard should be paid to the religious feelings of some Muslims.

The drawings, referred in paragraph 2 above as drawing 1, drawing 3, drawing 4, drawing 6, drawing 7, drawing 9, drawing 11 and drawing 12, are either neutral in their expression or do not seem to be an expression of derision or spiteful ridiculing humour. Therefore, in the opinion of the Director of Public Prosecutions, these drawings cannot be considered to be criminal offences under section 140 of the Danish Criminal Code.

Drawing 5 and drawing 10 deal with the position of women in a Muslim society and thus concern social conditions in those societies and the lives of the members of those societies. On this basis the drawings cannot be considered to contain expressions about Islamic religious doctrines or acts of worship and are consequently not punishable offences under section 140 of the Danish Criminal Code.

The two armed figures in drawing 8 can be seen to be an illustration of an element of violence in Islam or among Muslims. The standing man who could be a depiction of Muhammed, however, denies there is any reason for anger and speaks soothingly, which must be taken to be a rejection of violence. Neither can this drawing thus be considered an expression of mockery or scorn of Islamic religious doctrines or acts of worship, cf. section 140 of the Danish Criminal Code.

Drawing 2, showing the face of a grim-looking man with a turban shaped like an ignited bomb can be understood in several ways.

If Muhammed is taken to be a symbol of Islam, the drawing can be understood to mean that violence or bomb explosions have been committed in the name of Islam. The drawing can therefore be seen as a contribution to the current debate on terror and as an expression that religious fanaticism has led to terrorist acts. Understood in this way, the drawing cannot be considered to express contempt for the Prophet Muhammed or the Islamic religion, but as an expression of criticism of Islamic groups who

commit terrorist acts in the name of religion. On this basis, the drawing is clearly not a violation of section 140 of the Danish Criminal Code.

The drawing can also be taken to depict the Prophet Muhammed as a violent person and as a rather intimidating or scary figure.

The historical descriptions of the Prophet's life show that while propagating their religion, he and his followers were involved in violent conflicts and armed clashes with persons and population groups that did not join Islam, and that both many Muslims and others lost their lives in that connection.

Even against this historical background, a depiction of the Prophet Muhammed as a violent person must be considered an incorrect depiction if it is with a bomb as a weapon, which in the context of today may be understood to imply terrorism. This depiction may with good reason be understood as an affront and insult to the Prophet who is an ideal for believing Muslims.

However, such a depiction is not an expression of mockery or ridicule, and hardly scorn within the meaning of section 140 of the Danish Criminal Code. The concept scorn covers contempt and debasement, which in the usual meaning would not comprise situations depicting a figure as shown in drawing 2, regardless of how it is illustratively to be understood or interpreted.

Also taking into account that, according to the legislative material and precedents, section 140 of the Danish Criminal Code is to be interpreted narrowly, the affront and insult to the Prophet Muhammed, which the drawing may be understood to be, cannot accordingly with the necessary certainty be assumed to be a punishable offence under section 140 of the Danish Criminal Code.

No matter whether the purpose of publishing the drawings according to the text in the article was to express "scorn, mockery and ridicule" with the intention of debating whether special considerations should be made for the religious feelings of certain Muslims in a secular society, this intention, if it exists, is not found to have been expressed in the drawings in such a manner that it constitutes a violation of section 140 of the Danish Criminal Code.

For the sole reason that the matter cannot be considered to be a punishable offence under section 140 of the Danish Criminal Code, there is no cause to assess separately whether punishment in the

case would, in such event, be considered a violation of Article 10 of ECHR. There has thus not been any cause to assess whether interference by way of punishment would be a "necessary interference in a democratic society"; that is to say whether the interference pursued a proportionate legitimate aim, cf. Article 10(2) of ECHR.

On this basis the Director of Public Prosecutions does not find grounds for changing the decision made by the Regional Public Prosecutor of Viborg and therefore concurs in the decision pursuant to section 749(2) of the Danish Administration of Justice Act to discontinue the investigation in the case with respect to violation of section 140 of the Danish Administration of Justice Act.

3.3. Section 266 b of the Danish Criminal Code

Under section 266 b(1) of the Danish Criminal Code any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

Like section 140 of the Danish Criminal Code, section 266 b should be subject to a narrow interpretation out of regard for the right to freedom of expression.

The object of protection in section 266 b of the Danish Criminal Code is a group of people belonging to a majority or a minority – - who are scorned or degraded e.g. on account of their religion – contrary to section 140 of the Danish Criminal Code where the object of protection is the religious feelings connected with religions doctrines and acts of worship.

The fact that in the opinion of the Director of Public Prosecutions there is no violation of section 140 of the Danish Criminal Code does not rule out that section 266 b of the Danish Criminal Code may be violated.

There is no doubt that the drawings in Jyllands-Posten constitute a "statement or other information" and that it was made "publicly", cf. section 266 b(1) of the Danish Criminal Code.

The question is whether the article and the drawings "insult" or "degrade" Muslims on account of their

religion.

The concept "scorn" in section 266 b(1) is understood i.a. to be degrading expressions or expressions of ridicule. This concept must be considered to incompass the same meaning as the expressions "mockery" and "scorn" in section 140 of the Danish Criminal Code. The expression "degraded" in section 266 b(1) of the Danish Criminal Code is not defined in any detail in the legislative material of the Criminal Code, but was inserted by an amendment of the law in 1971, when it was simultaneously indicated that this expression was chosen in preference of another proposed wording in order to make greater allowance out of regard for the freedom of expression. It appears from the literature that expressions, although they are not scornful, may be degrading. It must, however, also be assumed that degrading expressions which are not scornful must be gross to a certain extent.

The text section of the article does not refer to Muslims in general, but mentions expressly "some" Muslims, i.e. Muslims who reject the modern, secular society and demand a special position in relation to their own religious feelings. The latter group of people must be considered to be comprised by the expression "a group of people" as mentioned in section 266 b, but the text in the article cannot be considered to be scornful or degrading towards this group – even if seen in the context of the drawings.

As mentioned in point 3.2 above, according to the heading, the drawings in the article depict Muhammed. The drawings that must be assumed to be pictures of Muhammed depict a religious figure, and none of them can be considered to be meant to refer to Muslims in general. Furthermore, there is no basis for assuming that the intention of drawing 2 was to depict Muslims in general as perpetrators of violence or even as terrorists.

The drawings depicting persons other than Muhammed do not contain any general references to Muslims. Furthermore, the depiction of Muslims in these drawings is not scornful or degrading. Not even when the drawings are seen together with the text section of the article is there any basis to assume that the drawings make statements referring to Muslims in general.

Accordingly, the Director of Public Prosecutions does not find that in the case of the article "The Face of Muhammed" there has been any violation of section 266 b of the Danish Criminal Code.

Based on this the Director of Public Prosecutions also concurs in the decision to discontinue the investigation with regard to violation of section 266 b of the Danish Criminal Code.

4. Conclusion

As it appears from point 3.2 and 3.3. above, the Director of Public Prosecutions does not find basis for changing the decision made by the Regional Public Prosecutor of Viborg and therefore concurs in the decision pursuant to section 749(2) of the Danish Administration of Justice Act to discontinue the investigation with regard to section 140 of the Danish Criminal Code as well as section 266 b of the Danish Criminal Code.

Although there is no basis for instituting criminal proceedings in this case, it should be noted that both provisions of the Danish Criminal Code – and also other penal provisions, e.g. about defamation of character – contain a restriction of the freedom of expression. Section 140 of the Danish Criminal Code protects religious feelings against mockery and scorn and section 266 b protects groups of persons against scorn and degradation on account of i.a. their religion. To the extent publicly made expressions fall within the scope of these rules there is, therefore, no free and unrestricted right to express opinions about religious subjects.

It is thus not a correct description of existing law when the article in Jyllands-Posten states that it is incompatible with the right to freedom of expression to demand special consideration for religious feelings and that one has to be ready to put up with "scorn, mockery and ridicule".

Henning Fode

ANNEX D

Appendices to the declaration by the Government of the Faroes under art. 1:

Act No. 11 of 31st March 1948

on

the Home Government of the Faroes

In recognition of the exceptional national, historical and geographical position held by the Faroes within the Realm, the Parliament of the Kingdom of Denmark (Rigsdagen), in conformity with the approval of the Parliament of the Faroes (Løgtingið), has passed, and His Majesty the King by Royal Assent confirmed, the following

Act on the Home Government of the Faroes

Section 1.

The Faroes are a self-governing nation within the Danish State, in accordance with this Act.

With due respect to the state boundaries the People of the Faroes, through its elected representatives, the Parliament (*Løgtingið)*, and an executive established by it, the Government (*Landsstýrið)*, shall assume the powers of Faroese Special Affairs as stated in this Act.

Section 2.

The matters and fields of responsibility included in the appended List A are in principle considered Faroese Special Affairs. The Home Government of the Faroes (the bodies referred to in the second sentence of Section 1) may determine that all or some of these matters and fields of responsibility shall forthwith be assumed by the Home Government with the consequence that the expenses involved are borne by the same. The Home Government may later determine to assume, with the same consequence, matters and fields of responsibility included in the list not previously assumed. In like manner the Home Government is under obligation to take over matters and fields of responsibility included in the list when the State Authorities so desire.

Section 3.

Regarding the fields of responsibility included in List B, further negotiations shall be held to determine whether and to what extent they may be transferred to Faroese Special Affairs.

Section 4.

The Home Government holds legislative and executive powers over fields of responsibility within its purview.

Acts passed by the Parliament of the Faroes and assented to by the Chairman of the Government of the Faroes shall be designated *Løgtingslógir* [Parliamentary Acts].

Section 5.

The Faroese self-government shall be subject to the limitations following from treaties and other international rights and obligations existing at any time.

The State Authorities decide matters concerning the foreign relations of the State.

Section 6.

Matters which, according to the present Act do not fall within the jurisdiction of the Faroese Home Government, shall be conducted by the State Authorities as Common Affairs of the State.

Matters of dispute regarding the powers of the Faroese Home Government as opposed to the State Authorities shall be referred to a tribunal consisting of two members appointed by the Danish Government and two appointed by the Faroese Government and three Supreme Court Judges appointed by the president of the Supreme Court, one of whom shall be designated as chairman. In case of agreement between the four members appointed by the Danish Government and the Faroese Government the matter is definitively decided. Failing this, the matter shall be decided by the three Supreme Court judges.

The Danish Prime Minister may suspend a decision which has been referred to the tribunal, until the tribunal has decided the matter.

Section 7.

Danish Government Bills containing provisions relating exclusively to the Faroes shall, before being introduced to the Danish Parliament, be submitted to the Faroese Home Government for consideration in order to secure that the Faroese Parliament has the greatest possible influence on the elaboration of such provisions. Other Danish Government Acts affecting conditions in the Faroes shall be submitted to the Faroese Home Government for consideration before they are given effect in the Faroes. In each case a time limit may be stipulated before the expiry of which the opinion of the Home Government shall be given. If for any compelling reason it has not been possible to effect the consultation provided for in this Section, the Act shall be submitted as soon as possible to the Faroese Home Government for comments.

The same procedure shall apply with regard to treaties and other international agreements which require the approval of the Danish Parliament and which affect special Faroese interests.

Section 8.

When the Faroese Home Government so requests an expert in Faroese matters shall, following negotiation with the Faroese Government, be appointed to the Danish Ministry of Foreign Affairs to assist the Ministry in dealing with matters concerning special economic interests of the Faroes. The expenses involved shall be paid by the Danish Treasury.

When the Faroese Home Government so requests, attachés shall, following negotiation with the Faroese Government, be assigned to Danish missions in those countries where the Faroes have special economic interests, to safeguard such interests. The expenses involved shall be paid by the Faroes.

The Faroese Home Government shall, following consultations, in each particular case, have the opportunity to assert the special interests of the Faroes in negotiations with foreign countries regarding agreements on trade and fishery.

Where matters of special interests to the Faroes are at issue, the Minister of Foreign Affairs may, at the request of the Home Government, authorise representatives of the Home Government to

negotiate directly, with the Cupertino of the foreign service, provided such negotiations are not considered incompatible with the interests of the Realm.

Section 9.

Regarding Common Affairs it may be agreed, following negotiations, in which cases and to what extent it is possible to empower the Faroese Home Government to issue detailed regulations regarding specific Faroese matters and assume administration of the field of responsibility in question.

Section 10.

In a passport and a certificate of nationality issued in the Faroes to a Faroese the words ”Føroyingur” and ”Føroyar” shall be inserted after the words ”Dansk” and ”Danmark”. A person who is a Danish citizen and domiciled in the Faroes shall be deemed a Faroese.

The right of voting and eligibility for institutions of the Faroese Home Government may be conditional on the person concerned being a Faroese. No other legislative or executive distinction may be made between Faroese and other Danish citizens.

Section 11.

Faroese is recognised as the principal language, but Danish shall be taught well and carefully, and Danish may be used as well as Faroese in public affairs.

At the presentation of cases of appeal all Faroese documents shall be accompanied by a Danish translation.

Section 12.

A special Faroese flag is recognised. The Danish authorities fly the Danish flag in the Faroes, also on ships. Private persons and companies, associations and institutions may use the Danish flag on land. Otherwise, the rules governing the use of the Faroese flag in the Faroes and on vessels registered in the Faroes shall be a matter of Faroese Special Affairs.

Section 13.

All provisions in force in the Faroes, not in conflict with this Act, shall remain in force until amended or repealed by the proper authority.

Section 14.

The Faroes shall be represented in the Danish parliament by at least two members. While the Danish parliament is divided into the present two chambers, the Faroes shall be represented in the Upper House by one member, cf. Section 36 of the Danish Constitution, and in the Lower House by two members.

Section 15.

The Office of Prefect of the Faroes is abolished.

In replacement an office of High Commissioner is established. The High Commissioner is the supreme representative of the Danish State in the Faroes and the head of the Danish administration in the Faroes. The High Commissioner shall in official capacity have access to the Faroese Parliament and may participate in deliberations regarding all Common Affairs, however, without the right to vote. The High Commissioner shall be notified forthwith of decisions made by the Faroese Parliament or the Faroese Government, and copies of Faroese Parliamentary Acts and other regulations issued by the Faroese Home Government shall be communicated to him forthwith.

The High Commissioner shall assume the duties of the Prefect subject to the changes following from this Act until the respective area has been reorganised.

Section 16.

This Act comes into force on 1 April 1948.

Faroese Special Affairs

List A

The following fields of responsibility shall be designated Faroese Special Affairs and transferred with immediate effect to the Faroese Home Government or later transferred at the request of the Home Government or the Danish Government.

1. The Constitution of the Faroes within the framework of the new system.

   Including – within the said framework – provisions with regard to the Parliament of the Faroes; legislation regarding elections to the Parliament of the Faroes; the executive power; the drafting, adopting, assent and promulgation of Parliamentary Acts; appointment, dismissal, conditions of service, salaries and pensions of civil servants.

2. Municipal affairs.

   Including governing, supervision and taxation of the municipalities.

3. Public works and fire service matters; city planning; housing; tenancy; national registry.

4. Health service matters; medical practice, midwifery, hospital service, apothecaries.

   Including public medical officers, legislation on unqualified practising; combat of tuberculosis and other contagious diseases; care of mental patients; vaccination.

5. Public welfare services.

   Special care for the mentally impaired.

   National insurance.

   Compulsory accident insurance.

   Labourers and working conditions, apprentices, assistants, holidays.

6. Direct and indirect taxes.

   Including stamp duties; totalisator duties; duties on special Faroese lottery. Dispatch charges such as probate fees, legal fees and registration fees shall accrue to the authority which defrays the cost of the institution concerned.

7. Appropriation and, in general, management of all own revenues.

   Accounting regulations, audits and appropriation of own revenues and expenditures.

8. Approval of harbour duties.

9. Education.

   Including elementary schools; secondary schools and courses; teachers' college; folk high schools; post-primary schools; youth and evening classes; home economics schools; vocational schools such as business-, technical- and navigation colleges, etc.

10. Archives, libraries, museums.

    Exemption is made for the Danish State archives; reservation is made for statutory deliveries to the Royal Library.

11. Preservation of buildings and nature conservancy.

12. Harbours; coastal protection; canals; hydroelectric power plants; traffic matters, including roads, railways, tramways, ferry services, bus services and road haulage.

    Motor and road traffic affairs.

    Mail, telegraph and telephone services in the Faroes.

    Electrical installations.

13. Rural and agricultural matters.

    Including general rural legislation; copyhold tenure; tenancy; parcelling of land; exchanges of strip-holdings; smallholdings; plant cultivation; animal husbandry; horticulture; agricultural sideline occupations; soil improvement; forestry.

    Veterinary matters.

    Pest control.

Domestic animals, arbitration; protection of animals; legislation on dogs.

Hunting and protection of animals on the territory.

Fishery and protection of fish on the territory.

Land registration.

14. Licensing of theatres and cinemas; entertainment.

Collections and lotteries.

Ship wrecks.

Property lost and found.

Toxic substances, explosives, arms.

15. Supplies, production and distribution.

Price control; maximum prices.

Rationing, discounts and subsidies.

Restrictions on bonuses and dividends.

Peddling of goods.

Alcoholic beverages regulations.

Shop closing regulations.

Restaurants, dining rooms, hotels, inns, hostels and guest houses.

Trade matters.

Trade and association registers.

Ship's register.

Brokers; translators; average adjusters; weighers and measurers.

Auditors.

Storage facilities.

Commission; agents; commercial travellers.

Agents of foreign business companies.

Book-keeping.

Mortgage credit institutes, etc; insurance companies in the Faroes.

16. The Public Trustee in the Faroes.

Registration.

Tourism.

Expropriation for special purposes.

Regulations regarding production of printed matters.

Special provisions regarding calendar issues.

Civic duties.

Equal rights for men and women.

List B

The following fields of responsibilities shall be subject to further negotiations prior to determining definitively whether and to what extent they can be recognised as Faroese Special Affairs:

1. The National Church.

   Including all aspects of church organisation; rituals; church officials, their salaries and pensions; church buildings; graveyards; withdrawal from and admission into the National Church; congregation councils; voluntary congregations within the Church; relations between parishioners and their clergy;

   Religious communities outside the National Church; holiday legislation.

2. Police.

3. Subsoil resources.

   Radio.

   Aviation.

4. The Land Fund.

5. Import and export controls.

Act No. 79 of May 12th 2005

on

the Assumption of Matters and Fields of Responsibility by

the Faroese Authorities

This Act is based upon a Treaty between the Government of the Faroes and the Government of Denmark as equivalent Parties.

Section 1.
This Act encompasses all matters and fields of responsibility, confer, however, subsection (2).

(2) The act does not encompass the following matters and fields of responsibility:

1) The Constitution of the Danish State.
2) Citizenship of the Danish State.
3) The Supreme Court of the Danish State.
4) Foreign, security and defence policy.
5) Monetary and currency policy.

Section 2.
The Faroese Authorities shall determine when matters and fields of responsibility governed by this Act shall be assumed; confer, however, subsections (2) and (3).

(2) The Faroese Authorities shall determine, after deliberations with the Danish Authorities, when the matters and fields of responsibility enumerated in the annexed List I shall be assumed.

(3) The matters and fields of responsibility listed under the same number in said List I referenced in subsection (2) above shall be assumed contemporaneously.

Section 3.

The Faroese Authorities have the legislative and executive powers in the matters and fields of responsibility that shall be assumed pursuant to Section 2.

(2) The Faroese Authorities shall assume the costs and the fixed assets directly contected with the respective matters and fields of responsibility that are assumed.

Section 4.

Courts established by the Faroese Authorities have jurisdiction over all matters and fields of responsibility in the Faroes.

Section 5.

Provisions set forth in Section 5, Section 6, Section 10, subsection (2), second sentence, and Section 13 in the Act on the Home Government of the Faroes, shall apply relevant to the matters and fields of responsibility governed by this Act.

(2) The provision in Section 2, fourth sentence in the Act on the Home Government of the Faroes shall apply relevant to the matters and fields of responsibility governed by Section 2, subsection (1) in this law.

Section 6.

The Faroese Authorities can, pursuant to agreement with the Danish Authorities, assume responsibility for Vágar International Airport and its operation.

Section 7.

This Act shall enter into force on 29 July 2005.

Section 8.

When a field of responsibility is assumed, the relevant Faroese Authority shall conclude any affairs within that field that has up to the date of assumption been handled by a Danish Authority, confer, however, subsection (2).

(2) The relevant Danish Authority may in special circumstances, and according to prior agreement with the respective Faroese Authority, determine that the Danish Authorities shall conclude certain affairs.

List I

1) Prison and probation service.
2) Property law.
3) Aviation.
4) National Church.
5) Industrial intellectual property rights.
6) Passports.
7) Police and prosecutorial authority and related elements of the criminal justice system.
8) Capacity, family and inheritance law.
9) Criminal law.
10) Judicial administration, including the establishment of courts.
11) Legal practice.
12) Immigration and border control.

Chapter 1. General comments

The purpose of this proposed legislation is to formally establish by law that the Faroese Authorities may assume control over all matters and fields of responsibility, with the exception of specific named fields of responsibility.

This proposed legislation does not change the existing rights of the People of the Faroes and consequently the People of the Faroes preserve and protect their inalienable and continuing right of self-determination in accordance with international law.

Constitutionally, the proposed legislation is ratification by the Parliament of the Faroes of a Treaty between the Government of the Faroes and the Government of Denmark, while at the same time the proposal promulgates the contents of the Treaty as law in the Faroes. The authority of the Parliament of the Faroes to adopt this legislation springs from the authority granted by the People of the Faroes to provide for legislation. The Danish Government shall table a bill before the Danish Parliament with equivalent text that regards internal Danish affairs, which follow from the Treaty between the Faroese Government and the Danish Government. The comments to the Danish legislative proposal are, among other issues, related to internal Danish concerns. The comments to the Faroese proposed legislation, therefore, are not the same as those found in the Danish bill.

The new legislation will establish an arrangement for assuming [from Denmark] fields of responsibility that is both conversed and extended compared to the Home Government Act [of 1948]; i.e. that, while the Home Government Act specifically named the fields of responsibility that could be assumed or taken over, this new legislation names those few areas that cannot be taken over pursuant to this law; thus, it is noted that this legislation grants direct authority to assume all other fields of responsibility. Such is the essence of the term, "negative list"; that the fields of responsibility governed by this legislation encompasses all possible fields of responsibility, current or future, excepting those that are specifically enumerated in Section 1, subsection (2). By contrast, Lists A and B in the Home Government Act are "positive lists", wherein an effort is made to name all the fields of responsibility that the legislation should encompass. These positive lists have generated great difficulties because doubt and disagreements have arisen when the Faroese Authorities have expressed the desire to assume a field of responsibility that is not expressly stated in the lists. Nevertheless, it has occasionally been possible to take over certain fields of responsibility, such as the areas of national naming policy, environmental protection, and safety at sea. In other situations, differences arose between the Danish and Faroese Authorities relevant to the assumption of a specific field of responsibility stated in the Home Government Act, as when the Faroese Government desired to take over responsibility for the legislation on the liability of the mass media during the

period 2001 to 2004; the consequence of this disagreement is that this field of responsibility to date has not been assumed by the Faroese Government.

This legislation has been developed through negotiations between the Government of the Faroes and the Government of Denmark, and the Parties are in agreement regarding the content of the legislation. Negotiations began during the previous administration, as announced in the Joint Declaration resulting from the meeting held in Tórshavn on 14 January 2002 in which it was determined to develop a new arrangement by which to assume fields of responsibility. The principle reason for a new arrangement to be promulgated by law is to avoid the differences of opinion stemming from the provisions in the Home Government Act related to assumption issues. Thus making it quite clear that the decision as to *if* and *when* to assume a field of responsibility shall be taken in the Faroes.[i] At this initial stage it was intended that the proposed legislation should stipulate that all fields of responsibility, with the exception of some few that are directly related to issues of state sovereignty, should come under Faroese administrative control simply subsequent to Faroese Government decree, and it was also stipulated that several fields of responsibility would be assumed when the law would enter into force.

Upon the election of the new Faroese Government in 2004, the subject was reviewed and the new Faroese prime minister and the Danish prime minister held talks at a meeting in Copenhagen on 16 March 2004 to again return to negotiations on an arrangement that would be established by legislation and thereby promulgate the new principles for an assumption framework. There was agreement to continue with the fundamental principles adopted by the previous government that the new arrangement shall encompass all fields of responsibility with the exception of those few fields of responsibility specifically stipulated under Section 1, subsection (2). They are:

- The Constitution of the Danish State.
- Citizenship of the Danish State.
- The Supreme Court of the Danish State.
- Foreign, security and defence policy.
- Monetary and currency policy.

The Parties are also in agreement that the proposed legislation in comparison to the initially intended law regarding the assumption of matters and fields of responsibility of the previous government is now revised relevant to the following main concepts:

- The proposed legislation also encompasses all matters and fields of responsibility named in List A and B in the Home Government Act.
- It will not be a direct consequence just of the entering into force of this law that any specific field of responsibility will be taken over.

The Parties are in agreement to promulgate regulations that safeguard the interests of government civil servants and other employees when matters and fields of responsibility are assumed.

The Faroese Authorities shall assume the costs and the fixed assets directly connected to the field of responsibility when taken over.

In contrast to the Home Government Act, the proposed legislation covers all three areas of governmental authority, the legislative power, the executive power, and the judicial power. Thereby, the Faroese governmental administration is rendered more whole and complete.

The proposed legislation is the result of negotiations between the Faroes and Denmark subject to the review and ratification of the parliaments of both countries and therefore has not been submitted for public comment and review in the Faroes.

Chapter 2. Consequences of the proposed legislation

The intent of this proposed legislation shall be carried into effect, when fields of responsibility shall be assumed, by the enactment of ordinary legislation by the Faroese Parliament. This means that when the prime minister has assented to and promulgated the ratified proposed legislation as the law of the land, there are no immediate and direct consequences, such as:

- Fiscal consequences for the national treasury.

- Administrative consequences vis-à-vis the national government or the municipalities.
- Financial or administrative costs for the business sector.
- Environmental consequences.
- Consequences for special regions of the country.
- Social consequences for certain social groups or associations.

There will only be issues of consequence when legislation is enacted pursuant to the enabling legislation of this proposed Act or if the Danish Authorities take action based on unilaterally espoused authority to demand that the Faroese Authorities assume a field of responsibility pursuant to Section 5, subsection (2). When a Faroese bill for the assumption of fields of responsibility is tabled before the Faroese Parliament, the respective consequences shall be specified.

Chapter 3. Specific comments

To Section 1, subsection (1):
Pursuant to the proposed wording in Section 1, subsection (1), there are no exceptions to what the legislation will cover, except the matters and fields of responsibility enumerated in Section 1, subsection (2).

To Section 1, subsection (2):
Regarding 1) the proposed legislation does not appertain to matters related to the royal family, the Danish flag, the Danish language, the Danish coat of arms, and matters related to the affairs of the Danish governmental ministers, how they are appointed or discharged and their legal responsibilities. Neither does it seek to legislate on the activities of the Danish Parliament nor on those of the representation of the Faroes to the Danish Parliament. Moreover, it does not legislate on the revenue and expenses of the Danish State and on how the laws enacted by the Danish Parliament that are deemed entered into force in the Faroes are promulgated.

Regarding 2) the proposed legislation does not attempt to legislate on matters of citizenship of the Danish State.

Regarding 3) the proposed legislation does not attempt to legislate on matters of the supreme court of the Danish State.

Regarding 4) the proposed legislation does not attempt to legislate on matters of foreign, security or defence policy.

Regarding 5) the proposed legislation does not attempt to legislate on matters related to monetary or currency policy.

To Section 2, subsection (1):

Pursuant to Section 2, subsection (1), it is solely by Faroese determination as to when an assumption shall occur. This is consistent with Section 46 of the Constitution of the Faroes whereby the Faroese decision to assume a field of responsibility shall be effected by law adopted by the Faroese Parliament. The Danish Authorities are thus not able to block such determinations by the Faroese Authorities. Concomitantly, the Danish Authorities, pursuant to Section 5, subsection (2) in the proposed legislation, have the equivalent right to decide that the Faroese Authorities assume a field of responsibility as governed by Section 2, subsection (1).

Section 2, subsection (1) governs all possible matters and fields of responsibility. The only exceptions are the areas enumerated in Section 1, subsection (2) and Section 2, subsection (2) in accordance with List I. In the event that new fields of responsibility should emerge that to date are unknown, for example because of social and technical development, these fields are governed by Section 2, subsection (1) as well, unless they are regarded as being related to current fields of responsibility.

The fields of responsibility addressed under Section 2, subsection (1) are in the main:

1. Fields of responsibility listed in List A of the Home Government Act as not assumed by the Faroese Authorities are:

- Special care for the mentally impaired.
- National insurance.
- Health service matters.
- Medical practice.
- Midwifery.
- Hospital service.

2. Annual accounting, company law (including legislation regarding corporations, etc.), financial matters (including supervision of financial institutions), responsibilities of the media, maritime law, geodetical survey administration, pilotage, measures and weights, hydrographic survey, contingency planning, copyrights, meteorological service and lighthouse authority.

To Section 2, subsection (2):

The difference between the fields of responsibility that can be assumed pursuant to Section 2, subsection (2) and those under Section 2, subsection (1) is not great. The fields of responsibility enumerated in subsection (2), however, require the Faroese Authorities to consult with the Danish Authorities before assumptions are effectuated. If there is no agreement subsequent to deliberations between the Faroese and the Danish Authorities regarding the assumption of fields of responsibility, the Faroese Authorities nevertheless have the authority to assume said fields of responsibility. In contrast to Section 2, subsection (1), the Danish Authorities do not have the unilateral right to demand that the Faroese Authorities assume responsibility for any of those fields of responsibility enumerated in Section 2, subsection (2).

Most fields of responsibility set forth in List I that are linked to Section 2, subsection (2) are of such a nature that necessary preparations should be accomplished before they are taken over.

Therefore, it is stipulated that deliberations should be held between the Faroese and the Danish Authorities before a decision is made to take over a field of responsibility. The purpose of this stipulation is to ensure that all issues that could arise after assumption of a field of responsibility are fully and completely addressed and that the Danish Authorities could release the field of responsibility in a well prepared and well managed manner. In the same manner, this assurance is extended to the

Faroese Authorities. If, for example, the police and judiciary are taken over, it would be advisable that the Faroese and the Danish Authorities are in agreement on how to coordinate certain matters. In the same way, it would be advantageous for the Faroese and Danish Authorities to be in agreement on how to collaborate on specific technical matters.

Regarding the National Church, it should be noted that there are no intended actual changes in connection with the assumption of the field of responsibility listed in List B in the Home Government Act. However, Section 2, subsection (1) and not Section 2, subsection (2), governs religious communities deemed not covered by legislation regarding the National Church and holiday legislation.

To Section 2, subsection (3):
This Section states that the named fields of responsibility under the same number may not be subdivided. They must be taken over as a whole.

To Section 3, subsection (1):
This Section, in the main, is equivalent to Section 4, subsection (1) in the Home Government Act.

To Section 3, subsection (2):
Corresponds to the provision in the latter half of the second sentence in Section 2 in the Home Government Act, however, with the difference now that it is explicitly stated that the Faroese Authorities shall assume the fixed assets related to the fields of responsibility.

To Section 4:
A significant characteristic with the Faroese judicial system is that the Faroese judiciary shall have jurisdiction over all matters and fields of responsibility in the Faroes, regardless of whether or not they are under Faroese or Danish control. How the judiciary shall be administered is a matter to be decided by law adopted by the Faroese Parliament, assented to and promulgated by the prime minis-

ter. A Faroese judiciary system shall be consistent with the requirements set forth regarding the judiciary in accordance with the human rights obligations of the Faroes.

As in the present, rulings of the Faroese courts may be directly appealed to the Danish supreme court.

To Section 5, subsection (1):

This Section refers to provisions in the Home Government Act that regard the legislative limitations due to international treaties and that there shall not be any discrimination between people of Danish and Faroese nationality. Concomitantly, reference is made to Section 6 of the Home Government Act that the Danish Authorities shall administer all matters that are not assumed by the Faroese Authorities. Also the tribunal set forth in Section 6 in the Home Government Act is operational in case of dispute with regard to this proposed legislation. Furthermore, reference is also made to Section 13 that provisions in force shall continue until amended.

In Section 4, subsection (2) in the Home Government Act, it is stipulated that the legislation adopted by the Faroese Parliament and assented to and promulgated by the prime minister shall be named Parliament laws. In the proposed legislation, Section 5, subsection (1) does not reference Section 4, subsection (2) of the Home Government Act. This indicates that the Faroese Parliament hereafter shall itself determine whether to name the legislation it adopts laws or parliamentary laws.

To Section 5, subsection (2):

Pursuant to the proposed legislation, the Danish Authorities have the unilateral right to demand that the Faroese Authorities assume those fields of responsibility governed by Section 2, subsection (1). On the other hand, the Section indicates that the Danish Authorities may not demand that the fields of responsibility named in Section 2, subsection (2), under List I shall be taken over by the Faroese Authorities.

To Section 6:

In this Section, it is stipulated that the Faroese Authorities may, pursuant to an agreement with the Danish Authorities take over the Vágar International Airport and responsibility for its operation. The Joint Declaration dated 4 April 2005 sets forth the procedure for this takeover.

To Section 7:

The date for entry into force is the same as in the equivalent Danish proposed legislation regarding said legislation for assumption of matters and fields of responsibility.

To Section 8, subsection (1):

Naturally, when the Faroese Authorities take over a field of responsibility, they will also take over the direct administrative handling of matters within that field with the aim to secure equivalent administrative treatment within this field of responsibility. This will also mean that the obligations of the Faroese Administration will be compatible with those of the Faroese Parliament.

To Section 8, subsection (2):

Under certain conditions, it may occur that during a period of transition that an inordinate amount of effort shall be required to action a specific matter when the matter, which has almost come to conclusion, shall be transferred to the Faroese Authorities for final action. Therefore, it may be necessary that the relevant Danish Authority enter into an agreement with the equivalent Faroese Authority that the Danish Authority take the final decision in the specific case.

Act No. 80 of May 14th 2005

on

the Concluding of Agreements under International Law by the Government of the Faroes

This Act is based upon a Treaty between the Government of the Faroes and the Government of Denmark as equivalent Parties.

Section 1.

(1) The Government of the Faroes may negotiate and conclude agreements under international law with foreign states and international organisations, including administrative agreements, which relate entirely to subject matters under the jurisdiction of the Authorities of the Faroes.

(2) Subsection (1) shall not apply to the negotiation and conclusion of agreements under international law, which concern both the Faroes and Greenland. Following a joint decision by the Government of the Faroes and the Government of Greenland, the two governments may, however, act jointly with respect to agreements under international law in accordance with the provisions of this Act.

(3) Agreements under international law which have been entered into in accordance with subsections 1 and 2, second sentence, may be terminated according to the same provisions.

(4) The provisions of subsections (1)-(3) shall not apply to agreements under international law affecting defence and security policy, or agreements which are to apply to Denmark or which are negotiated within an international organisation of which the Kingdom of Denmark is a member.

(5) The provisions of subsections (1)-(3) shall not limit the constitutional responsibility and powers of the Danish Authorities relating to the negotiation, conclusion and termination of agreements under international law including agreements, which are covered by subsections (1)-(3).

Section 2.

(1) Agreements under international law pursuant to Section 1 (1) shall be entered into on behalf of the State by the Government of the Faroes under the designation the Kingdom of Denmark in respect of the Faroes. Agreements under international law pursuant to Section 1 (2), second sentence, shall be entered into jointly by the Government of the Faroes and the Government of Greenland under the designation the Kingdom of Denmark in respect of the Faroes and Greenland. Other similar designations may, if necessary, be established pursuant to subsection (2), second sentence.

(2) The present Act presupposes close co-operation between the Government of the Faroes and the Government of Denmark in order that the overall interests of the Kingdom of Denmark should not be disregarded and that the Government of Denmark should be informed of intended negotiations, before these are commenced, and of the progression of the negotiations, before agreements under international law are entered into or terminated. The Government of Denmark shall lay down rules establishing the frameworks for co-operation following negotiations with the Government of the Faroes.

Section 3.

Section 8 (2) of the Act on Home Government of the Faroes shall be applied correspondingly in the appointment of representatives of the Government of the Faroes to diplomatic missions of the Kingdom of Denmark to attend to subject matters under the jurisdiction of the Authorities of the Faroes.

Section 4.

Where international organisations allow entities other than states and associations of states to attain membership in their own name, the Government of Denmark may, at the request of the Government of the Faroes, decide to apply or support an application for this purpose for the Faroes, where this is consistent with the constitutional status of the Faroes.

Section 5.

This Act comes into force on 29 July 2005.

1. General comments

In the Home Government Act section 5, subsection 2 stipulates that the Kingdom of Denmark is responsible for the foreign affairs of the Faroes. In section 5, subsection 1, it is stipulated that the Faroes should respect international law that is in effect in the country.

In addition to the above-mentioned provisions of section 5 are those of section 8. The most important subsection in section 8 is subsection 4, which stipulates that, with regard to special Faroese matters, and when it is not deemed to be inconsistent with the interests of the Kingdom of Denmark, the Danish Minister of Foreign Affairs may authorize Faroese representatives to conduct direct negotiations, if so requested, with the participation of the Danish foreign service.

As members of parliament well know, all political parties in the Faroese Parliament have since 1948 – doubtless without exception – desired the greatest possible Faroese influence in these matters. Increased competence in the area of foreign policy has particular significance as more and more areas of competence are assumed by the Faroes.

It makes no sense to have internal policy competence in an area for which there is not also the equivalent foreign policy competence, especially as globalization means that national law becomes increasingly subordinate to international law.

In addition, there is no doubt that enhanced Faroese foreign policy activities are a precondition for social development and economic growth within the country, as the influence of globalization increases.

During his address at the opening of the Danish Parliament on 1 October 2002, the Danish Prime Minister announced that Denmark was prepared to enter into negotiations with the Faroes and Greenland on a new division of competence with respect to foreign policy that would enable the Faroes and Greenland to play a significantly more active role in their own foreign affairs.

Based on this announcement, negotiations were entered into between the Faroes, Greenland and Denmark. The proposed legislation is the negotiated settlement resulting from exhaustive and difficult negotiations – and as the saying goes, every little bit helps.

Regarding the status of the proposal in terms of international and constitutional law, reference is made to the general comments to Parliamentary Bill number 91/2004: Proposal for an Act on the Assumption of Matters and Fields of Responsibility by the Faroese Authorities. As in that Bill, this proposed legislation also involves two parallel proposals, a Faroese and a Danish, each with its own comments. The Danish legislative proposal will be submitted to the Faroese Parliament as a recommendation to implement an act of the Kingdom of Denmark.

The overall advantages for the Faroes found in section 1, section 2, section 3 and section 4 in the proposed legislation in comparison to section 8 in the Home Government Act are set forth below:

- The Faroes will of their own accord have the authority to enter into negotiations with foreign states and international organisations, to conclude agreements and rescind said agreements related to all those areas for which the Faroes have exclusive competence, without seeking the consent of the Kingdom of Denmark. In other words, the foreign policy competence of the Faroes is now established by law rather than in ill-defined full powers from a Danish minister of foreign affairs. In this connection, it is worth noting that the customary practice whereby the Faroese Prime Minister co-signs international agreements with the Danish Foreign Minister will no longer apply. The practice will now be that the Faroese

Prime Minister is the sole signatory for the Faroes to international agreements, or that the Faroese Prime Minister delegates the authority to sign such agreements.

- The Faroes can of their own accord have direct diplomatic interaction with foreign states and international organisations in all areas of exclusive competence, now that the former requirement for the participation of the Danish Foreign Service no longer applies.

- The Faroes may have diplomatic envoys in all foreign states and international organisations with respect to all areas of exclusive competence. The Home Government Act stipulates that Faroese envoys may only be accredited to those countries in which the Faroes have special commercial interests. The new law allows for a considerable expansion of scope in diplomatic activity, as the Faroes may now as a general rule designate envoys in all countries and international organisations in which the Kingdom of Denmark is represented.

- The Faroes may in certain circumstances enter into membership and associated membership of international organisations in their own name, when such organisations permit such membership pursuant to their own rules and when this is consistent with the constitutional status of the Faroes. To date, only the Kingdom of Denmark has been able to apply for such membership or associated membership on behalf of the Faroes. Now, the Faroes may themselves apply for membership. Pursuant to section 1, the Faroes may participate as a member of international organisations under the name of the Kingdom of Denmark, when Denmark is not a member. Pursuant to section 4, the Faroes may, however, participate as a member *in their own name* regardless of whether Denmark is a member.

To a certain extent, however, the practice set forth in section 5, subsection 2 and section 8, subsection 4 in the Home Government Act is maintained relevant to section 1, subsection 5 and section 2, subsection 2, respectively, in this proposed legislation.

The procedures laid down in section 8, subsection 4 of the Home Government Act, whereby the Faroes in each and every case were required to request a negotiating mandate from a Danish minister of foreign affairs, have led to difficulties and in many instances have damaged Faroese foreign affairs interests. Considerable time has elapsed before receiving a response, and in some instances

no response at all has been received. Moreover, there have also often been delays in receiving confirmation of a result negotiated by the Faroes. Such delays have resulted in certain issues being more or less neglected entirely.

Section 8, subsection 4 of the Home Government Act is not rendered meaningless in comparison to the provisions set forth in section 1, subsection 1 in the proposed legislation. With regard to areas, which are not under the jurisdiction of the Faroese Authorities, the provisions of section 8, subsection 4 still apply.

The proposed legislation is the result of negotiations and subject to the approval of the parliaments of the Faroes and Denmark and has therefore not been submitted previously for comment and review in the Faroes.

The provisions in this law relate to relations with foreign states and international organisations. However, within the international community there are a multitude of organisations that are not created by states. Such international non-governmental organisations are normally established to promote specific areas of interest, such as sport and culture, between relevant national organisations within countries. The opportunity for Faroese national organisations to acquire membership in such non-governmental international organisations is not related to the provisions in this law. Nevertheless, it is conceivable that increased Faroese participation on the international scene pursuant to this law will also enhance the visibility of the Faroes in general, with the associated effect that international non-governmental organisations will be more favourably inclined towards membership applications from the Faroes.

The Faroese Parliament is advised that, after agreement was reached with the Government of Denmark regarding this proposed legislation, two other agreements related to foreign policy competence were concluded with the Government of Denmark in Fámjin on 29 March [2005]. One concerns administrative cooperation and the other collaboration on joint matters, including security and defence policy.

2. Consequences of the proposed legislation

The consequences of the proposed legislation can be divided into two areas, namely those consequences related to the full application of the law and those consequences related to the conclusion of international agreements pursuant to the law.

Regarding the former, the proposed legislation concerns the standing competence of the Faroes to negotiate directly with foreign states and international organisations, rather than having to seek a full power from Denmark in each separate case, As such, the legislation is not initially expected to have consequences such as:

- Fiscal consequences for the national treasury.
- Administrative consequences vis-à-vis the national government or the municipalities.
- Financial or administrative costs for the business sector.
- Environmental consequences.
- Consequences for special regions of the country.
- Social consequences for certain social groups or associations.

Eventually, however, the legislation will result in considerably more Faroese activity in foreign affairs which will generate greater demands in the administration, and in particular in the Faroese foreign service.

It is obvious that there will be consequences related to the conclusion of international agreements pursuant to the law. Such consequences will be brought to the attention of the Faroese Parliament when agreements are submitted to the Parliament for adoption pursuant to section 52, subsection 2 of the Constitution of the Faroes or when legislation to implement provisions of instruments under international law are submitted to the Parliament for adoption.

3. Specific comments

To Section 1, subsection 1:

This subsection stipulates that the Faroes can have unrestricted diplomatic interaction with foreign states and international organisations in order to negotiate and conclude international agreements, including administrative agreements relevant to all areas of exclusive competence. As international organisations are generally established through agreements under international law, the provision also encompasses Faroese membership in international organisations.

To Section 1, subsection 2:
This subsection stipulates that when Denmark is not a party to an agreement under international law or the European Union represents Denmark as a party to an international agreement, the Faroes and Greenland may, as has been the rule until now, become a joint party to the same international agreement under Danish leadership. On the other hand, the Faroes and Greenland may agree to act as a joint party to an agreement, independent of Denmark, under joint Faroese-Greenlandic leadership. The provision includes international organisations that are established through an agreement under international law. This provision does not prevent the Faroes and Greenland from maintaining their status as independent parties to NAMMCO and similar international organisations.

To Section 1, subsection 3:
This subsection stipulates that, just as the Faroes may conclude international agreements pursuant to subsection 1 and subsection 2, second sentence, they may also withdraw from such agreements pursuant to the same provisions.

To Section 1, subsection 4:
This subsection stipulates that the Faroes may not conclude agreements under international law related to defence and security policy. The provision does not however apply to agreements under international law related to security and defence policy when the other party to the agreement is not represented either by its foreign ministry or its defence ministry.

Similarly, this provision stipulates that the Faroes may not conclude agreements under international law that also extend to Denmark or which are concluded within organisations in which the Kingdom of Denmark is a member. However, it should be borne in mind that as the EU itself becomes a party to internationally binding agreements on behalf of its member states, this provision will not apply to such agreements. In other words, the law automatically extends the foreign policy compe-

tence of the Faroes in all areas of exclusive competence as corresponding foreign policy is further integrated within the EU.

To Section 1, subsection 5:

This subsection stipulates that the Danish Authorities continue to maintain their competence over foreign affairs. Article 5, subsection 2 in the Home Government Act can therefore continue to apply as modified according to this proposed legislation.

To Section 2, subsection 1:

This subsection outlines the title of the party to an agreement – the Faroes or the Faroes and Greenland jointly – when the provisions of section 1, subsection 1 or subsection 2, second sentence are implemented. At the same time this subsection provides for the possibility that the party to an agreement can go by other titles, depending on whether the agreement in question is concluded between states, governments, heads of state, ministers of foreign affairs or ambassadors.

To Section 2, subsection 2:

This subsection provides that, when the law is applied in practice, it should be done on the condition that the overall interests of the Kingdom of Denmark are not undermined. In order to ensure that this condition is respected, this subsection also outlines certain information commitments. In addition it is stipulated that details outlining cooperation between the Faroes and Denmark vis-à-vis this law will be subject to further negotiation between the countries.

To Section 3:

This section provides for the posting of Faroese envoys to all diplomatic missions of the Kingdom of Denmark in foreign states and international organisations. In addition, they may now promote the interests of the Faroes in all areas of exclusive competence. With this provision, section 8, subsection 2 of the Home Government Act is considerably expanded and enhanced such that the title shall be "envoy" rather than "assistant", and in contrast to the Home Government Act under which Faroese representatives were limited to dealing only with commercial interests, Faroese envoys may now deal with matters related to all areas of exclusive competence.

To Section 4:

This section stipulates that the Faroes may become a member or associated member of international organisations in their own right, where the international organisation admits entities other than states and organisations comprised of states as members or associated members in their own name. Upon request from the Faroese Government, the Danish Government can decide to submit the application for membership or associated membership for the Faroes or support a Faroese application for such membership, when this is consistent with the constitutional status of the Faroes.

To Section 5:

This section stipulates that the law shall enter into effect on 29 July 2005.

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[i] The foundation for the negotiations between the Government of the Faroes and the Government of Denmark was a memorandum drafted by the Office of the Prime Minister of the Faroes in the autumn of 2002 pursuant to an agreement reached during the meeting held in Miðvágur, Faroes, on 21 August 2002 and the subsequent meeting in Bøur the following morning. During these meetings, negotiations encompassed the development of a new arrangement that would reflect an agreement between the Parties and that would be rendered into a legally binding form. Negotiations had proceeded well in this regard, such that the former Faroese prime minister and the Danish prime minister could publicly announce the overarching general principles for such proposed legislation in the so-called Tvøroyrar Document dated 26 June 2003.