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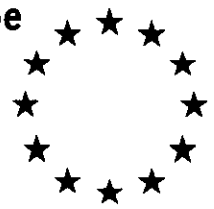

CPT/Inf (97) 14

Interim report of the Danish Government in response 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 29 September to 9 October 1996

The Danish Government has requested the publication of this interim report. The CPT's report on its visit to Denmark is set out in document CPT/Inf (97) 4.

Strasbourg, 11 December 1997

Interim report of the Danish Government in response 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 29 September to 9 October 1996

INTERIM REPORT OF THE DANISH GOVERNMENT IN RESPONSE 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 29 SEPTEMBER TO 9 OCTOBER 1996

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

A. POLICE ESTABLISHMENTS

1. Torture and other forms of ill-treatment

recommendations

R.1 police officers to be reminded that no more force than is reasonably necessary is to be used when effecting an arrest and that, once arrested persons have been brought under control, there can be no justification for striking them (paragraph 12);

According to the general principles for the lawful use of force by the police, including the provisions in sections 13 and 14 of the Danish Criminal Code (straffeloven) on self-defence and *jus necessitatis*, it is a condition for the use of force by the police that, following a specific assessment, the situation renders the use of force in question necessary and justifiable. Thus, more powerful means of force may only be used where less powerful means of force are not adequate. In addition the use of force must not be disproportionate to the situation, the person involved and the right involved.

Concerning the use of force in connection with arrests, section 758 of the Danish Administration of Justice Act (retsplejeloven) prescribes that the arrest should be made in as gentle a manner as permitted by the circumstances.

By circular of 29 June 1994, the Danish Minister of Justice decided, upon discussion with top police management and a number of police organisations, to suspend until further notice the use of the "fixated leglock", which had been used by Danish police in extraordinary situations in connection with arrests.

The reason for the suspension of the "fixated leglock" was that various parties stated that the use thereof might be fatal to the detainee in unfortunate circumstances.

The Ministry of Justice also requested the Medical Legal Council (Retslægerådet), which is an independent medical professional body, to make an assessment of the medical risks that might be connected with the use of this form of "fixated leglock".

In a statement of 30 November 1994, the Medical Legal Council stated that the use of the "fixated leglock" could not be considered to be without medical risk, etc.

Against this background, the Ministry of Justice notified top police management that the statement of the Medical Legal Council did not give the Ministry reason to lift the suspension of the "fixated leglock", and pursuant to circular letter of 8 December 1994 by the National Commissioner of Police, the suspension has been made permanent.

In circular letters to the police in connection with suspension of the "fixated leglock" the Ministry of Justice and the National Commissioner of Police have stressed the general principles for the use of force by the police - also in connection with the use of the "manual leglock". Thus, the circular of 29 June 1994 by the Ministry of Justice states as follows:

> "This form of leglock can thus still be used when necessary to pacify the detainee, also during the process of applying handcuffs to the detainee. It is presupposed, as so far, that the use of this form of leglock is not extended beyond what is strictly necessary and is stopped as soon as the detainee has given up further resistance to the arrest."

Upon request from the Ministry of Justice the circular letter of 8 December 1994 from the National Commissioner of Police includes the following additional instructions for the use of force:

> "Furthermore, attention is drawn to the fact that in its statement the Medical Legal Council writes that in connection with any form of leglock where the person is placed in a prone position it is recommended that the person's pulse and breathing is carefully observed, and the person should not be left alone.
>
> The Ministry of Justice has also stated that it still presupposes that the use of the "manual leg-lock" - like the other means of force of the police - is not extended beyond the strictly necessary."

When the "fixated leglock" was suspended, the Ministry of Justice also found it natural to request the National Commissioner of Police to initiate an investigation into the other self-defence holds and techniques of the police to clarify any risks in connection with their use.

Accordingly, the National Commissioner of Police prepared a "Report on the Medical Review and Assessment of Police Self-Defence Holds and Techniques" available in March 1996. A copy of the report is attaches as *appendix 1* for CPT's information.

The medical assessment was made by a number of doctors appointed by the National Board of Health (Sundhedsstyrelsen), and for most holds the review of the police self-defence holds and techniques did not give rise to comments. In the rather few cases where holds and techniques gave rise to comments on circumstances that should be stressed during training/instruction, and on holds requiring special caution, these factors have been incorporated into and emphasised during the training at the Police Academy.

Concerning the use of the manual leglock by Danish police, the medical review recommended that certain special precautions were stressed in the instruction of police personnel. Otherwise, the medical review did not give rise to comments on the use of the manual leglock. Reference is made to pages 14-15 and 18 of the report.

The description of and instruction in the use of handcuffs did not give rise to medical comments in the report (pages 20-21).

The report states as follows concerning instruction in the use of handcuffs:

> "When handcuffs are applied, they must be pressed down on and not slammed down over the wrists.
>
> Check that the handcuffs are not unnecessarily tight, and then lock them.
>
> When a detainee has been handcuffed, he is supported by being held in the armpits. It is emphasised that a detainee must never be lifted in the handcuffs alone.
>
> If the detainee is handcuffed while lying down, he should be asked to rise and at the same time be supported by being lifted by the armpits".

The "Report on the Medical Review and Assessment of Police Self-Defence Holds and Techniques" has subsequently been submitted to the National Board of Health and the Medical Legal Council, which supported the assessments of the report. In this connection, the Medical Legal Council pointed out that no physical holds can be assumed to be completely without risk. At the same time, the Medical Legal Council emphasised that when very tight handcuffs are used and especially at sudden and unexpected jerks of the handcuffs, the nerves to the hands may become injured. A copy of the statement of the Medical Legal Council of 11 April 1997 is annexed as *appendix 2*.

In April 1997, the National Commissioner of Police further prepared an account of the use of handcuffs by Danish police. The comments in the "Report on the Medical Review and Assessment of Police Self-Defence Holds and Techniques" - including the description of and the instruction in the use of handcuffs - and the comments in this respect of the National Board of Health and the Medical Legal Council are included in the account.

Based on the above medical assessments and the experience of Danish police with the use of handcuffs and information on the use of handcuffs in a number of other countries, the National Commissioner of Police has stated in his conclusive assessment that Danish police uses suitable and appropriately designed handcuffs, that Danish police receives adequately qualified

training in the use of handcuffs and that the correct use of handcuffs - from a medical point of view - does not give rise to comments. A copy of the account by the National Commissioner of Police on the use of handcuffs by Danish police is annexed as *appendix 3*. The account will be forwarded to all police districts of the country.

The Ministry of Justice will request the National Commissioner of Police to incorporate the comments of the Medical Legal Council to the "Report on the Medical Review and Assessment of Police Self-Defence Holds and Techniques" into the training at the Police Academy and to emphasise them - like the other medical comments in the report. The Ministry of Justice will also request that the comments are incorporated into the teaching material prepared by the Police Academy and sent out to the police districts for their information. The police districts will then be able to receive detailed information on and instruction in the Police Academy teaching of self-defence holds and techniques.

The Ministry of Justice is keeping an eye open to check whether, on the basis of the information received by the Ministry concerning specific cases, there will be a general need for a closer look into the use of force by the police - including the need to lay down detailed guidelines on the use of specific types of means of force, as it has just happened on the use of police dogs for the use of force, cf. I.3 below.

R.2 the Danish authorities to continue closely to monitor cases involving the application of "leglock" means of restraint, to ensure that they are not, on occasion, being applied by police officers in an over-zealous fashion (paragraph 13);

See R.1.

R.3 police officers to be issued with instructions making it clear that it is not acceptable to transport detained persons in the manner described in paragraph 14 (paragraph 14).

See R.1.

requests for information

I.1 **the outcome of the investigation into the case to which reference is made in paragraph 13 (paragraph 13);**

The District Public Prosecutor for Copenhagen has informed the Ministry of Justice that the investigation of this case concerning Veronica Ngozi Ugwouha is expected to be concluded shortly. The Ministry of Justice will inform the CPT on the result of the District Public Prosecutor's investigation.

Paragraph 11 of the report also mentions two cases concerning the use of force by the police. The first case mentioned concerns a woman who has stated that on 21 August 1996 the police struck her head against a wall in connection with an arrest.

The Ministry of Justice has obtained a statement from the District Public Prosecutor for Copenhagen, who stated that by letter of 8 April 1997, he had informed the lawyer of the woman in question that he did not intend to take further action in the case on the basis available. The reason for the District Public Prosecutor's decision was that it was not clear whether the woman wanted to lodge a complaint proper. It should be added that at the District Public Prosecutor's request the lawyer had stated that he had no contact with his client, but the lawyer has reserved the right to lodge a complaint later.

The other case mentioned concerns an affair in which a man has stated that the police had beaten him with truncheons on the body and the left arm in connection with an arrest.

The District Public Prosecutor for Copenhagen has stated that by letter of 21 June 1996 he had informed the complainant's lawyer that pursuant to section 749(2) of the Administration of Justice Act it had been decided - after submission to the Police Complaints Board which concurred in the decision - to

discontinue investigation in the case since there was no reason to believe that a criminal offence to be prosecuted by the public had been committed. The Director of Public Prosecutions has supported this decision by letter of 14 August 1996.

I.2 for 1995 and 1996:

- **the number of complaints of ill-treatment by the police lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;**

- **an account of disciplinary/criminal sanctions imposed on the grounds of ill-treatment by the police (paragraph 15);**

Before the introduction of the new police complaints system in 1996 the local police complaints boards decided whether to initiate an investigation in connection with complaints lodged concerning police behaviour on duty. However, the decision about the complaint itself was outside the scope of competence of the local boards, but was made by the local chief constable.

The local chief constable submitted informations about criminal offences committed by the police to the District Public Prosecutor who decided whether to initiate an investigation, and as a main rule questions of prosecution also had to be submitted to the District Public Prosecutor.

There are no adequate statistical data concerning complaints lodged under the former police complaints system. Report No. 1278 on the processing of complaints against police personnel, which was submitted in 1994 by a committee appointed by the Ministry of Justice, however, has a quantity of statistical data in chapter 8 concerning the local police complaints board cases processed in the period from 1983 to 1992. A copy of the chapter in question is annexed for CPT's information as *appendix 4* together with appendices 4 to 6 of the report.

It further appears from the Annual Report of the Police for 1995 that in that year 528 complaints against the police were lodged with the local police complaints boards. Six of these complaints were referred to criminal proceedings, in which charges were withdrawn in one case, and convictions were made in two of the cases.

For 1995 the National Commissioner of Police has stated that in that year disciplinary proceedings were initiated in 152 cases of which 55 were also criminal proceedings. There is no information as to whether the individual case arose as a consequence of a complaint against the police or in another manner.

The new police complaints system was introduced in 1996. The system renders possible a division of complaints into behavioural complaints and criminal cases. The Director of Public Prosecutions has submitted a report on the processing of complaints against the police in 1996. The report is discussed under I.6 and is annexed as *appendix* 7. It appears from this that of the 1013 complaints lodged, 526 had been decided in the year of the report.

Of the cases decided, about half (260) concerned behavioural complaints while the rest (258) were informations about criminal offences. Eight cases concerned investigations about criminal offences in connection with the death or serious injury of persons owing to police action or while in police custody.

Of the 260 behavioural complaints decided, 145 were dismissed as unfounded. Unfounded cases include groundless cases and cases where the investigation did not support the complaint as well as cases where the evidence was so contradictory that facts concerning the complaint could not be ascertained. In 15 cases, regrets were expressed in respect of the incidents, but without any criticism of the police personnel. In four cases, regrets were expressed in respect of the incident as well as criticism of the police personnel. One case gave rise to a criticism of the system (general procedures, etc.). The

remaining 95 behavioural complaints have either been amicably settled (39), withdrawn (32) or dismissed as being time-barred (12).

Out of the 258 decided informations about criminal offences, 57 informations were dismissed. In 112 cases, the investigation was discontinued or charges were withdrawn. 48 cases were withdrawn, five cases gave rise to regrets without basis for prosecution, and in 36 cases, a basis for prosecution was found. The 36 cases have been decided by preferral of charges, issuing of fines or withdrawal of charges. At the time of the report, information had not yet been given on the final conclusion of these cases.

The District Public Prosecutors have discontinued investigation of all eight cases about persons being injured or having died owing to police action or while in police custody.

Investigation has been discontinued by the District Public Prosecutors with the motivation that no criminal offences can be seen to have been committed, nor had any basis been found for criticism of the police officers involved. The police complaints boards have concurred in the decisions of the District Public Prosecutors.

During 1996, the Director of Public Prosecutions has received 75 complaints against decisions made by the District Public Prosecutors. Ten of these 75 complaints had been lodged by the police complaints boards. The processing of these complaints had not been concluded at the time of the report.

As for 1996 the Director of Public Prosecutions has stated that 142 disciplinary cases were initiated during the year against police officers.

I.3. a copy of the National Commissioner of Police's new circular on the use of police dogs (paragraph 16)

On 22 August 1997, the National Commissioner of Police's notification I, No. 40 on police use of police dogs for the

exertion of force was made effective. The notification is annexed as *appendix 5* for CPT's information.

The notification specifies the possibilities of using police dogs for the use of force. The notification stresses that police dogs must be used with level-headedness, caution and the greatest possible leniency.

In general, police dogs as a means of force must be used according to the general principles on the lawful use of force by police. It follows that the use of police dogs must be necessary and justifiable. Thus, police dogs may only be used where less powerful means of force are not adequate, and may the use of police dogs should be proportionate to the situation.

Furthermore, it appears from the notification that the person(s) in question must clearly be told that the police intends to set in police dogs. This applies especially in cases where police dogs are used to clear streets, buildings, etc., of a major number of people. In such case, if possible, the statement must be repeated several times and via a megaphone.

The use of police dogs must cease immediately when police directions have been obeyed; also any use of a police dog as a means of force must be reported to the chief constable (Commissioner of the Copenhagen Police).

2. Conditions of detention in police establishments

recommendations

R.4 conditions of detention a Police Station No. 1 in Copenhagen, and at the Police Headquarters in Århus, Esbjerg and Horsens to be reviewed, in the light of the remarks set out in paragraphs 19 to 23 (paragraph 24);

Based on the description in paragraphs 19-23 of some specific conditions in the detention facilities at Station 1 in

Copenhagen and the police headquarters in Århus, Esbjerg and Horsens, the CPT has recommended a review of these conditions in the light of the CPT's description.

The Committee has further recommended that initiatives be taken to ensure that conditions in all police establishments in the country meet the criteria indicated in paragraph 17 of the report.

In the light of the recommendations of the Committee, the Ministry of Justice has requested a statement from the National Commissioner of Police, who is directly responsible for maintenance of buildings and stock, and will revert to the matter in Denmark's final report to the Committee.

R.5 appropriate steps to be taken to ensure that conditions of detention in all police establishments in Denmark meet the criteria indicated in paragraph 17 (paragraph 24).

See R.4.

3. Safeguards against ill-treatment of persons detained by the police

recommendations

R.6 the terms of the draft Circular on safeguards regarding the right of detained persons to notify a close relative or third party of their situation to be re-drawn, in the light of the remarks set out in paragraph 29 (paragraph 29);

In its report concerning CPT's visit to Denmark in 1990, the Committee recommended the introduction of detailed rules on detainees' access to medical attention, on detainees' access to inform relatives or third parties of their arrest and on detainees' access to legal assistance in direct connection with their arrest.

In a preliminary reply to the Committee, the Ministry of Justice indicated about these issues that it did not find that there was a need for express rules in the Administration of Justice Act proper, but that it would consider issuing instructive directions in this field.

Subsequently, the Committee informed the Ministry of Justice that in the Committee's view, detainees' rights in this field were so fundamental that it was imperative that detailed rules on this were drafted.

Accordingly, following discussions with the Director of Public Prosecutions, the National Commissioner of Police, the Commissioner of the Copenhagen Police, the Association of Chief Constables (Politimesterforeningen) and a number of police organisations, the Ministry of Justice drafted a circular letter with instructive guidelines on detainees' rights. The circular letter was issued on 20 January 1997 and was sent to the Committee for its information with letters of 11 and 12 March 1997.

During its visit in Denmark in the autumn of 1996, the Committee was informed about the deliberations of the Ministry of Justice concerning the circular letter and on that occasion received a draft for its information.

The CPT report on the visit in Denmark comments exhaustively on the circular letter, and the Committee has also made a number of recommendations and comments.

Also in 1998, the Ministry of Justice will follow developments and in the light of the practical experiences with the newly issued circular letter will consider during 1999 whether there is a need to adjust the circular letter, for example in accordance with the proposals of the Committee.

R.7 the terms of the draft circular on safeguards regarding access to a lawyer to be re-drawn in the light of the remarks set out in paragraph 33 (paragraph 33);

See R.6.

R.8 persons arrested by the police systematically to be given a form setting out their rights in a straightforward manner at the very outset of their custody; that form to be available in different languages and the person concerned to be asked to certify that he has been informed of his rights (paragraph 41);

In connection with its preparation of the circular letter of 20 January 1997 to police and prosecutors on notification of relatives or others of arrest, on detainees' access to contact a lawyer and on detainees' access to have a doctor called, the Ministry of Justice at the same time prepared written guidelines to detainees. The guidelines are annexed as *appendix 6* for the CPT's information.

The guidelines inform the detainee about his or her rights in connection with contact with relatives, lawyer, doctor and embassy. According to item 1 of the circular letter, the guidelines are to be given to the detainee when he or she has been taken to the police station. The guidelines are available in Danish, English, German, French, Turkish and Arabic.

With a view to drafting the final report to the CPT, the Ministry of Justice has requested the Director of Public Prosecutions to make a statement clarifying whether, in connection with the questioning of a detainee, the police states in the police report that the detainee has been given the guidelines.

R.9 the Danish authorities to draw up a code of practice for police interrogations dealing *inter alia* with the matters to which reference is made in paragraph 43 (paragraph 43).

In the light of the Committee's recommendations, the Ministry of Justice has asked the Director of Public Prosecutions and the National Commissioner of Police, who are responsible for the training of police officers, for a statement and will

revert to the matter in Denmark's final report to the Committee.

comments

C.1 reference to Ministerial Order No. 467 in the draft circular on safeguards could well lead to detained persons being dissuaded from seeking to exercise their right of access to a lawyer (paragraph 35);

The Ministry of Justice has no immediate considerations concerning an amendment of the rules on lawyer's assistance to detainees. Thus it is not considered to amend the provision stipulating that in connection with their counselling of the suspect on his or her access to contact a lawyer, the police must inform the suspect that he or she has a duty to refund the remuneration for the counsel for the defence to the public if the suspect is found guilty. As is emphasised in the circular letter of the Ministry of Justice of 20 january 1997 on notification to relatives or others of an arrest, detainees' access to contact a lawyer and detainees' access to have the police call a doctor, the police obviously should not try to influence the suspect's assessment of his or her need for legal assistance.

However, the Ministry of Justice finds cause to emphasise that if the suspect so wishes, he or she is given access to legal assistance and that in that connection, no conditions are set out nor any assessment made concerning the suspect's subsequent financial possibilities of paying up.

C.2 the Danish authorities are invited to consider enlarging the terms of the draft circular on safeguards in order formally to provide that:

- **all medical examinations of persons in custody are to be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of sight of police officers;**

- **the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his lawyer (paragraph 39).**

See R.6.

<u>requests for information</u>

I.4 clarification of the circumstances in which, in terms of the draft circular on safeguards, police officers would be entitled to conclude that it is not "practicable and reasonable" to respect a detainee's wish to contact a doctor of his/her own choice (paragraph 39);

See R.6.

I.5 details of any measures taken to enhance police training on the conduct of interrogations (paragraph 42);

See R.9.

I.6 information about the operation in practice of the new police complaints procedure and, in particular, a copy of the Chief Public Prosecutor's first annual report to Parliament on complaints against the police (paragraph 44);

The Danish rules on processing complaints against the police described in paragraphs 32 to 34 in Denmark's 1st report (CAT/C5/Add.4) were replaced on 1 January 1996 by a new scheme excluding the police from participating in the examination of complaints against the police. Complaints concerning the behaviour of police personnel and criminal proceedings against police personnel are now examined and decided by the District Public Prosecutors. The decisions of the District Public Prosecutors can be appealed to the Director of Public Prosecutions.

It is important to note that the District Public Prosecutors as well as the Director of Public Prosecutions are independent of the Danish police.

Furthermore, District Police Complaints Boards have been appointed to provide continuous inspection of the District Public Prosecutors' processing of the complaints against police personnel. Each of the District Police Complaints Boards numbers a lawyer and two laymen, who are all appointed by the Minister of Justice on the basis of recommendations by the General Council of the Danish Bar and Law Society in the case of the lawyer appointee and by the counties and municipalities in the case of the two laymen.

The boards can issue statements on how particular complaints should be dealt with and can appeal to the Director of Public Prosecutions against what they view as unsatisfactory decisions.

In March 1997, the Director of Public Prosecutions issued a report for 1996 concerning the processing of complaints against the police. The report is annexed as *appendix 7* for CPT's information.

I.7 whether an independent person or body is empowered to make regular and unannounced inspection visits to places where persons are detained by the police (paragraph 45).

Under Part 5 of the Danish Ombudsman Act (ombudsmandsloven), the Ombudsman initiates a number of investigations at his own instigation. These may be investigations of specific cases, general so-called own-initiative investigations and inspections of public institutions.

Thus, pursuant to section 18 of the Ombudsman Act, the Ombudsman can examine any institution or enterprise and any place of service within the scope of the Ombudsman's activities. By the authority of this provision, the Ombudsman can carry out inspection visits to institutions, etc. Detention establishments are covered by the Ombudsman's activities. The

preparatory works to the Ombudsman Act presuppose that the Ombudsman carries out systematic inspections of prisons to comply with a recommendation by the CPT.

Inspection or viewing can also be carried out in connection with clarification of a specific case. Thus the police has to report every death during detention in custody to the Ministry of Justice. By letter of 27 March 1995 the Ministry of Justice informed the Ombudsman that - as had previously happened - the Ministry is prepared to notify the Ombudsman of the investigations into cases concerning deaths in detention establishments of the police without any prior request to that effect.

B. PRISONS

1. Torture and other forms of ill-treatment

recommendations

R.10 an external investigation to be carried out into the incident to which reference is made in paragraph 48 (paragraph 49);

In the light of the mutually discordant medical information in the case, the Department of Prisons and Probation on 4 June 1997 requested the Medical Legal Council as an impartial medical instance to issue an opinion. The Medical Legal Council has stated that the processing of the case is expected to be completed by the end of October 1997 at the latest. The Department will await the opinion of the Medical Legal Council before a decision is made on any further investigations into the case. The Department will notify the Committee about the outcome of these deliberations.

Concerning the access to using force in the institutions of the Department, pursuant to section 1 in the circular of 15 April 1988 on the use of force against inmates issued by the Department of Prisons and Probation, it is only permitted to use force under the rules of the circular apart from self-defence in accordance with the general rules of law. It

follows that it will be illegal to use force against inmates if the circular does not authorise such use and the situation does not call for self-defence.

Therefore, in all cases, it will be prohibited to strike inmates brought under control. In the circumstances, such a method will be a violation of the Criminal Code and a misconduct. That a prison officer strikes an inmate who has been brought under control may thus entail both criminal and disciplinary sanctions. Under the Criminal Code, in the circumstances, a custodial penalty might be imposed for the offence. The disciplinary reaction will be dismissal if the person is convicted of the offence.

The circular on the use of force is supplemented by a number of other administrative regulations in the field. In this connection, reference is made to the rules on the use of observation cells, security cells, fixation, etc., cf. circular of 27 May 1994, and on the use of handcuffs, cf. circular of 27 May 1994 and guidelines of 2 April 1996.

Rules on the use of force against inmates are also laid down in circular of 1 March 1996 on the use of shields against inmates and in circular of 15 December 1980 on search of inmates and their living quarters. Furthermore, in circular letter of 28 July 1993, rules have been laid down on recto-vaginal examination of inmates.

In addition, a number of guidelines and letters have been issued in association with these regulations. A review of the rules in this field is also included in the training and the compulsory and optional post-training courses of the staff.

R.11 a thorough investigation to be carried out into the nature and scale of the problem of interprisoner violence at the Western Prison and Horsens State Prison (paragraph 53).

The dominance exerted by strong inmates over weak inmates is at present one of the most difficult problems in Danish

prisons. The clientele of the institutions of the Department of Prisons and Probation has changed in recent years, and the problems are to a greater extent characterised by groups of especially weak and especially strong inmates.

Against this background, three different working groups have been appointed from 1993 to 1996 for consideration of strong and weak inmates, strong inmates, and weak inmates, respectively. All working groups have submitted reports to the Department with proposals for countering the problems.

The Department is aware that the number of violent episodes has been increasing in recent years. Therefore, various initiatives have already been implemented to protect the weakest inmates.

Thus, wards have been established that give drug addicts the option of serving their sentences under special conditions with the possibility of participating in a number of activities not to be found in the other wards, provided that they keep off drugs.

Furthermore, in 1998 two special wards will be established for the so-called especially strong inmates who exert a negative dominance over co-inmates. The Department expects the establishment of wards for especially strong inmates to considerably improve the general environment among inmates and to drastically reduce the number of episodes of threats and violence.

The Department has further decided to appoint a working group in the autumn of 1997 for considering whether the current rules and principles for allocation of inmates to different institutions and for occupation of inmates should be amended. Appointment of such a working group should be seen in the light of the development in society and in the development of the clientele of the Department.

The working group is also to examine the problems of inter-prisoner violence and threats and on the basis of its dis-

cussions is to submit proposals for an overall plan of how to limit these problems. In this context, an investigation will be carried out into the problems at the Western Prison and Horsens State Prison as recommended by the Committee.

According to plan, the working group is to conclude its work by the end of 1998. The Committee will then be informed of the results of this work and of any initiatives that have been implemented in the meantime to counter interprisoner violence.

comments

C.3 the prohibition of striking persons who have been brought under control applies equally in the penal as in the police sphere (paragraph 49);

See R.10.

C.4 the Danish authorities are invited to devise a national strategy to address the problem of interprisoner violence, in the light of the remarks set out in paragraph 53 (paragraph 53).

See R.11.

requests for information

I.8 for 1995 and 1996

- **the number of complaints of ill-treatment lodged against prison officers and the number of criminal/disciplinary proceedings initiated as a result of such complaints;**

- **an account of criminal/disciplinary sanctions imposed following complaints of ill-treatment by prison officers (paragraph 50).**

There seems to be no unambiguous definition of the term "ill-treatment". When reviewing the cases, the Department of Prisons and Probation has presupposed that complaints of ill-

treatment primarily mean complaints of violence and unjustified or unnecessary use of force. Furthermore, complaints of the prison officers' usage of language have been included if the complainant has specified that the usage was in the nature of threats or harassment. Also, complaints of handcuffs applied too tightly in a harassing manner have been included. This also applies to complaints of searches of the body based on harassment and other harassment complaints, for example complaints of sexual harassment or that the staff deliberately do not answer cell calls and other complaints of demeaning treatment.

Complaints of general dissatisfaction with staff conduct have not been included in the statement when it is obvious that petty issues are involved, such as complaints of delayed delivery of newspaper and general dissatisfaction with prison staff manners. Nor does the statement include complaints against specific decisions on, for example, the use of handcuffs when it appears from circumstances that the complaint relates to the actual decision to use handcuffs.

A. Statement of the number of complaints

In 1995 and 1996 there were a total of 49 complaints of ill-treatment, of which five complaints have given rise to criminal or disciplinary investigations. Of the five complaints, one from 1995 concerning violence resulted in conviction and dismissal from the Department of Prisons and Probation. The case is discussed in detail below under item B. One complaint from 1996 on unjustified use of force, also mentioned under item B below, resulted in a disciplinary investigation not yet concluded. The other three cases were dismissed by the prosecutor after the inmates in question had laid an information about the issue.

Further three complaints have lead to the Department expressing its regrets to the complainant about what happened. In these cases no basis was found to initiate criminal or disciplinary investigations. A survey of the complaints has been annexed as *appendix 8*.

B. Survey of sanctions as a result of complaints of ill-treatment

As it appears from the review under item A above, one complaint of ill-treatment has resulted in a sanction. The complaint concerned an episode in 1995 where an inmate who had been pacified and handcuffed was struck in the face by a prison officer in the presence of two other prison officers. The case was immediately reported by the two prison officers who witnessed the event and an information laid with the police. The prison officer was sentenced to 60 days' imprisonment and was dismissed from the Department.

As mentioned above, a disciplinary investigation is still pending concerning a complaint from 1996 of unjustified use of force and placing in a security cell. The inmate has received a letter from the Department of Prisons and Probation regretting the incident and has been recompensed for unjustified placement in a security cell. If the result of the disciplinary investigation is that the prison officer was guilty of dereliction of duty, a sanction will be imposed on the person in question. The Committee will be informed of the outcome of the case.

2. <u>Solitary confinement of remand prisoners by court order</u>

<u>recommendations</u>

R.12 prosecutors to be reminded that they should only seek a placement in solitary confinement when this is strictly necessary in the interests of a particular criminal investigation;

See R.15.

R.13 on every occasion when the question of whether to impose or prolong solitary confinement is raised before a court, the reasoned grounds for the decision which results to be recorded in writing;

See R.15.

R.14 prisoners to be systematically informed in straightforward language of the reasons for their placement in judicially-ordered solitary confinement;

See R.15.

R.15 in the context of each periodic review of the necessity to continue remand in custody, the necessity to continue a placement in solitary confinement to be fully considered as a separate issue, bearing in mind the general principle that all placements in solitary confinement should be as short as possible (paragraph 59);

The conditions for the use of remand in solitary confinement in Denmark are found in section 770 a of the Danish Administration of Justice Act. Pursuant to this provision, a person can only be detained in solitary confinement if the suspect is remanded in custody, and the remand in custody is decided pursuant to section 762(1)(3) of the Administration of Justice Act. This implies that in the circumstances of the case there must be specific reasons to presume that the suspect will render difficult the prosecution of the case, particularly by removing clues or by warning or influencing others.

It is furthermore a condition for detention in solitary confinement that the purpose of the remand in custody renders solitary confinement necessary, for example to prevent the suspect from influencing co-suspects through other inmates, or from influencing others through threats or in any other similar manner.

It follows from the demand for remand in custody that there must be a confirmed suspicion that the suspect has committed an offence punishable with imprisonment for one year and six months or more. Furthermore, a concrete assessment must show that the offence is likely to result in imprisonment.

In addition, a special proportionality principle applies, according to which detention in solitary confinement must not be implemented or continued, if the purpose thereof can be achieved with less infringing measures, or if the measure is disproportionate to the importance of the case and the legal consequence to be expected if the suspect is found guilty. The decision to detain in solitary confinement must also take into consideration the special stress on the suspect in which the measure may result owing to the suspect's low age or physical or mental weakness.

Detention in solitary confinement is decided by the court and cannot be prolonged by more than four weeks at a time. Furthermore, detention in solitary confinement is only allowed for a coherent period of eight weeks. However, this rule does not apply if the charge concerns an offence for which the Criminal Code prescribes imprisonment for six years or more. For these very serious offences there is no absolute restriction in time, but the principle of proportionality may imply that detention in solitary confinement cannot be further extended.

Anyway, it follows from section 770 c, cf. section 764(4), of the Administration of Justice Act that the court must make its decision concerning solitary confinement by order. If the suspect is remanded in custody, the court must state in its order the specific circumstances of the case on which it supports its decision that the conditions for detention in solitary confinement are satisfied. If the suspect is present at the hearing, he or she must be informed immediately of the provisions on solitary confinement applied by the court and of the reasons of the court for detention in solitary confinement. The suspect should also be informed of his or her right to appeal the decision. In addition a transcript of the court decision must be delivered to the suspect, if so desired, as soon as possible.

On 14 March 1997 the Director of Public Prosecutions issued a notice with guidelines for processing of detainee cases where the remand in solitary confinement exceeds three months. The

purpose of issuing the notice is to ensure that a remand in solitary confinement is as short as possible. The notice is annexed as *appendix 9* for CPT's information.

The notice enjoins on chief constables to notify District Public Prosecutors of all cases where the suspect has been remanded in custody for more than three months. This applies both to cases where no formal prosecution has been initiated, and to cases where prosecution has been initiated before the District Court.

The notice must include certain information on the case. In cases where no formal prosecution has been initiated, the notice forms the basis for the discussions, if any, between the District Public Prosecutor and the chief constable on the planning and further processing of the case.

The District Public Prosecutors inform the Director of Public Prosecutions of the number of annual reports and on the number of remand periods exceeding six months in juror cases. The District Public Prosecutors also notify the Director of Public Prosecutions if problems of a more general nature are observed.

As it appears from the above, current legislation, etc., has already laid down provisions in the field to ensure that solitary confinement is only applied in special cases. Furthermore it follows from the rules of the Administration of Justice Act that the court has a duty to give a reason for the use of solitary confinement by order, that is a written decision, in each case and to notify the suspect of the reason. It also follows from the rules of the Administration of Justice Act that the question of use of solitary confinement must be decided separately, i.a., in the light of the principle of proportionality.

R.16 steps to be taken without further delay to:

- **issue clear instructions to the police on the circumstances in which recourse may be made to prohibitions/**

restrictions upon remand prisoners' letters and visits;

- **require the police to state in writing the reasons for the imposition of such prohibitions/restrictions (paragraph 60);**

See R.17.

R.17 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 and letters to be considered as a separate issue (paragraph 60);

As it appears from Denmark's preliminary report of 23 January 1992 concerning the first periodic visit of the CPT, it follows from section 770 of the Administration of Justice Act that a remand prisoner is only subject to the restrictions necessary to ensure the purpose of the detention in custody or to maintain order and security in the remand prison.

Pursuant to section 771 of the Administration of Justice Act, a remand prisoner may receive visits to the extent permitted by maintenance of order and security in the remand prison. In view of the purpose of the detention in custody, the police may oppose visits to a remand prisoner or demand that visits are supervised. If the police refuses visits, the remand prisoner must be notified thereof unless the judge decides otherwise in consideration of the investigation. The remand prisoner may demand that police refusals of visits or demands for supervision are submitted to the court for decision. The remand prisoner is always entitled to unsupervised visits from his or her defence counsel.

Pursuant to section 772 of the Administration of Justice Act, a remand prisoner is entitled to receive and send letters. The police may peruse the letters before reception or sending. The police must hand over or send the letters as soon as possible unless the contents might harm the investigation or the main-

tenance of order and security in the remand prison. If a letter is withheld, the question whether the withholding should be maintained must immediately be submitted to the court for decision. Thus, in this situation trial by the court is mandatory. If the withholding is maintained, the sender must be informed immediately unless in consideration of the investigation the judge decides otherwise.

A remand prisoner is entitled to unsupervised exchange of letters with a number of authorities, etc.

If the police decides that in consideration of the purpose of the detention in custody other restrictions must be imposed on the remand prisoner's rights, it follows from section 773 of the Administration of Justice Act that the remand prisoner can demand that the question of maintenance of the restrictions is submitted to the court for decision.

In the cases where the courts make a decision, the order of the court must be accompanied by a reason, cf. section 218 of the Administration of Justice Act.

Linked with the rules of the Administration of Justice Act, the Remand Order and circular No. 220 of 19 December 1980 issued by the Department of Prisons and Probation on remand prisoners' right to exchange of letters and visits, etc., lay down administrative rules on the treatment of remand prisoners.

The Ministry of Justice still finds that the right to court trial under the rules of the Administration of Justice Act in cases where the consideration of the investigation motivates restrictions in remand prisoners' rights, and the detailed regulation by the Administration of Justice Act of the conditions for such measures and the directions laid down in conjunction therewith ensure remand prisoners an adequate legal status. Therefore, there are no current deliberations on amendments in the current legislation in the field.

R.18 the Danish authorities to pursue their efforts to provide purposeful activities and appropriate human contact for persons in solitary confinement (paragraph 61).

On 6 February 1995, the Ministry of Justice informed the CPT about various initiatives implemented or sought implemented for remand prisoners in solitary confinement. The Ministry of Justice refers to this information. Thus, attempts to counter the consequences of being isolated are still made in the light of, i.a., the recommendations of the CPT in this field.

comments

C.5 the Danish authorities are invited to consider introducing a maximum limit on the total period for which a remand prisoner may be placed in solitary confinement (paragraph 59).

The Standing Committee on Administration of Criminal Justice (Strafferetsplejeudvalget) is at present considering the need for an amendment of the rules on solitary confinement, i.a., in the light of the recently concluded scientific investigation of any harmful effects of solitary confinement. In this connection, the Standing Committee has also been notified of the CPT report. The Standing Committee is expected to submit a report during the first six months of 1998.

When the report is available, the Ministry of Justice will decide whether amendments to legislation should be proposed, or other initiatives be implemented in this field. The Ministry will also consider whether further restrictions should be introduced as to the duration of solitary confinement.

3. Conditions of detention in general

recommendations

R.19 a very high priority to be given to completing the scheduled renovation work at the Western Prison, and steps to

be taken to ensure that the programme of ongoing maintenance of the cells is more closely geared to the degree of wear-and-tear to which they are now subjected (paragraph 65);

In 1987, Copenhagen Prisons started a complete renovation of the individual wings of the Western Prison, including a refurbishment of the cells. The renovation of the north and east wings has been completed. The south wing work has started and is expected to be completed during 1997. In the west wing, the cells were painted in recent years. It has also been planned to refurbish and paint the cells in the Western Hospital during 1998-99.

Copenhagen Prisons agree that the planned renovation and painting of the cells must have a high priority. They will therefore also see to it that this is done by attempting to have the work carried out as project work with the participation of the inmates of the individual wings.

R.20 steps to be taken to enhance the regime offered to prisoners at the Western Prison in Copenhagen in the light of the remarks set out in paragraph 67 (paragraph 67);

According to Copenhagen Prisons, until 1996 each ward in the large wings, viz., the east and north wings, had a common room accommodating 12 inmates. The inmates were locked up by themselves in these rooms. Throughout 1995 and in the beginning of 1996, some very violent episodes took place in these rooms. Therefore, in 1996 it was decided to close these common rooms and to build niches on every floor so that the inmates can associate there and at all times be supervised by the staff.

A plan for the niches has been made, but owing to other urgent matters it is not yet possible to state when the work can be initiated and completed. Until this happens, Copenhagen Prisons has extended the inmates' access to cell association with two and three inmates, respectively, in the wards. Thus, the prison endeavours to create as satisfactory conditions as possible for the inmates' association, but at the same time a

number of necessary tasks must be performed and given priority within a given financial framework. The CPT will be informed when the planned alteration works have been implemented.

As pointed out in the comments concerning R.11, the Department of Prisons and Probation is aware of the problems with strong and weak inmates. In addition to establishment of the special wards mentioned, a number of general restrictions have been introduced to the inmates' access to money and effects. In certain places, such as Copenhagen Prisons, it has been necessary to introduce restrictions in the inmates' right to association, etc. The Department agrees that it is unfortunate that these restrictions encompass all inmates. This is also the background for the decision to appoint a working group to consider changes to the present scheme concerning the allocation and occupation of inmates.

However, the Department is still of the opinion that the offers of tuition and leisure time activities have not been generally restricted in relation to the Committee's visit in 1990. On the contrary, according to Copenhagen Prisons, a minor increase in leisure time offers to the inmates can be demonstrated. Furthermore, as at 8 September 1997 a total of 185 inmates participated in school lessons, 100 inmates thereof in association and 27 inmates in solitary confinement from the Western Prison. The financial resources granted annually by the Department for education and leisure time activities have not changed during the period 1990-1997.

R.21 appropriate steps to be taken to ensure that all prisoners in solitary confinement at the Western Prison benefit from proper, daily, open-air exercise (paragraph 68);

The existing exercise yard, known as the 'layer cake' for prisoners in solitary confinement at the Western Prison has been debated for years. So far, however, nobody has succeeded in coming up with an alternative to the present layout. This is because of the large number of this type of inmates in Copenhagen Prisons at all times and the limited space available. Moreover, all inmates must have daily access to outdoor

areas. The Department of Prisons and Probation agrees that the existing exercise yard does not allow the inmates much scope of movement. However, it is possible for the inmates to do gymnastics and similar types of exercise there.

In the light of the Committee's comments the Department of Prisons and Probation has asked Copenhagen Prisons to come up with alternative solutions. The Department will include their considerations in its general planning of refurbishment works within the budget framework. The Committee will be kept informed on any further action in this field.

To this can be added that, in the course of the summer of 1997, Copenhagen Prisons have rebuilt the exercise yard in the lock at the southern wing (adjoining the so-called 'layer cake') in connection with establishing a ward for inmates associated with outlaw motorcycle gangs. Being used entirely by inmates from this special ward, the yard has been expanded considerably to include the entire area between the southern wing and the yards for prisoners in solitary confinement, cf. the sketch annexed as *appendix 10* to this report. The exercise yard is enclosed by a new wire fence with plates, which makes it impossible for people outside to establish visual contact with those inside the fence.

R.22 steps to be taken to refurbish the cells in the psychiatric ward of the Herstedvester Institution (paragraph 70);

The Herstedvester Institution agrees that a large number of cells are in need of refurbishment. The aim is to initiate this work in the near future. Already, painting and replacement of furniture and fittings are taking place in the cells where the need for refurbishment is most urgent. The Committee will be kept up-to-date on the progress of these works.

R.23 steps to be taken to enhance the regime offered to inmates at Esbjerg Local Jail, in the light of the remarks set out in paragraph 81 (paragraph 81);

At the local jails, the inmates are offered a choice between different occupations and leisure time activities. For lack of space, the range of leisure time activities is smaller in the local jails than in the prisons, but it does, however, include various hobbies and other activities that are not space-consuming, typical examples being table tennis, snooker and fitness training.

Esbjerg Local Jail offers the inmates work which is carried out in five common rooms. Moreover, four inmates have a job cleaning the premises. In addition, a separate school room has been set up, which has been in use since 1 May 1997. The school room offers tuition by two teachers, who take turns to teach groups of inmates the three R's as well as giving special lessons. The school room is furbished with personal computers, which are available to inmates participating in the tuition. During leisure time, the inmates can participate in social activities such as games of snooker or table tennis and exercise in a fitness room with some workout equipment.

In the light of the Committee's comments, the Department of Prisons and Probation has asked Esbjerg Local Jail to consider whether it would be possible to expand the options available to its inmates, including those for outdoor exercise, so that these considerations can be included in the general planning of the Department. The Committee will be kept informed on the result of these considerations.

R.24 the on-going refurbishment of the main building at Horsens State Prison to be actively pursued and, in particular, steps to be taken without delay to renovate the disciplinary isolation unit (paragraph 85);

Horsens State Prison has informed the Department of Prisons and Probation that refurbishment of the first floor west of the disciplinary isolation unit is in progress. Cell doors have been replaced and a kitchen established for the use of the inmates.

Refurbishment (painting) of the remaining cells and passages in the main building is already in progress or will take place in the course of 1997 with participation by the inmates.

R.25 the outdoor exercise facilities for remand prisoners at Horsens State Prison to be improved (paragraph 90);

The Department of Prisons and Probation agrees that the exercise yard for remand prisoners leaves a lot to be desired. This was, however, what the layout of the building made possible at the time when the local jail unit was moved to its present quarters. Because of a police requirement that remand prisoners exercising in the yard must not be able to establish contact with other inmates it was necessary to surround the yard by a high, non-transparent fence. This fence was necessary, since the road passing through the area is used by other inmates from this prison ward.

Changes in the outdoor exercise facilities cannot be effected immediately by changing the present yard situated right outside the jail unit, since the existing architecture renders this impossible. According to the prison, to have remand prisoners exercising in the yard used by the prison wards would create great difficulties in ensuring, among other things, that there is no contact between remand prisoners and other inmates. This would also increase the need for human resources, i.e., extra staff in the yard during exercise periods.

In the light of the CPT recommendations, the Department has asked Horsens State Prison to come up with any alternative solutions. The Department will include the Prison's considerations in the general planning of refurbishment works within the budget. The Committee will be kept informed on any further action in this matter.

R.26 efforts to improve the regime at Horsens State Prisons to be vigorously pursued, in the light of the remarks set out in paragraph 91 (paragraph 91).

The Department of Prisons and Probation agrees that it is important to offer purposeful activities to inmates, including those serving long sentences. Regarding the problems with the dominance of strong inmates over weaker ones, please refer to R.11 and R.20.

In the opinion of Horsens State Prison, the existing gymnasium should be demolished to be replaced by a completely new one. The Department agrees with this while acknowledging the lack of funds for such a move. On this basis, Horsens State Prison has replaced the windows of the gymnasium and set up a joint prisoner-staff committee with a view to painting the gymnasium inside. The plan is that the inmates will perform the work themselves together with work foremen. At meetings in the leisure-time committee, inmates and staff discuss the suitability of the gymnasium for different activities, particularly in winter time, and they are planning to start with badminton, indoor football, basketball and volleyball.

Moreover, the Department wishes to mention that in the autumn of 1997 it will be starting a 20-week pilot project in co-operation with the Sports Confederation of Denmark. The aim of this project is to further enable staff to motivate inmates, and to initiate, implement and assess leisure time activities. The principal target group of this pilot project is the weak inmates, who so far have often refrained from participating in activities that are physically exacting. At first, this pilot project will be held for prison staff assigned to prisons on Zealand. However, the aim is that by 1998 the pilot project will be nationwide. The contents of the pilot project agree well with the Department's aims of leisure time activities and education and the targets therefor, annexed as *appendix 11*.

The Department agrees that for each inmate an individual plan for the term of the sentence should be set out with a view to organising the term and preparing for the release. It has been proposed that a future act on the execution of sentences, etc., should include provisions committing the institution, in cooperation with the convicted person, as soon as possible after the imprisonment, to make a plan for the term of

sentence and for the post-release period. The aim of this planning is to emphasise that, in so far as possible already from the beginning, the term of sentence should be planned, also with a view to strengthening and improving the inmate's possibilities for leading a non-criminal life after his or her release.

Planning as described above is already incorporated at the large majority of the prisons, where it is a standard part of attending to the individual inmate. Once a year, the Department and the institution holds a joint meeting on prisoners serving long sentences of eight or more years. At this meeting the two bodies perform a more comprehensive consideration of the inmate's situation, including the plan for the course of imprisonment.

The rules on the holding of such joint meetings are set out in the Department's circular letter dated 19 June 1987 on the holding of annual joint meetings, etc., at the closed prisons of the Department for Prisons and Probation and the holding of annual meetings at the open prisons of the Department for Prisons and Probation. The circular letter is annexed as *appendix 12*.

comments

C.6 cells of 8 m^2 provide only cramped living space for two persons (paragraph 78);

The Department of Prisons and Probation agrees that a cell of 8 m^2 provides very little space for two people. Actually, Esbjerg Local Jail only uses the cells in this way in very special cases at the express wish of the inmates themselves, usually a married couple. In such cases, permission is granted on humanitarian grounds so that the couple may spend their leisure time together in the cell.

C.7 at Esbjerg Local Jail, the delegation was concerned to note that a number of sharp tools had not been replaced on

the wall-mounted "shadow board" in the woodworking shop (paragraph 79);

According to Esbjerg Local Jail, said board is available only to the two work foremen. The tools missing during the CPT visit are rejected tools.

C.8 the design of the receptacles offered to remand prisoners at Horsens State Prison - as an alternative to their leaving their cells at night to use a toilet facility - rendered them quite unsuitable for use by female prisoners (paragraph 87);

This problem was solved immediately after the CPT visit, when the prison bought some chamber pots suitable for use by female inmates.

C.9 the CPT trusts that, in due course, the proposal to install "three cells into two" sanitation at Horsens State Prison will be the subject of a detailed assessment by the Danish authorities; at this stage, the Committee wishes to make clear that it much prefers that system (which gives prisoners access to a lavatory in a separate sanitary annex) to so-called "simple sanitation" (in which a lavatory is placed inside each cell) (paragraph 88).

In its letter dated 25 November 1996 the Department of Prisons and Probation informed the Committee about the prison reconstruction plan proposed by Horsens State Prison. The letter also stated that, for reasons of finance and capacity, the Department had no immediate plans for proceeding with the proposal which therefore had not been subjected to a more specific assessment by the Department. The Ministry of Justice refers to this letter.

The Department has taken notice of the Committee's comments on the proposed reconstruction plan submitted by Horsens State Prison. In due time, these comments will be included in the considerations on the final drafting of the project.

requests for information

I.9 the comments of the Danish authorities on the complaints heard about the quality of food served to prisoners held in the psychiatric ward, the solitary confinement ward and the observation cells at the Institution at Herstedvester (paragraph 71);

According to the Institution, there are very few written complaints about the frozen food supplied by Jyderup State Prison. The food is regularly tested by the health authorities. Thus, the National Food Agency (Levnedsmiddelstyrelsen) carries out inspections to ensure that the current rules and regulations are complied with and that the provisioning is otherwise adequate and duly treated in a hygienic manner. The National Food Agency also contributes to dealing with dietary criticism or complaints.

I.10 the comments of the Danish authorities on the questions raised in paragraph 82 (paragraph 82).

The Department of Prisons and Probation agrees that, in general, local jails are unsuited for long-term imprisonment. The current rules support this point of view, and, as the first choice, a person sentenced to imprisonment will be referred to a prison. Only when the term of imprisonment is short or when special circumstances favour such a move, including when the prisoner does so specifically request, may imprisonment take place in a local jail. Only in very special cases can the prisoner be transferred to a local jail on a permanent basis without his or her consent.

In case of transfer on disciplinary grounds from an open to a closed prison, the prisoner will often be placed provisionally in a local jail until a cell becomes available at the closed prison. Provisional stays may range from days to several months, depending on the waiting time for transfers to the individual closed prison.

In this connection it should be noted that several of the closed prisons perform a qualitative, including a medical, prioritisation of those waiting for vacancies at the prison.

There are two reasons why specific prisoners have to wait long for a vacancy. One is the above qualitative prioritisation of the people waiting, the other that for some years it has been necessary to convert ordinary open prison capacity into special units, and this has rendered the capacity utilisation of the prisons less flexible. The conversions were motivated by changes in the clientele, which raised a need for establishing contract wards, drug-free wards and other treatment wards. Lately, it has been necessary to expand the total capacity of the local jail units at the closed prisons reserved primarily for people associated with outlaw motorcycle gangs, who for safety reasons may no longer be placed in the local jails of Denmark.

The Department wishes to state that in an attempt to accommodate the large number of transfers on disciplinary grounds from open to closed prisons via local jails, it has decided to establish a new type of closed units in connection with an open prison. The Department expects that with this new type of institution it will be possible to reduce the total number of disciplinary transfers to the closed system proper, including to the local jails.

The use of local jails for the serving of sentences, including temporary stays of long duration, will be included in the terms of reference for the working group on the distribution and occupation of inmates described above under R.11. The working group will be requested to include the Committee's comments in its considerations.

4. Health care services

recommendations

R.27 steps to be taken to increase the frequency of visits by a doctor to Esbjerg Local Jail (paragraph 95);

The Department of Prisons and Probation has fixed the weekly standard for doctor's visits to the local jail in Esbjerg at 4 hours, and that for nurse's visits at 19.28 hours. These standards are based on a common permanent scale applying to all institutions under the Department for Prisons and Probation, and related to the capacity of the individual institutions.

About the planning of the medical visits to the local jail, the inspector of Esbjerg Local Jail has stated that surgery is held every 14 days and that the doctor can be summoned at any time, if the staff find that there is an acute need for medical attention. Usually, the doctor is called after consultation with the nurse, and the normal rate is one or two such visits a week, but sometimes fewer.

The nurse and other staff can telephone the doctor every day within normal working hours. Such telephone calls take place almost daily, and, as a special service outside their duties, the two doctors attached to the jail have made it possible for the staff to contact them outside their normal working hours. Such calls take place about once or twice every month. Relatively few inmates take the opportunity to consult the doctor during his scheduled hours of surgery, most of them wanting, however, to contact the doctor when the need arises.

As it will appear, the doctor attached to the jail is contacted by telephone or visits the jail to an extent considerably exceeding the scheduled surgery every fortnight. Thus, the actual frequency is much higher than once a fortnight, and it is on a level agreeing with the Committee's recommendations.

R.28 consideration to be given to introducing a visiting psychological/psychiatric service at Esbjerg Local Jail (paragraph 101);

The Department of Prisons and Probation is aware of the steadily increasing number of inmates with a mental disorder in the institutions under its auspices. These institutions have a permanent arrangement with a psychiatric (and, in some places, a psychological) counsellor to an extent corresponding to the capacity of the institution and the mental condition of its clientele. All doctors attached to local jails are general practitioners. For the local jails, the Department has chosen to let inmates whom the doctor considers to be in need of psychiatric attention be treated by an external psychiatrist in private practice. To this comes that, in specific cases, it is possible to apply to the Department for funds for intensive psychological and psychiatric treatment for a limited number of hours.

Inmates in need of hospital admission will be referred to the local psychiatric hospital or possibly transferred to the Institution at Herstedvester. This arrangement is in harmony with the Department's general principle about using the general health care system as far as possible, and it is the Department's impression that this works in a satisfactory manner. In accordance with the practice described under R.27 for the distribution of resources, a psychiatric service has not been attached to Esbjerg Local Jail on a permanent basis.

It should be added that the psychiatric service at the prisons and local jails is in keeping with the recommendations made by a committee set up by the Ministry of Justice in 1988 with participants from the National Board of Health and Danish Medical Association (Den Almindelige Danske Lægeforening).

R.29 all newly-arrived prisoners at Esbjerg Local Jail and Horsens State Prison to be medically screened on admission (paragraph 108);

Until 1990, all inmates had to be examined by the doctor attached to the institution soon after their admission. In practice, however, only a limited number of new inmates were actually examined by the doctor. This was ascribed to a lack of motivation on the part of the inmates and a necessary prioritisation of medical resources. Moreover it was assumed that the improvement in the general health of the population meant that the need for a medical screening had decreased.

In view of this the arrangement was changed after discussion with the National Health Service and other bodies. Since 1990 the institutions have been obliged to check that, except in cases of very short terms of imprisonment, all new inmates are seen by a doctor or a nurse as soon as possible after their admission. The aim is to enable the doctor or nurse to assess and observe the inmate and form an impression of his or her general state of health. On this basis, the doctor or nurse can decide whether the inmate should be offered a screening proper.

The Department of Prisons and Probation agrees that, at all its institutions, there should be routines for ensuring that all new inmates establish an initial contact with a doctor or nurse. The Department has also impressed the current arrangement on Esbjerg Local Jail and the local jail unit at Horsens Prison.

The Department further agrees that it is not sufficient if the initial contact with health officers takes place only at the explicit request of the inmate. On the other hand, the Department feels obliged to point out that, pursuant to Danish Law, all contact between patient and health officers must be voluntary and that the initial contact will therefore take place only if the inmate agrees to it.

The Committee has expressed the view that the initial contact with health officers should be as soon as possible, i.e., within 24 hours after admission. This time limit has not been incorporated into the Danish procedure. An investigation made by the Department's consultant in matters concerned with

general medicine and hygiene shows that all new inmates are informed orally and many times also in writing about the health service of the institution, including the possibility for initial contact with the health officers. This information is usually provided by the prison officers and mostly in connection with or within 24 hours following admission.

At large institutions with full-time or part-time nurses, such information is usually provided on weekdays by the nurse (possibly also by the prison officers), and usually within 24 hours after admission. In such cases, the initial contact with health officers will usually take place within 24 hours after admission.

In other cases (including at the majority of the local jails), contact with health officers typically does not take place within the 24-hour limit. However, the Department finds that this does not lead to an unjustifiable health service for new inmates, since it is customary in connection with admission (and not later than 24 hours after it has taken place) for prison officers to inform the new inmate about the health service of the institution. Moreover, according to current rules, all new inmates are entitled to have the staff call a doctor or nurse quickly.

requests for information

I.11 whether the renovation of the health-care facilities at Horsens State Prison has now been completed (paragraph 96);

Horsens State Prison has informed the Department of Prisons and Probation that the renovation works, consisting in the painting of cells and passages, replacement of curtains, a new medicine cupboard, new tables and chairs, etc., have been completed.

I.12 further details about the in-service training programme in psychiatry for nursing staff at the Western Prison (paragraph 97);

In its preliminary report of 23 January 1992 to the CPT, the Ministry of Justice expressed that it agreed that nursing staff at the Western Hospital should be trained to provide the necessary care and treatment of the psychiatric patients admitted to the hospital. However, at the same time the Department of Prisons and Probation was of the opinion that it would be against Danish practice and tradition to expand the Western Hospital to undertake long-term care of the mentally ill, since this group of patients should preferably be transferred to a psychiatric hospital.

According to the chief consultant at the Western Hospital it is a misunderstanding that the Western Hospital should be planning an in-service training course in psychiatry for nurses. The nurses at the Western Hospital have received the same psychiatric training as have all other nurses in Denmark. In this country, it is not possible to become authorised as a specialist psychiatric nurse. The special knowledge of psychiatry that is one of the characteristics of the nurses at the Western Hospital partly comes from the know-how and experience these nurses have gained during previous jobs, for some in leading positions, at psychiatric hospitals, partly from further training courses.

The nursing counsellor attached to the Department, who is the deputy director of Copenhagen Prisons, participates in three-day courses in psychiatry for prison nurses, and these nurses get the opportunity to participate in study programmes arranged jointly by the Training Centre of the Department and their union. Both the counsellor in general medicine and hygiene and the nursing counsellor describe the nurses as being competent and qualified, and they state that the work of the nursing staff is highly satisfactory.

I.13 confirmation that compulsory psychiatric treatment in prisons is subject to specific safeguards, comparable to those which apply to voluntary patients in psychiatric wards (paragraph 100);

In general, inmates in the institutions under the Department of Prisons and Probation cannot be subjected to compulsory treatment.

In very special cases, when the circumstances warrant such a move, it is possible to subject the inmates in the Institution at Herstedvester to compulsory treatment. The possibilities for doing so are limited to insane inmates who are temporarily extraordinarily dangerous, and who do not meet the conditions for being placed in preventive detention at the Psychiatric County Hospital in Nykøbing Sjælland, because their condition is transient and labile. The therapeutic period should be as short as possible, and the inmate should be transferred to, or perhaps forcibly admitted to, an ordinary psychiatric ward as soon as he or she no longer constitutes a danger. When an inmate is subjected to compulsory treatment there will be nurses permanently on duty, and a doctor can be called around the clock.

Patients subjected to compulsory treatment at a psychiatric hospital will be assigned a patient counsellor with certain predetermined tasks. This also applies to inmates being compulsorily treated at the Institution at Herstedvester, and these patient counsellors will have the same tasks as those outside the prison. This applies not only to convicted persons serving a prison sentence, but also to psychotic remand prisoners and other persons in indeterminate custody who already have a counsel or a welfare guardian.

According to the current guidelines, inmates at the Institution at Herstedvester have access to file a complaint with the Patient Board of Complaints (Patientklagenævnet) of the National Board of Health about the medical aspects of the compulsory treatment. At the same time, every case of compulsory treatment must be reported to the Ministry of Justice, which usually submits the case to the Medical Legal Council. This complaint procedure corresponds to that applying before the coming-into-force of Act No. 331 of 24 May 1989 on the deprivation of liberty and other forms of compulsion in

psychiatry (psykiatriloven), which regulates the use of compulsion at psychiatric wards.

Otherwise it should be stated that compulsory treatment of inmates at the Institution at Herstedvester has not taken place since the late 1980s.

Please note that the issue on compulsory treatment of inmates at the Institution at Herstedvester is included in the ongoing work of the Standing Committee on the Criminal Code concerning the drafting of a special bill on the execution of sentences, etc., cf. R.30.

I.14 confirmation that prisoners admitted to the Institution at Herstedvester are now informed in writing of the disclosure of confidential psychiatric information to non-medical staff, either before or immediately upon their arrival at the establishment (paragraph 111);

The Department of Prisons and Probation can confirm that as soon as possible and within a few days at the latest inmates received at the Institution at Herstedvester are interviewed by one of the psychiatrists attached to the institution. During this interview, the inmate is informed both in writing and orally that the ward officers will participate in the treatment and will for that purpose be informed of the entries in both psychiatric and psychological case records. The case record on physical illness, however, is reserved for the health officers.

I.15 whether appropriate counselling is provided before HIV screening of prisoners and if, in the case of a positive result, psychological support is guaranteed (paragraph 112);

See I.16.

I.16 whether there is currently a policy for combatting transmissible diseases (in particular hepatitis, AIDS, tuber-

culosis and skin diseases) in places of detention (paragraph 112);

An inmate wishing to be tested for HIV will be informed by the doctor before the test about what it entails, and the doctor will counsel the inmate according to his or her requirements. Regardless of whether the test turns out to be positive or negative, at the time of learning about the blood test result the inmate in question will be offered relevant counselling and support by the health officers. Inmates who are HIV-positive will be offered psychological and social support corresponding to that offered to other people in the Danish society. Furthermore, the institutions of the Department of Prisons and Probation participate in an interdisciplinary co-operation with the regional HIV and AIDS clinics in Denmark, including the specialist clinics at university hospitals.

Doctors and nurses at the institutions of the Department are aware of the international recommendations offered by the WHO and the Council of Europe, and the Department seeks to live up to these international recommendations with regard to counselling and preventive measures and other aspects.

The general policy for the combat against transmissible diseases at the Department's institutions is identical with the general rules of precaution and combat plans in Denmark, which rest on knowledge about the sources of infection and the susceptibility to infection. The results of HIV screening tests are reported anonymously to Statens Seruminstitut in accordance with the general practice in Denmark. At the institutions of the Department information is offered on transmissible diseases corresponding to that offered to society at large. Information is provided in connection with the regular contact between health officers and the inmates, through a nursing network of "AIDS key persons" and by handing out literature prepared by the National Board of Health.

The Department has employed an AIDS consultant who counsels the Department on general and specific issues in connection with HIV, hepatitis and other diseases. An important part of

the consultant's work consists in providing staff and inmates with the best possible information. Amongst the nurses working at prisons and local jails, a number of AIDS key persons has been appointed who can be called by the institutions all over the country when they are in need of counselling of prison staff.

Already in 1986, the Department set up a special AIDS working group, which was given the task of preparing guidelines and planning information services for both inmates and staff on issues related to HIV and AIDS. Acting upon a working group recommendation, the Department established a one-year nation-wide pilot project, under which since 1 November 1996 the inmates have had free and unlimited access to cleaning syringes and needles with 0.5% hypochlorite. The aim of this is to limit the risk of spreading HIV infection by inmates sharing their works. The project is being closely followed by the AIDS working group, which will assess its effect when it expires, to determine whether to render it permanent.

Otherwise, the preventive work of the Department is carried out in cooperation with the National Board of Health, which is also represented in said working group on AIDS.

I.17 confirmation that the signed consent of patients at the Institution at Herstedvester is now being obtained prior to the commencement of treatment with libido-suppressing drugs, and that such persons are given a detailed explanation (including in writing) of all recognised adverse effects of the drugs concerned (paragraph 114);

The Institution at Herstedvester has informed the Department of Prisons and Probation that the inmates' written consent for treatment with libido-suppressing hormones is always obtained before any such treatment. In connection with the oral information about its effect and any adverse effects the inmate will be given a copy of the description in the Danish Pharmaceutical Catalogue on the preparations used. The andrological consultant of the Institution will go over the text with the inmate, who will then be encouraged to sign a

declaration that he or she has been given the counselling mentioned and agrees to the treatment.

I.18 whether any additional safeguards (e.g. the support of a system of lay/legal "advocates") exist to ensure that the consent given by prisoners to medical treatment is truly free and informed (paragraph 115);

According to the Institution at Herstedvester, they are very much aware of this at all times. Furthermore, prisoners sentenced to indeterminate custody will be given the opportunity to consult a welfare guardian appointed by the Court.

I.19 whether the clinical value of using libido-suppressing drugs is currently subject to regular evaluation by an appropriate, external medical authority (paragraph 116);

On 1 May 1997, an amendment to the Danish Criminal Code came into force, one aim of which is to intensify efforts directed at sexual offenders. In this connection it is presumed that a scheme will be established according to which the Medical Legal Council will be heard before treatment of an inmate with libido-suppressing medicine is initiated at the Institution at Herstedvester.

Since this Act came into force there have been no instances when it was considered whether to initiate such treatment. No special procedures have been implemented for submitting such cases, but should the occasion arise, the Institution at Herstedvester would submit any concrete cases to the Medical Legal Council, as provided in the Act.

During the current administrative implementation of the above Act the Department of Prisons and Probation will consider how the treatment can be followed up on a continuous basis. In this connection it should be noted that it is a prerequisite that the Department continues to follow the libido-suppressing treatment and is alert to any long-term effects of the medicinal products used during treatment.

At the time when the Act was passed, funds were earmarked for research and investigation into sexual crime.

5. Other issues related to the CPT's mandate

recommendations

R.30 a high priority to be given to the adoption of measures designed to enhance the independence of the complaints procedures to which prisoners have access (paragraph 126);

Also under the current regulations it is possible to complain to the Ombudsman of the Danish Folketing. Final administrative decisions can also be brought before the courts pursuant to section 63 of the Constitution which provides that the courts may decide any question on the delimitations of the competence of public authorities.

Furthermore, the Standing Committee on the Criminal Code is drafting a special bill on the execution of sentences, etc. This bill is based on Report No. 1181/1989 on legislation on the execution of sentences, etc., from a working group under the Standing Committee on the Criminal Code. This report has previously been sent to the CPT.

The report proposes, among other matters, an extended access to trying before a court certain radical decisions made as part of the execution of a sentence. The issue on the formulation of an extended access to complaint in this area, also in the form of extended access to try such a case before a court, is therefore also included in the considerations of the Standing Committee on the Criminal Code which are expected to be concluded this year.

comments

C.10 there is a need for a degree of flexibility in applying the rules on visits to prisoners whose families live some considerable distance away (for example, by allowing them

to accumulate their visiting entitlement) (paragraph 118);

See C.11.

C.11 granting extended unsupervised visits to enable prisoners to maintain family and personal (including sexual) relations is a constructive measure, provided such visits take place under conditions which respect human dignity (paragraph 118);

The object of the regulations on the right of inmates to receive visitors is to ensure that the inmates can maintain and enhance their connections with the outside world. The current regulations in this area are based on humane considerations and on the fact that the chances that inmates may lead a crime-free life after their release are closely connected with good personal and social relations. According to the regulations the inmates are entitled to one weekly visit. The visiting period must not be less that 30 minutes and, when circumstances permit, it should be at least one hour. The inmates' requests for visits should be granted to the extent possible.

Esbjerg Local Jail has stated that it allows visitors living one hour's travel away from the jail to extend their visit from one hour to two or three hours. This procedure has always been in force at the jail, and it therefore fails to understand some of the complaints that have been brought before the Committee by some inmates.

The Department of Prisons and Probation agrees that the possibility of receiving visitors is highly important to the inmates. Moreover, it finds that both prisons and local jails are very obliging to the inmates' requests for visit schemes to the extent that this is possible while safeguarding order and security. In view of this the Department can see no reason for further measures to ensure more flexibility in the planning of visit schemes.

C.12 the Danish authorities are invited to take steps to ensure that the written information provided to prisoners on reception at Esbjerg Local Jail is made available in a wider range of the languages most commonly spoken by prisoners (paragraph 124);

At the instigation of a delegation during the last visit by CPT in 1991, the Department of Prisons and Probation has prepared information folders in 13 different languages: Arabic, English, Farsi, Finnish, French, German, Greenlandic, Italian, Russian, Serbo-Croatian, Spanish, Turkish, and Urdu.

Esbjerg Local Jail has stated that it possesses this material in all languages. There must therefore be some misunderstanding, if the CPT is suffering from the impression that the reception material is available in Danish and English only.

C.13 the steps taken by the Danish authorities to improve the situation of Greenlandic prisoners held at the Herstedvester Institution are to be welcomed; however, there can be no doubt that the present system has a number of undesirable effects which could be avoided if such prisoners were able to serve their sentences in Greenland (paragraph 132);

The Department of Prisons and Probation can inform the CPT that a number of the improvements carried out at the Institution at Herstedvester are due to a recommendation by the Commission on Greenland's Judicial System[*] in September 1995. It appears from this recommendation that the Commission has considered whether it would be possible beforehand, i.e., before the Commission's final report, to make a proposal for the establishment of a closed prison in Greenland for housing the prisoners who today are serving their sentences at the Institution at Herstedvester. However, the Commission has decided *not* to make such a proposal beforehand, the main reason being that they wish to assess the placing of the current Herstedvester clientele in connection with the

*: Translator's comment: sometimes erroneously referred to as the Greenlandic Legal System Commission.

elaboration of the total prison system in Greenland and in connection with the development of the Greenlandic psychiatric system.

Instead, the Commission has recommended the Ministry of Justice that it improves conditions for the Greenlandic inmates in the way that has since been implemented, until Greenlanders need no longer serve their sentences in Denmark. In this connection, - in accordance with the recommendation of the Commission - as provided in the Act No. 476 of 12 June 1996, the Ministry of Justice has also introduced access to administrative stationing in Greenland of inmates at the Institution at Herstedvester. In this way it has been made possible slightly before the scheduled time to transfer inmates to a prison in Greenland.

The Commission on Greenland's Judicial System expects to conclude its work within one or two years.

requests for information

I.20 the comments of the Danish authorities on the issue raised in paragraph 119 (paragraph 119);

The CPT has requested information on police practices in connection with interpreter services during visits from family and relatives of prisoners in solitary confinement who do not speak Danish.

The Ministry of Justice has asked the Director of Public Prosecutions for his comments and will revert to this issue in Denmark's final report to the CPT.

I.21 the legislative progress being made in respect of the enhancement of the independence of complaints procedures to which prisoners have access (paragraph 126);

See R.30.

I.22 copies of the Ombudsman's reports on his visits to prisons (paragraph 127);

Since its visit, the CPT has received copies of the inspection reports on the Ombudsman's visits to the Institution at Herstedvester, Ringe State Prison and Copenhagen Prisons. Until 1 January 1997, the Ombudsman of the Folketing usually made an inspection at one of the institutions under the Department for Prisons and Probation once a year. In view of the Ombudsman's increased scope of inspection from 1 January 1997, the number of inspections should increase considerably in future. Copies of the Ombudsman's inspection reports will be send to the CPT on a regular basis.

I.23 copies of future reports produced by the Internal Inspection of the Department of Prisons and Probation (paragraph 128);

Since its visit, the CPT has received copies of the Internal Inspection's reports on visits to the local jails in Vejle, Randers, Esbjerg, Århus, Kolding and Køge. Copies of the Internal Inspection's reports will be sent to the CPT on a regular basis.

I.24 the comments of the Danish authorities on the drug abuse issues to which reference is made in paragraph 130 (paragraph 130);

In view of the very considerable number of drug addicts imprisoned in the institutions of the Department of Prisons and Probation, the Department has taken a number of initiatives in recent years. Some of these initiatives are based on an action plan submitted by the Minister of Justice in June 1995 with a view to taking various initiatives within the scope of the Department.

Accordingly, two drug-free units have been established which can receive both inmates who are drug addicts, but wish to stop their abuse, and inmates who are not drug addicts and wish to serve their sentences in a drug-free environment. At

the time of their transfer they commit themselves to remaining drug-free for the duration of their stay.

Furthermore, two actual contract prison wards have been established where inmates addicted to drugs commit themselves by contract to remaining drug-free, to participate in the therapeutic programme, as well as to participate actively in the daily activities of the ward. As part of their contract there will be certain advantages to gain from serving in these wards, for instance improved access to leave of absence, etc. Later in 1997 another two contract prison wards will be established accommodating a total of 30 inmates.

In addition, a three-year experiment has been initiated with treatment of drug addicts in the prisons. An established treatment institution outside the Department gets access to treat inmates in a closed prison in cooperation with the prison officers. The treatment institution works according to the so-called "Minnesota Model".

The Department attaches great importance to ensuring that staff who are to work with drug-addicted inmates are duly trained so that they are in a position to participate actively in this work during the daily activities, both in ordinary wards and in the special units for drug addicts. Thus, the basic training programme for prison officers includes a thematic week on drug abuse and drug addicts. Teachers are either specialist staff from the Department's own institutions or external experts. In addition to this thematic week during the basic training programme, a five-day residential course has been held for several years for staff who have already received their basic training and who show a special interest in this field.

I.25 the progress being made by the Commission on Greenlandic Judicial System, together with information on any other developments in the area of treatment of Greenlanders (paragraph 132);

See C.13.