

**Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Denmark from 4 to 13 February 2014. [Danish response in *italic*]**

**I.C. Co-operation**

**Paragraph 5 in CPT's report**

CPT's observation concerning paragraph 5:

- The CPT trusts that the Danish authorities will make continued efforts to improve the situation in the light of the Committee's recommendations, in accordance with the principle of co-operation which lies at the heart of the Convention.

*Please be assured that the Danish Government is continuously striving to ensure that no persons deprived of their liberty by Danish authorities are treated in a way that may be characterised as torture or inhuman or degrading treatment or punishment, cf. Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.*

*In this respect the Government thoroughly examines the recommendations of inter alia the CPT for the purpose of working towards a better protection of persons deprived of their liberty against torture or inhuman or degrading treatment or punishment.*

*In order to further strengthen the coordination of the Danish Government's overall human rights reporting commitments please be informed that in October 2014, the Government decided to establish a permanent cross-ministerial human rights committee under the Ministry of Foreign Affairs. The Committee is also expected to map the follow-up to recommendations received by the Government from international human rights monitoring bodies and mechanisms, among others.*

*Concerning the specific reference to the CPT's concerns as regards the imposition of judicial restrictions on remand prisoners, the practice of the use of fixation in prisons and the prolonged application of mechanical restraints on psychiatric patients, reference is made to the Ministry of Justice's responses to paragraphs 33, 35, 72 and 111 (judicial restrictions on remand prisoners) and to paragraphs 67, 68 and 71 (fixation in prisons), and to the Ministry of Health's responses to paragraph 115, 121, 122 and 125 (mechanical restraints on psychiatric patients) in the CPT's report below.*

## **II.A. Law enforcement agencies**

### **Paragraph 8 in CPT's report**

#### CPT's request for information concerning paragraph 8:

- The CPT would like to be informed of the steps taken by the Danish authorities to ensure that all persons preventively detained by the police are held in appropriate conditions.

*On 11 June 2014, the Danish National Police – at the request of the Danish Minister for Justice – issued guidelines to all police districts on the use of administrative detentions under the Danish Police Act and the management of large demonstrations.*

*The guidelines contain, inter alia, provisions on the treatment of detainees during large demonstrations. These provisions were drafted in the light of the outcome of the court cases regarding the administrative detentions during the 2009 conference and aim to prevent similar episodes in the future.*

### **Paragraph 9 in CPT's report**

#### CPT's recommendation concerning paragraph 9:

- The CPT recommends that the Danish authorities remind police officers that they should use no more force than is strictly necessary when carrying out an arrest and that where it is deemed essential to handcuff a person, the handcuffs are under no circumstances excessively tight and are applied only for as long as is strictly necessary.

*The Danish Police Act of 9 June 2004 regulates the use of force by police officers and stipulates that they may use force only if necessary and justified and only by such means and to such an extent as is reasonable with regards to the interest which the police are seeking to protect.*

*Infringement of the provisions on the use of force in the Police Act can make the police liable to pay compensation for damages and any police officer can receive disciplinary or even penal punishment, if he or she does not observe the provisions in concern.*

*The Danish Police College, which is part of the Danish National Police, has issued guidelines on the instruction of police trainees in the use of handcuffs.*

*The guidelines stipulate, inter alia, that handcuffs – for security reasons – are always to be applied while the person is holding his hands behind his back. It must be ensured that the handcuffs have not been applied to tightly. During transportation, it must be ensured that the handcuffs cause as little inconvenience to the person as possible. In case of longer transports, a fixation belt may be applied, which restrains the person's hands in front instead of behind the back.*

## **Paragraph 10 in CPT's report**

### CPT's recommendation concerning paragraph 10:

- The CPT recommends that the Danish authorities incorporate torture as a specific offence under national criminal law.

*The United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment article 4 requires each participating state to "ensure that all acts of torture are offences under its criminal law". The convention does not require the parties to adopt a specific criminal offence provision in national legislation concerning torture.*

*The question of adopting a provision on torture as a specific offence in the Danish Criminal Code was thoroughly assessed by the Committee on Criminal Law (Straffelovrådet) in its report no. 1494/2008 from January 2008.*

*The Committee on Criminal Law did not recommend adopting such a provision. The Committee pointed out that all acts covered by the definition of torture in the United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment article 1 were already covered by existing provisions of Danish criminal law, including acts where mental pain and suffering were inflicted on the victim.*

*The Danish Government agreed with the assessment of the Committee on Criminal Law and followed its recommendations by adopting the current provision in the Danish Criminal Code and the Military Criminal Code in Act no. 494 of 17 June 2008.*

*Instead, the Committee on Criminal Law recommended adopting a special provision in the Danish Criminal Code making torture an aggravating circumstance in the determination of the penalty for violation of the Danish Criminal Code.*

*The Committee considered this alternative to emphasize the gravity of the crime of torture in the same manner as a specific provision on torture would. In addition the exact character and gravity of the specific crime would be clearly reflected in connection with the criminal case. Thus, instead of being convicted of the general crime of "torture", a wide concept, the perpetrator would be convicted in accordance with the relevant specific provisions with reference to the fact that the criminal act was committed by the use of torture (e.g. "assault of a particularly dangerous nature by the use of torture" or "confinement by the use of torture").*

*It should be noted that the provision in the Danish Criminal Code regarding the use of torture as an aggravating circumstance on this background has been defined in accordance with the United Nations Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment article 1. The Ministry of Justice refers to the travaux préparatoires to Act no. 494 of 17 June 2008.*

*Furthermore, the amendments to the Danish Criminal Code and the Military Criminal Code by Act no. 494 of 17 June 2008 established that violations of the Criminal Code and the Military Criminal Code, including attempts and complicity, cannot be subject to the statute of limitations if the violation is committed by the use of torture.*

*Consequently, the Danish Government considers the current legislation to be a sufficient and adequate response to the need for criminalizing the crime of torture as well as emphasizing the specific gravity of the crime.*

### **Paragraph 11 in CPT's report**

CPT's recommendation concerning paragraph 11:

- The CPT recommends that all police officers wear an identity number or name badge for identification purposes.

*By letter of 30 October 2014, the Minister for Justice asked the National Police to introduce individual identity numbers on all police uniforms as soon as possible. Numbers will be composed of a single letter and four digits.*

### **Paragraph 13 in CPT's report**

CPT's recommendation concerning paragraph 13:

- At present, the power to delay notification of custody is neither clearly defined nor strictly limited in time, and resort to that power does not appear to be accompanied by the above-mentioned safeguards. The CPT recommends that appropriate measures be adopted to remedy these deficiencies.

*Pursuant to Section 2(2) of Circular no. 9155 of 18 March 2010, all persons detained by the police have the right to inform relatives or other relevant persons about the arrest. Hence, the police must without undue delay give the detainee the opportunity to inform his closest relatives or other relevant persons about the arrest.*

*However, pursuant to the Section 2(3) of the Circular, the detainee can be denied this right temporarily or definitively, if, due to the specific circumstances of the case, information about the arrest in itself may compromise the investigation. The police must make this decision without undue delay. If the detainee is denied notification due to certain steps of the investigation, these steps must be completed as soon as possible.*

*If the detainee is denied this right, the police must, as a general rule, notify his/her relatives or other relevant persons, if the detainee so wishes, cf. Section 2(4). Such notification must be made without undue delay. The police must notify the detainee about the result of the notification.*

*However, the police may refrain from doing so, if due to the circumstances of the case there are specific reasons to presume that information about the arrest in itself would interfere with the investigation of the case and this is crucial for reasons of the investigation.*

*The decision to deny or delay the detained person his/her right to inform or to have his/her relatives or other relevant persons informed of the arrest is made by the officer on duty or by the officer in charge of the investigation, cf. Section 2(6).*

*Furthermore the Circular stipulates that compliance with the said procedures must be recorded in the detention report or protocol. If notification is denied the reason for this must furthermore be noted.*

*The Circular is issued by the Ministry of Justice to the police and the Prosecution Service and is as such binding upon the individual police officer.*

*The Ministry of Justice has not found that additional regulation is needed.*

### **Paragraph 14 in CPT's report**

CPT's recommendation concerning paragraph 14:

- The CPT reiterates its recommendation that the Danish authorities ensure that all persons detained by the police are able, in practice, to enjoy the right to inform a relative or a third party of their choice, of their situation as from the very outset of their deprivation of liberty. Further, such notification should be properly recorded and detained persons provided with feedback on whether a member of their family or third person was contacted.

*Reference is made to the Ministry of Justice's response to paragraph 13 of the CPT's report above.*

### **Paragraph 16 in CPT's report**

CPT's recommendation concerning paragraph 16:

- The CPT recommends that the Danish authorities take the necessary steps to ensure that the right of all detained persons to have access to a lawyer is effective *in practice* as from the very outset of custody. Further, it recommends that, in association with the Bar Association, a list of ex officio lawyers which detained persons can consult be compiled for each police station. In addition, a record should be maintained of any request by a detained person to see a lawyer and whether such a request was granted.

*Pursuant to Section 3(1) of Circular no. 9155 of 18 March 2010, the police must without undue delay give all detainees the opportunity to contact an attorney, who can serve as representation in the detainee's case. Access to such contact should be given in immediate connection to the detainee being brought in to the police station.*

*The attorney shall in accordance with the rules in Chapter 67 of the Danish Administration of Justice Act be given access to be present during police interrogations of the detainee, cf. Section 3(3) of said Circular.*

*Pursuant to the Administration of Justice Act, Chapter 66, the court can in certain circumstances deny chosen representation. If the police wishes to oppose to certain representation chosen by the detainee the police can temporarily deny said representation. The question of whether the detainee should have access to that particular representative*

*must afterwards be presented before the court in correspondence with the rules in the Administration of Justice Act. The detainee must in such cases without undue delay be given access to other representation.*

*According to Section 3(5) of the Circular compliance with the abovementioned rules must in all cases be noted in for example the detention report.*

*In order to ensure that all persons detained receive sufficient guidance about their rights, the Danish National Police has issued a leaflet that outlines the most important rights for detainees including the right to have an attorney. The document is translated into six languages besides Danish including English, Arabic and French and is presented to the detainee by the police in addition to oral guidance.*

*The rules set out in the Circular apply equally in relation to detainees under the age of 18. Furthermore, the Circular states that due respect must be given to the special needs and conditions of the detainee due to his/her young age.*

*Furthermore, Order no. 467 of 26 September 1978 stipulates that when the police charges a person with a criminal offence which under the law can result in a more severe penalty than a fine, the police is obliged to guide the person about his/her right to an attorney. To make sure that all persons charged and detained are aware of their right to be assisted by an attorney during the police interrogation, the guidance must be given no later than the guidance about the right not to give a statement.*

*If a person, who is charged with a criminal offence which under the law can result in a more severe penalty than a fine, has not requested an attorney in connection with an interrogation, the person is assigned an attorney at the latest when he/she is brought before the court for a preliminary examination with the purpose of detention on remand or upholding of the arrest. The person and the attorney will always be given the possibility to discuss the charge and the evidence before the court's preliminary examination.*

*The court's preliminary examination must take place within 24 hours after the arrest of a person. Therefore, a person detained will at the latest be assigned and given the possibility to speak to an attorney about the charges against him within 24 hours from the arrest.*

*In each of the twelve police districts in Denmark a list of the districts endowed attorneys is compiled. Furthermore, such lists are available on the website of the Danish Courts. A compiled list of all attorneys in Denmark is available on the Danish Bar and Law Society's website.*

## **Paragraph 17 in CPT's report**

### CPT's request for comments concerning paragraph 17:

- The CPT's delegation received no complaints regarding access to a doctor in the context of detention by the police. However, it was informed about a survey carried out by The Street Lawyers<sup>1</sup> of 50 drug users who had been detained by the police and who alleged that they had been denied access to medical care while in police custody. It is alleged that the lack of treatment for their withdrawal symptoms had a negative impact on the way in which they answered questions during police interviews, including false confessions. The CPT would appreciate the comments of the Danish authorities on this matter.

*Pursuant to Circular no. 9155 of 18 March 2010, all detainees will receive medical attention if needed. When a detainee is in need of medical attention the police must – dependant on the circumstances – without undue delay bring the detainee to the hospital, send for a doctor or give the detainee access to contact a doctor, cf. Section 4(1) of said circular.*

*According to Section 4(4) of the Circular it must be noted in for example the detention report if the detainee has requested to get in contact with a doctor.*

*It occurs that the police must postpone an interrogation in situations where a detainee under the influence of alcohol, narcotics or medication is not deemed suited for interrogation, cf. Section 5(1) of said Circular.*

### CPT's recommendation concerning paragraph 17:

- The CPT recommends that steps be taken to put in place a proper reporting system for all such injuries recorded by doctors of persons in police custody. [On injuries consistent with allegations on excessive use of force or ill-treatment.]

*Apart from suspicious deaths doctors are not obliged to report possible criminal offences to the police. This is partly due to the fact that doctors are subject to confidentiality.*

*Complaints concerning the conduct of police personnel and reports of criminal offences committed by police personnel while on duty must be submitted to the Independent Police Complaints Authority.*

*Pursuant to Sections 1019(1) and 1020 of the Administration of Justice Act a complaint or report will immediately be forwarded to the Authority if it is submitted to the police or prosecuting authority.*

*Furthermore, the Authority initiates an investigation on its own initiative where a person has died or been seriously injured as a result of police intervention or if the person in question was in police custody.*

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<sup>1</sup> A non-governmental organisation that provides legal aid services to vulnerable and marginalised groups in Denmark such as drug users, street-based sex workers, homeless and undocumented migrants.

## **Paragraph 18 in CPT's report**

CPT's recommendation concerning paragraph 18:

- The CPT recommends that steps be taken to ensure that all persons detained by the police are systematically informed of their rights, orally at time of deprivation liberty and through the provision of an information sheet, in a language they can understand, upon detention at the police station. Further, consideration should be given to a specific record being maintained of the fact that detained persons have been provided with information on their rights; detained persons should be asked to certify with their signature that such information has been provided and, if necessary, the absence of a signature in a given case should be explained.

*According to Section 1(2) of Circular no. 9155 of 18 March 2010, persons detained by the police must be informed of their rights as set out in the Circular. The information must be given in a language, the detainee can understand.*

*In order to ensure that all persons detained receive sufficient guidance about their rights, the Danish National Police has issued a leaflet that outlines the most important rights for detainees including the right to have an attorney. The information sheet is available in Danish, English, German, French, Spanish, Turkish and Arabic and is presented to the detainee by the police in addition to oral guidance.*

*If the detainee does not understand any of these languages, the police must ensure that the information is given in an understandable way as soon as possible – possibly by an interpreter. In exceptional cases, where it is not possible to guide the detainee before release, e.g. because an interpreter is not available, the information sheet must be handed out in English.*

*Observance of these requirements must be reported in for example the detention report or protocol, cf. Section 1(3) of the Circular.*

*The Ministry of Justice has not found that additional regulation is needed.*

## **Paragraph 19 in CPT's report**

CPT's recommendation concerning paragraph 19:

- The main deficiency observed was a lack of access to natural light and insufficient artificial lighting in the cells in the stations visited, which made reading difficult. The delegation, also received complaints from persons recently detained in police stations who had not been offered anything to eat despite being held there for several hours. Indeed, at the Copenhagen City Police Station and Roskilde Police Station, the delegation was informed that detained persons were only offered a meal after having been detained for eight hours. The CPT considers that all detained persons should be offered something to eat at appropriate times during the day. The CPT recommends that steps be taken to remedy these deficiencies.

*Detention cells and holding cells at the Danish police stations are designed according to the guidelines for new police buildings of August 1992 given by the Ministry of Justice. Detention*



*cells and holding cells constructed before 1992 have also been altered to meet the standards in the guidelines.*

*According to the guidelines, there must be access to natural light in detention cells, and the window area must be equivalent to at least 10% of the floor area. Access to daylight is not required in holding cells, which are often used only for short stays.*

*Naturally, there are requirements for the artificial lighting in the cells but not for the luminosity or the conditions for reading.*

*The provision of meals for detained persons is subject to local decisions in the police districts. It is in that connection taken into consideration when the detainee is brought in to the station, normal mealtimes, the expected extend of the detention etc.*

### **Paragraph 21 in CPT's report**

CPT's request for information concerning paragraph 21:

- The CPT would be interested to learn more about the Independent Police Complaints Authority's plans to recruit and train young professionals as investigators.

*The Independent Police Complaints Authority contemplates at the moment the possibility of also recruiting qualified investigators, who does not have a background in the police. The Independent Police Complaints Authority has in July 2014 – i.e. with a view to these considerations – set up a working group, who will make a draft for an actual recruitment policy. When the working group has completed the draft for such recruitment policy, it will be given to the Independent Police Complaints Authority, who will consider the matter.*

*It is noted that the Independent Police Complaints Authority's legal workers to some extent are taking part in the investigation of the police complaint cases. The legal workers in the Authority have different backgrounds and more of them have not previously been employed with the police or prosecuting authority. Recently the Independent Police Complaints Authority has engaged a new deputy manager as from 1 December 2014, who has been working as a barrister-of-law.*

### **Paragraph 24 in CPT's report**

CPT's observation and request for information concerning paragraph 24:

- The CPT trusts that the Danish authorities will continue to provide the Independent Police Complaints Authority with the necessary resources to carry out its functions effectively. It would like to be informed about the nature and, in due course, the outcome of the above-mentioned review into the Authority.

*During the negotiations of the bill establishing the Police Complaints Authority it was agreed that the new system should be evaluated 3 years after its commencement, i.e. in January 2015.*

*The Ministry of Justice will inform the CPT as soon as the outcome of the evaluation is available.*

## **II.B. Prison establishments**

### **Paragraph 25 in CPT's report**

CPT's recommendation concerning paragraph 25:

- The CPT recommends that the Danish authorities take the necessary steps to ensure that all prisons operate within their design capacity and that they pursue their efforts to manage the prison population, taking due account of the relevant Recommendations of the Committee of Ministers of the Council of Europe in this area, in particular: Recommendation No. R(99)22 concerning prison overcrowding and prison population inflation; and Recommendation Rec(2006)13 on the use of remand in custody.

*The CPT has recommended that the Danish authorities pursue their efforts to manage the prison population, taking due account of the relevant Recommendations of the Committee of Ministers of the Council of Europe in this area, in particular e.g. Recommendation Rec (2006) 13 on the use of remand in custody.*

*In 2012 the Director of Public Prosecutions launched a project focused on reducing the length of remand in custody.*

*In this connection a Lean project was implemented in two selected police districts in order to identify the most efficient workflows in relation to dealing with cases of remand prisoners. Using the experience from the Lean project a new management concept for investigation in cases of remand prisoners was developed, with the particular intention to shorten the length of the remand in custody. The new management concept has now been introduced in all police districts, and the districts have started using the concept.*

*The Director of Public Prosecutions is closely monitoring the experiences with the use of the concept.*

*With the political multi-year agreement on the appropriation for the Danish Prison and Probation Service for 2013-2016, a long term and solid solution was found for managing the prison population and avoiding overcrowding.*

*A total of 200 new places are to be established. One hundred of these places have already been established, and one hundred more are expected to be ready throughout 2015. The new places will contribute significantly to reducing the occupancy level of Danish state or local prisons on a permanent basis to avoid that the population of some prisons exceeds the approved number of places for long periods of time.*

*In addition to the establishment of new places, the multi-year agreement also includes a number of initiatives, which have already contributed to a reduction in the occupancy level of the institutions of the Danish Prison and Probation Service, including the increased use of community service and electronic tagging.*

*In 2014 (January-August), the total average occupancy level of the state and local prisons of the Danish Prison and Probation Service was 93.5 per cent, broken down into 92.2 per cent for places in open state prisons, 95.8 per cent for places in closed state prisons and 93.2 per cent for places in local prisons.*

*As a consequence of a relatively low occupancy level in 2014, the Danish Prison and Probation Service has regularly closed down excess capacity on a temporary basis. In mid-September 2014, more than 300 places had therefore been closed down. These places are expected to be reopened when the occupancy level increases.*

*Consequently, 2014 has not been characterised by overcrowding. According to the multi-year agreement, the average occupancy level of state and local prisons must be 94 per cent as from 2016.*

*In 2011, the Parliamentary Ombudsman launched a general investigation of the overcrowding problems at the institutions of the Danish Prison and Probation Service on his own initiative, and the Department of Prisons and Probation therefore consulted the state and local prisons to identify any consequences of the periods with overcrowding. On the basis of the consultation responses, the Parliamentary Ombudsman was informed that, in the opinion of the Department of Prisons and Probation, the periods in 2010 and the first half of 2011 with high occupancy levels had not resulted in any inmates not being accorded their statutory rights and that the periodical overcrowding had been handled with maximum consideration for the inmates.*

*On the basis of this information, the Parliamentary Ombudsman decided not to take further steps in relation to any consequences for the inmates' rights under the sentence enforcement legislation.*

## **Paragraph 27 in CPT's report**

### CPT's recommendation concerning paragraph 27:

- The CPT recommends that prison officers at Western Prison and Copenhagen Police Headquarters Prison be reminded that no more force than is strictly necessary should be used to control prisoners and that there can be no justification for striking a prisoner after he or she has been brought under control or for physically assaulting a prisoner who refuses to obey an order.

*The CPT has referred to a foreign national inmate who had told the delegation that he had been hit by a prison officer in the left side of his chest for not taking off his clothes when requested.*

*Copenhagen Prisons have informed the Department of Prisons and Probation that it has not been possible to identify and investigate the specific case referred to.*

*Copenhagen Prisons have also stated that naturally they agree that force may be used only to the extent permitted by the applicable rules and that, on the basis of the CPT's recommendation, they have issued a reminder to joint consultative committee of the prisons, which consists of representatives of the staff and management. Minutes of meetings of the joint consultative committee are made available to all employees of Copenhagen Prisons.*

*Copenhagen Prisons have informed the Department of Prisons and Probation that they will immediately launch an investigation in case of suspicion of violence against an inmate.*

*If an inmate wishes to report violence to the police, the prison will always assist the inmate. If the inmate does not wish to report the matter to the police, Copenhagen Prisons will nevertheless report the matter to the police if, based on the prison's investigation, there are reasonable grounds for suspecting that the inmate has been subjected to violence.*

*The Department of Prisons and Probation refers to the above information.*

### **Paragraph 30 in CPT's report**

CPT's recommendation concerning paragraph 30:

- The CPT nevertheless recommends that further steps be taken to put into place a comprehensive anti-bullying strategy to reduce the incidence of inter-prisoner violence and intimidation at Ringe State Prison, taking into consideration the above remarks.

*Ringe State Prison has informed the Department of Prisons and Probation that, after the CPT's visit, the prison has taken the following initiatives to reduce the incidence of inter-prisoner bullying and violence:*

#### **(1) Focused allocation of new inmates to units, work places and school where safety is a significant factor.**

- *From January 2015, a new reception procedure will be introduced, and the Department of Prisons and Probation and Ringe State Prison will cooperate to develop a more refined tool for deciding the unit in which the inmate should be placed and the occupation he or she should be given.*

#### **(2) Increased sectioning**

- *In 2014, fences have been erected at the end of the courtyards to allow the inmates to be in the courtyards without fearing that they will meet the inmates of other units.*
- *Only a limited number of inmates are allowed to participate in common leisure time activities and only subject to prior registration.*
- *The inmates attend work/school with the other inmates of their unit. Previously all inmates attended work/school together. This means that the maximum number of inmates being together is 16, and that they are only together with inmates from their own unit when they are working or attending school. Previously the number could be much higher.*
- *Prohibitions against more than two inmates in one room are issued more frequently than previously.*
- *The measure of transferring inmates to the prison's special unit (unit 1 for inmates who threaten other inmates) is used much more frequently than previously.*

- *If there are grounds for transferring an inmate to a closed prison or the police headquarters, this measure will be used.*

### **(3) Skills development for staff and inmates**

#### **Staff**

- *The staff have been ordered to react more proactively towards unacceptable behaviour. In practice, this means that the staff are expected to intervene if they see or hear inmates being bullied and that, by being present and by focusing on safety, the staff may prevent incidents of unacceptable behaviour.*
- *The prison unit managers have been instructed to discuss the proactive approach with the staff and support this approach on a continuous basis.*
- *The new prison staff conflict management programme which started in November 2014 is expected to upgrade the conflict management tools of staff.*
- *A training course for the entire staff in the use of force has been initiated. The purpose of the course is to brush up the use of locks and holds, etc. and to make the staff feel safe when intervening. The courses have been completed for almost all employees, and the few remaining will attend the course in January 2015.*

#### **Inmates**

- *At present, the prison is in the process of developing a three-day conflict management course (to be included in the adult vocational training scheme (AMU)) which will be offered to all new inmates. Three local instructors have been educated and have been certified by AMU. The first two courses will be launched in February 2015.*

*Together with the prison, the Department of Prisons and Probation will monitor the development closely to ensure that the initiatives taken have the necessary effect of reducing inter-prisoner violence and intimidation.*

### **Paragraph 31 in CPT's report**

#### CPT's recommendation concerning paragraph 31:

- The CPT recommends that the Danish authorities take proactive measures to prevent sexual exploitation of prisoners at Ringe Prison, notably as concerns those prisoners allocated to the mixed male and female wing.

*In recent years, a number of initiatives have been taken to improve conditions for female inmates. One of the initiatives of the Danish Prison and Probation Service is a cognitive programme tailored to women, and, on the basis of the current multi-year agreement, female inmates have been offered better employment and leisure time activities at Møgelkær State Prison.*

*In general, the Danish Prison and Probation Service has a strong focus on the conditions of female inmates, both as regards their safety and their rehabilitation. This area is closely*

*monitored through annual, general user surveys of the inmates' well-being. It should also be mentioned that policy makers are currently discussing whether it will be a good idea to place all female inmates in a separate institution.*

*As regards the conditions of female inmates in Ringe State Prison, the prison has informed the Department of Prisons and Probation that the suitability of each woman is assessed individually before she is assigned to unit 5 which also holds male inmates. It is also a requirement that the relevant female inmate is drug-free. The suitability of male inmates is also assessed individually before they are assigned to the unit.*

*The prison finds it essential to maintain the possibility of placing women in unit 5 since these more well-functioning women are offered an alternative to the women's section, which may have a conflictual and unstable environment with highly stressed women who react violently.*

*For the purpose of further reducing the risk of harassment of women by male inmates of unit 5, the prison has introduced a rule providing that men and women (married couples exempted) are only allowed association in the cell if the cell door is open. This enables staff to assess the situation visually and intervene if it seems that this privilege is being abused.*

*Generally, the prison is aware of the risk existing when men and women associate in the same unit. Special attention is paid to the possibility of using toilet facilities as private rooms, and therefore inmates are allowed to use toilets upon request at one of the prison workshops only as the access to the toilets is difficult to monitor. The toilets are closed during church services, and in case of subsequent social interaction between inmates, supervision is intensified.*

*The Department of Prisons and Probation agrees with the information provided by the prison.*

### **Paragraph 32 in CPT's report**

CPT's comment and recommendation concerning paragraph 32:

- More generally, the CPT considers that the Danish authorities need to put in place a more rigorous reporting system of all incidents of inter-prisoner violence as at present it would appear that prison officers and health-care staff are not noting down all occurrences. Consequently, there is also a lack of action to identify and address acts of violence, intimidation and bullying. It also means that the statistics on inter-prisoner violence produced by the Department of Prisons and Probation are most likely not an accurate reflection of the situation in prisons.
- The CPT recommends that a more rigorous approach towards combating inter-prisoner violence in prisons be put in place, which should include a systematic recording and reporting of all such incidents. Reference should also be made to an effective complaints system.

*On 20 March 2013, the Department of Prisons and Probation sent a letter to all prisons and to Copenhagen Prisons concerning the procedure for handling cases relating to inter-prisoner violence and intimidation. The following was emphasised:*

- *all cases must be registered in the Client System of the Danish Probation and Prison Service,*
- *the registration must be made in the victim's case file,*
- *the registration must be made regardless of whether the victim wishes to report the matter to the police,*
- *the registration must be made when it has been established through interrogation that the case involves violence or intimidation,*
- *the registration must be made regardless of the sanction imposed based on the outcome of the interrogation, e.g. transfer, a disciplinary sanction or exclusion from association with other inmates, and*
- *the registration must be made no later than seven days after the interrogation.*

*In that connection, the Department of Prisons and Probation sent a list of registered reports of inter-prisoner violence or intimidation in 2011 and 2012, respectively, and the institutions experiencing significant deviations for one year to the next were ordered to assess the reasons for the deviation.*

*As a result, the Department of Prisons and Probation believes that a procedure for handling such cases has already been developed and that this procedure is satisfactory. The institutions assist inmates in reporting matters, and in special cases an institution may report a matter against the wish of an inmate. However, it is usually the inmate who decides since the inmate's cooperation is normally required for prosecution of an offence.*

*Inmates may file a complaint with the management of the institution if assaulted and they may request, e.g., a transfer to another institution. A decision of that nature may be appealed to the Department of Prisons and Probation. The Department believes that the inmates are well-informed of this right of appeal, and that the staff provide guidance in that respect.*

*It should also be mentioned that the Department of Prisons and Probation has set up a working group to conduct a detailed analysis of specific incidents of violence during a particular period to gather knowledge. Consequently, the group will seek to ensure uniformity in the registration practice of the institutions relating to incidents of violence and intimidation and to make specific proposals for effective measures which may reduce the extent of incidents of violence and intimidation for both inmates and the staff, both in the short term and the long term. The group consists of employees with knowledge of statistic and dynamic security, relational work and user-driven innovation. The working group is expected to complete its work during spring 2015.*

*See also the response to paragraph 73 below concerning procedures for filing of written complaints in sealed envelopes.*

### **Paragraph 33 in CPT's report**

#### CPT's recommendations concerning paragraph 33:

- The CPT welcomes the continued progress made by the Danish authorities and recommends that they pursue their efforts to ensure that remand prisoners are only placed in solitary confinement in exceptional circumstances which are strictly limited to the actual requirements of the case and last no longer than is absolutely necessary. Further, the Committee recommends that the authorities pursue their efforts to counteract the negative effects of remand prisoners placed in judicially-imposed solitary confinement.

*The Administration of Justice Act chapter 70 provides strict rules for the use of solitary confinement. As a general principle in section 770 remand prisoners are only subject to those restrictions, which are necessary to ensure the purpose of the remand in custody or the maintenance of order and security in the remand centre.*

*Furthermore, section 770 b stipulates that solitary confinement may only be used during remand in custody when the aim of the solitary confinement cannot be attained by less invasive measures, when the solitary confinement is not disproportionate to the importance of the case and the expected legal ramifications if the defendant is convicted, and the investigation of the suspected criminal offence is carried out with the speed which is required in such cases.*

*The prerequisites for the use of solitary confinement are generally increased with the duration of the solitary confinement. Thus, it follows from section 770 d(3) that the use of solitary confinement beyond 8 weeks in relation to a person over the age of 18 and the use of solitary confinement beyond 4 weeks in relation to a person under the age of 18 must be approved by the Director of Public Prosecutions before such a request can be made to the courts.*

*Since 2001 the Director of Public Prosecutions has been closely monitoring the use of solitary confinement of remand prisoners in order to ensure that remand prisoners are only placed in solitary confinement when it is necessary to ensure the purpose of the remand in custody. The Director of Public Prosecutions submits a yearly report on the use of solitary confinement to the Minister for Justice.*

*In this context it should be noted, that the Director of Public Prosecutions has implemented a new system for collecting data regarding remand in custody and solitary confinement. The system can also be used by the regional state prosecutors in their supervision with the police districts. The regional state prosecutors are expected in their yearly report to the Director of Public Prosecutions to account for the development in the amount of solitary confinements as well as the duration of these in order to decrease the use of solitary confinement and to point out any regional or local differences in the use of solitary confinement.*



## **Paragraph 35 in CPT's report**

CPT's recommendation concerning paragraph 35:

- The CPT reiterates its recommendation that the Danish authorities reinforce the safeguards surrounding the application of judicial restrictions on remand prisoners' contacts with the outside world, namely:
  - that the police be given detailed instructions as regards recourse to prohibitions/restrictions concerning prisoners' correspondence and visits;
  - that there be an obligation to state the reasons in writing for any such measure;
  - that, in the context of each periodic review by a court of the necessity to continue remand in custody, the question of the necessity for the police to continue to impose particular restrictions upon a remand prisoner's visits, telephone calls and letters be considered as a separate issue.

*The Administration of Justice Act and the Remand Custody Order provide regulation on remand prisoners' right to receive visits and to send and receive letters.*

*Pursuant to Section 770 of the Administration of Justice Act, a remand prisoner is only subject to those restrictions, which are necessary to secure the purpose of the remand or the maintenance of order and security in the detention center.*

*Pursuant to Section 771 of the Administration of Justice Act, a remand prisoner can receive visits to the extent that the maintenance of order and security in the detention centre permits it. The police can, due to the purpose of the remand, oppose that the remand prisoner receives visits, or insist that visits take place under supervision. The remand prisoner can demand that a decision to deny visits or require supervision is submitted to the court for review.*

*A remand prisoner always has the right to unsupervised visits by his defence attorney.*

*Pursuant to Section 772 of the Administration of Justice Act, the police can inspect letters before they are received or sent. The police shall as soon as possible hand over or send the letter unless the content is harmful to the investigation or to the maintenance of order and security in the detention centre.*

*If a letter is withheld by the police, the question whether the suppression should be upheld shall immediately be submitted to the court for decision. If the suppression is upheld the sender shall be notified immediately, unless the judge, due to considerations to the investigation, makes a different decision.*

*A remand prisoner always has the right to unsupervised exchanges of letters with the court, the defence attorney, the Minister for Justice, the Director of the Prison and Probation Service and with the Parliamentary Ombudsman.*

*According to the Administration of Justice Act section 773 the police can impose other restrictions such as restrictions on telephone calls. The remand prisoner can require that such restrictions be submitted to the court.*

*In practice, the decision whether or not to impose restrictions in the right to receive visits or mail (B&B) is taken by the prosecutor at the time when the decision on remand (or the prolonging thereof) is taken by the court.*

*The prosecutor may only make a decision to impose restrictions that are deemed necessary in accordance with section 770 of the Administration of Justice Act. "B&B" judicial restrictions are therefore as a general rule only imposed, when the purpose of the remand is to prevent the detainee from obstructing the course of the proceedings, in particular by removing traces or warn or influence others.*

*The decision to impose restrictions in the right to receive visits or mail will usually not be communicated in writing to the remand prisoner. However, should this be requested by the remand prisoner, the prosecutor may produce a written justification. Furthermore, if the remand prisoner demands that police denials of visits or requirements of supervision are submitted to the court for review, the court's decision on the application of "B&B" judicial restrictions will be made in writing.*

*In addition to the Administration of Justice Act and the Remand Custody Order, Judicial Guidance number 36 of 12 April 2012 regarding the Remand Custody Order gives detailed instructions as regards restrictions concerning remand prisoners' right to receive visits and correspondence.*

*The Danish Ministry of Justice has recently taken steps to examine the use of "B&B" judicial restrictions in Denmark. A project involving the Danish Prison and Probation Service, the Danish National Police and the Director of Public Prosecutions is to address a number of issues regarding the use of "B&B", e.g. to what extent "B&B" judicial restrictions are being applied, any demerits of "B&B" judicial restrictions in relation to remand prisoners' ability to maintain contact with family and the possibility of targeting the use of "B&B" judicial restrictions.*

*As such, the restrictions imposed by the police are not part of the periodic review by the court regarding the continued need for remand in custody. However, the question can be brought before the court for review. Accordingly, the restrictions are subject to judiciary control and the Administration of Justice Act is considered to provide sufficient safeguards in relation to remand prisoners' rights to receive visits and to send and receive letters.*

### **Paragraph 36 in CPT's report**

CPT's recommendation concerning paragraph 36:

- The CPT recommends that greater efforts be made to ensure that all prisoners are offered the possibility to associate or to be involved in activities requiring human contact for several hours every day.

*First, it should be noted that, as a paramount rule, detention in Copenhagen Police Headquarters Prison is only temporary.*

*Copenhagen Prisons have stated that the inmate composition at Copenhagen Police Headquarters Prison is complex. In general, inmates are members of four or five different biker gangs or other gangs, and often the number is higher. For security reasons, inmates from different gangs cannot associate with other inmates from other gangs while at Copenhagen Police Headquarters Prison due to their socially dominant behaviour.*

*There may also be other reasons why it is difficult to find a suitable fellow inmate for some inmates to associate with. In those cases, the difficulties will often be caused by matters relating to security.*

*However, the staff make a great effort to ensure that all inmates associate with other inmates, and this issue is monitored on a continuous basis, e.g. at the monthly meetings with the prison management at which the individual inmates are discussed.*

*Copenhagen Prisons have also stated that an inmate who is in fact excluded from association because he or she has no association with other inmates enjoys the same rights to measures which may alleviate the feeling of isolation as inmates excluded from association through a decision.*

*Finally, Copenhagen Prisons have indicated that they will consider whether, within the existing framework, more can be done to ensure that as many of the inmates at Copenhagen Police Headquarters Prison as possible are able to associate with others.*

*The Department of Prisons and Probation refers to the information provided by the prison and adds that, in connection with the monthly reports on the length of stays at Copenhagen Police Headquarters Prison, the Department monitors the development closely.*

### **Paragraph 37 in CPT's report**

CPT's comments and recommendation concerning paragraph 37:

- If the Danish Prison and Probation Service intends to accommodate prisoners at this facility who do not fulfil the requirements of a "negatively strong" prisoner, efforts should be made to provide a more meaningful regime for them. More generally, the CPT continues to believe that the placement criteria should be rendered more transparent.
- The CPT recommends that the Danish authorities review the situation at the Copenhagen Police Headquarters Prison, in the light of the above remarks.

*There are five described categories of inmates who may be placed at Copenhagen Police Headquarters Prison. Categories 1-4 only comprise inmates meeting the criteria of being negatively strong inmates. Also inmates falling within category 5 are placed there. In the instruction letter from the Department of Prisons and Probation to the institutions dated 28 August 2006, category 5 inmates are defined as follows:*

*Remand prisoners from Copenhagen Prison*

- a) *who are excluded from association with other inmates under section 63 of the Sentence Enforcement Act (see also comments to paragraph 38),*
- b) *who wish to be excluded from association with other inmates, or*
- c) *who are kept in solitary confinement as ordered by the court.*

*This list is not exhaustive since also other categories of inmates may also be placed there, such as inmates needing particularly strong protection and secrecy as to the prison in which they are placed.*

*Categories 5(a)-(c) are characterised by the inmates being excluded from normal association with other inmates because of their legal status or a decision made by the prison. As a result, the basic right to association with other inmates is not restricted when the inmates are placed – usually for a short period of time – in Copenhagen Police Headquarters Prison instead of in an ordinary local prison unit, such as in Western Prison. To these inmates, the solitary confinement ordered by the court or the exclusion from association decided by the prison is the primary and fundamental decision, and placement in Copenhagen Police Headquarters Prison is merely a secondary decision which is made for operational reasons. The length of solitary confinement and exclusion from association with other inmates are covered by the ordinary due process protection, decision-making procedures and restrictions set out in the Danish Administration of Justice Act and the Danish Sentence Enforcement Act. However, it is not possible already on the first day to decide and tell the inmate how long e.g. the period of exclusion from association imposed by the prison is going to last and when he or she will be returned to an ordinary local prison unit, as such exclusion is naturally decided to prevent a particular future behaviour, which will be discontinued when it is considered advisable to allow the inmate to associate with other inmates again, e.g. because the inmate has reflected on his behaviour and made a positive change to the behaviour which gave rise to the exclusion.*

*Copenhagen Prisons have informed the Department of Prisons and Probation that, on the basis of the information from the CPT, it has not been possible to identify the specific case, and it is therefore impossible to make further comments in that respect.*

*The Department of Prisons and Probation still finds that it must also be possible to place category 5 inmates at Copenhagen Police Headquarters Prison according to the existing practice.*

*The Sentence Enforcement Act and the Administration of Justice Act and any administrative rules laid down in pursuance of those Acts describe and provide guidance on the various options for placement, transfer and exclusion of inmates. With regard to Copenhagen Police Headquarters Prison, the Department of Prisons and Probation has in fact issued a special circular dated 12 October 2012 which describes the concept of negatively strong inmates in detail and deals with various case management requirements relating to placement in Copenhagen Police Headquarters Prison. As stated above, the Department of Prisons and Probation has also defined categories for placement there and e.g. specifically described the persons who may be placed as category 5 inmates. It should be noted that a decision of whether to place an inmate in Copenhagen Police Headquarters Prison must be based on an individual assessment. Prior to the prison's decision to exclude an inmate from association, the inmate will, as a minimum, be informed that the prison intends to make such decision on exclusion, and he or she will be allowed to express an opinion. When the decision has been made, he or she will be informed of the statutory provisions under which the decision has been made.*

*The Department of Prisons and Probation believes that the placement criteria and the legal reasons for placement have already been described and defined, and that the transparency relating to the use of Copenhagen Police Headquarters Prison is therefore satisfactory.*

## **Paragraph 38 in CPT's report**

### CPT's recommendation concerning paragraph 38:

- the CPT recommends that the Danish authorities take the necessary measures to ensure that:
  - any prisoner subject to prolonged solitary confinement:
    - has the right of appeal to an independent authority;
    - has a plan drawn up to address the reasons for the issues which require the prisoner to be kept in solitary confinement;
    - has a multi-disciplinary team to review the plan initially after one month and thereafter every three months, with the right to appeal any decision to prolong the solitary confinement;
  - the longer the situation of solitary confinement continues, the more thorough the review should be and the more resources made available to attempt to (re)integrate the prisoner into the main prison community;
  - the above-mentioned prisoner is provided with psychological and, if necessary, psychiatric counselling to assist him to associate with other prisoners and more importantly prepare him for reintegration into society;

*The rules on administrative exclusion of inmates from association with other inmates are set out in the Sentence Enforcement Act and the Executive Order on Exclusion of Inmates from Association (Executive Order No. 283 of 26 March 2012 on Exclusion of Inmates from Association, including Placement in Observation Cells, etc. in State and Local Prisons).*

*It should be noted that a working group has looked at ways to reduce the use of exclusion from association with other inmates. In 2010, the working group made a number of proposals to revise the rules on exclusion from association, partly to reduce the number of exclusions from association and partly to reduce the length of such exclusions. As a result, new rules on the exclusion from association with other inmates were introduced on 1 April 2012.*

*Section 63(1)-(3) of the Sentence Enforcement Act reads as follows:*

**'63.** (1) *The director of the institution or the person so authorised may exclude an inmate from association with other inmates if necessary –*

*(i) to prevent escape, criminal activities or violent behaviour;*

*(ii) to carry out measures necessary for reasons of security or required to prevent any danger of infection; or*

*(iii) because the inmate exhibits gross or frequently repeated impermissible behaviour obviously incompatible with continued association with other inmates.*

*(2) The director of the institution or the person so authorised may exceptionally exclude an inmate from association with other inmates for up to five days if necessary to protect the inmate against assaults.*

*(3) If there is reason to assume that the conditions of subsection (1) hereof for exclusion from association are present, the institution may temporarily exclude the inmate from association with other inmates while the question of exclusion is being considered. If there is reason to assume that the conditions of section 25 of this Act for transfer to a closed prison or of section 26 of this Act for transfer between uniform closed enforcement institutions or of section 28 of this Act for*

*transfer to a local prison are present, the institution may also temporarily exclude the inmate from association with other inmates while the question of transfer is being considered.'*

*Section 63(6)-(9) of the Sentence Enforcement Act contains rules on proportionality, considerateness and period of exclusion from association with other inmates, etc.:*

*'(6) An inmate may not be excluded from association if the exclusion would be disproportionate in view of the purpose of the measure and the indignity and the discomfort presumably caused by the measure.*

*(7) Exclusion from association must be accomplished as considerately as circumstances permit.*

*(8) Exclusion from association must be discontinued promptly when the conditions for such exclusion are no longer present. The institution shall consider the question of complete or partial discontinuation of the exclusion from association at least once a week.*

*(9) The period of exclusion from association may not exceed three months. The Department of Prisons and Probation may make a decision on exclusion from association for more than three months in the event of highly exceptional circumstances. In such case, subsection (8), second sentence, hereof applies correspondingly.'*

*The above rules apply to the enforcement of prison sentences and safe custody, see section 1 of the Sentence Enforcement Act. The rules apply correspondingly to the use of administrative exclusion of remand prisoners from association, see section 1(1), second sentence, of the Executive Order on Exclusion of Inmates from Association, cf. section 776, first sentence, of the Administration of Justice Act.*

*The Executive Order on Exclusion of Inmates from Association contains detailed rules on the consideration of cases concerning the exclusion of inmates from association.*

#### *Special rights and offers to inmates excluded for more than 14 days*

*Inmates who have been excluded from association for more than 14 days must receive guidance on the special rights and offers for which they are eligible under section 6 of the Executive Order on Exclusion of Inmates from Association. Therefore, the staff must at all times be particularly aware of whether such inmates need increased staff contact, medical or psychiatric assistance, etc. The staff must be aware that such needs increase with the length of the exclusion from association, see section 6(1) of the Executive Order.*

*The staff must also be particularly aware of whether the exclusion from association can be relaxed through association with one or more inmates in the cell or during exercise in the courtyard, work in association with other inmates or leisure time activities with other inmates or the staff, etc., see section 6(2) of the Executive Order.*

*An inmate who has been excluded from association for more than 14 days must also be offered regular and long consultations with a psychologist, a doctor, a minister of religion or a similar person, have a television set made available free of charge, and be offered special access to individual tuition and work, including any other approved activity which may help reduce the*

*particular stress and risk of impairment of the mental health connected with exclusion from association, see section 6(3) of the Executive Order.*

*Inmates who have been excluded from association for more than three or six months, respectively, and inmates under the age of 18 who have been excluded from association for more than four weeks have additional rights to increased contact with others, see sections 7 and 8 of the Executive Order.*

*Considerations of whether to discontinue exclusion from association and plan for reintegrating the inmate into the prison community*

*Under section 9 of the Executive Order on Exclusion of Inmates from Association, the authorities are subject to a special duty to make records of the continuous considerations of whether to discontinue the exclusion from association:*

*'9. (1) When exclusion from association is discontinued, see section 63(8), first sentence, of the Sentence Enforcement Act, a record must be made of the date and time of the discontinuation of the exclusion.*

*(2) In addition, a record must be made of the considerations of the institution under section 63(8), second sentence, of the Sentence Enforcement Act on complete or partial discontinuation of the exclusion, including the date and time of such considerations. The record must also include a plan for returning the inmate to association, including a plan for relaxing the measure of exclusion from association, see section 6(2) of this Order.*

*(3) The record referred to in subsection (2) hereof is subject to the approval of the director of the institution or the person so authorised. The director of the institution cannot delegate such authority to any person other than the deputy state or local prison director or finance director.'*

*Section 9 of the Guidance Notes on Exclusion of Inmates from Association, including Placement in Observation Cells, etc., in State and Local Prisons (Guidance Notes on Exclusion of Inmates from Association) contains the following plan for reintegrating inmates into the prison community:*

*'When an inmate is excluded from association with other inmates, a plan must be made on how to reintegrate the inmate into the prison community, including how to relax the measure of exclusion from association, see section 9(2) of the Executive Order. Such plan must be made the first time the institution considers the issue of whether to discontinue the exclusion from association, whether in full or in part, and, just like the weekly records, it is subject to approval by the director of the institution or the person so authorised. However, the director of the institution cannot delegate such authority to any person other than the deputy prison director/finance director/deputy prison governor.*

*If the exclusion from association is continued, the plan for reintegration must be adjusted and updated on a continuous basis, and the plan for reintegration must be included in the subsequent weekly records.'*

Special procedural requirements relating to exclusion from association for more than 14 days or three months, respectively

Under sections 10 and 11 of the Executive Order, special procedural requirements apply when an inmate has been excluded from association for more than 14 days or three months, respectively:

**'10.** When an inmate has been excluded from association for fourteen days, the exclusion must be reported to the Department of Prisons and Probation under the Ministry of Justice. The same applies at the end of each subsequent fourteen-day period. The report must be accompanied by copies of the records referred to in sections 5(4) and (5) and 9(2) of this Order.

**11.** (1) Where the institution finds it necessary, very exceptionally, to exclude an inmate from association for a period exceeding three months, the institution shall send a recommendation to that effect to the Department of Prisons and Probation under the Ministry of Justice. The institution shall send the recommendation to the Department in time for it to be received two weeks before the exclusion has lasted for three months to allow the Department to make a decision before the period of exclusion exceeds three months.

(2) Before the Department of Prisons and Probation under the Ministry of Justice makes its decision, the relevant inmate is entitled to an interview with a representative of the Department. In its recommendation, the institution shall state that the inmate has been informed of such right and indicate whether the inmate wants to make use of it.

(3) If the Department of Prisons and Probation under the Ministry of Justice has decided on exclusion from association for more than three months, the institution shall submit the records prepared pursuant to section 9(2) of this Order to the Department at least once a week for use by the Department in its considerations on whether to discontinue the exclusion from association in full or in part.'

The purpose of revising the rules on exclusion from association was to reduce the number of exclusions from association, to reduce the periods of exclusion and to increase focus on allowing excluded inmates to associate with other inmates during part of the exclusion period, in order to alleviate the negative effects of solitary confinement.

The revision to the rules has had a positive effect on the number of exclusions from association. Accordingly, the number of discontinued exclusions was 741 in the institutions of the Danish Prison and Probation Service in 2011, while the number was 543 in 2013, corresponding to a decline of 27 per cent.

Although fewer inmates have been excluded from association, and it must be assumed that this measure is only used in particularly serious situations, the proportion of exclusions under which inmates have been allowed to associate with other inmates has remained stable: 248 out of 741 exclusions in 2011 (33 per cent) and 181 out of 543 exclusions in 2013 (33 per cent).

As regards the periods of exclusion from association, the revision to the rules has also had a positive effect. In fact, there were fewer exclusions from association in the categories of 0-3 days, 4-7 days, 8-14 days and 15-28 days in 2013 compared with 2011. Only the number of



exclusions exceeding 28 days has remained unchanged. It should be noted that, due to the reporting duty, the individual cases concerning exclusion from association for more than 14 days are monitored on a continuous basis by the Department of Prisons and Probation.

#### Right to appeal the decision to an independent authority

As regards the right to appeal a decision to an independent authority, it should be noted that inmates are entitled to bring decisions on exclusion from association before the Parliamentary Ombudsman. The Parliamentary Ombudsman cannot change a decision, but he may request the Department of Prisons and Probation to reconsider the case. In practice, requests made by the Parliamentary Ombudsman are always complied with. Furthermore, administrative decisions may be brought before the courts under section 63 of the Danish Constitution. Court proceedings will not stay the execution of a decision to exclude.

Against that background, the Department of Prisons and Probation finds that the existing rules on exclusion of inmates from association reflect the due process protection pointed out by the CPT.

#### A specific case from Vridsløselille State Prison

As regards the specific case to which the CPT refers in paragraph 38, Vridsløselille State Prison has informed the Department of Prisons and Probation that the inmate concerned has gradually been reintegrated into the prison community in the following manner:

- From 5 March 2014, he was allowed association in a cell with a fellow inmate
- From 20 March 2014, he was allowed to attend the weekly church services with the other inmates
- From 31 March 2014, he was allowed to exercise every day in the courtyard together with other inmates
- On 1 July 2014, he was transferred to a normal prison unit, and he was allowed to sing in the prison's choir.
- From 10 July 2014, he was allowed to work at the prison's textile workshop.

As regards psychological/psychiatric assistance, the prison states that the inmate has had nine consultations with the prison's psychologist in the period from 5 March 2014 to 24 September 2014.

The Department of Prisons and Probation refers to the above response from the prison.

### **Paragraph 39 in CPT's report**

#### CPT's recommendation concerning paragraph 39:

- The CPT recommends that the Danish authorities carry out a full review of the police investigation into this case of alleged ill-treatment by prison officers at East Jutland Prison in 2009, and inform the Committee of the outcome accordingly.

*The case mentioned by the CPT concerns a prisoner of the State Prison of East Jutland, who through his defence attorney claimed to have been ill-treated by prison officers in connection with a disciplinary interrogation in January 2009.*

*The Director of Public Prosecutors has informed that the prison officers in question were charged and questioned, and that the case was investigated.*

*On 27 January 2010, the local Prosecution Service of South Eastern Jutland decided not to prosecute the allegations against the prison officers.*

*The decision was taken in accordance with section 721, paragraph 1(2), of the Administration of Justice Act. According to this provision, charges can be dropped when further pursuance of the case is not likely to result in the person being found guilty.*

*The Prosecution Service referred in their reasoning to the following:*

*The prison staff had claimed to be not-guilty of the alleged assault; there were no witnesses to the alleged assault; the nurse who removed a gold chain from the prisoner's neck, stated that the prisoner had no injuries to the back of his head; persons present in the fixation room have stated that the prison officer accused by the prisoner of i.a. hitting and kicking the prisoner was not positioned by the prisoner's head; the prison staff has stated that the prison officer in question was not in the fixation room when oxygen was requested; the doctor who examined the prisoner noticed marks on the prisoner's neck and extravasations of blood behind both ears. The doctor stated that the marks may very well be caused by the heavy gold chain carried by the prisoner during the incident. Based on this, the Prosecution Service found that it would not be possible to lift the burden of proof in the case.*

*The prisoner was informed of the decision in writing on 27 January 2010. The letter contained information on how to file a complaint against the decision to the higher level of the Prosecution Service.*

*According to section 724, paragraph 1, of the Administration of Justice Act, a decision not to prosecute can be appealed to the superior level of the prosecuting authority, in this case the State Prosecutor. According to the case file, the prisoner has not filed a complaint against the decision of the South East Jutland Prosecution District.*

*It is noted that the abovementioned incident also was reported to the police with charges of assault committed by the prisoner against three of the prison officers involved, and that these charges on the other hand resulted in an indictment.*

*In August 2010, the Court in Horsens sentenced the prisoner in question to ten months of imprisonment. Besides the account of assault, the case also involved one account of attempted escape and one account of illegal possession of a mobile phone with the view of escaping. The sentencing was reasoned by the fact that the prisoner was found guilty of violence against three prison officers committed in the facility where he served a sentence. The Court also took into consideration that the prisoner was previously convicted of escaping from prison and of assault.*

*According to section 901 of the Administration of Justice Act, the decision of the court could be appealed to the High Court. However, according to the case file, the prisoner has not appealed the decision of the Court of Horsens.*

*In the light of the review of the case, the Director of Public Prosecutors has not found reason for further remarks.*

*The Department of Prisons and Probation has also consulted the South-East Jutland Police on the incident. The South-East Jutland Police has provided additional information regarding the incident that led to the prisoner being charged for assaulting three prison officers.*

*On 20 August 2010, the prisoner was convicted by the District Court of Horsens for violation of section 119(1) of the Danish Criminal Code because he had punched one of the prison officers present three times in the face, bit another prison officer below the right breast and slapped the officer's face several times and punched a third prison officer twice in the face during the interrogation. In that connection, the court took into account that the inmate had punched one of the prison officers in the face without any provocation on the part of the prison officer, except that as interrogator he had confronted the inmate with the case being the subject-matter of the interrogation. Furthermore, the court found it substantiated that the other prison officers had then attempted to pacify the inmate who was hitting in all directions, and in that connection he had slapped the face of one of the prison officers several times and bit the officer's chest, and he had also punched another prison officer twice in the face. Finally the court found that there was no reason for assuming that any of the victims had provoked the inmate's use of violence.*

*The Department of Prisons and Probation adds that the case has not given rise to any disciplinary reactions against the prison officers involved since the Department has found that, due to the very special nature of the case and the particular circumstances, the acts were lawful self-defence.*

#### **Paragraph 40 in CPT's report**

CPT's recommendation concerning paragraph 40:

- The CPT recommends that steps be taken to ensure that prisoners in all remand establishments, notably Western Prison and Police Headquarters Prison in Copenhagen have ready access to a proper toilet facility at any time of the day or night. It would be far preferable to install in-cell toilets in all prison establishments.

*Both the Western Prison and Copenhagen Police Headquarters Prison are institutions located in very old buildings, and therefore they do not fully meet the requirements for modern prison facilities. There are no in-cell toilets, and therefore these institutions must be staffed to ensure that all inmates can access a toilet at any time of the day or night.*

*Seen in the light of the recommendations of the CPT, the Department of Prisons and Probation has pointed out to the remand institutions visited that inmates must have access to a toilet at any time, also at night.*

*It should be added that, when constructing new prison facilities, the Danish Prison and Probation Service only establishes residential units with a toilet attached to each cell.*

### **Paragraph 43 in CPT's report**

CPT's recommendation concerning paragraph 43:

- The CPT recommends that every effort be made to avoid accommodating two prisoners in cells designed for single occupancy at Western Prison. Efforts should also be made to replace damaged furniture and missing curtains.

*Copenhagen Prisons have taken note of the recommendation.*

*The Department of Prisons and Probation refers to the above response from the prison.*

CPT's recommendation concerning paragraph 43:

- Further, the CPT encourages the management of Western Prison to pursue their efforts to offer all prisoners access to purposeful activities during their time at the establishment.

*The Western Prison has informed the Department of Prisons and Probation that the occupational activities offered by the prison are adjusted on a continuous basis to offer meaningful activities to all inmates, including to foreign national inmates. The prison admits that sometimes it has been difficult to provide information about the activity offers to all inmates because of the language barriers experienced in the communication with the inmates, who speak many different foreign languages.*

*In the light of these difficulties, the Western Prison has launched a communication project called 'Information On Admission' (IVI) which aims at providing better information on the stay in the prison in general and guidance on the activities offered in the prison. The project aims at overcoming the challenges and frustrations that may be caused by language barriers. It will therefore benefit foreign national inmates in particular. Since some of the inmates of the target group are unable to read, the project information is communicated by means of symbols and images, which replace the traditional written information. The preliminary project results are positive, and the prison expects that the project will be able to alleviate communication problems in future.*

*Moreover, it should be noted that the prison offers English classes especially for foreign national inmates.*

*It should also be mentioned that the Western Prison is currently investigating the possibility of offering hygiene courses tailored specifically to foreign national inmates and that, in relation to cell work where inmates work on the prison's own product line 'Made By Prisoners', the prison has a special focus on ensuring that this offer must also be relevant to foreign national inmates.*

*The Department of Prisons and Probation refers to the information provided by the prison.*

## **Paragraph 45 in CPT's report**

CPT's recommendation concerning paragraph 45:

- The CPT recommends that the Danish authorities review the policy of placing juveniles remanded in custody pending trial in a prison establishment rather than a secure institution for juveniles. Further, all juveniles held in remand custody must be provided with a full programme of vocational, education, sports and recreational activities.

*The Administration of Justice Act's chapter on remand in custody also applies to minors (children under the age of 18).*

*Accordingly, the Administration of Justice Act section 765 stipulates that when the prerequisites for remand in custody are fulfilled and the purpose of remand in custody can be attained by less invasive measures the court can decide that the minor shall be placed in a secure institution instead, if the minor consents.*

*The Director of Public Prosecutors has issued instruction No. 4/2007 on treatment of cases regarding juvenile offenders, which establishes guidelines as to how the Prosecution Service shall handle cases where remand in custody of a minor is considered. The guidelines stipulate that it should always be attempted to place the minor in a surrogate to remand in custody unless specific reasons deem remand in custody necessary e.g. if the crime committed is of a very serious or dangerous nature.*

*As such it is not the Danish authorities' policy to place minors remanded in custody in a prison establishment rather than a secure institution. It should be noted that if a minor is placed in remand in custody the Administration of Justice Act section 768 a(2) contains strict time limits as to the duration hereof.*

*Most of the relatively few juveniles who are remanded in custody in the institutions of the Danish Prison and Probation Service are held for quite short periods of time. Against that background and considering the special rules for juveniles of the Danish Prison and Probation Service which aim at protecting juveniles from older inmates, the Danish Prison and Probation Service has decided to give the following areas a high priority: education guidance, screening/testing of the linguistic skills of the juveniles, primary and lower secondary school education and improvement of basic reading, arithmetic and writing skills.*

*It should be noted that, in recent years, the Danish Prison and Probation Service has intensified its educational efforts towards all inmates, especially juveniles and continues to implement relevant initiatives and develop the area. The CPT's recommendations will be included in its work.*

## **Paragraph 46 in CPT's report**

### CPT's request for comments and information concerning paragraph 46:

- If it is considered necessary to have a separate unit for sentenced juveniles, consideration might be given to locating that unit on the grounds of an open prison which was accommodating sentenced juveniles. In this way, a specialised centre focused around the needs of juveniles could be put in place which would also provide increased options for managing juveniles in the closed and open sections, including joint activities. The CPT would appreciate the observations of the Danish authorities on this matter.
- Further, given that many of the juveniles/young adults had already spent time in several institutions before prison, a major challenge lies in assisting them make the transition from prison (with its support and structure) to life in the community. The Committee would like to be informed of the measures being taken to facilitate this process.

*The Danish Prison and Probation Service is working on a continuous basis to develop the form and contents of its prison units. As a main rule, sentenced juveniles (i.e. persons of 15-17 years of age) are placed in institutions outside the prison system.*

*The Minister for Justice has initiated a survey on juveniles in prison in order to gain knowledge and determine possible future measures. The CPT's considerations will be taken into account if possible in that connection.*

*As regards the CPT's comments on assistance to sentenced juveniles to make the transition from prison to life in the community, it should be noted that juveniles serving a prison sentence in an institution of the Danish Prison and Probation Service already receive education guidance, assistance from social workers, etc.*

*An action plan is prepared for the individual juvenile, and his or her home municipality is contacted, e.g. for the purpose of coordinating action plans.*

*Moreover, on release on parole, the individual juvenile will be subjected to supervision, and in that connection he or she will also receive guidance and assistance. Finally, the supervisory authority charged with the supervision of the juvenile released on parole must consider whether the juvenile should have a mentor if he or she has not already been given a mentor during the stay at the institution.*

## **Paragraph 47 in CPT's report**

### CPT's recommendation concerning paragraph 47:

- The CPT recommends that regular psychiatric input for Odense Remand Prison be sourced. Further, doctors' on-call should be reminded of their duty to attend the prison when circumstances so require.

*As regards regular psychiatric assistance at Odense Local Prison, the prison governor has informed the Department of Prisons and Probation that the prison employs a psychiatric consultant 2-4 hours per week. The psychiatrist is also employed in the forensic psychiatric sector. As a result, the psychiatrist is able to attend to/see two or three inmates per week. In*

*periods when the need for attending to inmates is lower, the psychiatrist also performs supervision of the prison's nurses.*

*The Department of Prisons and Probation refers to this information.*

*As for the (somatic) doctor's duty to attend when needed, the prison governor has informed the Department of Prisons and Probation that, according to the prison's general experience, the doctor usually attends when needed, including to inmates with mental problems. The specific case at Odense Local Prison referred to by the CPT is therefore not characteristic of the usual medical attendance at the prison.*

*The Department of Prisons and Probation agrees that a doctor on-call during working hours must meet his obligation to attend the prison when warranted by circumstances.*

*It should be noted that, outside normal working hours, the inmates of the local prison only have access to the normal public medical emergency service, like all other citizens in Denmark. In Denmark, the medical emergency service is operated by the regional authorities.*

## **Paragraph 51 in CPT's report**

### CPT's recommendation concerning paragraph 51:

- The CPT recommends that the Danish authorities take steps to ensure that every newly-arrived prisoner be properly interviewed and physically examined by a medical doctor, or a fully qualified nurse reporting to a doctor, during the initial screening. Such screening should always take place within 24 hours of a person's admission to prison, and preferably on the day of arrival at the establishment. Further, each prison health-care service should have in place a screening tool to enable them to properly assess the health-care needs of each newly-admitted prisoner.

*When the CPT visited Denmark in 2002 and 2008, the CPT also pointed out that the Danish Prison and Probation Service should take steps to ensure that inmates are always screened by a medical doctor or a qualified nurse as soon as possible and no later than 24 hours after admission to the institution.*

*In connection with the visit in 2002, the Department of Prisons and Probation informed the CPT that it considered the Danish practice, according to which inmates are informed of the health care services available at the institution when admitted and are offered an appointment with the doctor or nurse of the institution, to be in accordance with the European Prison Rules according to which a doctor or nurse reporting to the doctor must attend to all inmates as soon as possible after their admission and examine them, unless it is obvious that such examination is unnecessary.*

*On the basis of the recommendation maintained by the CPT in connection with its visit in 2008, the Department of Prisons and Probation decided to launch a screening project with systematic screening of all inmates in selected institutions for somatic diseases. The project has not yet been completed, and therefore it is not possible to draw any final conclusions at this stage. The Department of Prisons and Probation expects the results to be ready in early 2015. A detailed assessment will then be made to determine whether the screening should be*

*continued and offered to inmates of all institutions of the Danish Prison and Probation Service and which model should be applied.*

*Furthermore, the Danish Prison and Probation Service completed a screening project concerning mental illnesses among remand prisoners at Western Prison from 2009 to 2012. The results were published in December 2013. The purpose of the project was to examine whether it would be possible to develop a screening tool for the nurses of the Danish Prison and Probation Service which would enable them, on a systematic basis, to identify early signs of mental illness and the need for psychiatric monitoring of remand prisoners. On the basis of the screening project results, it was concluded that the screening tool did not enable prison nurses to make a qualified identification of all remand prisoners with mental illnesses. The report therefore recommends that alternative methods be found to identify mental illness, such as the institution of special reception units and closer cooperation with the psychiatric sector outside the prisons. As from 1 January 2015, reception units will be established in all prisons to make it easier to identify inmates with mental illnesses. The Department of Prisons and Probation is currently examining the CPT's other recommendations.*

## **Paragraph 52 in CPT's report**

### CPT's recommendation concerning paragraph 52:

- The CPT recommends that the necessary instructions be issued to ensure that any relevant statements by newly-arrived prisoners or an inmate involved in a violent incident in prison are recorded by the health-care service, together with the doctor's observations. The existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is immediately and systematically brought to the attention of the supervisory authority, regardless of the wishes of the person concerned.

*Inter-prisoner violence must be registered in the electronic Client System of the Danish Prison and Probation Service. The registration must be made in the victim's case file and regardless of whether the victim wishes to report the matter to the police. The registration must be made when it has been established, in connection with an interrogation, that violence has occurred, regardless of whether the interrogation leads to a sanction. Reference is made to the response to paragraph 32 above.*

*According to the Danish practice, inmates are not forced to receive medical assistance. However, inmates are guided by staff on the right to medical attendance and to report a violent incident to the police, if relevant. If an inmate has been subjected to violence, he or she will be examined by a doctor upon request. The doctor will record the incident in the inmate's medical records.*

*If the health care staff suspects that the staff has used violence against an inmate, such suspicion will in practice be reported to the management of the institution. Violence used by staff against inmates is not tolerated, and the management will therefore report any such violence to the police immediately regardless of the inmate's wish. Depending on the outcome of any criminal proceedings, the employee involved can be dismissed.*



*In case of suspicion that violence has been used against an inmate before admission, this will be reported to the police depending on the circumstances. In practice, an inmate bearing signs of violence/ill-treatment or stating that he or she has been subjected to violence/ill-treatment will be examined by a doctor or nurse who will enter a report of the incident in the medical records.*

### **Paragraph 53 in CPT's report**

#### CPT's recommendations concerning paragraph 53:

- The CPT recommends that steps be taken to ensure that medical consultations at Western Prison take place in a location which guarantees medical confidentiality (i.e. that the medical examination is conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of non-medical staff). Further, the system of making an application to see a member of the health-care staff should be reviewed to ensure that it guarantees medical confidentiality. In particular, prisoners should not be obliged to openly state the reason why they wish to see a member of the health-care staff; they should be informed about the possibility to make an application using a sealed envelope. Further, medication should only be distributed by health-care staff.

*Copenhagen Prisons have provided the Department of Prisons and Probation with the following information:*

*'As regards medical confidentiality in relation to appointments with a doctor for consultations and medical examinations, such consultations and examinations most often take place in the inmate's cell with the door left ajar. A prison officer will be stationed outside the door only in case of a particular security risk.*

*Consultation rooms have been established, and they can be used if considered necessary by the doctor. If an inmate is to be examined in the consultation room, it will still be necessary to leave the door ajar in case of a particular security risk, and in that case two prison officers will always be stationed quite near for security reasons.*

*As regards confidentiality concerning the reason why the inmate wishes to see a doctor, it appears from the prison house rules that the inmate may opt to place a request in a sealed envelope.*

*Moreover, the prison also informs newly-arrived inmates of this option as part of the screening procedure.*

*As regards the administration of medications, the prison follows the rules laid down by the Department of Prisons and Probation.*

*Newly-appointed officers receive instructions from the head nurse on how to handle the administration of medications when they take up their positions.'*

*The Department of Prisons and Probation refers to the information provided by Copenhagen Prisons, but adds the following:*

*The Circular on the Dispensing of Medicines, etc. to Inmates of State and Local Prisons reads as follows:*

**'2.** *The administration of any type of medicines is subject to prescription by the doctor responsible for the area, but see section 2(5) and section 9 on non-prescription drugs.*

*(2) Medicines must be administered by the doctor or the person so authorised by the doctor, see subsection (3).*

*(3) In addition to nurses, the doctor may use other staff without nurse training who have received instructions in the dispensing of medicines (e.g. prison officers) as assistants.*

*(4) Such powers may be delegated to staff without nurse training only if they have been informed of the instructions on the dispensing of medicines in the relevant area, see section 5.*

*(5) (...)*

**3. (1)** *The doctor is responsible for prescribing all medicines to be administered, including the medicines dispensed by nurses and staff without nurse training.*

*(2) Nurses and staff with no nurse training shall comply with the treatment prescribed or ordered by the doctor.*

**4. (1)** *The doctor shall instruct the staff without nurse training in the administration of medicines and also provide guidance on the dosage and dispensing of medicines and any need for observation of actions and adverse reactions. The doctor shall supervise the administration of medicines by this group of staff.*

*(2) (...)*

**5. (1)** *When staff without nurse training assist in the administration of medicines, written instructions must be available at the institution concerning the dosage and dispensing of medicines.*

*(2) (...)*

**6. -(1)** *The doctor shall keep medical records for each patient and enter prescription information, etc. in those records.*

**7. -(1)** *The doctor/nurse/staff without nurse training shall also note down all the doctor's prescriptions and orders for dispensing of medicines on a suitable drug chart (e.g. Form DFK 172). The persons dosing and/or dispensing the medicines must also separately and independently record both the dosage and dispensing in the drug chart.*

*(2) (...)'*

*The task of dispensing medication is handled by doctors, nurses and other staff without nurse training. The Department of Prisons and Probation finds that it is safe to let staff without nurse training handle the dispensing of medication, as they have received special instructions and training. However, the Department of Prisons and Probation is fully aware of the problem and is therefore currently running a large number of medication administration courses for staff without nurse training at all local prisons. It is not possible to let the task be handled by doctors and nurses alone within the framework of the existing health-care staffing levels.*

*The Department of Prisons and Probation is also aware of the importance of registering the dispensing of medication to the inmates, including by entering the relevant information in the*

*inmates' medical records. Pursuant to the Circular on the Dispensing of Medicines, etc., information must be recorded on a special drug chart. The Department of Prisons and Probation believes that the rules of the Circular are complied with.*

*Finally, it should be mentioned that the Department of Prisons and Probation is currently exploring whether it is possible to connect to the reporting system of the National Agency for Patients' Rights and Complaints (Patientombudet) for 'adverse reactions' and not least the establishment of national electronic medical records. These systems would make it possible to report and record errors, etc. to the benefit of other parts of the Danish Prison and Probation Service.*

### **Paragraph 54 in CPT's report**

CPT's recommendation concerning paragraph 54:

- The CPT recommends that initial assessments of substance misuse should include a physical examination and that all prisoners prescribed detoxification treatment should be seen by a doctor and have a care plan drawn up. The CPT also recommends that more effective steps be taken to implement a three-pronged strategy in all prisons: to put an end to the supply of drugs, to reduce as far as possible the demand for drugs and to provide appropriate assistance to prisoners with drug-related problems.

*It is difficult to keep prisons free of illegal substances, but in recent years the Danish Prison and Probation Service has further increased its efforts to prevent controlled substances from entering the institutions. During the past few years, more sniffer dogs have been used, and more searches have been carried out in the institutions than previously. At the same time, a wide range of drug abuse treatments are offered in all state and local prisons. In the local prisons, the nature of the treatment is primarily motivating, whereas the treatments offered in the state prisons target a large number of different types of abuse, and the intensity of the treatments varies according to need.*

*In 2013, more than 4,000 inmates were offered treatment, and more than three out of four treatment courses were successfully completed.*

*Social drug abuse treatment is handled by external treatment centres in close cooperation with the employees of the Danish Prison and Probation Service, whereas medical treatment is handled by the health-care staff of the Danish Prison and Probation Service.*

*The Danish Prison and Probation Service has no common standard for the treatment of substance abusers. However, it is expected that focus on this problem will be intensified in the coming years as and when the Danish Prison and Probation Service examines the possibility of establishing electronic medical records. At the same time, the Danish Prison and Probation Service will consider the introduction of uniform application of medicinal products in all institutions. However, the individual doctor is entitled to prescribe medication, and it is therefore impossible to order doctors to prescribe specific medicinal products, but the Danish Prison and Probation Service may appeal to doctors to follow the directions on the application of medicinal products that the Danish Prison and Probation Service is expected to give.*

*Today, all newly-arrived inmates having an active substance abuse problem or receiving substitution treatment are offered prescribed detoxification with substitution products or prescribed continuation of the existing substitution treatment. A doctor will always be involved in the treatment at the institution of the Danish Prison and Probation Service since only doctors may prescribe medication. Before an ongoing treatment is continued, relevant information will be obtained from the doctor of the treatment centre to which the inmate has been attached.*

*An actual physical examination of the inmate is carried out if needed. Then a plan will be made for the continued treatment plan. However, the plan, including the clinical follow-up, will depend on the doctor/nurses of the institution since, as stated above, no fixed standard applies to the choice of medicinal products and the duration of treatments.*

*Due to the limited size of certain local prisons, remand prisoners cannot participate in motivation groups and special educational therapy. However, if the remand prisoner receives an unconditional prison sentence this will subsequently be taken into account when the enforcement institution is chosen.*

*As regards the entering of information into medical records and medicinal charts, reference is made to the response to paragraph 53.*

### **Paragraph 57 in CPT's report**

#### CPT's recommendation concerning paragraph 57:

- The CPT recommends that the Danish authorities put in place a more comprehensive reception and induction process in all remand prisons which should include the provision of information in a language that the prisoner understands.

*The Danish Prison and Probation Service has an information folder entitled 'Information about arrest and remand custody' which the staff must hand out to all new inmates on arrival. The folder describes the most important rules applicable to arrested persons and remand prisoners. According to the folder, inmates are entitled to see the rules of the Danish Prison and Probation Service, the European Prison Rules and any special rules of the local prison (e.g. the local prison's house rules in which also practical issues, such as the possibility of buying necessities, visiting hours, etc. are described). If an inmate wishes to receive further information, he or she is always welcome to borrow the rules and regulations from the staff, and, in case of any doubt, the inmate can always ask the staff for clarification.*

*The information folder covers a large number of issues, such as special dietary needs, options available in connection with visits, letter writing, leaves, work, education and training, treatment and leisure time. The possibilities of community service and home detention with electronic tagging are also briefly described. The folder also describes issues such as illness, dental treatment, complaints, appeals, transfer to a state prison, practical assistance from social workers and the staff's duty of confidentiality.*

*The folder is available in the following languages: Arabic, Danish, Dari, English, Estonian, Farsi, Finnish, French, Greenlandic, Latvian, Lithuanian, Mandarin, Pashto, Polish, Russian, Serbo-Croatian, Somali, Spanish, Czech, Turkish, German and Urdu. The relevance of adding new languages is considered on a continuous basis.*

*A similar information folder is available to persons serving a prison sentence. It is entitled 'Information on serving a prison sentence'. Also this folder has been translated into a number of languages.*

*Both information folders are currently being revised. Once the revision has been completed, the Department of Prisons and Probation will ensure that the new updated folders will be distributed to all state and local prisons (and made available at the website of the Danish Prison and Probation Service). In that connection, the Department of Prisons and Probation will impress on the institutions that they must adapt their reception procedures to ensure that the folders are handed out to all new inmates on arrival. Just like the old version of the folders, the new version will be translated into a large number of foreign languages.*

*The information folders are able to cover a vast need for information on basic issues and routines, but obviously they are unable to cover all needs in all situations imaginable.*

*The individual institution must ensure at all times that all inmates, not least foreign national inmates, understand what is going on in the institution. Consequently, in each particular situation the institutions of the Danish Prison and Probation Service must decide on the language of the daily communication with a foreign national inmate about practical issues and issues governed by law. Inmates are not entitled to communication in their native languages or the language preferred by the individual inmate. However, communication must always take place in a language that the inmate reasonably understands. If communication is to take place in another language than Danish, the communication must in general be performed by a member of staff who speaks the language chosen. Alternatively, a fellow inmate may assist as an interpreter if the inmate agrees. If no member of staff or no fellow inmate speaks the language in which communication is to take place, an interpreter from the list kept by the Danish National Police must be summoned.*

*It may be necessary to use an interpreter on admission and in a number of other situations, e.g. in connection with measures of force or in connection with medical attendance and treatment. However, interpreting is only one way to solve communication and information problems in connection with reception and admission to a local prison.*

*As mentioned in the response to paragraph 43, the Western Prison is working on a communication project which will be to the benefit of foreign national inmates in particular. The project is called 'Information On Admission' (IVI). The project aims at meeting the challenges and frustrations that may be caused by language barriers. One of the ambitions of the project is to develop a concept which can also be used by other institutions facing the same challenges.*

*In the light of the CPT's comments, the Danish Prison and Probation Service will consider whether it will be possible to improve the reception and admission procedures for remand prisoners in local prisons and local prison units. The experience from the above-mentioned communication project at the Western Prison will be taken into account.*

## **Paragraph 59 in CPT's report**

CPT's request for information concerning paragraph 59:

- However, with the increasing number of foreign national prisoners and Danish prisoners from ethnic minorities entering the prison system, there is a greater need to recruit staff from diverse backgrounds, preferably with a knowledge of foreign languages, to reflect better the prison population. The CPT would appreciate the observations of the Danish authorities on this matter.

*About 10 per cent of the newly-appointed prison officers have an ethnic background other than Danish. This information is based on an assessment since the ethnic background of employees is not registered.*

*At present, prison officers are required to have knowledge of English (Level C - lowest upper secondary school level), but they are not required to have knowledge of other foreign languages.*

*For a number of years, the Danish Prison and Probation Service has focused and continues to focus on employing prison officers with ethnic backgrounds other than Danish, provided always that the candidates meet the formal requirements of the employment, including adequate educational skills and compliance with the guidelines of the Danish Prison and Probation Service for employment of persons with a criminal record.*

## **Paragraph 60 in CPT's report**

CPT's recommendation concerning paragraph 60:

- The CPT recommends that the Danish authorities take the necessary steps to enhance the ongoing training for prison officers, particularly as concerns inter-personal communication skills. Further, consideration should be given to providing the necessary support to foreign national prisoners in all establishments and the appointment of a dedicated foreign national prison officer at Western Prison, in the light of the above remarks.

*In 2014, an extensive further training programme was introduced for all experienced prison officers, defined as officers who completed their training as prison officers more than five years ago. The further training programme will run until 2016 and covers three subjects for prison officers:*

- *Understanding of role (in relation to inmates and colleagues)*
- *Relational work (in relation to inmates)*
- *Reflection (of own practices)*

*As a result, the training programme covers the recommended area of 'inter-personal communication skills'.*

*The basic training programme for prison officers was revised in 2010 to the effect that prison officers who have been trained after 2010 have received more thorough training in relational*

*work and communication skills compared with officers trained under the previous basic training programme.*

*In addition to the two folders mentioned in the response to paragraph 57, which apply to all inmates, a special information folder is available to inmates having been sentenced to expulsion. The folder is under revision. It contains information about various different issues, such as the rules on release from prison, the possibilities of serving a sentence in the country of origin and practical information concerning the return journey. The folder also contains a brief description of the asylum seeking procedure.*

*In its current form, the information folder for inmates having been sentenced to expulsion is available in the following languages: Arabic, Danish, English, Farsi, Serbo-Croatian, Somali and Turkish. In its revised form, it will also be made available in other languages.*

*At present, the Danish Prison and Probation Service is not planning to appoint dedicated foreign national prison officers in the local prisons. As described in the response to paragraph 57, the individual institution must ensure that the individual foreign national inmates understand what is going on at the institution. This can be communicated by staff, fellow inmates or an interpreter. Moreover, as described in the response to paragraph 57, the Western Prison is currently working on a communication project where information on central routines and procedures at the institution is communicated by means of symbols and images.*

## **Paragraph 61 in CPT's report**

### CPT's comments and recommendation concerning paragraph 61:

- In the Committee's view, a continuous period of up to 28 days of solitary confinement as a punishment is excessive. The Committee considers that the maximum period of solitary confinement as a punishment should be no more than 14 days for a given offence, and preferably lower. Further, there should be a prohibition on sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of that maximum period. Any offences committed by a prisoner which might call for more severe sanctions should be dealt with through the criminal justice system.
- As regards minors, the CPT has very strong reservations as concerns any form of solitary confinement of juveniles as this can compromise their physical and/or mental integrity. To this end, it considers that a juvenile should not be placed in solitary confinement for disciplinary purposes for more than three days.
- The CPT recommends that the Law on the Enforcement of Sentences and other relevant regulations in relation to disciplinary matters be revised accordingly, taking into account the above remarks.

*The Danish Prison and Probation Service is fully aware of the risk of negative effects of solitary confinement, inter alia, in connection with the placement in a disciplinary cell. In that connection, see also the response to paragraph 38 concerning the exclusion of inmates from association with other inmates.*

*Because of the focus of the Danish Prison and Probation Service on this area, a working group was set up in 2012 for the purpose of reducing the use of disciplinary cells. However, due to other extensive projects relating to a major reorganisation of the Danish Prison and Probation Service, the work of the group has not yet been completed. In early November 2014, the working group submitted its preliminary recommendations to the Department of Prisons and Probation. Based on these recommendations, the Department has decided to suspend the work of this group and to continue the work on the tasks originally assigned to the working group and preliminary recommendations on the basis of a partnership model. Representatives of the new regional areas of the Danish Prison and Probation Service (established on 1 October 2014) and the Department of Prisons and Probation will participate in this work.*

*The CPT's recommendations to reduce the maximum period of placement in a disciplinary cell from the existing four weeks, see section 70(1) of the Sentence Enforcement Act, will be considered in connection with the further work under the new partnership strategy for the purpose of reducing the use of disciplinary cells.*

*In that connection, it should be noted that disciplinary punishment in the form of placement in a disciplinary cell for more than 14 days is used by the Danish Prison and Probation Service only in exceptional cases. Only five out of 2,959 placements in disciplinary cell in 2013 in the institutions of the Danish Prison and Probation Service lasted for more than 14 days (and the longest placement in that year lasted for 21 days). From 2004 to 2013, the average annual number of placements in disciplinary cells lasting for more than 14 days was 4.4 placements.*

*Under section 775 of the Administration of Justice Act, remand prisoners may be placed in a disciplinary cell for disciplinary purposes for up to two weeks, or their wages may be seized. Consequently, a maximum period already applies to the placement of remand prisoners in disciplinary cells as suggested by the CPT in general.*

*Moreover, inmates serving a prison sentence under section 112(1)(iii) of the Sentence Enforcement Act may appeal a decision on disciplinary punishment in the form of placement in a disciplinary cell for more than seven days to the courts. Only few decisions on placement in disciplinary cells for more than seven days are appealed. From 2010 to 2013, a maximum of three decisions of this kind were heard by the courts every year.*

*As regards juveniles between 15 and 17 years who are serving a sentence in a state or local prison, it should be noted that, according to the rules, it is possible to punish these juveniles in the same manner as the other inmates by placing them in a disciplinary cell. In practice, the institution will pay great attention to the juvenile's age, and if it is considered necessary the institution will attempt to alleviate any negative effects of solitary confinement, e.g. by offering the juvenile association with another juvenile inmate in the cell or participation in activities with the staff.*

*On the basis of an open letter dated 6 October 2014 from the Danish Institute for Human Rights (Institut for Menneskerettigheder) and the National Council for Children (Børnerådet) to the Minister for Justice concerning solitary confinement of juveniles, the Minister has requested the Danish Prison and Probation Service to examine whether the use of solitary confinement of juvenile inmates between 15 and 17 years may be reduced even more.*



*On 8 October 2014, the Department of Prisons and Probation therefore at first instructed the state and local prisons to make special efforts to reduce the placement of juveniles under the age of 18 in disciplinary cells.*

*On 20 November 2014, the Minister for Justice consulted the Parliamentary Legal Affairs Committee (Folketingets Retsudvalg) on the placement of juveniles in solitary confinement, and in that connection she stated that she had requested the Department of Prisons and Probation to closely monitor the development in the use of placement of juveniles in disciplinary cells over the next three months. In practise, all cases will be reported to the Department of Prisons and Probation to ensure that all institutions comply with the instructions to reduce the use of disciplinary cells as much as possible.*

*If the number of situations in which juveniles are placed in disciplinary cells is not reduced significantly over the next three months, the Minister will request the Department of Prisons and Probation to take further initiatives in this field.*

### **Paragraph 63 in CPT's report**

CPT's recommendation concerning paragraph 63:

- The CPT recommends that the Danish authorities review the use of pepper spray in the light of the above remarks.

*Most recently, on 1 February 2013, the Department of Prisons and Probation evaluated the use of pepper spray.*

*The Danish Institute for Human Rights is currently working on a report on 'The use of pepper spray in Danish state and local prisons'. It will therefore be obvious to await the conclusions of this report before evaluating and possibly adjusting the use of pepper spray in the institutions of the Danish Prison and Probation Service.*

*The CPT has referred to a case at Copenhagen Police Headquarters Prison in which the staff applied pepper spray through the hatch of an observation cell door to pacify a foreign national inmate who was threatening to harm himself.*

*The Department of Prisons and Probation has pointed out to Copenhagen Prisons that the application of pepper spray through the hatch of a cell door and into a cell in which an inmate had been placed is contrary to the rules governing the use of pepper spray.*

*The Department of Prisons and Probation will take the CPT's comments on the use of pepper spray in Danish prisons, including in particular the comment that pepper spray should not be used in closed rooms, into consideration in its coming evaluation of the use of pepper spray when the above-mentioned report from the Danish Institute for Human Rights has been published.*

## **Paragraph 64 in CPT's report**

CPT's recommendation concerning paragraph 64:

- The CPT recommends that the Danish authorities take the necessary steps to clarify the legal regulations concerning the placement of prisoners in observation and security cells.

*With reference to the rules described below, the Department of Prisons and Probation finds no need to specify the rules for placement in observation cells. As regards the rules for placement in security cells, reference is made to the response to paragraph 71 below.*

## **Paragraph 65 in CPT's report**

CPT's request for information concerning paragraph 65:

- In this respect, the Committee would like to be informed of the safeguards surrounding placement in such a cell when it exceed days, and lasts for weeks and months on end.

*The rules on placement of inmates in observation cells have been laid down under section 64(2) of the Sentence Enforcement Act. The rules have been detailed in Executive Order No. 283 of 26 March 2012 on Exclusion of Inmates from Association, including Placement in Observation Cells, etc., in State and Local Prisons (the Executive Order on Exclusion of Inmates from Association).*

*According to section 16 of the Executive Order, inmates may only be placed in observation cells:*

- *if it is necessary to prevent vandalism,*
- *if it is required for vital reasons of order and security at the institution, or*
- *if special observation is required.*

### Principle of considerateness and discontinuation

*According to section 16(2) of the Executive Order, inmates may not be placed in observation cells if the placement would be disproportionate in view of the purpose of the measure and the indignity and the unpleasantness presumably caused by the measure.*

*According to section 18 of the Executive Order, placement in observation cells must be carried out as considerately as circumstances permit, and the placement must be discontinued promptly when the conditions for such placement are no longer present.*

### Reporting

*Under section 19(2) of the Executive Order, the institution must promptly prepare a report on the matter. The report must include a record of the decision and the reason for it, information on the date and hour when the inmate was notified of the decision and information on the considerations of the institution under section 20. As a result, the exact reason for the placement, including whether special observation is required, will always appear from the*

report. In that way, it is clearly considered whether the purpose of the placement is to prevent suicide or other self-harm.

#### Medical attendance

According to section 20(1) of the Executive Order on Exclusion of Inmates from Association, a doctor must be called if it is suspected that an inmate placed in the observation cell has fallen ill, including been injured, or if the inmate him or herself requests medical assistance.

As regards examination and any change of the inmate's clothes, reference is made to the responses to paragraph 66 below.

#### Special procedural rules applicable to measures for the prevention of suicide or self-harm

As regards inmates placed in an observation cell to prevent suicide or self-harm ('special observation is required'), it should be noted in particular that detailed rules on the consideration of cases concerning the death, suicide, attempted suicide or other suicidal or self-harming behaviour of inmates have been laid down (Circular No. 84 of 23 November 2012 on the Institutions' Consideration and Reporting of Incidents related to Death, Suicide, Attempted Suicide and other Suicidal or Self-harming Behaviour among Inmates in the Care of the Danish Prison and Probation Service).

If an inmate is considered suicidal, the rules set out in part 5 of the above Circular provide that the director of the institution must assess whether, in addition to the measures already taken by staff (such as placement in an observation cell), it must be assumed that further measures are required to prevent suicide, etc., and whether an interview with the inmate is required to identify his or her motive and state of mind, preferably conducted by the doctor or psychiatric consultant of the institution.

The director of the institution must also ensure that a case is created in the suicide module of the Client System and that, if the suicide threat was presented verbally, the incident has been entered in the security list. The considerations of the prison director concerning the need for further measures must be entered in the suicide module.

#### Supervision and duty to make records

While placed in an observation cell, inmates must be attended to regularly by staff, see section 21(1) of the Executive Order. Any person attending to an inmate must make a record thereof in an observation form regardless of whether there are any changes in the inmate's situation. The record must include information on the date and hour of the attendance and information on the inmate's condition as well as comments on the need to continue the placement. The frequency of attendance depends on a specific assessment.

#### Appeal guidelines

Furthermore, it must be recorded when the inmate has been informed of his or her right to appeal to the Minister for Justice and of the time-limit for appeal, see section 111(2) of the Sentence Enforcement Act.

Reporting in case of placement for more than three days and nights

*If it is decided to continue the placement in the observation cell for more than three days and nights, the institution must promptly submit a report on such decision to the Department of Prisons and Probation under the Ministry of Justice, see section 21(2) of the Executive Order on Exclusion of Inmates from Association. The report must include a detailed explanation of why the conditions for continued placement in an observation cell are considered met, and a copy of the report prepared under section 19(2) as well as the observation form filled in under section 19(1) must be appended. The provision underlines that inmates may be placed in an observation cell for more than three days and nights only in exceptional situations.*

CPT's request for information concerning paragraph 65:

- Further, it would like to receive information on the reasons why the three persons referred to above were placed in an observation cell for such prolonged periods, and what their daily regime was during this period.

*Copenhagen Prisons have stated that the three specific cases referred to by the CPT have all been registered incorrectly in the Client System of the Danish Prison and Probation Service, and that it had therefore not entered in the Client System when the placements in observation cells were discontinued.*

*The following comments are made in respect of the specific cases:*

Case on 16 May 2013: *The inmate had set fire to his cell. He was evacuated and taken to an observation cell. Shortly after, he was admitted to hospital for observation for asphyxiation and treatment of a burn injury. According to the duty officer's report, the fire alarm went off at 2.25 pm, and the ambulance left the prison at 2.55 pm. Consequently, the inmate spent less than 30 minutes in the observation cell.*

Case on 21 June 2013: *According to the information entered in the observation cell module of the Client System, the inmate was placed in an observation cell on 20/21 June 2013 at around midnight. The first information was recorded at 0.09 am on 21 June 2013. The inmate was taken out the same day at 12.43 pm and therefore spent less than 13 hours in the cell.*

Case on 29 September 2013: *The inmate was placed in an observation cell at 11.20 pm and was taken out on 30 September 2013 at 8.43 am, which means that the inmate spent 9 hours and 23 minutes in the cell.*

*The Department of Prisons and Probation refers to the above response from Copenhagen Prisons.*

CPT's recommendation concerning paragraph 65:

- At the very least, the CPT recommends that all persons held in an observation cell longer than 24 hours are offered one hour of outdoor exercise.

*According to section 43(3) of the Sentence Enforcement Act, inmates are entitled to spend at least one hour every day in the open air unless this is incompatible with the handling of security by the institution, or the relevant inmate was placed in a security cell under section 66 of the Act.*

*The general rule is therefore that also inmates who are excluded from association with other inmates, including inmates placed in observation cells, are entitled to spend at least one hour every day in the open air (courtyard exercise). If an inmate is placed in an observation cell for 24 hours or longer, he or she will be entitled to exercise in the courtyard/to spend time in the open air during placement in the cell, unless impossible for security reasons.*

### **Paragraph 66 in CPT's report**

CPT's recommendation concerning paragraph 66:

- The CPT recommends that the Danish authorities review the use of observation cells both as regards prisoners at risk of suicide or self-harm and for prisoners who are disruptive or violent. Further, in those cases where the risk of self-injury warrants the removal of clothes, prisoners should be provided with rip-proof clothing and footwear.

*As regards the issue of whether there is a need for reviewing the use of observation cells, reference is made to the response to paragraph 64 above.*

*According to section 20(2) of the Executive Order on Exclusion of Inmates from Association, a search of an inmate's person will be made in connection with the placement in an observation cell in accordance with the rules in section 60 of the Sentence Enforcement Act, unless the institution considers it unnecessary.*

*Section 20(2) of the Executive Order also provides that an inmate's clothes may also be changed if necessary in the specific case. If so, the inmate must be requested to change his clothes himself or herself.*

*If, in a specific case, it is considered necessary to change the clothes of an inmate placed in an observation cell, he or she must receive at least underpants or a blanket. The inmate must also be offered a vest.*

*If the changing of an inmate's clothes may in itself escalate the situation, the institution may decide not to change the clothes.*

*The Department of Prisons and Probation considers it unnecessary to buy rip-proof clothes since an inmate placed in an observation cell is attended to regularly, and therefore the risk that the inmate will rip his or her underwear (and blanket) without being detected is limited.*

*As mentioned in the response to paragraph 64, the Department of Prisons and Probation has found no reason to revise the rules on the use of observation cells. The Department also finds that the rules on and the possibilities of calling a doctor are proportionate to the form of placement since a doctor must be called in case of suspicion of illness or injury or if the inmate makes a request for medical assistance.*

## **Paragraph 67 in CPT's report**

CPT's observation concerning paragraph 67:

- In the CPT's view, the doctor should always visit a fixated prisoner.

*As a consequence of the CPT's recommendation, the Department of Prisons and Probation has examined for a certain period of time how many cases inmates placed in a security cell were attended to by a doctor.*

*According to the information available, almost all inmates were attended to immediately after being placed in a security cell with fixation. A very limited number of inmates were attended to by a nurse who then contacted the doctor by telephone. On the basis of the nurse's information about the inmate's physical and mental condition, the doctor assessed whether medical assistance is required. Finally, in very rare cases, inmates had not been attended to due to the very short duration of the fixation as there had not been enough time to call a doctor.*

*It should be noted that neither the Department of Prisons and Probation nor the prison director has any power to give directions to doctors. The decision of whether medical assistance is required is always based on the doctor's professional assessment, see section 66(5) of the Sentence Enforcement Act. However, such assessment or complaint may subsequently be appealed to the National Agency for Patients' Rights and Complaints.*

*In that connection, it should be added that, when the Committee of Ministers of the Council of Europe adopted the European Prison Rules in 2006, Denmark reserved the right to observe or not to observe rule 43.2 since the Danish Government found that the requirement that medical professionals must visit inmates in solitary confinement every day gives rise to serious ethical considerations concerning the possible role of such staff in that they have expressly stated an opinion of whether a particular inmate is fit for continued imprisonment in solitary confinement.*

*With reference to the above, the Department of Prisons and Probation finds that it is not necessary to revise the rules, as they work as intended.*

*Moreover, the Department of Prisons and Probation is not aware of any cases of inmates placed in a security cell with fixation who have complained of not being attended to by a doctor.*

*Reference is made to the response to paragraph 71 below where the rules on placement in security cells are described in further detail.*

## **Paragraph 68 in CPT's report**

*The CPT has not requested that this paragraph be commented on separately, but apparently the CPT has several serious concerns relating to the use of fixation in the prisons on the basis of its examination of a number of cases concerning the fixation of inmates placed in a security cell in Western Prison. In that connection, the CPT mentioned two specific cases.*

*The first case concerned a Syrian inmate who was transferred to the Western Prison from the Ellebæk Institution for Detained Asylum-Seekers, and who became agitated in the prison's reception area when he was told to undress for a strip search. The inmate started to shout and attempted to hit a prison officer. Consequently, he was escorted naked apart from a pair of underpants through the ground floor of the southern wing and across a courtyard to a security cell in which he was fixated for two hours and 45 minutes. During the transfer, the inmate did nothing and said nothing.*

*In the other case, an inmate, who had harmed himself, was being transferred to an observation cell without the use of handcuffs. Suddenly, the inmate began hitting in the air and speaking in Arabic. Three prison officers decided to restrain the inmate, who resisted while being held down on the bed, and he was subsequently carried by four prison officers to the security cell in which he was stripped of his clothes and fixated for 2 hours and 36 minutes.*

*Copenhagen Prisons have informed the Department of Prisons and Probation that unfortunately it has only been possible to identify the last case referred to.*

*According to the observation cell report, the inmate was involved in a fight in the courtyard area on 4 February 2014, and he had not obeyed staff orders to leave the courtyard area together with the courtyard staff. When the staff used force to remove him from the courtyard area, he suddenly started to resist and struggle to get loose. He was therefore taken to the observation cell and remained there for around five hours.*

*It also appears from the security cell report that, on the next day, the inmate pounded on the door because he had cut himself. He said something in an incomprehensible language and moved his hand across his neck in a cutting movement, which was interpreted to mean further self-harm. It was therefore decided to place him in an observation cell. On the way to the observation cell – he was following voluntarily – he suddenly began punching the air and saying something incomprehensible. To avoid further escalation of the situation, he was escorted to the cell by force (hand grips). In that connection, his head was held down as he started to spit.*

*In the observation cell, he was placed on the bed on his stomach and held down, and he then started to resist violently. His arm was bleeding very much, and the nurse arrived and applied an emergency dressing. He was still resisting and was therefore carried to the security cell where he was fixated.*

*After 40 minutes' fixation, the staff talked to him and informed him that if he remained calm, the fixation would be removed quicker to which he nodded. Subsequently, his wound was sewn by a doctor, and since he remained calm, his other arm was loosened after another one and a half hours. The fixation was removed altogether after a further 45 minutes.*

*In respect of this case, Copenhagen Prisons refers to the report according to which the inmate had previously been compulsorily admitted to hospital ('code red'), in December 2013 he had attempted to hit a prison officer, and the day before he was placed in the security cell he had been placed in an observation cell after a fight in the courtyard, on which occasion – after he had apparently calmed down – he had attempted several times to struggle to get loose from the prison officers escorting him from the courtyard. Against that background, Copenhagen Prison finds no basis for criticising the extent of the fixation used.*

*According to the security cell report, the situation escalated when the staff decided to use force. In that connection, Copenhagen Prisons have also stated that the inmate punched the air in the direction of the staff, and that his behaviour was loud and threatening and his tone of voice aggressive.*

*It has further been stated that, in general, inmates who are restrained and who resist, are placed on the stomach which is the most expedient for both the inmate and the staff when the hand grips are loosened. It should also be mentioned that, at this point, the inmate was still attempting to spit at the staff.*

*The Department of Prisons and Probation finds that the grounds for placing him in a security cell, including the fixation, were adequate. It has been taken into account that the inmate had cut himself and that he resisted in a violent manner. Furthermore, with reference to the above, the Department finds no basis for criticising the extent of the fixation.*

## **Paragraph 71 in CPT's report**

### CPT's observations and recommendations concerning paragraph 71:

- the findings of the 2014 visit demonstrate that there is a need to review the current approach towards the resort to fixation in prison and put in place far stricter rules governing its application. In particular, the following issues should be reviewed:
  - Regarding its appropriate use, fixation should only be used as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain those risks; it should never be used as a punishment or to compensate for a shortage of trained staff.
  - Any resort to fixation should always be either expressly ordered by a doctor or immediately brought to the attention of a doctor, and the doctor should in all cases visit the fixated prisoner.
  - The duration of fixation should be for the shortest possible time (usually minutes rather than hours). The exceptional prolongation of restraint should warrant a further review by a doctor. Restraint for periods of days at a time cannot have any justification and would amount to ill-treatment.
  - Persons subject to fixation should receive full information on the reasons for the intervention.
  - The management of any establishment which might use fixation should issue formal written guidelines, taking account of the above criteria, to all staff who may be involved.



Further, the person concerned should be given the opportunity to discuss his/her experience, during and, in any event, as soon as possible after the end of a period of restraint.

- The Committee recommends that the Danish authorities take the necessary steps to ensure that all the principles and minimum safeguards set out above are applied rigorously in all prison establishments resorting to the measure of fixation and, if necessary, amend the law accordingly.

*According to section 66 of the Sentence Enforcement Act, an inmate may be placed in a security cell if necessary to avert imminent violence or overcome violent resistance, or to prevent suicide or other self-harm. During his or her placement in a security cell, the inmate may be fixated by force by the application of a body belt, wrist and ankle straps and mittens. Under subsection (4), a fixated inmate must have a constant guard.*

*Fixation in a security cell may not be used as a punishment in any circumstances, and, as described above, it may only be used as a preventive measure if necessary to avert imminent violence or overcome violent resistance or to prevent suicide or other self-harm.*

*It further follows from section 66(5) of the Act that, in case of fixation of an inmate, the institution must promptly request a doctor to attend to the inmate. The doctor must attend to the inmate, unless the doctor considers such attendance unnecessary for obvious reasons.*

*According to section 5 of the Guidance Notes on Use of Means of Restraint in State and Local Prisons, the staff must provide the doctor with the actual information about the inmate's condition, and the assessment of any signs of illness should then be left to the doctor. When a doctor is called, the staff will not normally be responsible for assessing whether the inmate is ill or injured. In that connection, it should be noted that the doctor is responsible only for assessing the inmate's health condition.*

*Reference is also made to the response to the recommendation in paragraph 67.*

*As regards placement in security cells and fixation, it also follows from section 66(2) and (3) of the Sentence Enforcement Act that the measures must not be disproportionate and that the measures must be taken as considerately as circumstances permit.*

*The constant guard must be an experienced permanent staff member who has not been involved in the fixation. Furthermore, it must be assessed whether it will be advisable if the guard is familiar with the fixated inmate. The guard must not attend to other tasks apart from attending to the fixated inmate.*

*Finally, the guard must record information on the supervision of the inmate every 15 minutes as long as the inmate is fixated in the security cell.*

*An inmate may be fixated for more than 24 hours only in exceptional cases. Regardless of whether the inmate is fixated or not, the guard must ensure that a doctor is called again if the inmate shows any signs of illness.*

*Under the Executive Order on Use of Means of Restraint in State and Local Prisons, the institution must prepare a report on the use of security cells, including fixation, and other means of restraint as soon as possible. The report must state the reason for such use, the date*

*and hour when the use of the means of restraint was discontinued and whether the inmate has been informed of his or her right to appeal to the Minister for Justice and when the time-limit for appeal expires, see section 111(2) of the Sentence Enforcement Act. The report must also contain information on the considerations of the institution concerning medical attendance and reporting under the Executive Order. The inmate is entitled to receive a copy of the report upon request.*

*The Department of Prisons and Probation finds that the rules governing medical attendance in situations in which inmates are fixated for a long period of time are satisfactory. Because of the rules on supervision by a guard, it is possible to call a doctor quickly and efficiently if the inmate shows any signs of illness, etc. Moreover, the Department of Prisons and Probation has not identified any cases in which the inmate has been harmed because of lack of medical attendance.*

*As regards debriefing after fixation in security cell, the CPT stated after the visit in 2008 that it found that inmates should be offered an interview after having been fixated in a security cell. Against that background, the Department of Prisons and Probation stated in its letter of 13 August 2010 that the institutions must ensure that, after fixation in a security cell, the inmate is offered to talk about the measure with a senior member of staff.*

## **Paragraph 72 in CPT's report**

### CPT's request for comments concerning paragraph 72:

- the delegation met a number of prisoners at Western Prison who had relatives within the prison but who were not permitted to have contact with them due to the "B & B" regime being applied to them. Such a restriction would appear excessive, especially when they had no other close relatives in the country. The CPT would appreciate the observations of the Danish authorities on these matters.

*Usually interpreters will be present when remand prisoners have legal counsel or are being questioned by the police. However, the purpose of "B&B" judicial restrictions is to prevent the remand prisoner from obstructing the course of the proceedings, in particular by removing traces or warn or influence others. During most visits from friends or family, the police will therefore require that the conversation is held in Danish or English, as the delay caused by interpretation would otherwise make it impossible for the police to prevent the remand prisoner from warning or influencing the visitors.*

*The rules governing a remand prisoner's right to telephone conversation are based on the same safeguarding principles as the rules governing a remand prisoner's right to visits and to send and receive letters and other restrictions in a remanded prisoner's rights.*

*The Remand Custody Order contains specific regulation concerning telephone conversation. Pursuant to Section 72 of the Remand Custody Order, a remand prisoner can be allowed to have telephone conversations if correspondence by letter cannot be awaited without substantial nuisance, and to the extent that it is possible in practice. Section 72 also stipulates that the police may oppose telephone conversations by a remand prisoner in view of the*

*purpose of the custody. A remand prisoner's requests to have telephone conversation with his attorney are generally granted.*

*Similarly to the rules safeguarding a remand prisoner's right to visits and to send and receive letters, the police may however only deny telephone conversations if such a restriction is deemed necessary in accordance with Section 770 of the Administration of Justice Act.*

*A remand prisoner can demand that the decision to restrict his/her right to telephone conversation is submitted to the court for decision, cf. Section 773 of the Administration of Justice Act.*

*As regards remand prisoners, who have little contact with the outside world, the prison is obliged to help to increase their contact with the outside world as far as possible and to the extent that it is safe and sound, cf. Section 56 of the Remand Custody Order.*

*As regards the prisoners at Western Prison referred to by the CPT who had relatives within the prison, but who were not permitted to have contact with them due to the "B&B" judicial restrictions, the Danish authorities has no knowledge of any specific cases. However, in general the "B&B" judicial restrictions do not impose restrictions on the remand prisoners' right to social intercourse with other inmates, but in specific cases the "B&B" judicial restrictions may also apply with regard to visits from other prisoners who are placed e.g. in other units of the prison.*

*Pursuant to Section 23 of the Remand Custody Order a remand prisoner, who is not in solitary confinement by decision of the court, shall, whenever possible, be given access to social intercourse with other inmates in accordance with the Community Order.*

*The Enforcement of Penalties Act number 435 of 15 May 2012 and the Community Order number 36 of 7 January 2014 provide regulation on remand prisoners' access to social intercourse with other inmates.*

*Pursuant to Section 33 of the Enforcement of Penalties Act an inmate must as far as possible have access to social intercourse with other inmates. Section 16 of the Community Order states that the prison staff assesses whether it is considered to be safe to give an inmate access to social intercourse with other inmates.*

### **Paragraph 73 in CPT's report**

#### CPT's recommendation concerning paragraph 73:

- The CPT recommends that the Danish authorities review the prisoner complaints system in the light of the above remarks.

*As regards the inmates' right to make written complaints, the Department of Prisons and Probation would like to inform the CPT that at the large institutions the inmates must in practice fill in and hand over a request form to the staff if they wish to talk to specific members of staff, such as the nurse or the head of the prison unit. A request may be handed over in a sealed envelope. Request forms are available to the inmates of the unit/cell.*

*Likewise, the inmates may hand over a complaint of matters relating to the institution in a sealed envelope.*

*The rules for the submission of requests described by Copenhagen Prisons in connection with the response to paragraph 53 above therefore reflect the rules of the Danish Prison and Probation Service as a whole, both in relation to request forms and other written communications, including complaints.*

*Inmates are entitled to unmonitored communication with public authorities, including to submit complaints to the management of the state or local prison. As a result, it is not permitted to open, read or withhold sealed letters addressed to public authorities. Likewise, inmates are entitled to unmonitored correspondence with the minister of religion attached to the institution.*

*As regards assistance to help inmates word complaints, there are no general rules. Oral complaints must be recorded by the staff, see section 13 of the Danish Access to Public Administration Files Act. Such a record may form the basis of a complaints procedure.*

*Inmates may also request the staff, e.g. his or her contact person or a social worker attached to the institution, to assist in writing a complaint.*

*As regards decisions which may be appealed to the courts, it follows from section 1(1) of the Executive Order on Requests for Appeal of Certain Final Administrative Decisions on Sentence Enforcement, etc. that, if an inmate submits a request for appeal, information on the request and the time of its submission must be recorded. A request for a judicial review submitted to one of the institutions or units of the Danish Prison and Probation Service must be sent to the Department of Prisons and Probation under the Ministry of Justice as soon as possible, see section 2 of the Executive Order.*

*Information on the right to file a complaint is provided in the two folders 'Information on arrest and remand custody' and 'Information on serving a prison sentence', which are handed out by the institutions on admission (see more information about the folders under the response to paragraph 57).*

*It should also be noted that, under Danish public administration law, communications from inmates must be put on record. This also applies to complaints, etc., from the inmates, which will be registered in the Client System.*

*No time-limits apply to the institutions' processing of communications from the inmates, but public authorities must reply to communications from citizens within a reasonable time. The Department of Prisons and Probation finds that, in general, communications from the inmates are processed at the pace required by the individual communication and that it is not necessary to lay down further rules in this respect.*

*Consequently, the Department of Prisons and Probation finds that the existing system does not restrict the inmates' right to file complaints and have complaints processed during their imprisonment.*

*The Department of Prisons and Probation would also inform the CPT that, for the purpose of communicating with inmates concerning the conditions at the institution, rules on a spokesman scheme are set out in section 34 of the Sentence Enforcement Act.*

*The management of the institution must hold regular meetings with the spokesman or group of spokesmen. At such meetings, general complaints from the inmates about the conditions at the institution may be discussed. In that way, the institution is able to acquaint itself with the inmates' general wishes and complaints.*

## **II.C. Foreign nationals held under aliens legislation**

### **Paragraph 77 in CPT's report**

CPT's recommendations concerning paragraph 77:

- every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor.
- The CPT recommends that the Danish authorities put an end to the detention of children at Ellebæk, in the light of the above remarks.

*Please be informed that unaccompanied children between the age of 15 and 18 years only under exceptional circumstances are detained and only when the purpose of detention cannot be attained by less interfering measures.*

*It is strived that the period of detention is as short as possible, and furthermore the Ellebæk Institution has implemented specific guidelines regarding detention of unaccompanied children between the age of 15 and 18 years in order to show consideration for their special needs.*

*When an unaccompanied child between the age of 15 and 18 years is detained in the Ellebæk Institution the personnel will inform the Danish Red Cross organization who will assign a personal representative for the child. During the detention the child will be offered expanded options regarding participation in recreational activities and classes etc.*

### **Paragraph 78 in CPT's report**

CPT's recommendation concerning paragraph 78:

- The CPT recommends that efforts be made to maintain the establishment in a decent state of repair and to limit the carceral environment to a minimum.

*The Department of Prisons and Probation would like to inform the CPT that the Ellebæk Institution finds that the facilities available to the clients are being seriously worn down, and the conditions and quality of the buildings generally require a substantial and continuous work to maintain them in acceptable condition. The residential buildings, in particular, appear to be worn down some places, but maintenance work and projects are performed on a continuous basis to improve conditions.*

*As regards the attempt to reduce the institution's prison appearance, it should be noted that, for security reasons, the Department of Prisons and Probation finds that it is not possible to make adjustments without increasing the risk of escapes.*

CPT's recommendation concerning paragraph 78:

- Further, arrangements should be made to ensure that regular activities are not cancelled due to lack of staff. Consideration should also be given to extending the possibilities for detained persons to cook their own food.

*The Ellebæk Institution has provided the Department of Prisons and Probation with the following information:*

*'The Institution has noted that the CPT has taken notice of the number and scope of leisure time activities, work, education and training, etc., offered to inmates. However, the CPT also states that the regime of the institution has not changed since 2008, which the institution cannot recognise. In fact, a large number of initiatives have been taken concerning the approach to tasks, the everyday life of the inmates and the general physical conditions, etc.*

*To fill the various positions and use human resources in the most effective manner, the institution has an employee with a flexible job content on duty every day to handle special tasks in the morning until noon and tasks relating to activities in the afternoon. The person in this flexible position is also used to cover for employees who are absent due to illness to minimise the need to call in staff and work overtime. It is therefore correct that sometimes the activities planned to be undertaken by the person in this flexible position are cancelled, without any replacement activities being offered instead on that particular day.*

*The institution believes that its organisation of work schedules, education and training and leisure time activities, etc., is satisfactory – partly to alleviate any harmful effects of the imprisonment, but also in relation to the staff's working environment and the relationship between inmates and staff. Fundamentally, the institution believes that as many activities as possible should be offered. However, the amount of leisure time activities, etc., sometimes has to be limited for operational and financial reasons. Within the existing framework, it is very difficult to find ways of offering additional activities or avoid cancelling activities.*

*However, the institution recognises that the inmates sometimes become frustrated when activities are cancelled. In the opinion of the institution, such frustration must be handled as part of the daily relationship between inmates and staff, for which reason the competencies of the staff must be improved as much as possible. In that connection, the institution refers to the fact that a competency development plan has been prepared for the staff of the institution, focusing on increased knowledge of the inmates' circumstances and mental reaction patterns/mental backgrounds.'*

*As regards the inmates' possibility of cooking their own food, the institution has stated the following:*

*'The CPT recommends that the institution considers the possibility of extending the existing arrangement under which food is cooked at the institution twice a week. This is confirmed by the feedback from the meetings with 'spokespersons' at which the inmates often express wishes for adjustment of the meals served at the institution. This means that the institution is aware of the inmates' wishes and satisfaction with the possibility of cooking their own food. Against that background, the institution will consider whether it will be possible to extend the arrangement within the existing framework.'*

*The Department of Prisons and Probation refers to the above statement made by the institution.*

### **Paragraph 79 in CPT's report**

#### CPT's recommendations concerning paragraph 79:

- The CPT recommends that the Danish authorities ensure that every newly-arrived detainee is clinically assessed by a medical doctor or by a fully qualified nurse reporting to a doctor, as soon as possible after his/her admission to Ellebæk. Such health-care screening should be conducted in an appropriate and confidential setting.
- Further, the CPT recommends that specific screening be put in place aimed at identifying victims of torture, with clear rules on the procedures to be undertaken whenever a medical practitioner reports on any detained person who may have been the victim of torture.

*On the basis of the CPT's recommendation, the Department of Prisons and Probation has requested a statement from the Ellebæk Institution. On 8 October 2014, the institution made the following statement:*

*'The nurses of the institution are present on weekdays from 8.00 am to 5.00 pm. During that time, health screenings are carried out on admission, the nurses being present in the reception area to handle the task directly. Following a specific assessment or at the inmate's request, the screening may be continued in the consultation room of the institution.*

*Inmates who arrive outside these hours will be contacted by a nurse on the following day, or in case of arrival during the weekend, on the following Monday. In that situation, the staff receiving new inmates may contact a nurse by telephone, and it is also possible to contact the ordinary health service for advice. The institution finds that the response time for health screenings is satisfactory, and there have been no episodes giving rise to health-care concerns.*

*Consequently, initial health screenings are carried out in the reception area or in the inmate's living room. In the first situation, the initial screening is carried out with the assistance of the accompanying interpreter and in the presence of the prison officers on duty and the escorting police officers. In the last situation, the screening is carried out without the presence of other persons than the inmate, unless he or she wishes that a fellow inmate should be present or if the presence of others is necessary for security reasons. In both situations, a follow-up screening is carried out in the consultation room with the assistance of an interpreter if it is deemed necessary or if so requested by the inmate.*

*During the initial health screening, the inmate receives information about the institution's health-care services, and the inmate is asked about current and previous health problems and any medication taken. The inmate in question is informed that a follow-up screening may be carried out in the consultation room in a more confidential setting. After admission, the inmate may also submit a discrete request to that effect in a sealed envelope.*

*As regards screenings to identify victims of torture, the institution has stated the following:*

*'The institution performs no independent investigation on whether inmates have been subjected to torture or war crimes. Any such information will be included in the assessment of any necessary health-related requirements caused by the imprisonment and the placement in the institution. If it is established that an inmate is a victim of torture, this will have no formal significance in relation to the handling of the task of the institution, but it may affect the consideration of the inmate's case by other authorities, such as the Danish Immigration Service and the police. Against that background, the institution finds that this issue is primarily relevant for the police to ensure that the necessary basis for the court order is obtained prior to imprisonment and in connection with the extensions of custody.'*

*The Department of Prisons and Probation refers to the statement made by the Ellebæk Institution in its entirety.*

### **Paragraph 80 in CPT's report**

CPT's observation concerning paragraph 80:

- As regards medical confidentiality issues during consultations and the delivery of medication, the same observations made in relation to Western Prison apply to Ellebæk and should be addressed accordingly (see paragraph 53 for the relevant recommendation).

*The Ellebæk Institution has provided the following information:*

*'The institution finds that the necessary considerations are shown to ensure discretion in connection with the guidance provided by the health-care staff at the first meeting with the inmate. On the basis of the CPT's recommendation, the institution will, however, take steps to increase focus on the guidance to inmates provided by the health-care staff and the considerations shown to ensure discretion. However, it should be mentioned that these matters are already taken into account in the ordinary health-care services offered, and it should also be noted that information about the health-care services, including the possibility to write directly to the nurses, is described in the institution's information folder, which has been translated into the most relevant languages and is available to all inmates.'*

*The Department of Prisons and Probation has no further comments.*

### **Paragraph 81 in CPT's report**

CPT's recommendation concerning paragraph 81:

- The CPT recommends that the Danish authorities make the necessary arrangements for interpretation services to be provided when required, taking into account the above remarks.

*The Ellebæk Institution has provided the following information about interpreting assistance:*



*'As regards the use of interpreters, the health-care staff use interpreters if requested by the inmate and if considered necessary. However, the staff is not unwilling to accept the assistance of a fellow inmate for interpreting if that is also the inmate's wish, and consent has therefore been given.'*

*The Department of Prisons and Probation confirms that this is in compliance with the rules for interpreting assistance in the institutions of the Danish Prison and Probation Service, and the Department therefore refers to the institution's response.*

## **Paragraph 82 in CPT's report**

CPT's recommendation concerning paragraph 82:

- The CPT recommends that the Danish authorities takes steps to improve the provision of information to irregular migrants from the outset of their detention and that they improve the possibilities for contact with the outside world such as permitting persons detained at Ellebæk to possess mobile phones, in the light of the above remarks.

*The Ellebæk Institution has made the following comments to the CPT's recommendation:*

*'The CPT recommends that the inmates of the institution are permitted to possess mobile phones with a view to enhancing communication with their families and others outside the institution. In that connection, it should be noted that, within the existing framework, inmates are permitted to receive visitors at the institution, and they also have unlimited access to the telephones at the residential units.*

*However, the possession of mobile phones is not permitted in the institution, and, under section 2 of the Executive Order on Inmates' Personal Property, such possession cannot be permitted despite the CPT's recommendation. The institution believes that the possession of mobile phones will in itself improve the inmates' contact with the outside world, and it may also contribute to increasing the individual inmate's safety. However, the institution also believes that the possibility to communicate with inmates in the other residential units, to communicate with the outside world, to take photos with the mobile phone camera, etc., may constitute a security risk in relation to escapes, etc.'*

*The Department of Prisons and Probation refers to the statement made by the Ellebæk Institution in its entirety.*

## **II.D. Secure institutions for juveniles**

### **Paragraph 83 in CPT's report**

CPT's recommendation concerning paragraph 83:

- The CPT considers that a secure institution for juveniles is not an appropriate place to accommodate foreign minors under the age of 15 for the sole reason of not having a resident's permit. The Committee recommends that the law be changed accordingly.

*The Ministry of Justice observes that according to the section 36 of the Danish Aliens Act an asylum seeker can be deprived of liberty to ensure enforcement of a refusal of entry, expulsion, transfer or in circumstances where the asylum seeker refuses to co-operate in the administrative procedures of the Danish Immigration Service. An asylum seeker can only be held under detention when the less interfering measures mentioned in section 34 of the Danish Aliens Act are insufficient in order to ensure the presence of the asylum seeker for the purpose of expulsion.*

*As deprivation of liberty is a very intrusive measure the Danish National Police has implemented a strategy concerning the use of detention in relation to the Danish Aliens Act. It is therefore a leading principle of this strategy that all use of detention requires careful consideration and that detention can only be upheld as long as it is necessary and proportional.*

*The use of detention must be in accordance with national law and Danish international obligations and with special consideration for vulnerable asylum seekers such as minor asylum seekers.*

*In line with this it follows from section 35 of Executive Order No. 419 of 29 April 2014 (on the use of force against children and juveniles under care) that an asylum seeker can only be held under detention when less interfering measures are insufficient in order to ensure the presence of the asylum seeker for the purpose of expulsion.*

*Accordingly foreign minors under the age of 15 are not accommodated in a secure institution for the sole reason of not having a resident permit in Denmark.*

*The placement of a minor asylum seeker under the age of 15 in a secured institution will always be for as short a period of time as possible.*

### **Paragraph 85 in CPT's report**

CPT's request for information concerning paragraph 85:

- The CPT would like to be informed about the outcome of the work of the Committee.

*The Ministry of Children, Equality, Integration and Social Affairs expects the report from the Ministerial Committee mandated to scrutinize the current legislation concerning the application of forceful measures on juveniles, to be completed in March 2015 whereupon the Ministry will forward the report to the Committee.*

### **Paragraph 86 in CPT's report**

CPT's request for information concerning paragraph 86:

- The CPT would appreciate the comments of the Danish authorities on the application of the use of force at the Secure Institution for Juveniles Grenen.

*The Ministry of Children, Equality, Integration and Social Affairs has requested comments from Danish Regions about the conditions at The Secure Institution for Juveniles Grenen. Danish Regions reports that Region Midtjylland, where the secure institution Grenen is located, informs that employees at Grenen are trained to handle various situations that may have the potential to develop into a dangerous situation for the employees or the juveniles. Therefore, according to the safety policy at Grenen, the individual employee continually assesses the needs for calling for backup from colleagues in those cases in which the employee feels insecure.*

*An assessment made by the employee to call for backup may in some cases be perceived by the juvenile as being too quick and an escalation of the conflict. However, at Grenen it is a substantial consideration, that in cases in which an employee feels insecure and thus as a preventive measure calls colleagues through a personal protection equipment (alarm system) it is based on a professional assessment of the situation, which also works preventively and reassuringly.*

*It may be noted that the alarm has only been used once in the period from the 29th of July 2014 to the 7th of October 2014. There are no logs available for a longer period.*

*As for the overall precepts for the use of force in secure institutions The Ministry of Children, Equality, Integration and Social Affairs observes that the Committee has been extensively informed on the matter in connection with the Committee's visit on 4 to 13 of February 2014.*

*However, the Ministry observes that the purpose of the existing rules on forcible measures is to protect all children and young people placed in care, including juvenile offenders. The rules of the use of forcible measures in exceptional situations are laid down in the Order on forcible measures. Hence, section 1 of the Order on forcible measures prescribes that the use of forcible measures against children and young people pursuant to the Order shall be used only if it is authorized by the Act on Social Services. The use of forcible measures must never replace the care and socio-educational assistance and should be used in accordance with the children's and young people's integrity and self-determination. The use of forcible measures must be limited to what is strictly necessary and must be proportionate to the purpose. Physical punishment is not allowed, nor is fixation. Fixation is defined as the use of mechanical means of restraint such as belts, straps for hands and feet and other mechanical fastening. Humiliating, taunting or other degrading treatment is prohibited.*

*All episodes involving use of forcible measures are to be reported to the youth's residential municipality and to the relevant social supervisory authority.*

### **Paragraph 88 in CPT's report**

#### **CPT's recommendation concerning paragraph 88:**

- Some of the young persons interviewed did not know whether they were allowed to ask for access to the toilet at night or whether they had to use the flask. In the CPT's view, all juveniles should be provided with ready access to toilet facilities without undue delay, including at night, and should be informed about this right. The CPT recommends that such an approach be rigorously applied.

*The Ministry of Children, Equality, Integration and Social Affairs has requested comments on this from Danish Regions. Region Midtjylland informs that the juveniles have and should have access to use a toilet at night as well as the young individual has the right to choose if he/she wants to use a urine flask. As a result of the findings of the CPT this option is now integrated as part of the written information handed out to all the juveniles on their first day at the Secure Institution for Juveniles Grenen.*

### **Paragraph 89 in CPT's report**

CPT's recommendation concerning paragraph 89:

- The CPT recommends that the Danish authorities review the application of this restrictive measure at the Secure Institution for Juveniles Grenen.

*With regard to the rules for social contact at the secure institutions for juveniles, especially at the Secure Institution Grenen, Region Midtjylland informs that it may be noted that the rooms of the young people are locked at 11.30 pm on Saturdays and at 10.30 pm on the remaining days of the week.*

*The task of a secure residential institution is among other to ensure that the young people who are subject to visit- and letter scrutiny, cf. The Danish Administration of Justice Act, do not communicate directly or indirectly with the outside world – unless they have explicit permission from the police to do so. A part of this task is to ensure that a juvenile is not able to affect other juveniles to influence witnesses and other people who may have an influence on the investigation of the police. In some situations, thus, there may be instances in which the young people are not allowed to spend time alone with other young people.*

*Furthermore, the environment at a secure institution is characterized by a massive educational presence. This provides an institutional environment where young people rarely are alone together.*

*Region Nordjylland informs that restrictions about social interaction among the juveniles should be considered as protection of the most vulnerable of the juveniles.*

*It is the opinion of the Ministry of Children, Equality, Integration and Social Affairs that the rules should not be too restrictive, but that situations may occur that would justify a restriction of social contact on the grounds of issues of order and security.*

### **Paragraph 90 in CPT's report**

CPT's recommendation concerning paragraph 90:

- The CPT recommends that efforts be made by the Danish authorities to take the necessary steps to ensure that at least one teacher is qualified to teach juveniles with learning disabilities.

*The Ministry of Children, Equality, Integration and Social Affairs has requested the Ministry of Education to evaluate the recommendation of the CPT. The Ministry of Education is responsible for the education at secure institutions. According to the Ministry of Education it follows from the rules for special education at institutions for placement that special educational support shall be provided by personnel with the appropriate educational and professional qualifications for the task.*

*The local council in the municipality, where the secure institution is located, is responsible for teaching at the regional secure institution.*

*Special education in secure institutions requires the conclusion of an agreement between the institution and the municipality where it is located. The agreement must include provisions for the personnel. It must be clear what qualifications the staff has to handle the special needs assistance.*

*As for the specific circumstances at the secure institutions for juveniles, Danish Regions observes the following: "The teachers at Grenen are all educated at a teachers training college and their skills are maintained through follow-up education and participation in conferences regarding special education to update and qualify the teachers' skills also in regard to juveniles with learning difficulties*

*Through supervision conducted by external psychologists the teachers acquire knowledge about how the teaching with regard to the individual student can and must be carried out in a teaching- and learning situation.*

*Region Hovedstaden finds that the teachers at Sølager are all qualified even though they are not specialised in teaching juveniles with learning disabilities.*

*Region Nordjylland informs that it could be difficult for some of the secure institutions, to make sure that at least one teacher is specialised in teaching juveniles with learning disabilities, if it means they need a secondary education."*

## **Paragraph 92 in CPT's report**

### CPT's recommendation and request for information concerning paragraph 92:

- The CPT recommends that juveniles held at the Secure Institutions for Juveniles Sølager and Grenen be guaranteed prompt access to a doctor at any time. Further, the CPT would like to be informed whether there is always someone competent to provide first aid present at the establishments, including at night.

*The Ministry of Children, Equality, Integration and Social Affairs informs that access to healthcare overall falls under the authority of the Ministry of Health, while Danish Regions is responsible for the secure institutions. On the Ministry's request for comments to the CPT's recommendation Danish Regions reports that Region Nordjylland agrees with the recommendation in the matter of access to a doctor. Grenen informs that they offer the juveniles fast access to a doctor. And finally Danish Regions report, that all regions remark that members of the staff are able to provide first aid.*

### **Paragraph 93 in CPT's report**

CPT's recommendation concerning paragraph 93:

- The CPT recommends that foreign nationals held in Secure Institutions for Juveniles are provided with free health care and medication similar to that enjoyed by Danish juveniles.

*The matter of foreign nationals falls under the authority of The Ministry of Justice. The Ministry of Justice observes that there is made no distinction between minor asylum seekers and other children residing in Denmark regarding the right to health care treatment, whereas adult asylum seekers are entitled to free health care treatment if the treatment is necessary, urgent or alleviating.*

### **Paragraph 94 in CPT's report**

CPT's observation concerning paragraph 94:

- The CPT trusts that only staff who have been appropriately trained are tasked with the distribution of medicine.

*On this matter Danish Regions report that in all the regions staff who handles medicine are educated in handling medicine.*

### **Paragraph 95 in CPT's report**

CPT's recommendation concerning paragraph 95:

- The Committee reiterates its recommendation that steps be taken to ensure that every newly-admitted juvenile be physically examined by a health-care professional within 24 hours of his or her admission.

*On the matter of the practice of physical examination upon admission Danish Regions observe that Region Midtjylland remarks that in case a member of staff finds that a juvenile needs medical attention, a doctor will be contacted without any hesitation. Region Nordjylland remarks that it should be an individual assessment in every case.*

*Finally, it is noted that juveniles at secured units have equivalent access to healthcare as any other citizens in the Danish community.*

## **Paragraph 97 in CPT's report**

### CPT's observation concerning paragraph 97:

- At Grenen, the delegation was informed that difficult behaviour in a juvenile was generally dealt with by behavioural approaches, rather than by medication. [...] Such an approach represents an example of good practice from which prison establishments might be able to learn.

*In connection with the establishment of special units for juveniles, the Danish Prison and Probation Service has obtained inspiration from the secure social institutions.*

*It should also be noted that the units for juveniles and the juvenile section at Copenhagen Prisons employ social educators and use special educational approaches. Consequently, behavioural problems are not solved by means of medication. If an external doctor has prescribed medication for a juvenile who is placed in one of the institutions of the Danish Prison and Probation Service, he or she may continue to take such medication. However, this decision will always be based on a specific assessment.*

## **Paragraph 98 in CPT's report**

### CPT's recommendation concerning paragraph 98:

- The CPT recommends that - if needed at all - the period of confinement of a juvenile in his/her room upon admission should be based on individual assessment and reduced to the absolute minimum necessary. Furthermore, all young persons should be offered at least one hour of outdoor exercise every day and human contact and other activities during the application of the admission measure. The first days of a juvenile's placement should be used by staff to engage with the young person so as to assess his/her specific needs and establish a trusting relationship. Further, the confinement of juveniles to their rooms should be properly recorded.

*The Ministry of Children, Equality, Integration and Social Affairs has asked Danish Regions for comments regarding the CPT's recommendation and comments. Danish Regions Region Midtjylland informs that it must be emphasized that during the individual introduction the juvenile is fully or partly participating in the social community with the other juveniles and activities. Furthermore the juvenile is introduced to the school and the workshops at Grenen.*

*Moreover, it must be emphasized that during the introduction course the juvenile is offered at least 1 hour of outdoor activities every day. During the individual introduction, the newly placed juvenile is in contact with the pedagogical staff and the other juveniles in a context and pace, which is assessed to be sound and caring to the newly placed juvenile, the other juveniles, integrity, need and group dynamic.*

*The individual introduction is a pedagogical initiative which is carried out in a period of 5 days on average. The purpose is to build an environment as safe as possible for the newly placed juvenile, the other juveniles and the pedagogical staff. When a juvenile is placed in a secured residential institution, the juvenile is often characterized by chaos. This considerable and*

*intrusive measure, which a placement in a secured department is, is a stressful factor for the juvenile. Thus it often makes the juvenile react inappropriately due to thoughts and emotions characterized by fear, anxiety, anger, stress, sadness etc. At the time of the placement at the secured department, the juvenile is often characterized by problems relating to abuse. There is a special focus on that the newly placed juvenile feels safe around the pedagogical staff, the other juveniles, the activities, teaching, structure and rules of the institution.*

*The individual introduction is planned in accordance with a standardized activity plan, which is continuously evaluated and adjusted accordingly. Furthermore all individual courses are evaluated by the management when the introduction is completed. The activity plan and the evaluation is documented and recorded electronically.*

### **Paragraph 99 in CPT's report**

CPT's request for information concerning paragraph 99:

- The CPT would like to be informed of the various language versions currently available.

*The Ministry of Children, Equality, Integration and Social Affairs has forwarded the request to Danish Regions, who reports that at Grenen, the activity plans and procedures are in Danish. For the foreign juveniles the staff translates the necessary information via Google Translate, use an internal interpreter and in more rare cases end external interpreter, if it is found necessary. At Sølager they expect to have information materials in Arabic, Turkish and English by 2015.*

### **Paragraph 100 in CPT's report**

CPT's recommendation concerning paragraph 100:

- The CPT recommends that the presence of at least one female staff member should be guaranteed at the Secure Institution for Juveniles Grenen whenever female juveniles are being accommodated.

*On the matter of the presence of female staff whenever female juveniles are being accommodated Danish Regions reports that Region Nordjylland seeks the presence of female staff at any time. However it cannot always be guaranteed in an acute institution, that there will be a female staff available when a female juvenile arrives. Region Midtjylland furthermore informs that it would be expedient always to have a female member of staff present when a juvenile girl arrives at the institution. However, there are relatively few girls placed at the secured units and few women apply for a job at Grenen. Grenen continuously tries to attract female applicants who can work with the juveniles on the secured units.*

*The Ministry of Children, Equality, Integration and Social Affairs has taken note thereof.*



## **Paragraph 102 in CPT's report**

### CPT's request for information concerning paragraph 102:

- The CPT would like to receive confirmation that all means of manual physical restraint applied to juveniles are safe and induce as little pain as possible.

*To this, Danish Regions observes that a distinct effort is made to ensure that any use of force at Grenen is carried out as short and gently as possible with great attention to the adolescent. The staff is continuously educated in the "Order of use of force towards children and adolescents placed outside the home" and in gentle use of force. The education is continuously refined. Any use of force is analysed with the purpose of creating learning, preventing use of force and making sure that physical force is only used when absolutely necessary and carried out in a proportional and least intrusive manner.*

## **Paragraph 103 in CPT's report**

### CPT's recommendations concerning paragraph 103:

- The CPT recommends that the Danish authorities ensure that resort to strip searches is based on an individual risk assessment and subject to rigorous criteria and supervision. Further, they should review the way in which juveniles are searched upon admission to the Secure Institution for Juveniles Grenen, in the light of the above remarks.

*The Ministry of Justice informs that it follows from Section 792 e of the Administration of Justice Act that the search of a suspect's body must be of a proportional and careful manner. If a strip search is deemed necessary, the search must if possible be conducted by a person of the same sex or by health care personnel.*

*According to the Police Act decisions by the police to conduct strip searches must be based on an individual assessment and are subject to rigorous standards and supervision.*

*The Ministry of Children, Equality, Integration and Social Affairs informs that it follows from Section 123a of the Consolidation Act of Social Services that the principal of the institution or his/her authorised deputy may decide to inspect the child's or young person's body on suspicion that the child or young person holds effects the possession of which constitutes a violation of regulations and the non-observance of security precautions. An inspection of the effects kept by a child or young person on his/her body shall not be conducted if, given the purpose of the restrictive measure and the anticipated ensuing humiliation and discomfort, the measure is considered disproportionate. Any inspection shall be conducted as gently as the circumstances allow. Furthermore an inspection of this kind shall only in exceptional circumstances be conducted and supervised by a person of a different gender than the young person.*

*Furthermore it follows from Section 24 of the order of use of force against children and adolescents placed outside the home that body searches shall only be conducted by patting the juvenile outside the clothes and by searching pockets and shoes. The staff can demand that*

*the juvenile remove outdoor clothes, cap and shoes. A body search must be proportional, gentle and preceded by other more lenient measures.*

*Danish Regions observe that the Police carry out body searches. The staff at Grenen, as well as in other secure institutions, never attends any body searches carried out by the police.*

### **Paragraph 104 in CPT's report**

CPT's request for information concerning paragraph 104:

- The CPT would like to receive the breakdown of the figures of isolation (number of cases, length) for each of the three units of Grenen for the first half of 2014.

*The Ministry of Children, Equality, Integration and Social Affairs has forwarded the request for information to Danish Regions who report that Grenen informs that during the first 6 months of 2014 there has been one placement in isolation. It took place in the special secured unit, department SOUTH. The placement in isolation lasted 7 minutes.*

### **Paragraph 105 in CPT's report**

CPT's requests for information concerning paragraph 105:

- The Committee would like to be informed about the frequency and length of "shielding" at the Secure Institution for Juveniles Sølager for the period June 2012 to June 2014. Further, it wishes to be informed of the procedures and safeguards surrounding this measure.

*Danish Regions observe that at Sølager the concept "shielding" is used, when a unit is separated into two groups. The juveniles are informed of the reasons for separating the unit and of the following plan for the separation. A group can consist of one or two juveniles.*

*A unit is separated when juveniles have difficulties with social relations and behaviour against other juveniles.*

*When the unit is separated into two groups, a plan is made with the juvenile(s) in the smaller shielded group with regard to the intended objective for the shielding and for activities required to achieve the intended objective. Part of the plan could be that staff and juvenile consider how similar conflicts can be avoided, when the shielding will end and/or make an agreement of conflict resolution among the implicated parties. There is always staff with the smaller shielded group.*

*The length of "shieldings" ranges from a few hours to 2-3 days. A plan is always made with the shielded group to take part in meals and/or activities with the rest of the juveniles during the shielding. Some juveniles voluntarily request to be shielded from the rest of the group with the purpose of calming their own sense of chaos. The length of this kind of shielding has been up to 2-3 days. Also with this type of shielding a plan will be made with the shielded juvenile to take part in meals and/or activities with the rest of the juveniles.*

*The total number of "shieldings" is 10 in the period June 2012 to June 2014.*

### **Paragraph 106 in CPT's report**

CPT's request for comments concerning paragraph 106:

- The CPT would like to receive the Danish authorities' comments on the approach employed by staff at Grenen juvenile secure institution with regard to confinement to a room.

*The request for comments has been forwarded to Danish Regions who report that the situations described in the report cannot be recognized as being the practice at Grenen. Nor are the situations described compatible with the pedagogical approach of Grenen or the ethical framework to intervene with a "time-out" at a room. The approach of using time-out has and must have care and security as its main purpose, and it must be used in accordance with the principles of proportionality and minimizing interference.*

*A time-out is in most cases carried out at the juvenile's unlocked room and in a time frame not exceeding 3 hours. Time-out is a method that in time, location and activity is matched to the individual and current need for treatment as well as an ongoing evaluation. Thus, the time-out process is professional didactic motivated and substantial efforts are made to make the juveniles understand the background and purpose of the process.*

*The Ministry of Children, Equality, Integration and Social Affairs takes note thereof.*

### **Paragraph 107 in CPT's report**

CPT's request for comments concerning paragraph 107:

- The CPT has doubts over the practice of calling police officers into juvenile institutions to manage violent situations. The institutions' staff is in charge of maintaining order within the institution and should be able to control a violent outburst by one or more juveniles. Indeed, it appeared that staff at both institutions were in fact trained accordingly and did use force when necessary to prevent violent incidents. The CPT would like to receive the Danish authorities' comments on this matter.

*The request for comments on the matter has been presented to Danish Regions. Danish Regions observes that in the report this matter is justified by the relationship between the juveniles and the staff. Furthermore Danish Regions report that Sølager informs that the practice of calling the police is justified by the fact that the police are under different regulations in relation to the use of force. The institution (Sølager) is regulated pursuant to the "Order of use of force towards children and adolescents placed outside the home".*

*The Ministry of Children, Equality, Integration and Social Affairs take note thereof.*

## **Paragraph 108 in CPT's report**

CPT's recommendation concerning paragraph 108:

- The Committee recommends that handcuffs be only applied on individual grounds, based on the principle of proportionality and never on a routine basis.

*Reference is made to the Ministry of Justice's response to paragraph 9 of the CPT's report above.*

*The Ministry of Children, Equality, Integration and Social Affairs take note thereof.*

## **Paragraph 111 in CPT's report**

CPT's recommendation concerning paragraph 111:

- The CPT reiterates its recommendation that the application of limitations on detained juveniles' contact with the outside world be reviewed. The imposition of such limitations should be the exception, not the rule.

*The Ministry of Justice observes that for minors remanded in custody or in a secure institution the rules in the Administration of Justice Act section 770-773 regarding restrictions on remand prisoners' right to contact with the outside world apply.*

*Reference is made to the response to paragraph 33 and 35.*

*With regards to minors placed in a secure institution they have an extended right to correspondence pursuant to order No. 419/2014 on the use of force against children and youth placed outside the home, section 29. Accordingly, a minor remanded in a secure institution is entitled to receive unsupervised visits from the social supervision, that supervises the operation of the institution and to unmonitored correspondence with the social supervision, the Appeals Permission Board, the Prosecution Service, the Police, the European Court of Human Rights, the European Committee for the Prevention of Torture, the United Nations Committee Against Torture, the United Nations Human Rights Committee, members of the Danish Parliament and other public institutions.*

*The institution can according to order No. 419/2014 on the use of force against children and youth placed outside the home, section 28, where it is necessary in regards to the minor's health and development and upon a decision from the Children and Youth Committee monitor letters, telephone calls or other communication between the juvenile and certain people outside the institution.*

*Decisions to monitor the minor's contact with specified persons for a limited period of time are only made in exceptional cases and when required because of the child's or young person's health and development, and are thus not the rule.*

*Decisions made by the Children and Youth Committee can be appealed to the National Social Appeals Board pursuant to order No. 419/2014 on the use of force against children and youth placed outside the home, section 49.*

*Danish Regions and the institutions reiterate, that issues concerning visit- and letter scrutiny are regulated by the police and the court, not by the secure institutions.*

### **Paragraph 112 in CPT's report**

CPT's request for comments concerning paragraph 112:

- In the CPT's view, staff should foster the young persons' confidence in the effectiveness of the complaints system. The Committee would like to receive the Danish authorities' comments on this matter.

*The CPT's request for comments on the matter has been presented to Danish Regions who observe that one of the tasks at Grenen is to help the young people be more aware of the procedures for filing complaints as well as improving their confidence that complaints are dealt with properly. With a systematic and documented approach Grenen is much concerned with how to inform and guide the juveniles on their rights to file a complaint. Grenen will, if necessary, help the juvenile to formulate a complaint.*

*The Ministry of Children, Equality, Integration and Social Affairs also finds that it is important that young persons placed outside their home know and trust the complaints procedures as well as their right to file complaints.*

## **II.E. Psychiatric institutions**

### **Paragraph 115 in CPT's report**

CPT's observation concerning paragraph 115:

- In welcoming these proposals as a clear step in the right direction, the CPT trusts that the Danish authorities will invest the necessary resources in psychiatry to implement the plans to reduce the use of coercion.

*The Government has declared it a goal to improve conditions for people with mental illness, including a reduction in the use of coercion. Just on 15 May 2014 the Government presented a comprehensive long-term action plan for the future development and expansion of the services to people with mental illness. This plan includes e.g. targets for reducing coercion in psychiatry, including mechanical restraint, and will support the new framework and direction for psychiatry that has been recommended by the Commission. The keyword for the plan is equal effort. Psychiatric patients must receive the same effort, have the same rights and get the same high quality in treatment and rehabilitation as patients with physical illness. 2.2 billion Danish kroner has been reserved for an increase of capacity in psychiatry, e.g. in outpatient psychiatry and closed wards.*

*Link to the action plan (in Danish):*

[http://www.sum.dk/Aktuelt/Nyheder/Psykiatri/2014/Maj/~/\\_media/Filer%20-%20Publikationer i pdf/2014/Ligevaerd-psykiatriplan-maj-2014/Psykiatri\\_handlingsplan-netudgave.ashx](http://www.sum.dk/Aktuelt/Nyheder/Psykiatri/2014/Maj/~/_media/Filer%20-%20Publikationer i pdf/2014/Ligevaerd-psykiatriplan-maj-2014/Psykiatri_handlingsplan-netudgave.ashx)

*One of the most important objectives for the Government is to reduce coercive measures with 50 % in 2020.*

*Currently, the Government enters into partnerships with the regions responsible for progression on the reduction of coercion in psychiatry. With the Financial Act for 2014 the Government has permanently allocated 50 million Danish Kroner per year to these partnerships as well as 100 million Danish Kroner in 2014 to create a better physical environment at hospitals to support a reduction of coercion. There has furthermore been allocated 74 million Danish kroner over four years (2014-2017) to experiment with force-free units in the psychiatry and.*

*Inspired by what is being done on cancer and heart disease, the Government formed a Task Force for psychiatry. The Task Force will be following the development of the area in general, including monitoring the goal regarding the 50 % reduction of coercive measures.*

*To achieve the objectives in the action plan, the Danish Government and the other "satspulje" parties agreed on a significant investment in psychiatry. The result is the 2.2 billion Danish kr. mentioned above primarily to reduce waiting lists and create the necessary environments for a reduction in the use of coercive measures.*

*More specifically the agreement ("satspulje") has the following focus areas:*

- More capacities of high quality*
- More and better skills in psychiatry*
- A modern psychiatry with focus on physical facilities and environment*
- Cross-disciplinary efforts in child and adolescent psychiatry*

*A better physical environment and more appropriate facilities are important in order to achieve proper treatment, to secure the safety of patients as well as of staff, and to reduce the use of coercion. Therefore it must be seen as part of an expansion of the treatment capacity in psychiatry.*

*With the agreement it will be possible to increase capacity and modernise the regional psychiatry, which leads to a more equal treatment of psychiatric patients and increased quality in treatment.*

*The regions will as part of the agreement have the possibility to hire up to 500 more people in psychiatry. This will lead to faster diagnosis and treatment, and thus shorter waiting lists.*

*The outcome of the agreement will be monitored annually e.g. how the regions fulfil their goals.*

### **Paragraph 121 in CPT's report**

CPT's observation concerning paragraph 121:

- the Committee considers that applying instruments of physical restraint to psychiatric patients for days on end cannot have any medical justification and amounts to ill-treatment.

*Reference is made to the Ministry of Health's response to paragraph 125 in CPT's report below.*

## **Paragraph 122 in CPT's report**

### CPT's comment concerning paragraph 122:

- Documentation examined by the delegation showed that in the case of a patient who had been continually immobilised for a period of 34 days at Amager, authorisation in writing by a second doctor had only been provided twice during the whole period. Staff were of the opinion that only one such authorisation was required, even if the patient was restrained for more than a month.

### CPT's recommendation concerning paragraph 122:

- Existing legal safeguards must be rigorously enforced.

*Psykiatrisk Center Amager has informed the Ministry of Health that the staff at the intensive wards have great knowledge of the psychiatry law, including the rules of second opinion after the 48 hours belt fixation, and hereafter the weekly inspection of fixations that last more than a week.*

*The staff is aware that in accordance with the law they must make sure, that the inspection and interviews are being carried out. The doctor does the evaluation. Fixations that last more than 48 hours very rarely occur.*

## **Paragraph 125 in CPT's report**

### CPT's recommendation concerning paragraph 125:

- The CPT again calls upon the Danish authorities to review the legislation and practice of immobilising psychiatric patients and in particular to ensure that immobilisation with a belt:
  - is only used as a last resort to prevent risk of harm to the patient or to others;
  - is applied for the shortest possible time (usually minutes rather than hours) and is always terminated as soon as the danger of harm has passed; the maximum duration should ordinarily not exceed six and under no circumstances exceed 24 hours;
  - is never applied or its application prolonged due to a shortage of staff;
  - is subject to regular review by a second doctor in case of an exceptional prolongation of immobilisation beyond the six hours limit, and thereafter at reasonably frequent intervals; and that in cases of disagreement between the treating and the second doctor about the prolongation of immobilisation, the matter be automatically referred to an independent third authority for decision. The same procedure should apply if the use of mechanical restraint is repeated within 24 hours following the termination of a previous measure of restraint.

*The Psychiatric Act lays down the conditions for using coercive measures. When these conditions no longer exist the coercive measure must be discontinued. As regards to long-term immobilisation, it is the aim of the Ministry of Health that the use of this should be reduced.*

*However, the Ministry of Health has not found basis for establishing an absolute legal limit to the duration of immobilisation in connection with the upcoming amendment of the Psychiatric Act in 2015 as this might deprive psychiatric departments and staff of the means to undertake*

*necessary measures for the protection of the patient concerned and other patients, should the patient's condition be unaltered at the expiry of the time limit.*

*In order to ensure high quality in the use of coercive measures and limit the duration of the immobilisations, the Ministry of Health has instead proposed that clear and uniform rules be laid down stipulating a minimum frequency of medical supervision and simultaneous assessment of whether the immobilisation should cease or continue.*

*According to the forthcoming bill, medical assessment of the immobilisation must take place at least three times a day at evenly spaced intervals. This means that the medical assessment of immobilisation will be reduced from four to three times a day. On the other hand, according to the upcoming amendment of the Psychiatric Act, the decision to maintain immobilisation, which is currently subject to a special review (second opinion) if it is extended beyond 48 hours, will be changed from 48 to 24 hours. The review is to be undertaken by a doctor who is not employed in the psychiatric department in which the measure is being enforced, is not responsible for treating the patient, and is not a subordinate of the doctor treating the patient. This measure will ensure impartiality in relation to the evaluation of the need to continue the immobilisation. The doctor undertaking the external review must be a trained medical specialist in either psychiatry or child or adolescent psychiatry.*

*It is the opinion of the Ministry of Health that, in addition to enhancing the level of professionalism in relation to the application of long-term immobilisation, the above mentioned measures improve the legal protection of patients' rights.*

*If there is a divergence of opinion between the assessments of the two doctors concerning the need to continue the immobilisation, the decision of the doctor treating the patient will be decisive, as this doctor will have a more in-depth familiarity with the patient's health situation than the external doctor, and is responsible for the continuing treatment of the patient. The discrepancy between the two doctors' assessments of the situation must, however, be communicated to the patient both verbally and in writing, as the patient must be fully informed in case of wishing to lodge a complaint to the Psychiatric Patients' Complaints Board.*

*Moreover, the nursing staff can at any time discontinue a physical immobilisation without prior assessments of a doctor when restraint is no longer deemed necessary.*

*The Ministry of Health is of the opinion that the above mentioned rules and the surveillance by the public health medical officers will diminish the risk of abuse and give the patients the necessary safeguards.*

*Since the visit of CPT in 2008, different initiatives have been taken in order to reduce the use of mechanical restraint – both nationwide and on a regional basis.*

*The Psychiatric Act has been amended by the Danish Parliament in 2010. The purpose of the amendment was among other things to reduce the use of coercion in psychiatry with more stringent requirements for the use of mechanical restraint, including a minimum frequency of medical supervision and simultaneous assessment of whether restraint should cease or continue.*

*Furthermore, in 2015 the Government will introduce a bill to change the Psychiatric Act in order to ensure better rights for psychiatric patients, who are subject to detention or coercion. The proposal will e.g. include measures with the aim to:*



- Clarify the legal status of minors in psychiatric care
- Ensure a stronger emphasis on the need to seek advance indications from the patient regarding treatment during the admission interview
- Tighten the criteria for and supervision of the use of medical restraint.

Moreover the Government has declared it a goal to improve conditions for people with mental disorders, including a reduction in the use of coercion.

### **Paragraph 126 in CPT's report**

#### CPT's observation concerning paragraph 126:

- The CPT trusts that the Danish authorities will ensure that immobilisation does not take place in view of other patients.

#### CPT's request for information concerning paragraph 126:

- Patients at *Sct. Hans* and *Sikringen* were regularly offered a debriefing after having been subjected to immobilisation. At *Amager*, this was still not systematically the case, but the delegation was assured that a regular debriefing would be introduced in the near future. The CPT would like to receive confirmation that this is the case now.

*Psykiatrisk Center Sct. Hans* has informed the Ministry of Health, that all units at *Sct. Hans* have a room dedicated to handling restraining of patients in cases where all other measures prove inadequate. Staff does its utmost in these situations to show respect for the patient's dignity and to make sure that other patients do not witness the situation. Depending on how and where in the ward a situation takes place, it is not always possible to avoid other patients witnessing the incident while staff gets the situation under control and escort a patient to the patient's room or the dedicated room.

*Psykiatrisk Center Amager* has informed the Ministry of Health that, as a general rule, other patients do not witness restraint on fellow patients, as they are being guarded by the staff or the restraint takes place at the patient's room.

*In special occasions with acute unpredictable and violent behavior from the patient, it can be necessary to interfere before taking care of the fellow patients at the ward.*

*Furthermore, if the situation starts a conflict between patients, there will be patients that may see interference from the staff.*

*After the Committee's visit, PC Amager has issued an action plan to ensure that all patients are being offered an interview/conversation with respect to each and every restraint precaution. It is a continuous point of focus of the LEAN boards.*

*It is strived to carry out the interview at the first round, and in the presence of contact person, doctor and patient.*

*It is the contact person's responsibility to make sure that the interview is carried out.*

## **Paragraph 127 in CPT's report**

### CPT's observation concerning paragraph 127:

- in the CPT's view, hospital staff should be sufficient in number and appropriately trained to handle violent situations without recourse to the police.

*Psykiatrisk Center Sct. Hans has informed the Ministry of Health that staff is continuously screening the patients and the ward environment to anticipate and prevent violent situations. Sometimes that includes calling staff from other wards to make sure that a situation does not escalate or – if unavoidable – to handle a violent situation as considerately as possible for patient and staff.*

*The number and training of staff in general enable them to handle these situations.*

*In very few and special situations the patient behaviour is so violent that regardless of the number of staff it is considered most safe for patient and staff to ask the police to handle the situation. The cooperation with the police about this is in general good, and the police are very respectful in their approach to the patients.*

*Psykiatrisk Center Amager agrees that it must strive towards being sufficiently and appropriately staffed to handle the intense situations. It is correct that police are being called, when it is estimated that the situation cannot be handled without risking security for both patients and staff. In these situations police can be part of the solution.*

*As mentioned under paragraph 115 the Danish Government and the other "satspulje" parties have agreed on a significant investment of 2.2 billion Danish kr. in psychiatry. The regions will as part of the agreement ("satspulje") have the possibility to hire up to 500 more people in psychiatry. This will lead to faster diagnosis and treatment, and thus shorter waiting lists.*

## **Paragraph 128 in CPT's report**

### CPT's recommendation concerning paragraph 128:

- The CPT recommends that the Danish authorities take the necessary action to ensure that pepper spray is only ever authorised inside a hospital when there is a real risk of threat to life.

*The use of pepper spray by the police is governed by the general rules on the use of force by the police in the Police Act.*

*The Police Act stipulates that the police may only use force if it is necessary and sensible, and only by means and to an extent that are reasonable relative to the interest which the police seek to protect. Force must be used as considerately as possible under the circumstances and in such a manner that potential bodily harm is minimized. Furthermore, any risk of harm to bystanders must be taken into consideration.*

*Specific rules on pepper spray are contained in Executive Order no. 978 of 21 September 2004 (as amended). It follows from this Executive Order that the police is only authorized to*

*disperse pepper spray under certain circumstances and that the use of pepper spray always must be based on an individual assessment with proper consideration taken to the present circumstances, including the location on which the spray is to be dispersed.*

*The Ministry of Justice considers the current rules governing the use of pepper spray by the police to be appropriate and sufficiently strict.*

### **Paragraph 132 in CPT's report**

CPT's recommendation concerning paragraph 132:

- The CPT calls upon the Danish authorities to reinforce staffing levels in the psychiatric establishments visited, and notably the number of nurses. Further steps should be taken to fill the vacant psychiatrists' posts at all three establishments as a matter of urgency.

*The responsibility for the service provided in the health care lies with the regions. Therefore the regions are obliged to ensure the appropriate staffing level in the psychiatric wards.*

*As mentioned in paragraph 115 the Danish Government and the other "satspulje" parties have agreed on a significant investment of 2.2 billion Danish kr. in psychiatry. This means e.g. that as part of the agreement it will be possible to increase capacity and modernise the regional psychiatry, which leads to a more equal treatment of psychiatric patients and increased quality in treatment.*

*Region Hovedstaden has made the below listed general remark concerning the fact that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report of September 17, 2014 has commented the staff levels at PC Amager and PC Sct. Hans, which is found too low. CPT compares The Mental Health Services of the Capital Region of Denmark (Region Hovedstaden) with i.a. the UK.*

*The Mental Health Services of the Capital Region of Denmark (Region Hovedstaden) will first point out the difficulties in relation to comparing staffing of wards at a cross-country level, as there are significant differences in the proportion of how many psychiatric patients get hospitalized from country to country. Take for instance the UK, that has far fewer psychiatric beds per. 1,000 inhabitants, which makes the pressure on each ward higher.*

*The Capital Region of Denmark's (Region Hovedstaden) strategy in relation to the psychiatric beds includes fewer but better staffed psychiatric beds. This approach is commenced but it must be emphasized that the number of FTEs (fulltime employed) per. 1,000 [patient] bed days has increased from 4.3 in 2009 to 5.4 in 2013. The Capital Region of Denmark (Region Hovedstaden) has in recent years – in particular in the context of the budget for 2015 - devoted resources to increase staffing in a number of wards. At the same time as funds have been allocated to hire about 15 employees, activity offers in the afternoon and evening hours have increased. In addition, the Ministry of Health has earmarked funds for two projects to reduce the use of belt restraints by hiring more personnel. Finally, the coming years will see a significant education effort to increase employee skills in terms of raising the activity in the wards.*

*It may be noted, with respect to the construction project at the New Psychiatric Centre Sct. Hans, that the Ministry of Health had some requirements associated to new hospital construction projects to achieve economies of scale in terms of human resources. This is made possible by placing the ward sections close to each other.*

*Psykiatrisk Center Sct. Hans has informed the Ministry of Health that Sct. Hans is focusing both on covering the patients' needs as nuanced as possible and at achieving the highest quality level as possible with the resources at hand. That includes careful planning, recruitment, training and patient involvement. An increase of staff will make it possible to take those efforts to a higher level. The buildings, though, put a limit to how far it is possible to get. That situation will change dramatically when the patients move into the new building in a few years' time. The new building will offer a wide range of possibilities for the patients, where insufficient number of staff can become a hindrance to exploit those possibilities.*

*Regarding vacant psychiatrists' post the department is trying in every possible way to recruit the necessary numbers of psychiatrists including from other countries.*

*Psykiatrisk Center Amager agrees that there must be sufficient staffing with relevant education on the intensive wards. Mental Health Services Capital Region of Denmark, will start an analysis of the 24 hours treatment in primo 2015 – hereby looking into staffing at the intensive wards.*

*It is the assessment of PC Amager that there should be an extra staff in each shift full day. The first step to accommodate that is that PC Amager in 2015 will receive extra resources equaling one extra full time staff at each of the two intensive wards. This should contribute to increasing the activity possibilities for the patients and thereby contribute to reducing the use of restraint.*

### **Paragraph 133 in CPT's report**

CPT's request for information concerning paragraph 133:

- Sikringen continued to employ 18 security guards from a private security firm, at least partly because of its long-standing difficulties in recruiting male health-care staff. [...] The CPT would like to know if the employment of security staff from a private company is further envisaged for the new Secure Department at Slagelse and, if so, to be informed about any safeguards or guidelines in place regulating such employment.

*The Psychiatry in Region Zealand has regarding Sikringen informed the Ministry of Health that the security guards from the private security firm G4S (Group 4 Security) are employed under a three-year contract concluded between G4S and the Department of Forensic Psychiatry. The current contract expires in 2016.*

*The Department does not envisage any changes to the tasks performed by the security guards or to matters concerning the contract in general, as the Department is satisfied with the work performed by the security guards.*

*If, after relocating to the new psychiatric hospital in Slagelse (in 2015), it turns out to be possible to recruit a sufficient number of male health-care staff, this could prompt a reassessment of the need for a future contract.*

### **Paragraph 135 in CPT's report**

CPT's recommendation concerning paragraph 135:

- In the meantime, efforts should be made to equip the outdoor exercise yards at Sct. Hans with a shelter from inclement weather pending the opening of the new forensic facility.

*Psykiatrisk Center Sct. Hans has informed the Ministry of Health that all wards offer patients sheltered outdoor facilities for relaxation/smoking. The department is positive about the idea to establish sheltered areas in the outdoor exercise yards.*

### **Paragraph 138 in CPT's report**

CPT's recommendation concerning paragraph 138:

- The CPT recommends that the Danish authorities take the necessary steps to provide all patients with a wide range of rehabilitative and recreational activities as part of their treatment plan.

*The department at Sct. Hans agrees with the CPT on this recommendation.*

*Psykiatrisk Center Sct. Hans is continuously trying to increase the type and the number of activities to be offered to the patients. This includes the possibilities associated with the fact, that the centre is placed in a large park that needs maintenance. The department is increasing the numbers of occupational therapists and expects all units to have at least one occupational therapist at the end of 2015. At the moment several units already have two occupational therapists. All units already have a staff member dedicated and trained to offer patients different activities.*

*The department also offers patients free access to the use of mobile phones, TV and the internet recognising that this also gives the patients different and individual opportunities of entertainment and relaxation.*

*Psykiatrisk Center Amager strives, depending on the patients' condition, to offer activities for all on a daily basis, and to include them as a part of the treatment plan for each patient.*

*PC Amager is in the process of establishing "sense rooms" at both intensive wards, and there is a gym at the center.*

*There is an occupational therapist (OT) associated that does groups based and individual activities with the patients, and in 2015 the OT staffing will be expanded with one extra full time staff member at each intensive ward. This is to widen the possibilities for goal-oriented activities with the patients.*

*The Psychiatry in Region Zealand has regarding Sikringen informed the Ministry of Health that all patients – except for those who for short periods of time are confined to the "0 room" (zero stimulus room) – can access the yard alone or with other patients for at least thirty minutes twice a day and they also have the possibility of taking part in sports, exercise, classes, occupational therapy, cooking classes and music therapy.*

*In the lounge, the occasionally locked-up and not locked-up patients have the opportunity to meet one another and the staff, and play computer games and other games, watch television, listen to the radio and generally spend time with others as part of milieu therapy activities. By and large, patients are allowed to go outdoors every day accompanied by staff (two employees) on the hospital grounds, nearby areas, or the town and environs, depending on the patient's condition, status, etc.*

*Besides helping and activating the patients, the activities are used by staff to observe the patients' condition and to supplement the observations made while accompanying patients to bathing and toilet facilities.*

*The following employees are responsible for handling patients' activities: 2 physical education teachers, 1½ occupational therapists, 6 activity assistants and ½ musical therapist. Adult special-needs classes are also conducted by external instructors as required and/or requested. There is no workshop or possibility of actually working.*

*After relocating to the new psychiatric hospital in Slagelse, it is expected that the staff will have more time for additional activities with patients, partly because the new premises will be more expediently designed and furnished.*

## **Paragraph 139 in CPT's report**

### CPT's comment concerning paragraph 139

- Access to outdoor exercise was also limited in all three establishments, mainly due to the lack of staff. For example, at Amager, the delegation met two patients who alleged that they had not been offered access to the outdoor exercise yard since their admission 13 and 7 days earlier respectively.

### CPT's recommendation concerning paragraph 139:

- The CPT recommends that the Danish authorities take the necessary steps to ensure that all patients are offered at least one hour of outdoor exercise every day.

*Psykiatrisk Center Sct. Hans has informed the Ministry of Health, that several outdoor areas have got a new fence that reduces the risk of absconding and thereby increases the possibilities for the patients to use the outdoor facilities. The fences were finished after the visit of the CPT. Otherwise, the CPT report is accurate, and it will be difficult to make major changes under the current legislation, the current physical standard of the buildings and the current level of staff.*

*Psykiatrisk Center Amager has informed the Ministry of Health that the patients at the center have the option of going outside to the courtyard with the staff.*

*Furthermore PC Amager has a football field that can be used in company with the staff. The patients can, all depending on their condition, daily go outside either by themselves or accompanied by the staff.*

*The Psychiatry in Region Zealand has regarding Sikringen informed the Ministry of Health that after relocating to the new psychiatric hospital in Slagelse, it will be possible to significantly increase the time spent by patients outdoors.*

*The new Secure Department has been set up so that three patients can each have direct access to a private yard. A yard will also be associated with the protected unit (comprising three or four bed wards, including the "0 room") in each of the three new wards, and each of the three sections will also have a courtyard openly connected to the dining room and an activity yard. Finally, the new Secure Department will have a common sports field.*

*As a rule, at present, locked-up patients in the Secure Department at Nykøbing Sjælland have thirty minutes of access to the yard twice a day.*

*The "0 room" is a zero stimulus room, which is why patients confined to this room are not allowed to access the yard. Also, the duration of confinement to the "0 room" is short (from a few hours to a few days).*

### **Paragraph 141 in CPT's report**

CPT's request for comments concerning paragraph 141:

- The CPT would like to receive the Danish authorities' comments regarding the frequent application of involuntary ECT.

*The Government would like to inform CPT that the latest statistics from 2012 show that the number of voluntary ECT amounted to 17,814 treatments whereas the number of involuntary ECT amounted to 312 treatments. This is equivalent to 1.7% of all ECT's in Denmark in 2012. This is in the Ministry of Health's opinion not to be characterized as frequent application of involuntary ECT.*

### **Paragraph 144 in CPT's report**

CPT's comment concerning paragraph 144

- The delegation gained the overall impression that the three-year experiment of using walking belts had been handled well, with appropriate supervision and outside monitoring and as much respect for patients' dignity as possible. Nevertheless the utmost care should be taken to ensure that "walking-restraint" is exclusively applied to patients whose condition requires restraint and the measure should be ended as soon as it is no longer necessary. As with any other form of restraint, it should never be applied to compensate for shortages of trained staff. Moreover, in the CPT's view, "walking-restraint" should not be a substitution for more modern, professional and less restrictive methods to control violent behaviour.

CPT's recommendation concerning paragraph 144:

- The CPT recommends that the Danish authorities take into consideration the above remarks with a view to reducing resort to mechanical restraint; such a reduction should not be achieved through an increased recourse to isolation measures.

*The Psychiatry in Region Zealand has regarding Sikringen informed the Ministry of Health that as regards the information about the access of patients with walking restraints to the surroundings outside the Secure Department, it should be noted that permission to go outside the department and the terms of this are notified by the Ministry of Justice. The Danish Health and Medicines Authority is also notified of the special terms of restraint which apply to the patient concerned.*

**Paragraph 146 in CPT's report**

CPT's comment concerning paragraph 146

- The measure of locking a patient in his or her room is decided by a doctor. However the laws does not provide for a regular review of that measure. The CPT's delegation was told by the management of *Sikringen* that every patient's condition and treatment, including the need for continued locking-up, was discussed every six weeks during the ward staff meeting.

CPT's recommendation concerning paragraph 146:

- The CPT recommends that the Danish authorities make every effort to radically reduce the resort to locking patients in their rooms for extensive periods of the day at the Secure Department of Nykøbing Sjælland Psychiatric Hospital. It should be applied to the absolute minimum necessary and always on an individual basis, and accompanied by appropriate safeguards, in particular through provision for a regular formal review. Locking of patients should never be resorted to due to lack of staff. The alternative to locking-up is clearly not an increased use of physical immobilisation.

*The Psychiatry in Region Zealand has regarding Sikringen informed the Ministry of Health that the use of locked confinement for some of the Secure Department's patients is based on a specific, individual assessment and is done for either therapeutic or security reasons. This also means that the use of locked confinement ceases as soon as this is deemed possible.*

*The use of locked confinement to treat a patient does not mean that the patient is completely isolated. The employees of the Secure Department observe the requirements for up to ten minutes of supervision an hour, but they also respect the patients' individual requests for contact, including a wish to be alone.*

*Some of the locked-up patients are only locked up for certain periods every day. Several locked-up patients are also allowed to go outside, have limited periods of time in the yard or lounge with other patients, receive occupational therapy, music therapy and take part in sports.*



*Finally it should be noted that before 1987, all patients in the Secure Department were locked up 24 hours a day, apart from the time spent in workshop activities and in the yard.*

*The Department expects that after relocating to the new psychiatric hospital in Slagelse – with its better physical framework and possibilities for other environmental-therapy activities with the patients – the need to lock up patients will be reduced.*

## **Paragraph 149 in CPT's report**

### CPT's comment concerning paragraph 149

- A patient's request for discharge has to be responded to by the head doctor only "as soon as possible and at least within 24 hours". In the CPT's view, the rule should be that a voluntarily admitted patient is either able to leave the hospital immediately upon his/her request or, if the conditions for involuntary retention are met, the procedure for involuntary hospitalisation is initiated.

### CPT's recommendations concerning paragraph 149:

- The CPT recommends that legislation and practice are brought in line with this approach.
- The Committee further reiterates its recommendation that the retention of a voluntarily admitted patient requires an opinion from a second doctor who is independent of the department accommodating the patient.

*In order to use detention or compulsory treatment the patient must be insane or in a condition similar to insanity. The following two conditions must be met prior to any compulsory admission of a patient to a psychiatric ward:*

- 1. The patient must be insane (mentally ill) or in a similar condition and*
- 2. It must be deemed unjustifiable not to admit the patient for treatment.*

*This is the case:*

- o *When the prospect of recovery or a significant and decisive improvement of the patient's condition would otherwise be seriously reduced, or*
- o *When the patient exposes him or herself or others to significant harm.*

*The conditions for detaining an admitted patient are the same conditions that apply to compulsory admission. If these conditions are not met patients, who wish so, must be discharged.*

*If a patient in a psychiatric ward wants to be discharged, the consultant doctor must decide within 24 hours whether the patient may be discharged or is to be detained. If the patient has been involuntarily admitted and requests to be discharged within the first 24 hours following admission, the consultant doctor must inform the patient no longer than 48 hours after admission whether he or she may be discharged.*

*The time limit of 24 and 48 hours is stipulated so that the head doctor will obtain adequate time to establish whether the patient meets the conditions of being detained or discharged as mentioned above.*

*The Ministry of Health has no immediate plans to alter this arrangement.*

*However the Ministry of Health would like to point out, that whenever a patient is exposed to coercive measures it must be noted in a special protocol at the psychiatric ward, and this information is also reported to the local authorities as well as the central Governmental institutions.*

*In the Regional State Administrations a local Patient Board of Complaints is set up. Complaints about the board's decisions concerning the deprivation of liberty (involuntary placement and forcible detention), restraint, involuntary treatment in out-patient care, protective restraint, and locking of doors in the ward, can be lodged to the regular court system. The Court appoints a lawyer for the patient, and the costs are paid by the State.*

*Furthermore, the patient must be offered a patient advisor to safeguard these rights.*

### **Paragraph 150 in CPT's report**

#### CPT's comment concerning paragraph 150

- If the application of restraint to a voluntary patient is deemed necessary, the legal status of the patient as "voluntary" should be reviewed. This would secure the patient's safeguards under Danish law.

#### CPT's recommendation concerning paragraph 150:

- The CPT recommends that whenever restraint is applied to a voluntary patient, the legal status of that patient should be reviewed.

*In Denmark no admission, examination, treatment or care may be initiated or continued without informed consent of the patient unless otherwise provided for by statute or statutory provisions. Every time a person is subjected to coercive measures a separate protocol has to be filled out as required by the Danish Psychiatric Act. Besides, this information is also reported to the National Board of Health. The Danish data for the use of coercion are of high quality, publicly available and highly validated.*

*Other safeguards in connection with coercive measures are the assignment of a patient advisor. The advisor must be assigned as soon as the decision has been taken and has to visit the patient within 24 hours of being assigned. Whenever coercive measures are used, the patient must be advised on complaints procedures.*

*Furthermore, patients have the right to be informed why coercion is required and what effect treatment may be expected to have on their health condition, including what the outcome may be if the treatment is not undertaken.*

*As mentioned above the patient also has the right to appeal the decision and in some cases access to legal representation.*

## **Paragraph 151 in CPT's report**

### CPT's comment concerning paragraph 151:

- The examination of annual reports from the Patient Complaint Board of Sjælland Region showed a number of hospital decisions on involuntary hospitalisations, forced medication and the use of restraint had been overruled by the Board. However it is unclear whether the overruled decisions have a wider impact on the way in which the hospitals concerned practice the application of coercion.

### CPT's request for information concerning paragraph 151:

- The CPT would like to be informed whether there are any wider policy implications emerging from the individual Board decisions.

*The Region Hovedstadens Psykiatri has informed the Ministry of Health that in Denmark there are no wider policy implications emerging from the individual Board decisions.*

*The responsibility for the professional treatment of patients and the quality development of patient treatment lie with the local management of each section of the psychiatric centres of the Capital Region (Region Hovedstaden), and with the Head of Clinic of each centre. The decisions made by the Patient Complaints Board serve as an important source of learning.*

*In connection with the upcoming revision of the hospitals internal guideline to handling complaints on involuntary hospitalizations, forced medication and the use of restraint the Mental Health Services of the Region Hovedstaden will develop guidelines to ensure a more systematic use of the decisions of the Board in quality development.*

*The Psychiatric Patient Complaint Board has informed the Ministry of Health that the Board has no authority to take any political initiative in this respect.*

*However, the Psychiatric Patient Complaint Board attempts to provide an overview for the political decision-makers by drawing up an annual report on its activities. For the very first time the Psychiatric Patient Complaint Board has drawn up an annual report covering the entire country with its report for 2013.*

*The Psychiatric Patient Complaint Board presents its annual report to the Ministry of Health, to the Parliament and to the Danish Health and Medicines Authority.*

*The Psychiatric Patient Complaint Board is willing to discuss its practice with the hospitals and patient advisors when participating in local meetings around Denmark.*

*The intent of having an appeals board is to impact the practice of the Patient Complaints Board and also to impact the hospital decisions on - in most cases - forced medication. There can be various reasons for the appeals board to overrule a decision from the Psychiatric Patients Complaints Board. However, the appeals board has noticed that a main reason for overruling decisions regarding forced medication has been lack of or insufficient motivation of the patient for voluntary medication. This may also be due to lack of documentation of the motivation. The appeals board does not have any information as to whether the individual regions have adapted their policies accordingly, but it is our impression that several departments are beginning to systematize their motivation of the patients further, for instance by using separate sheets in the medical records listing what the specific patient needs to be informed of*

and motivated for daily, including when the patient in fact has been informed and motivated for the treatment.

### **Paragraph 152 in CPT's report**

#### CPT's recommendation concerning paragraph 152:

- The CPT reiterates its recommendation to ensure that all forensic patients and patients subject to physical immobilisation benefit from the appointment of a representative with the necessary skills and duties to support him/her effectively in the exercise of his/her patient's rights in accordance with Danish law.

*It follows from Section 71 of the Danish Criminal Code that where there is a possibility that the court may order an accused to be placed in an institution or in safe custody, the court may appoint for him a guardian representative ("bistandsværgе"), who together with the assigned lawyer is to assist the accused/defendant in the proceedings. According to this provision, the guardian representative should preferably be a member of the immediate family of the accused/defendant.*

*The legislator has thus found that where a guardian representative is to be appointed in a case that may result in a judgment ordering a defendant to be placed in an institution or in safe custody, the guardian representative shall preferably be a person whom the accused/defendant knows and trusts. In such a situation, the defendant will also have a defence lawyer to safeguard his rights.*

*In pursuance of Section 71(2) of the Danish Criminal Code, the court shall appoint a guardian representative ("bistandsværgе") where it is ordered that the defendant must be placed in an institution or in safe custody, or where the decision gives rise to this possibility. According to this provision, the guardian representative shall stay apprised of the condition of the convicted person, and see to it that the stay and other measures last no longer than necessary.*

*According to section 3(3) of Statutory Order No. 947 of 24 September 2009, concerning guardian representatives issued by the Ministry of Justice, the guardian representative should preferably be a member of the immediate family of the accused/defendant.*

*The police are required to initially ask if there is a specific person the person in question would like to have appointed as a guardian. If the person in question does not have a specific request, does not have near relatives, or neither of the persons are willing or suitable/qualified, the police shall appoint a representative from the official list of Guardians issued by the Danish authorities [statsforvaltningen] cf. Section 5(2) of Statutory Order No. 947 of 24 September 2009.*

*It should be noted, that if a guardian representative who is also a member of the immediate family of the accused/defendant grossly neglects the duties following from the appointment, or otherwise appears to be unsuited for the task, the court can decide that the person in question be disqualified from performing the task as guardian representative, cf. Section 17(5), cf. Section 17(2) of Statutory Order No. 947 of 24 September 2009.*