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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1990

Addendum

DENMARK*

[7 April 1995]

CONTENTS

* For the second periodic report submitted by the Government of Denmark, see CCPR/C/37/Add.5; for its consideration by the Committee, see CCPR/C/SR.778 to 781 and the Official Records of the General Assembly, forty-third session, Supplement No. 40 (A/43/40), paras. 145-199.

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* Available for consultation in the files of the Centre for Human Rights.

I. GENERAL OBSERVATIONS

1. This is the third report submitted by Denmark in pursuance of article 40 of the International Covenant on Civil and Political Rights. The report deals with the changes in legislation and legal usage, etc. relating to the individual material provisions that have occurred since the Danish Government submitted its second report to the Committee. The date of commencement has been set at 1 October 1987.

2. To the extent that no changes have occurred in legislation and legal usage since Denmark submitted its first and second reports (CCPR/C/1/Add.4, Add.19 and Add.51, and CCPR/C/37/Add.5), the comments to the individual provisions in the Covenant refer to the previously submitted reports.

3. It should be mentioned that the questions raised at the examination of Denmark's second report, and which were not exhaustively dealt with at the time, have been incorporated below under the comments to the individual provisions.

4. Reference is also made to the general social description in the core document concerning Denmark, which is under preparation and will soon be forwarded to the United Nations.

II. INFORMATION RELATING TO SPECIFIC PROVISIONS OF THE COVENANT

Article 1

5. Since the introduction of Home Rule in Greenland on 1 May 1979 the Home Rule authorities have gradually assumed the legislative and administrative authority of local matters according to the Home Rule Act.

6. Since the second periodic report of the Government of Denmark the following important areas have been transferred to Home Rule:

(a) As per 1 January 1987: housing and technical organization of Greenland;

(b) As per 1 January 1989: protection of the environment;

(c) As per 1 January 1992: health service.

By these last transfers to the Home Rule authority the schedule to the Home Rule Act of areas to be transferred is completed. A detailed survey of matters transferred to the Greenland Home Rule authorities is attached as annex I.

7. From 1987 the Greenland legislative assembly (Landsting) has 27 members and as of 1 November 1988, the Landsting elects from among its members the Chairman of the Landsting for the election period of four years, while previously the head of the Home Rule government (Landsstyre) was also the chairman of the Landsting.

8. Home Rule in Greenland is not based on an ethnic criterion. The population in Greenland is statistically registered as born in Greenland or born outside Greenland. As per 1 January 1994, out of the total population 48,029 persons were born in Greenland and 7,390 persons were born outside Greenland. The population born in Greenland is the approximate size of the indigenous population. Franchise and eligibility are extended to any person who holds Danish citizenship, has attained the age of 18 years, and has been a resident of Greenland for a period of not less than 6 months prior to an election.

Article 2

9. The principle of non-discrimination, which is contained in the first paragraph of article 2 of the Covenant, has been implemented in Denmark, inter alia, by section 266 b of the Penal Code, according to which any person who, publicly or with the intent of propagating them to a wider circle, makes statements or any other communication by which a group of persons is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years. Also, Act No. 289 of 1971 has been passed on prohibition of discrimination on account of race. Pursuant to section 1 of the Act a person is punishable who while performing occupational or non-profit activities refuses to serve a person on the same conditions as others, due to the person's race, colour, national or ethnic origin, creed or sexual orientation. The maximum penalty is fines or simple detention or imprisonment for up to six months. In the same manner a person is punishable who for any of the above reasons refuses to admit a person on the same conditions as others to a place, performance, exhibition, gathering, or similar, which is open to the public.

10. In the tenth, eleventh and twelfth periodic reports of Denmark to the United Nations on racial discrimination, Denmark has explained how these provisions have been construed and applied by the courts. Reference is therefore made to the general review of this in the report concerning article 4 - Judicial measures. It must be noted that by Act No. 357 of 1987, the protection under the Act was extended to comprise also discrimination caused by a person's sexual orientation in addition to race, etc. By the same amendment a similar extension was made of section 266 b of the Penal Code. By way of illustration of the application of the Act on discrimination due to race, etc., reference is made to a sentence of 22 January 1991 by the Eastern High Court, according to which a municipality was found unwarranted in considering the nationality of tenants when approving these for tenancy in non-profit housing associations.

11. By Act No. 466 of 30 June 1993 on the Racial Equality Board, a commission for ethnic equality was set up for the purpose of ensuring that questions of ethnic equality are involved in as many aspects of social life as possible, and that discrimination which may be exercised between persons of Danish origin and other persons is made visible and is opposed. Under section 2 of the Act, it is incumbent on the Racial Equality Board to combat discrimination of any aspect, and to assist in giving all ethnic groups in society the possibility of exercising their activities on an equal basis, regardless of differences in background. On its own accord or upon request, the Board can

investigate matters comprised in the object of the Act. The Board advises the Folketing, the Government, local and central authorities, local decision makers, organizations and institutions, as well as other parts of society that may contribute to rendering ethnic discrimination visible and to oppose it.

12. Therefore, the main object of the Board is the promotion of equality between people, regardless of their ethnic background. Ethnic equality comprises both judicial, behavioural and cultural conditions as well as the specific efforts made by many different groups in society. The judicial field of contribution comprises an evaluation of whether or not it will be necessary to amend existing or future legislation for the purpose of promoting ethnic equality. The cultural field of contribution comprises questions concerning values, standards and religious affiliation, including the methods of ensuring cultural equality and the possibility of maintaining cultural diversity.

13. The question of identifying initiatives that may be taken for the purpose of reducing tension between Danes and ethnic minorities, both in social life in general and with authorities, employers, etc., falls within the Board's task in the attitude-related field of contribution.

14. Finally, the promotion of ethnic equality comprises initiatives providing ethnic minorities real possibilities of acting on equal terms with persons of Danish origin in social life. This applies to the contribution made by all citizens as well as the contribution that is aimed in particular towards ethnic minorities for the purpose of ensuring real equality in society. In this connection the Board itself is allowed to start initiatives, both by requesting information and documentation, and by taking an active part in, for example, attitude creating activities.

15. The Board may secure the required basis for advising through information retrieval, but the Board members must also be prepared to assist with information and to act as a link to institutions and others. Also, the Board may hold regular contact meetings with various parties, such as decision makers, authorities, trade organizations, and non-governmental groups. Therefore, the Board can take an active part in the work to promote ethnic equality, for example through general information and fact-finding activities. The consultancy of the Board may also consist in submitting recommendations on circumstances which have not necessarily been expressly requested.

16. As far as Denmark is concerned, the provision in the second paragraph of article 2 of the Covenant is complied with by Danish law partly by establishing a harmony of standards, i.e. establishing that Danish law is in agreement with the requirements of the Covenant and partly, in relation to a few provisions, by rewording, i.e. that Danish law has been amended to make it conform to the Covenant. In that connection it should be noted that by Act No. 285 of 29 April 1992 on the European Convention on Human Rights, Denmark has incorporated the European Convention on Human Rights (ECHR) in Danish law, so that with the first eight supplementary protocols, ECHR is made part of Danish legislation with the status of an act. In effect, the Incorporation Act constituted only a formalization of the legal status existing already before the incorporation. Already before the Act, Danish courts and judiciary authorities were therefore bound to apply the material human rights provisions in the interpretation and application of the Danish

provisions. The reason for Denmark's choice of incorporating ECHR was the need to render Denmark's obligations under international law visible in a field of interest that is important to people. It was therefore the wish to ensure effective information about the human rights rules that made Denmark choose to incorporate the European Convention on Human Rights. In that connection it should be noted that in a steadily increasing number of cases the ECHR is invoked and applied by the Danish courts.

17. The International Covenant on Civil and Political Rights is essentially a part of the European Convention on Human Rights, and beyond doubt there has been increasing awareness of the human rights rules of international law in the Danish courts and judiciary authorities.

18. In 1987 the Folketing decided to establish the Danish Centre for Human Rights. It is an important aspect in the work of the Centre for Human Rights to build a computer-based documentation centre for human rights in general, intended to be incorporated in the extensive human rights documentation network being constructed under the aegis of the Council of Europe (the so-called Human Rights Documentation System, HURIDOCS). The Human Rights Centre also works closely with the other Scandinavian human rights centres, so that in effect it is a regional contribution to the European network.

19. In addition, the Human Rights Centre is in charge of cross-disciplinary research in human rights and communication of knowledge of human rights to wide parts of the population, and it assumes fact-finding work for public authorities, organizations, etc. Finally, the Human Rights Centre is charged with answering inquiries about human rights from journalists, lawyers, and other interested parties. As examples of professionally delimited tasks for the Human Rights Centre the following can be mentioned: human rights and assistance to developing countries, formulation of new human rights as a response to technological development, preparation of reports for fact-finding missions in connection with international control of compliance with human rights obligations, and preparation of a proposal for making human rights protection more effective, for example in the member States of the Council of Europe.

20. Finally, the Ministry of Justice has taken the initiative in the autumn of 1994 of publishing a new periodical on EU law and human rights, in which, among other things, all rulings by the European Court of Human Rights in Strasbourg are summarized. This ensures a wider knowledge of the interpretation and application of human rights provisions in the Danish courts, with prosecutors, with lawyers, and others.

21. At the examination of Denmark's second report the question was raised of whether the International Covenant on Civil and Political Rights had been translated into Greenlandic. The answer is that no such translation has been made.

Article 3

22. Since the second Danish report was submitted, initiatives have been launched with regard to equal status for women and men in a number of fields. Several changes have been made in the equal status legislation.

23. On 21 April 1983 Denmark ratified the United Nations Convention on the Elimination of All Forms of Discrimination against Women. The ratification presupposes that neither legislative nor de facto sex discrimination exists in Denmark. For a more comprehensive reading of the Danish equality situation see the third report by the Government for the Committee on the Elimination of Discrimination against Women of May 1993.

24. The Danish legislation has only in a general way been inspired by the Covenant, the ratification of which has not per se been of special significance in connection with the introduction in Denmark of equality between men and women.

25. The ESC (Equal Status Council), which was established in 1975, is still the central body in the field. Act No. 238 of 20 April 1988 on Equality between Men and Women (Equal Status Act), as amended by Act No. 374 of 20 May 1992, explicitly states that its aim is to further equality between the sexes in the society. The Act provides the legal basis of the Equal Status Council. It makes it incumbent upon all public authorities, be it at State, county or local community level, to work towards equality. They may in this connection take special measures to create equal opportunities for men and women. The Act empowers the ESC to examine all matters regarding the purpose of the Act, either on its own initiative or upon request.

26. The definition of equal treatment of men and women is found in section 1 of the Equal Opportunities Act providing for equal access of men and women to employment, parental leave, etc., as amended in 1994 (see Consolidation Act No. 875 of 11 October 1994). It protects both men and women against discrimination in relation to employment, parental leave and other important matters of the labour market.

27. The Act on Equal Pay to Men and Women, as amended in 1992 (see Consolidation Act No. 639 of 17 July 1992), states that any employer who employs men and women shall grant them equal remuneration, including equal pay for the same work or for work of equal value.

28. The Act on Equality of Men and Women in Appointing Members of Public Committees, etc. No. 157 of 24 April 1985 prescribes that public councils, committees, etc. which are set up by a minister to prepare legislation or other rules or for planning of importance to the society shall have, to the widest possible extent, a balanced representation of men and women.

29. The Act on equal opportunities between men and women in certain executive board positions in the public administration, No. 427 of 13 June 1990, prescribes that all authorities in the civil service directed by boards, councils or other collective management bodies should have a balanced composition of men and women.

Article 4

30. As mentioned in the previous reports the Danish Constitution contains no general rules on jus necessitatis. Section 23 of the Constitution does contain a rule on provisional acts in extremely urgent cases, where the Folketing cannot be convened. Such acts, however, must under no circumstances

be at variance with the Constitution and the freedom rights mentioned therein. There are no rules, nor have any rules been contemplated on jus necessitatis, which, incidentally, cannot be regarded as very likely to occur in the Danish society.

Article 5

31. No changes have occurred compared with prior reports.

Article 6

32. On 13 February 1991 Denmark signed the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. For the purpose of allowing Denmark to ratify the Second Optional Protocol, the legal authority for capital punishment for certain, aggravated crimes committed during the occupation of Denmark in the Second World War was abolished. This occurred by Act No. 1097 of 22 December 1993. Henceforth, there is not even any theoretical authority for capital punishment in Denmark. Denmark ratified the Second Optional Protocol on 24 February 1994 (in force on 24 May 1994).

33. Denmark's attitude to capital punishment is also evident in connection with extradition of a criminal for prosecution in another country which, according to the Extradition Act of 1967, can take place only on the condition that capital punishment cannot be executed for the act in question.

34. By way of supplement it can be stated that Danish law does not consider abortion to be manslaughter. Pursuant to the Act on Induced Abortion it is a woman's right to have her pregnancy interrupted before the end of the twelfth week of her pregnancy. After that time a woman can be granted permission to have her pregnancy interrupted if there are special circumstances in connection with her health, if the pregnancy is a result of incest or rape, or there are other, very special causes. An induced abortion must be performed only by physicians at public hospitals. Hospital personnel may ask to be excused from participating in induced abortions for ethical or religious reasons. In connection with a request for induced abortion the woman must be informed about the nature of the measure. The number of legal abortions amounted to 18,833 in 1992 (in 1975 the figure was 27,884).

Article 7

35. On 27 May 1987 Denmark ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Denmark ratified the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 2 May 1989. The practical compliance with these conventions is guaranteed by provisions in the Danish Penal Code and Administration of Justice Act.

36. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment paid Denmark a routine visit in December 1990. In its report made in July 1991, the Committee states that it found no evidence of torture in the Danish prisons visited. On the contrary, in many ways the Committee received a positive impression of the Danish

prisons, for example as regards the possibilities for visiting, the cleanliness in the institutions, the possibilities for education, the library system, and the spokesman system. The Committee made a number of recommendations and comments, which the Danish authorities have largely complied with. A few points are still under discussion in the running dialogue that is assumed to go on between the Committee and the member States.

37. Since Denmark submitted its last report to the Human Rights Committee, questions have been raised in a few cases about whether arrests made by the police and their treatment of prisoners have been of a nature which can be described as torture or other inhuman treatment. In that connection a case from 1990 may be mentioned about the treatment by the authorities of a Tanzanian and a Gambian citizen, respectively. A court of inquiry was subsequently instituted in the case. The purpose was, among other things, to make it clear whether anyone in the police or the Prison Service must be assumed to have committed errors or omissions which might give the authority in question cause for holding someone legally responsible. After a very thorough investigation, comprising for example the examination of 77 witnesses, the head of the court of inquiry, who was an independent judge, declared that the case did not involve cruel, inhuman or degrading treatment. However, the judge criticized a number of aspects involving both the manner in which the police had acted in the case and the treatment of the two aliens by the Prison Service. Disciplinary measures were subsequently taken against several of the persons involved. As a follow-up of the inquiry a number of initiatives were implemented, including further instruction of the personnel, and the circular on the use of force was issued.

38. Regarding the second clause of article 7 of the Covenant, it can be stated that the previously collegially sanctioned duty of notification of biomedical research projects was superseded by a legally binding duty of notification of projects by Act No. 503 of 24 June 1992 on a scientific ethical committee system and treatment of biomedical research projects with effect from 1 October 1992. Failure to observe the duty of notification is punishable with a fine or mitigated imprisonment. The projects must not be implemented before they have been evaluated from a scientific ethical point of view, and permission to implement has been given by the regional scientific ethical committee. If the committee should find that the project gives rise to questions of principle, the project must be put before a central committee.

39. The Act contains rules on establishing a scientific ethical committee system, statutory registration with this committee system of biomedical research projects, the general principles on which the statutory committee system must base its evaluation of registered projects and other tasks of the committee system, as well as special rules on experiments with fertilized human ova and gametes intended for fertilization, and a prohibition against donation of fertilized human ova and certain experiments. Pursuant to the Act, Order No. 392 of 17 May 1994 has been issued on the freezing and donation of human ova.

40. Pursuant to section 8 of the Act, it is incumbent on the committee to ensure that patients and healthy individuals participating in the project will be informed verbally and in writing about its contents, its foreseeable risks and advantages; that their free and explicit consent will be obtained and

given in writing; and that it appears clearly from the information material that at any time patients and healthy individuals participating in the project can withdraw their consent. Experiments on groups of patients unable to give their consent, such as minors, persons under guardianship and unconscious persons, must not be carried out if they can equally well be carried out on adult, competent persons. In such cases the consent must be given by the next of kin or guardian. Regarding the requirement to consent and information, the National Health Service has issued a circular of 22 September 1992 on information, consent, etc.: "Physicians' duty and patients' rights".

41. Biomedical research comprises the exploration of somatic as well as psychiatric and clinico-psychological complaints. It is possible to imagine cases where it is difficult to establish whether it is a case of clinical research or treatment. However, in treatment and experimental treatment there is a similar duty to inform and obtain consent (cf. the above-mentioned circular).

42. Incidentally, section 23 of Act No. 331 of 24 May 1989 on Confinement and other Coercive Measures in Psychiatry contains an explicit prohibition against experimental treatment of persons who have been confined under the Act (i.e. mentally deranged persons or persons in a state directly comparable to this, and who have been committed to a psychiatric hospital or otherwise detained). Neither may experimental treatment of voluntary patients take place by force. The Act is dealt with below under article 9, to which reference is made.

43. Under Act No. 353 of 3 June 1987 an Ethical Council was established. The latest amendment of the Act is Act No. 503 of 24 June 1992. The competence of the Ethical Council under the Act is partly to undertake fact-finding tasks, partly to submit recommendations relating to (i) genetic treatment (gene therapy) of human gametes used for fertilization and of fertilized human ova, embryos and foetuses; (ii) the application of new diagnostic technology for the purpose of tracing congenital defects and diseases in fertilized human ova, embryos and foetuses; and (iii) freezing of human gametes intended for fertilization and of fertilized human ova. The Ethical Council may also deal with ethical questions in connection with existing, new or extended use of technology and methods of treatment. It is assumed, however, that the Council can only deal with ethical questions of substantial importance. In October 1989 the Ethical Council submitted a report on "Protection of human gametes, fertilized ova, embryos and foetuses". The Council may take up questions on its own initiative. The Council consists of 17 members, and has a wide membership of laymen and professionals (such as physicians, jurists and philosophers).

Article 8

44. Especially regarding the third paragraph of article 8 of the Covenant on detention with forced or compulsory labour, it should be noted that pursuant to section 35 of the Penal Code sentenced persons must carry out the work they are directed to do, according to rules laid down by the Minister of Justice. The compulsory labour may consist of participating in education or working in production or on daily operations or maintenance. It is also possible under

the supervision of the institution to work with self-procured employment, and in the last part of the confinement to participate in employment or education outside the premises of the institution. The inmates are paid wages for employment as well as for education, and they receive a subsistence allowance when they are ill. Prisoners remanded in custody cannot be forced to work, but they do have that possibility.

45. Denmark has introduced community service and a provisional arrangement with youth contracts as an alternative to custodial sentences. The background for this is the wish on one hand to have a more tangible reaction on the part of the justice system than an ordinary suspended sentence, and on the other hand to introduce a few more options before an unconditional custodial sentence becomes necessary. The provisional arrangement with youth contracts has now expired, but it is now being considered whether to introduce it on a permanent basis.

46. A youth contract is an agreement between a youth under 18 and his/her parents, on the one hand, and the social services and the police, on the other, implementing an educational or other treatment plan, possibly performance of some useful piece of work, in return for omitting entry of the youth in the Criminal Register. The Youth Contract System therefore relates only to persons between 15 and 17 years of age. The social measures on which the youth contract system is based cannot apply to persons above 18. The main idea has been to confront the young person with measures of greater consequence and gravity than mere withdrawal of charges or a conditional sentence, and at the same to spare the young person the negative effects connected with a custodial penalty; the youth contract is primarily intended to replace withdrawal of charges or a conditional sentence.

47. In contrast, community service, which was introduced by Act No. 6 of 1992, replaces an unconditional custodial sentence. The rules for community service are contained in sections 62-67 of the Penal Code. As a condition of deferment of a custodial sentence in the form of community service the court must decide that the sentenced person must carry out unpaid community service for not less than 40 and not more than 240 hours. In addition, a maximum or discharge period is to be fixed within which the obligation to work must be fulfilled. No guidelines have been laid down for fixing the number of hours, but it is presumed as a matter of course that as a general rule there is a certain relationship between the duration of the custodial sentence that would otherwise have been given and the number of working hours. The maximum duration is meted out in proportion to the number of working hours.

48. Community service is not aimed directly at young criminals, but there is no doubt that both community service and the youth contract system have contributed towards postponing the use of unconditional custodial sentences, and in that sense both can be said to have satisfied the terms of alternatives to custodial sentences. Both forms of measure are sanctions which are considered both by the criminals themselves and by those around them as radical and tangible sanctions against unwanted behaviour. Also, the sanctions are felt by the criminals themselves to be much more reasonable and suitable reactions than an unconditional custodial sentence.

49. The Penal Code does not make it a condition of sentencing to community service that the accused must consent. However, section 62 (1) of the Penal Code stipulates that the court must assess whether or not the accused is at all suited for receiving a conditional sentence that is conditional on community service. The question of compulsory labour in the form of community service must evidently be seen in the light of the provision in article 8 of the Covenant, which contains an unconditional prohibition against carrying out forced or other compulsory work. From paragraph 3 (b) of the same article it appears that in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the prohibition against forced or compulsory labour in the Covenant shall be no hindrance to anyone being made to carry out hard labour pursuant to a sentence to such punishment by a competent court of justice. Also important in this connection are the provisions of the ILO Convention on forced or compulsory labour, which contain a similar prohibition against labour under threat of punishment. Another exception from this prohibition, however, is among other things labour carried out for and under the inspection and control of public authorities (cf. art. 2 of the ILO Convention). In cases where community service replaces a sentence of unconditional confinement, the Covenant is not seen by the Danish Government as a hindrance to sentencing the person to a legal consequence of much lesser importance. If it is a matter of community service as an alternative to a suspended sentence, the community service must be seen as a help to the sentenced person to stabilize his social situation. The Covenant cannot be assumed to be a hindrance to this, either.

50. Even though the consent of the accused is not required for carrying out community service, acceptance by the accused is usually a decisive condition for sentencing to community service, because the sentence cannot otherwise be executed in practice. It must be added to this that in connection with a personal investigation the accused will be allowed to express an opinion on a possible sentence to community service and that, as stated above, when evaluating the aptitude of the accused, the court also determines the attitude of the accused to carrying out the unpaid work.

Article 9

51. By Act No. 386 of 1987, section 762 (2) of the Administration of Justice Act was extended so that it became possible to remand an accused person in custody when there is a strong suspicion that he has committed an offence under sections 119 (1), 244-246, 250 or 252 of the Danish Penal Code, if, in consideration of information on the aggravated nature of the offence, the offence can be expected to involve an unconditional sentence of imprisonment for at least 60 days and law enforcement reasons are deemed to require that the accused is not at large (cf. sect. 762 (ii) of the Administration of Justice Act (the so-called enforcement of law custody)).

52. The provision is applicable only if the charge concerns a violation of the specifically listed offences. Thus, the provision is not applicable, for example, to large-scale malicious damage or violation of section 241 of the Penal Code (involuntary manslaughter). The intention is that it should be applied to the most aggravated cases of the so-called meaningless street violence (i.e. violence against unoffending persons) and in aggravated

cases of assault on groups of persons who by the nature of their work are particularly exposed to assault (such as taxi-drivers or policemen). It may also be used in cases where weapons have been used or considerable damage has been inflicted, and for certain repeated offences. Finally, the provision may be applied to aggravated cases of violation of section 252 of the Penal Code on recklessly exposing another person to danger.

53. Regarding the Covenant's provision in article 9 (2) on requirements in connection with arrest, it should be noted that the provision has been introduced in Danish law by section 758 of the Administration of Justice Act. The provision was mentioned in Denmark's second report, and has subsequently been more precisely formulated in Act No. 332 of 1989. After the amendment, the provision reads as follows:

> "Section 758 (1) - The arrest must be made as gently as circumstances allow. While observing the provisions in section 792 e the police may inspect and examine the arrested person's body and clothing for the purpose of depriving the person of objects that may be used for violence or escape, or which may otherwise entail danger to the arrested person or others. The police may take into custody such effects as well as money found on the arrested person. During the detention the person in question is not subject to other limitations of his freedom than those required by the purpose of the arrest and by considerations to order.
>
> (2) - As soon as possible the police must inform the arrested person of the charge and the time of the arrest. The report must show that this rule has been observed."

54. The amendment of the Act specified in the fourth clause of subsection 1 that the provision does not go further than the considerations of security and order require - balanced against the requirement of gentleness. In connection with the security examination of the arrested person, physical examination of the person may be carried out if the relevant conditions in chapter 72 of the Administration of Justice Act are fulfilled. The provision is taken to mean that normally the arrested person must be allowed to inform family, employer, attorney or others, possibly through a police officer.

55. By Act No. 331 of 24 May 1989 on Deprivation of Liberty and other Restraints in Psychiatry, the so-called Psychiatry Act was passed. The Act came into force on 1 October 1989, whereby the old Act on Mental Illness of 1938 was revoked. In relation to the Act, seven executive orders and a new circular were promulgated. This constitutes quite a detailed regulation of the small - but important from a point of judicial security - part of psychiatry relating to the question of restraint.

56. The central field for the new Act is a regulation of the facility in certain cases for using restraint in connection with psychiatric treatment. Essentially, the provisions of the Act may be divided into three main groups. One main group consists of rules specifying the conditions of detention and application of other forms of restraint in psychiatry and the procedures involved. The relevant rules are found particularly in parts 3-5 and 11 of the Act. Another main group is a set of legal guarantees of control and trial

of the restraint applied. Part 10 of the Act on trial by the courts and access to appeal is central as are the rules in section 20 of the Act on registration and reporting of restraint. A third main group is the rules in the Act aiming at reducing or, if possible, preventing the use of restraint. Examples of this are the rules on informed consent and treatment plans in section 3 and on patients' councils and patients' meetings in section 30, also aimed at drawing the patients actively into the treatment. Also, the rules on hospital standards in section 2, the principle of the least serious measure in section 4, regular watching in section 16, and mandatory subsequent trial under section 21, aim at preventing and reducing the use of restraint.

57. Important innovations in the new Act worth mentioning are that it introduces a patients' counselling system, according to which the patient is entitled to access to a personal counsellor, the local complaints board system, and the rules on registration and reporting of restraint. Similarly to a large number of other rules in the Act, the primary aim of these innovations was to improve the legal status of psychiatric patients subjected to restraint. However, this strengthening of participation and insight of third parties into psychiatry has also aimed at creating more openness in psychiatry, so that there may be a dialogue not only between patients, relations, physicians and other personnel participating in the treatment and care of the patients, but also with the surrounding society, also with a view to the political decision-making process. Such openness is deemed to be an important condition of continued development of the psychiatric hospital service to the benefit of all parties, not least for the weak and exposed group of citizens represented by the psychiatric patients.

58. The most essential provisions in part 3 of the Act on deprivation of liberty read as follows:

> "Deprivation of liberty
>
> Section 5. Commitment to a psychiatric hospital, cf. sections 6-9, or forcible detention in a psychiatric hospital, cf. section 10, is only allowed if the patient is mentally ill or in a state which is quite equivalent, and it will be unjustifiable not to detain the person for the purpose of treatment, because:
>
> (i) the expectations of restoration to health or of a material and decisive improvement of the state will otherwise be materially worse, or
>
> (ii) the person presents an immediate and considerable hazard to himself and others.
>
> Commitment to a psychiatric hospital
>
> Section 6. - (1) If a person who must be assumed to be mentally ill does not personally seek the required treatment, it is incumbent on the next of kin to call a physician. If they fail to do so, it is incumbent on the police to do it.

(2) On the basis of his examination and information received the physician considers whether commitment to a psychiatric ward is required. If the patient should oppose such a commitment, the physician decides if commitment is required.

(3) Commitment to a psychiatric hospital must be made if the conditions in section 5 are fulfilled. The physician will write a statement to that effect, cf. section 7 (2).

Section 7. - (1) The police decides about the implementation of the commitment to the psychiatric hospital and offers its assistance.

(2) Commitment to a psychiatric hospital must be made only on the basis of a physician's certificate based on the physician's own examination, made for the purpose of the commitment. The certificate must not be issued by a physician who is employed at the psychiatric hospital or the psychiatric ward to which the patient is to be committed. Further, the certificate must not be issued by a disqualified physician. Disqualification is defined as in section 3 of the Administration Act.

(3) In the case of commitment under section 5 (ii) the physician's examination must be made within the previous 24 hours, and in the case of commitment under section 5 (i), within the previous seven days before the commitment.

Section 8. If at all possible, the committing physician must be present until the police leaves the place together with the person to be committed. In the case of commitment under section 5 (i) the police informs the physician of the time of committing the patient.

Section 9. - (1) If commitment to a hospital takes place under section 5 (ii), the patient must be admitted immediately. If commitment to a hospital takes place under section 5 (i), the patient must be admitted as soon as possible before the time-limit of seven days mentioned in section 7 (3).

(2) The consultant physician decides whether or not the conditions of commitment are fulfilled.

(3) The Minister of Justice lays down the detailed rules concerning the procedure for committing patients to hospitals, including the assistance of the police to this.

Forcible detention

Section 10. - (1) Forcible detention of a person who has been committed to a psychiatric ward must be made if the consultant physician deems that the conditions in section 5 are fulfilled.

(2) If a patient who has been committed to a psychiatric ward is to be transferred to a closed psychiatric ward and resists the transfer, the rules on forcible detention apply.

(3) If a request of discharge is made, the consultant physician must inform the patient as soon as possible and at the latest within 24 hours if he may be discharged or will be forcibly detained. If a request of discharge is made within 24 hours after commitment has taken place, the consultant physician's decision must be communicated not later than 48 hours after the commitment. If the request has been made by the patient's counsellor, cf. sections 24-29, the patient's counsellor must also be informed.

Section 11. When the conditions in section 5 no longer apply, the detention must be terminated immediately. The patient and the patients' counsellor must be informed immediately of the fact."

59. Part 10 of the Act contains the rules on judicial trial and access to appeal, which are worded as follows:

Commitment and forcible detention

Section 34. - (1) Upon request by the patient or the patient's counsellor, the hospital authority must submit decisions concerning forcible commitment and detention to the court pursuant to part 43 a of the Administration of Justice Act.

(2) If the court approves the detention of the patient, the question of discharge cannot be tried pursuant to subsection (1) until after a period of two months after the Court's decision.

Forcible treatment and fixation, etc.

Section 35. In each chief administrative authority and in Copenhagen Community a Patient Board of Complaints is set up, consisting of the appropriate administrative officer of the authority as the chairman and two members. The members are appointed by the Minister for Justice after hearing respectively the Danish Medical Association and the Federation of Disabled Persons' Organisations. Further, the Minister for Justice appoints substitutes for the members. The appointment covers a period of four years. The members can be reappointed.

Section 36. Upon request by the patient or the patient's counsellor, the hospital authority must submit complaints of forcible treatment, forcible fixation, the application of physical force, and protective fixation to the Patient Board of Complaints.

60. Deprivation of liberty in the sense of the Act is meant to be forcible commitment and detention, i.e. commitment and continued stay in a psychiatric ward, which the patient resists. Further, the Psychiatry Act regulates the form of deprivation of liberty that consists of administratively decided commitment to the criminal lunatic asylum at the County Hospital in Nykøbing Sjælland.

61. With a view to enforcing judicial security of patients, the Psychiatry Act establishes a more extensive access to appeal the decisions that can be made under the Act, including decisions of forcible commitment and detention,

other forms of deprivation of liberty, and a number of other measures and circumstances. At the same time a completely new complaint system is established, under which the patients may complain to the courts, the specific, local patient boards of complaint, the general Patient Board of Complaints of the Health Sector, and a number of particular authorities, all depending upon the substance of the complaint. If the complaint concerns the most vital and integrity-violating measures such as forcible commitment and detention and other deprivations of liberty, complaints can be lodged directly with the courts. It may be noted here that the access to trial by the courts of the legality of administrative deprivation of liberty - also within psychiatry - is in Denmark a constitutional right (cf. sect. 71 (6) of the Constitution).

62. According to section 34 of the Act, a complaint to the courts is lodged by the patient or the patient's counsellor requesting the hospital authority to bring decisions on forcible commitment and detention before the court, which the authority then has a duty to do immediately, i.e. without any prior administrative complaints procedure. There are no formal requirements in connection with lodging a complaint, except that it must be lodged not later than four weeks after the termination of the deprivation of liberty. In quite extraordinary cases, however, and by permission of the Minister for Justice, complaints may be lodged during a period of up to six months after termination of the deprivation of liberty. The hospital authority must submit the complaint to the court not later than five weekdays after the complaint has been lodged. The complaint must be accompanied by the required information, medical certificate, a statement of the complaint, etc.

63. In the first instance, trial by a court is performed by a district court, and its decision may then be appealed to a High Court by both parties, i.e. the patient and the hospital authority. The case must be appointed for hearing as soon as possible, and it is incumbent on the court to assign a lawyer to the plaintiff, and in general to endeavour to obtain appropriate evidence in the case, including if necessary a new statement from the consultant physician, and possibly also to obtain an opinion from the Medico-Legal Council. Both parties are allowed to present evidence in the case, but in any case the court must conduct extensive material proceedings. Incidentally, the court may decide to arrange a preliminary court meeting with the parties, at which the case can be elucidated and the proceedings planned in detail. The courts' right of trial comprises both the formal legality of the detention and the material conditions of its implementation and maintenance. Further, if the court establishes that detention has taken place in contravention of the provisions of the Act, the injured party may on request be awarded compensation from the State.

64. Section 34 stipulates also that if the court tries the forcible detention and approves it, a new trial can take place only after the expiry of two months after the decision of the court. This time-limit, however, applies only to renewed trial of the same detention, i.e. detention which has been upheld for more than two months, which is a rare occurrence. Therefore, the time-limit does not apply if it is a case of a new detention, nor does it limit access to requesting the consulting physician to address the question of detention.

65. A scientific examination has been implemented of the effects of the Act with a view to later amendments of the Act.

Article 10

66. In 1993 Order No. 137 b of 24 March 1993 was introduced on compensation to inmates in the institutions of the Prison Service as a consequence of accidents, etc.

67. Denmark still has no intentions of changing its reservations regarding the second clause of article 10 (3) of the Covenant, since Danish criminal policy is still based on the principle of "dilution". Special rules still apply, however, for dealing with 15- to 17-year-old inmates in the institutions and local prisons of the Prison Service (cf. circular No. 169 of 8 October 1991, as amended by circular No. 56 of 14 April 1993). Here the main principles are that the charged youths are kept apart from adults, and that their cases are expedited as much as possible.

68. The circular specifies that, if possible, the 15- to 17-year-old prisoners remanded in custody must be placed in a custody substitute, such as a special institution for a limited number of youths. If this is impossible, however, special rules must be observed in connection with the detention. For example, without permission from the Prison Service, the 15- to 17-year-old inmates must not be placed in a cell together with inmates of more than 17 years of age. The staff at the institution must consider whether the youth may share facilities with other inmates and when such sharing is allowed, it lies with the staff to be attentive to possible objectionable influences on the youth. When permission is given to share facilities with older inmates, it must be recorded with whom it has been permitted, from what time, when the permission was withdrawn, and finally the reason why the sharing of facilities is deemed to be in the young person’s interests. Similar rules apply widely to persons of 15-17 years of age who have been sentenced to prison or detention.

69. Regarding the treatment of inmates, it can be stated that the three Ministry of Justice Orders on serving a prison sentence, on treatment of detained persons, and on detention in custody, respectively, have been framed in accordance with the principle of giving the inmates the most normalized existence possible, i.e. an existence without other restrictions than those required for reasons of security and order in the institution, and, in connection with remand prisoners, also the purpose of the remand in custody (cf. below on the principle of normalization). Statistics on the extent of isolation of persons in detention in the years 1990-1993 is enclosed as annex II.

70. In 1978 the Administration of Justice Act and the administrative rules on remand in custody were revised. In this connection the principal consideration was the endeavour to put persons serving prison sentences and remand prisoners on an equal footing. Therefore, it was decided that as far as possible, remand prisoners should be allowed to share facilities with other inmates, which means that to the extent that it is possible in the local prisons to practise facility sharing, these may be shared by sentenced persons and remand prisoners.

71. As for the normalization principle, it can be stated that as a predominant main rule inmates of Danish prisons preserve their civil rights. It is a wish expressed at the highest levels that inmates should only be subjected to such limitations of their rights and behaviour patterns as are a direct consequence of their imprisonment. This means that the authorities try to approximate life in prison as much as possible to the conditions in the outside world. "Normalization" is the name of this basic element of Danish prison philosophy. Other important elements that are more or less a consequence of this normalization are "openness" and "responsibility". These elements are the real cornerstones of the Danish "treatment philosophy", where the word "treatment" is used in a very broad sense.

72. In Denmark, this means first of all that a person is placed in an open prison. Only if it is judged that there is a real risk of escape, or if the prisoner is considered dangerous, is he placed in a closed prison. Furthermore, he should be placed in the prison that is closest to his home, so as to offer him the best possible chances of preserving his contacts with his wife and family and to pave the way for a gradual release from the prison.

73. The "openness principle" also implies that inmates may correspond with anyone. Reading of their letters only takes place under special circumstances. In open institutions the inmates have telephone booths in the wards, and to a certain extent private phones in their cells. Inmates are entitled to visits from next of kin and others for at least one hour every week. Most often it is possible for them to receive much more frequent visits. The visits are predominantly without control of any kind, and they either take place in the inmates' cells or in special visiting rooms designed for the purpose.

74. In open prisons the inmates are normally granted weekend leave every third week. It is also possible for inmates in closed prisons to obtain weekend leave when they have served approximately one fourth of their sentence and it is considered that there is only limited risk of abuse. More than half of the leaves are in the form of work leave where an inmate leaves the prison to go to work or to take part in educational activities.

75. While serving their sentences, inmates are obliged to work. Work and education rank the same, and endeavours are made to ensure that the workplaces are modern and relevant for the inmate. With regard to education and training, the inmates are given the same offers as ordinary citizens. For those who are worst off - the few who have little or no experience, and whose educational level is very low - the so-called project schools have been introduced where work and education are integrated in short-term, easy-to-take-in projects.

76. The "hotel" functions, which traditionally have been associated with imprisonment and which to a certain extent contribute to a social and functional crippling of the inmates, are now being replaced by the so-called self-administration principle which makes an inmate responsible for his own daily life. An important element of this is the inmate's duty to buy and cook his own food, and this means that he is paid a fixed daily amount for food, for which he will then be personally responsible for buying in the prison shop and for preparing. The necessary instruction and training are provided by the

prison. The inmate is also responsible for his personal hygiene, and for laundry and repair of his clothes, etc. This requires, of course, that the prison provides him with the necessary economic and practical background. It is the Danish experience that it is extremely difficult to make good and meaningful use of the leisure hours. The prison administration is therefore now trying to improve the possibilities of engaging inmates in sports and other structured spare-time activities.

77. Conditional release when two thirds of the sentence has been served is a normal element of serving a sentence. The transition from prison to freedom is considered a most difficult stage. For this transition to be successful, there must be continuity of the efforts made during the imprisonment and following the release. It is therefore of crucial importance that the after-care sector is closely linked with the prison system. A probation and after-care system has been arranged in almost 30 districts and local offices across the country. The districts attend to persons with conditional sentences and probation as well as to conditionally released persons who are under supervision.

78. Denmark has been requested to provide information on relapses. In this regard, the Prison Service regularly prepares surveys on relapsing. The latest survey was made in 1992, and it appears from it that 45 per cent of all prisoners released in 1988 relapsed over a two-year period. The following statistics on relapse appear in the annual report of the Department of Prisons and Probation for 1992, when the Department made a survey of relapses for persons who were released in 1988 after serving unconditional prison sentences or who were given conditional sentences with supervision. The survey also included clients who left the pensions of the Prison Service in 1988, as well as persons who, during the period from 1 January to 25 August 1988 were given a conditional sentence, including a community service order. The survey covers a total of 9,069 persons, which largely corresponds to the total prison population.

79. As in previous surveys relapse is defined as backsliding into new crime involving a punishment exceeding a fine within a period of two years from the date of release, the date of receiving the conditional sentence or the date of departure from the pension. As it appears from table 10.1 in the tabular part (enclosed as annex III), relapses total 45 per cent. It also appears that relapses decrease in line with the age of the persons surveyed - from 72 per cent in the group of 15-17 years to 21 per cent in the group of 50 years and older. Thus, relapses are most frequent among the young age groups. The highest relapse rate (85 per cent) is found in the group of persons who were sentenced to prison and had their applications for conditional release under section 38 (1), of the Danish Penal Code rejected on the very ground that the risk of relapse was too great. A good half (51 per cent) of the people sentenced to prison but released under section 38 (1) with or without supervision, relapsed. These people were released after having served two thirds of their sentence.

80. The lowest rate of relapse can be seen in the groups representing people given a community service order and people released conditionally with supervision under section 38 (2). The rate of relapse for these two groups

was 29 per cent and 31 per cent, respectively. Prisoners released under section 38 (2) are released after having served between one half and two thirds of the sentence given. For clients leaving after staying at the pensions of the Prison Service, the rate of relapse has been computed at 40 per cent. The total rate of relapse was computed at 45 per cent. For the groups of people sentenced to prison, the total rate of relapse was 46 per cent while it was 42 per cent for the groups of people with conditional sentences with and without community service orders.

81. The rules of Denmark are adapted to the United Nations Standard Minimum Rules for the Treatment of Prisoners. A detailed explanation of how the Covenant has been implemented will be given in connection with the response to a comprehensive questionnaire received by the Department of Prisons and Probation from the United Nations on 27 September 1994. Please see the later response to this.

Article 11

82. No changes have occurred compared with prior reports.

83. As a supplement it can be stated that in connection with the enforcement of a judgement or other enforceable claims in the sheriff's court, the court may decide to detain a debtor for up to six months in case of his non-observance of his duty of information (cf. sect. 497 (2) of the Administration of Justice Act). The remedy, which is only used very rarely in practice, has not in any way anything to do with the performance of a contract, but merely with the observance of the duty to give the information deemed necessary by the sheriff's court to carry out the enforcement. In case of enforcement of pecuniary claims, the debtor thus, under section 497 (1) of the Administration of Justice Act, must give information on his/her own financial situation and that of his/her household. Correspondingly, debtors in bankruptcy proceedings may be detained by order of the bankruptcy court for up to six months in case of non-observance of the duty of information (cf. sect. 103 of the Bankruptcy Act). This remedy, which is only used very rarely in practice, has not in any way anything to do with the performance of a contract either, but merely with the observance of the duty to give the information deemed necessary by the bankruptcy court for completing the bankruptcy proceedings. Thus, under section 100 of the Bankruptcy Act the debtor must give the bankruptcy court and the administrator or the receiver of the bankruptcy estate all the information required for the administration of the estate.

Article 12

84. The choice of residence in Denmark is free. However, according to the National Register Act, every person has a duty to notify the public (the National Register) of his/her (permanent) address and any moves. This duty is associated with the national system of taxation and the division of the country into municipalities which are each an independent taxation unit.

85. Furthermore, the right of liberty of movement and free choice of residence is, of course, limited by private property rights, including

limitations in the access to private buildings and sites and to privately owned nature areas. Naturally, provisions governing prohibited entry to certain military areas also limit this right.

86. Finally, section 101 of the Danish Bankruptcy Act can be mentioned, according to which the debtor is not allowed to leave the country without permission by the bankruptcy court, and section 102, according to which the bankruptcy court may retain the debtor's passport, if it has reason to fear that he will leave the country without good cause. The debtor must give the bankruptcy court notice well before he changes his residence or permanent abode. The bankruptcy court may forbid him to change his residence or abode, if the processing of the estate requires his presence. If the debtor does not comply with these obligations, the bankruptcy court may apply the same coercive measures as against unwilling witnesses. Where the debtor is a company, corresponding provisions may be applied by order of the court on members of the management, the board of directors and the auditor, or on other persons close to the debtor, such as the major shareholder.

87. As for the forms of sanctions used in connection with punishment, including sanctions which are less radical than actual deprivation of liberty, please see the mention of youth contracts and community service under paragraphs 45-50 in this report.

Article 13

88. The provisions governing expulsion of aliens are laid down in Consolidation Act No. 894 of 27 October 1987 on the Aliens Act with amendments. The Aliens Act also governs entry, stay and work of aliens in Denmark.

89. The Aliens Act is supplemented by Executive Order No. 19 of 18 January 1984 as amended by Executive Order No. 430 of 1 June 1992. Furthermore, the Aliens Act is supplemented by Executive Order No. 761 of 22 August 1994. The latter Order deals with residence in Denmark of aliens falling within the regulations of the European Community (now European Union).

90. The provisions of the Aliens Act governing expulsion, notably sections 22 to 26 of the Act, stand unchanged since Denmark's second periodic report. Please refer to this report, noting only that the responsibilities of the Ministry of Justice with regard to the Aliens Act have been transferred to the Ministry of the Interior.

Article 14

91. As for the requirement in article 14 (1) of the Covenant to the effect that a person charged with an offence is entitled to a fair and public hearing before a competent, independent and impartial tribunal, it can be mentioned firstly that Act No. 403 of 13 June 1990 on the amendment of the Administration of Justice Act amended the rules on the capacity of judges (sect. 60 (2) of the Administration of Justice Act), being phrased as follows:

"(2). A person shall not participate in the capacity of a judge in the hearing of a criminal case if, before commencement of the hearing, he or she has made an order to remand the accused in custody pursuant to section 762 (2) concerning the offence of the charge, or to take measures as mentioned in section 754 a, or to withhold letters pursuant to section 781 (3). However, this does not apply when the case is being processed pursuant to section 925 or 925 a, or when the case in general concerning the offence which motivated the measure as mentioned in the first clause above does not comprise a judgement on the evidence for the guilt of the accused."

92. The amendment of the Act entails disqualification of the judge, if, before commencement of the hearing, the judge in question has made a decision to remand in custody pursuant to section 762 (2) of the Administration of Justice Act, phrased as follows:

"(2). An accused person may also be remanded in custody when there is a specially confirmed suspicion that he has committed

(1) an offence requiring public prosecution, and which may involve imprisonment for six years or more under the Act, and information on the aggravated nature of the offence is deemed to require for law enforcement reasons that the accused is not at large, or

(2) an offence under sections 119 (1), 244-246, 250 or 252 of the Danish Penal Code, if, in consideration of information on the aggravated nature of the offence, the offence can be expected to involve an unconditional sentence of imprisonment for at least sixty days, and law enforcement reasons are deemed to require that the accused is not at large."

It will thus be sufficient for disqualification of a judge that the said provision is included in the basis for remanding in custody together with any grounds for remand according to the remand provisions in section 762 (1) of the Administration of Justice Act, having the following wording:

"An accused person can be remanded in custody upon reasonable suspicion of his having committed an offence requiring public prosecution, if the offence may involve imprisonment for 18 months or more under the Act, and

(1) according to information on the situation of the accused, there are substantial grounds for believing that he will evade prosecution or enforcement, or

(2) according to information on the situation of the accused, there are substantial grounds for fearing that, at large, he will commit a new offence of the character mentioned above, or

(3) according to the circumstances of the case there are substantial grounds for believing that the accused will attempt to obstruct prosecution of the case, particularly by eliminating evidence or by warning or interfering with others."

93. Furthermore, a judge will be disqualified in a number of specific cases where he has made a decision concerning the use of agents by the police and concerning opening or withholding of letters. Additionally, a new provision was inserted in section 61 (1) of the Administration of Justice Act, according to which a person shall not judge a case when there are other circumstances liable to raise doubts of the complete impartiality of the judge.

94. The background of the amendment was to bring the rules in the Administration of Justice Act on the disqualification of judges into line with the interpretation of article 6 (1) of the European Convention on Human Rights on hearings before an impartial tribunal, expressed by the decision of the European Court of Human Rights of 24 May 1989 in the so-called Hauschildt case. As for the amendment of section 60 (2) of the Administration of Justice Act on agent activities, the opening and withholding of letters and the insertion of the new section 61, the following comment was made in the Memorandum to the Bill (col. 3841):

> "In the opinion of the Ministry of Justice, in special cases where the decision of the judge during investigation does not relate to remand based on a specially strong suspicion, there may be such an advance assessment of the evidence of the case that from similar viewpoints as in the Hauschildt case, there may be basis for a doubt on the impartiality of the judge during the hearing.
>
> The Ministry of Justice finds that the rules on disqualification of judges should be designed so that there can be no doubt in future that Denmark complies with the requirement in the European Convention on Human Rights on hearings before an impartial tribunal.
>
> On this background it is suggested that a judge should also cede his seat during the hearing of criminal cases in a number of cases which have not caused disqualification according to Danish legal practice applicable so far."

95. The obligation under article 14 (3) (f) of the Covenant, according to which an accused person is entitled to have the assistance of an interpreter free of charge if he does not understand or speak the language used in the court, was originally enacted in Denmark in a circular No. 77 of 1967, most recently amended by circular No. 104 of 7 July 1989 of the Ministry of Justice. The circular lays down that the costs of an interpreter in connection with criminal and civil cases concerning offences of special legislation sanctioned by a fee must be paid out of the Exchequer.

Article 15

96. No changes have occurred in the legislation or practice in relation to this provision.

97. However, it can be stated in relation to subsection (2) of the provision that via its work in the United Nations Denmark has assisted in establishing the International Tribunal for the prosecution of war crimes committed in the former Yugoslavia. The legal basis for Denmark's collaboration with the Tribunal and the associated necessary legislation concerning, among other

things, extradition of suspected persons for prosecution before the Tribunal was provided by Act No. 1099 of 21 December 1994 on criminal proceedings before the International Tribunal relating to war crimes committed in the former Yugoslavia. The Act authorizes the Minister for Justice to decide that the Act, duly amended, may be applied to other cases of international prosecution of war crimes. Use of this authority may, for example, be anticipated in relation to other tribunals for judgement of war crimes, including the ad hoc tribunal for judgement of war crimes committed in Rwanda during 1994, which the United Nations Security Council decided to set up on 8 November 1994 (res. 955 (1994)). The Act became effective on 1 January 1995.

Article 16

98. No changes have occurred in the legislation or practice in relation to this provision.

Article 17

99. It may be mentioned that in a judgement pronounced on 13 October 1986, referred to in the weekly publication of the Judiciary (the Danish Law Reports), page 871, the Supreme Court considered whether section 73 of the Taxation at Source Act concerning the transfer of non-applied personal deduction between spouses violated section 70 of the Danish Constitution and articles 16 and 17 of the Covenant, among others. Both before the Eastern High Court and the Supreme Court, the plaintiff had claimed that it was a violation of the provisions mentioned that he was not entitled to transfer the non-applied personal deduction of his cohabiter to himself, as would have been the case if she had been his co-taxed spouse. The Eastern High Court made the following pronouncement on the matter:

> "The provisions of section 37 of the Taxation at Source Act are found not to violate section 70 of the Danish Constitution or the treaty provisions relied on by the plaintiff. Consequently, and as the question of amendment of the legislation comes within the sphere of the legislative power, the plaintiff's claim in this respect cannot be sustained."

This decision was upheld by the Supreme Court, which stated as follows:

> "The court endorses the view that section 37 of the Taxation at Source Act does not violate section 70 of the Danish Constitution or the treaty provisions relied on by the appellant."

100. Under the rules in section 792 f (2) of the Administration of Justice Act, effective on 1 July 1989, the police are allowed to store fingerprints lawfully taken from a person charged, whether or not the person is later acquitted, or the charge is wholly or partially dropped. On the other hand, fingerprints of persons not charged must be destroyed when the case is finished. As mentioned, the decisive factor for determining whether the police are allowed to store fingerprints is that the print was taken lawfully from a person charged. The question of when a person should be considered charged is not directly governed by the Administration of Justice Act. However, it is evident that a person should be considered charged when this

has formally been declared to the person in connection with the investigation. Also, in a number of other cases the question of whether a charge has been preferred can be clearly answered because it is presumed by the provisions of the Administration of Justice Act. Apart from these cases, the question of charging is based on the strength of the suspicion directed against the person. A charge is part of the prosecution, and therefore there must be a particular reason to prefer a charge against a person in the form of circumstances, clues, etc. which can objectively and reasonably point towards the guilt of the person in question.

101. The fingerprint must also be lawfully taken. This means that the taking of fingerprints from a charged person can only be done if the measure must be presumed to be of substantial importance to the police investigation, or if the person is reasonably suspected of having committed an offence which may involve imprisonment for 18 months or more under the law.

102. The lawfulness of the fingerprint taking and thus their storage can be brought before the court by the person charged pursuant to section 746 (1) of the Administration of Justice Act. If the court finds that the measure was unauthorized, the fingerprints taken must immediately be destroyed by the police (cf. sect. 792 f (3) of the Administration of Justice Act). Furthermore the police have the possibility of deleting fingerprints from the central fingerprint register on their own accord or upon request. In practice, this possibility is only used in quite unique cases, for example in case of mistaken identity.

103. Proper physical examinations are expressly governed by Danish law in sections 792-792 f on bodily measures of part 72 of the Danish Administration of Justice Act. The rules differentiate between bodily measures to persons charged and non-charged. As a main rule, a bodily measure may be taken as part of the investigation against persons charged and others by inspection of the outer body, the taking of photographs, prints and the like of the outer body and a search of the clothes worn by the person (inspection of the body) (cf. sect. 792 (1) (1) of the Administration of Justice Act). Furthermore, as concerns charged persons, a more detailed inspection of the body may be made, including of its cavities, blood sampling or other similar tests, X-ray examinations and the like (physical examination) (cf. sect. 792 (1) (2)). Finally bodily measures may be taken against arrested persons under the rules of section 758 (1) (cf. sect. 792 (2)). The exceptions to these main rules on inspection of the body and physical examination appear from sections 792 a-f of the Administration of Justice Act. Among other things it appears that the criterion of level of punishment is substantially higher for physical examinations than for inspections of the body (cf. sect. 792 a).

104. Basically, inspections of the body and an examination of the outer body and sampling may be carried out by the police (cf. sect. 792 c (1)). Pursuant to section 792 c (2), physical examination requires a court order, as a point of departure. However, the police may carry out the measure if the purpose of the measure would otherwise be wasted (cf. sect. 792 c (3)), or if the charged person (and his counsel) give their written consent (cf. sect. 792 c (5)). Section 792 e prescribes that bodily measures shall be performed with leniency and to the extent possible by persons of the same sex. Physical examinations may only be performed with the assistance of a medical doctor.

105. The question of the storage and destruction of material and other information provided through bodily measures by the police, and concerning persons who have not been charged, is governed by section 792 f. Thus the police are not allowed to store photographs of persons with a view to later identification of persons who have not been charged, or who have been acquitted, or against whom prosecution has been dropped. Nor are the police allowed to store other material and other information provided through bodily measures and concerning persons who have not been charged. Finally, information and material provided through measures which the court refuses to approve or which the court finds unauthorized must immediately be destroyed.

106. In continuation of the exposition in Denmark's second report on the rules of coercive placement of children away from home, it can be stated that a number of amendments of these provisions have been adopted. The amendments all aim at strengthening the judicial security of the family. Thus, the importance of the examination for the processing of the case has been emphasized so as to ensure that a decision is made on a justifiable basis and on the basis of current information. At the same time, rules have been introduced on an informed consent so that parents are clearly told what the local authority wishes to obtain through the intended placement. Finally, a more clear and linguistically broader wording has been introduced to identify the circumstances in the family and of the child or the young person which can motivate a coercive placement away from home.

107. Also, aliens staying permanently in Denmark, for example refugees, are of course entitled to a family life. This right is protected in the rules of the Aliens Act on family reunion, according to which the closest family of aliens may obtain a right of residence, etc., in Denmark in specified circumstances.

108. As for the law in connection with data registers, Denmark in 1989 ratified the European Convention for the Protection of Individuals with regard to Automated Processing of Personal Data. The register legislation in Denmark has changed to a minor degree since Denmark's second report. However, the legislation is based on the same principles, but so that in the light of the practical usage of data, the rules on instructions, etc., have been eased in case of non-sensitive registers. It should be noted that the legislation concerns all computer registration. As a great deal of interest was evinced at the oral review of Denmark's second report, English copies of the Acts on Private and Public Registers, respectively, are enclosed as annexes IV and V. It should be noted that the enclosed copies are not completely up to date, but the later amendments are of a technical character and not of substantial importance.

109. With regard to the practical use of the Register Acts, a total of 2,044 cases were registered in 1993, of which 924 concerned the Act on Public Registers, while 940 concerned the Act on Private Registers, 64 cases related to secretariat matters, etc., and finally, there were 116 other cases, including international cases. During the year, the Data Protection Agency carried out 48 inspection visits, of which 21 with public authorities and 27 in private enterprises. The Agency rejected a number of the registers applied for, corresponding to 13.5 per cent in all. To elucidate this matter, a copy of the latest annual report from 1993 from the Data Protection Agency in Denmark is enclosed as annex VI.

110. The second periodic report in paragraph 124 mentioned the lawful access to the right to inspect one's own hospital journal. By Act No. 504 of 30 June 1993, this right was extended to cover records on health matters prepared by authorized health-care persons, such as doctors, dentists, physiotherapists, chiropractors, etc., whether the practice is public or private.

111. Under general comments, States parties have been requested to indicate what the individual countries understand by the concepts of "family" and "home". It can be stated in this respect that Danish law does not contain any general and unambiguous definition of the concepts which, on the contrary, are defined concretely in relation to the many diverse legal contexts in which they appear. The concept of "family" is thus defined in taxation law on the basis of factual cohabitation, while in social law and other contexts, such as aliens law, the concept is defined on the basis of the duty of maintenance. In the law of succession, the concept is defined on the basis of biological criteria. Thus, there are a number of rather diverse definitions for the concept of "family". This, however, is not the case with regard to the concept of "home" where the definition is largely the same, based among other things on the principles of private property and of privacy and respect therefor. The concept of "home" is defined, for example, in the Danish Penal Code in connection with the provisions on prohibition of infringements of peace and honour and in section 72 of the Constitution on the inviolability of the dwelling. Furthermore, home is defined in connection with provisions on house searches, found both in the Administration of Justice Act and in a number of special acts containing authorization for control surveys of individuals and in enterprises.

Article 18

112. No substantial changes have occurred since the previous reports.

Article 19

113. Denmark has been requested to provide information on restrictions on the freedom of expression. In that respect, the basis in section 77 of the Constitution is a complete prohibition against censorship. As for the material freedom of expression, it is possible in certain cases to invoke a subsequent responsibility for certain statements, viz., in cases where it has been deemed that other interests similarly worthy of protection should in the actual case enjoy a higher degree of protection than the one required by considerations of freedom of expression.

114. Section 266 b of the Danish Penal Code thus lays down that "any person who, publicly or with the intent of propagating them to a wider circle, makes statements or any other communication, by which a group of persons is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for any term not exceeding two years".

115. This balance between on the one hand freedom of expression and on the other hand control of racism and racist statements, among other things, was

the theme of the decision made by the European Court of Human Rights on 23 September 1994 in the case Jersild vs. Denmark. The decision established as a fact, with 12 votes against 7, that Denmark violated the journalist Jens Olaf Jersild's right of freedom of expression under article 10 of the European Convention on Human Rights, when he and Lasse Jensen, head of the news section, were sentenced by the Supreme Court judgement of 13 February 1989 to daily fines totalling DKK 1,000 and 2,000, respectively, convertible into five days' simple detention for having contributed to an interview in the Sunday Television News on 21 July 1985 where a group of young people from Copenhagen - so-called Green Jackets - made racist statements.

116. The background for the decision of the case before the Court of Human Rights was as follows: The Supreme Court convicted Jersild and Lasse Jensen for having contributed to a violation by a group of youths from the Østerbro/Nørrebro areas of Copenhagen - the so-called Green Jackets - of section 266 b of the Danish Penal Code, which prohibits the propagation of racist statements, among other things. The majority of the Supreme Court, consisting of four judges, stressed, among other things, that Jersild and Lasse Jensen had caused the insulting racist statements to be made publicly by this narrow circle and thus in a criminal manner. Nor did the Supreme Court find that the case in question was governed by such considerations with regard to freedom of expression on subjects and episodes of a general character that they could lead to acquittal as against the considerations of protection against racial discrimination. One of the five judges voted for an acquittal of Jersild on the basis that Jersild had not exceeded the freedom of expression which journalists were entitled to, taking into consideration that the aim of the feature was to inform about and raise a discussion on the special racist attitudes held by the group in question - the Green Jackets.

117. On 25 July 1989, Jens Olaf Jersild filed a complaint with the European Commission of Human Rights, claiming that the conviction constituted a violation of his right of freedom of expression pursuant to article 10 of the European Convention on Human Rights. The European Commission of Human Rights stated in a report of 8 July 1993 with 12 votes against 4 that Jersild's right under article 10 had been violated. Both the Commission of Human Rights and the Danish Government brought the case before the European Court of Human Rights which found, as mentioned above, that Denmark had violated article 10 of the European Convention on Human Rights.

118. For a further elucidation of the balance between freedom of expression and other considerations to be protected, it can be mentioned that in 1989, in a case concerning the access of the press to depicting conditions in a psychiatric ward, the Supreme Court found [U 1989.762H] that the news and information value of the feature made was so worthy of acknowledgement that the consideration of freedom of expression here had to have a higher priority than the consideration of protection of the private sphere.

119. It can also be mentioned that in 1994 in a case concerning a journalist who was found in the garden of a well-known politician in order to interview demonstrators for a feature in a local television station in Copenhagen, the Supreme Court found [U 1994.988H] that in the balance between the consideration of privacy and the consideration of news communication, the

latter consideration had to be given such a weight that the presence of the journalist in the garden could not be considered unjustified. In its grounds, the Supreme Court referred to the decision of the European Court of Human Rights in the case of Jersild vs. Denmark.

120. As for the freedom of expression of the press, it can also be stated that an act on media responsibility was adopted in 1991 (Act No. 348 of 6 June 1991) (annex VII). With the adoption of the Media Responsibility Act the previous enactment in the field, the Press Act from 1938, was abolished. The Press Act only covered printed periodicals, while the new Media Responsibility Act also covers electronic mass media, i.e. radio and television and certain other news products. The Media Responsibility Act does not regulate the material delimitation of the freedom of expression. These rules are to be found in other legislation, particularly in the Penal Code and in the law of torts, with particular reference to defamation of character, terms of abuse, etc. The Media Responsibility Act provides a system of responsibility, i.e. the Act itself contains detailed rules on who may be held responsible for the contents of the media.

121. The Media Responsibility Act created a Press Complaints Board which is to function as a complaints body for all media. The main task of the Press Complaints Board is to decide on questions of press ethics. The board has a chairman, a vice-chairman and six other members appointed by the Minister for Justice. The chairman and vice-chairman must be jurists and are appointed after hearing the President of the Supreme Court. Two members are appointed after hearing the Danish Journalists' Association (Dansk Journalistforbund), two members are appointed after hearing of and with a view to representing editorial management in the printed press and radio and television, and two members are appointed as the representatives of the public after hearing the Joint Council of Danish General Education (Dansk Folkeoplysning).

122. With regard to criminal liability for statements in the media, reference is made to section 9 of the Media Responsibility Act, under which criminal liability for the contents of a domestic periodical can only be imposed on the author of an article in the magazine, the editor and the publisher (but cf. sects. 14, 25 and 27 of the Media Responsibility Act). As for liability in damages, the following appears from sections 29 and 31 of the Media Responsibility Act:

> "Section 29. Liability in damages for the contents of a domestic periodical rests with those who can be held criminally liable under the rules of sections 9-15 and sections 25 and 27.
>
> ...
>
> "Section 31. Liability in damages for the contents of radio and television broadcasting as mentioned in sections 1 and 2 rests with those who can be held criminally liable under the rules of sections 16-25 and 27.
>
> ..."

123. A further reference can be made to section 172 of the Administration of Justice Act on protection of sources. According to this provision, the editor and editorial staff of both printed media and radio and television cannot be ordered to give evidence as to the identity of the source of a piece of information or the author of information passed on in the medium when the source or the author has not been named. However, restrictions may be imposed on this right of protection of sources if the criminal case in question relates to an offence of a serious nature, which may involve a prison sentence of four years or more. This, however, presupposes that the evidence as a witness must be presumed to be of crucial importance to the clearing up of the case, and the consideration of the clearing up clearly surmounts the need of the mass media to be able to protect their sources. A duty to give evidence may also be imposed if the criminal case in question concerns a violation of the provisions of the Penal Code on breach of professional secrecy of public employees.

124. As for the access itself to practical exercise of the freedom of expression through media, it can be mentioned that since Denmark's second report, the Danish Radio and Television Act has undergone a number of modernizations. Thus, the broadcasting periods of the television stations have been greatly increased, just as a completely independent second Danish television channel, TV2, has been established. TV2 started its activities in 1989 and, unlike the original Danish television channel, it is entitled to show commercials and thus finance its activities with such income. The main purpose of the review of the Radio and Television Act was to introduce rules on the broadcasting of radio and television programmes via satellite and to give access to practising programme activities with a view to direct distribution through community antenna systems in larger areas than a local area, i.e. without prior or simultaneous transmission via satellite or other forms of radio systems.

Article 20

125. The Danish Government continues to be of the opinion that article 20 (1) of the Covenant, according to which all propaganda for war shall be prohibited by law, contravenes the freedom of expression protected in article 19, and therefore Denmark continues to maintain its reservation.

Article 21

126. No changes have occurred compared with previous reports.

Article 22

127. The Act on Protection against Dismissal on the Grounds of Membership of an Association was amended by Act No. 443 of 13 June 1990. The amendment resulted in a tightening of the sanctions for dismissal in contravention of the Act, as an unlawful dismissal is reversed as a main rule, and the dismissed person must be re-employed. If re-employment is impossible, for example because the unlawfully dismissed person does not wish to continue the employment, the employer must still pay compensation. The level of the compensation was also raised. Additionally, the amendment resulted in an

improvement of a procedural nature, as it is laid down by law that cases under the law must be proceeded with as fast as possible. The court can also give the legal proceedings a suspensive effect during the case so that the dismissal has no effect until the case is decided by judgement.

128. In connection with the oral review of Denmark's second report, a case was mentioned concerning the Act on Freedom of Association, decided by the Supreme Court in 1986, the so-called bus driver case (HT case). The case was subsequently brought before the European Commission of Human Rights, which found, however, that the complainants could not be considered victims of a violation of article 11 on the freedom of assembly and association of the European Convention on Human Rights, as the damages already awarded to the bus drivers in the Supreme Court judgement were sufficient. However, the case became of great importance as it focused on the question of freedom of association. A number of judgements have later been pronounced on the matter and on the detailed interpretation of the above Danish Act on Freedom of Association. Thus, a Supreme Court judgement from 1989 [U 1989.249H] fixed compensations of about 11 months' and about 5 1/2 months' salary for a 53-year-old kitchen help and a 50-year-old cleaner, respectively, who had been dismissed because they were members of a Christian union.

129. In this connection, concerning the amount of the compensation, section 4 a (2) of the Act provides that it cannot be less than one month's salary and cannot exceed 24 months' salary. Also, within these limits, the compensation must be fixed taking into consideration the time of employment of the employee and the circumstances of the case in general. The compensation awarded must cover the non-pecuniary damage suffered by the dismissed person through the dismissal, and therefore nothing prevents damages from being awarded under the usual rules concerning damages in addition to the compensation.

Article 23

130. As mentioned in the second report, according to Danish law a marriage can only be contracted between two persons of different sex. By Act No. 372 of 7 June 1989 it has, however, become possible for two persons of the same sex to enter into a so-called registered partnership. Registration of a partnership can only take place if at least one of the partners is resident in Denmark and has Danish citizenship. The registration has the same legal effects as the contracting of marriage, at least in relation to succession and other financial circumstances. However, the Adoption Act rules on spouses do not apply. Thus, registered partners have no access to adopt or - as a main rule - to obtain custody of each other's children nor those of others.

131. As for the question on differences between children born in and out of wedlock, children born out of wedlock enjoy the same legal protection as children born in wedlock. For example, children born out of wedlock are also fully entitled to succeed both biological parents whether or not they are still cohabiting. Children born out of wedlock are also entitled to exactly the same social allowances and other public benefits as children born in wedlock. Furthermore, both parents of a child born out of wedlock are obliged to provide for the child financially until it is 18 years of age, whether or not they cohabit with the child and/or the other parent. If the parents do

not cohabit, the parent with whom the child is not staying has to pay child maintenance to the other parent. A number of legal provisions exist to help public authorities collect such claims, including access to withholding the amounts from wages.

132. In this connection it can be mentioned that the rules mentioned in Denmark's second report on joint custody are used not only in connection with divorce, but also apply to parents who have never been married and who do not even cohabit. Thus, a child born out of wedlock has ample opportunities to still have two parents with custody. Agreements on joint custody must be approved by the public authorities (the chief administrative authority, statsamt), and this approval is always obtained unless it would be against the best interests of the child.

133. As for the rules of the Marriage Act, Act No. 209 of 1989 implemented a number of modernizations and simplifications of the rules of the Act on Separation, Divorce and Maintenance Payments to Spouses. It can also be mentioned that a proposal has been put forward to introduce an Act, according to which the State may contribute financially to counselling of couples in connection with an imminent dissolution of a marriage.

Article 24

134. Act No. 793 of 1990 introduced a new provision in section 10 a of the Act on Legal Capacity. If the parents disagree on who is to have sole custody, both now have to give their consent to the child's departure from Denmark. The amendment relates to international implementation of custody decisions, etc. (international child abductions).

135. The rules for employment of young people under the age of 18 are laid down in section 59 in the Working Environment Act (cf. Consolidation Act No. 646 of 18 December 1985). According to clause 1 of section 59 (1), the main rule is that children below the age of 15 are prohibited from gainful employment. A general exception is made for two hours of light work and a special exception for the participation by children living at home in a family undertaking, apart from work at dangerous machines, etc. and hazardous substances and materials. Authority is given in various ways to modify this prohibition administratively. Detailed rules have been laid down in Order No. 333 of 23 June 1977 concerning children's light gainful employment. As for the evening and night work of the 15- to 18-year-olds, detailed rules are laid down in Order No. 465 of 1985. Concerning the hazardous work of young people, detailed rules are laid down in Order No. 524 of 1992. As for the access of young people to employment with dangerous machines, there is an age limit of 18 years, but for agriculture and horticulture an age limit of 16 years in certain specified circumstances (cf. annex 2 to Order No. 524 of 1992). Similarly, an age limit of 18 years applies for work with hazardous substances and materials.

Article 25

136. Since Denmark's second report various amendments have been adopted concerning the General Election Act and the Act on Election of Danish Representatives for the European Parliament. No amendments have been

implemented of the Local Government Elections Act, dating from 1989, nor of the rules on aliens' right to vote and their eligibility for election to local government councils. The amendments of the General Election Act were of a technical nature. By the amendment of the European Parliament Elections Act, which was implemented by Act No. 1086 of 22 December 1993, resident citizens from the other member States of the European Union were granted suffrage and eligibility for election in Denmark to the European Parliament elections in accordance with the provisions to that effect in the Treaty of the European Union.

137. In the oral review of Denmark's second report, the question of aliens' participation in local elections was raised. In this respect it can be stated that a total of 97,694 aliens were recorded on the electoral rolls for local elections in Denmark in 1993 out of a total number of 4,077,351 persons entitled to vote. The number of aliens who used their right to vote is not known, as this is no longer recorded and computed statistically. The last time such a count was made was in 1985, and then the poll among aliens was computed to 52.5 per cent. In comparison, the poll among Danes in the same election could be computed to 70.0 per cent.

138. It can further be stated that aliens receive a general introduction to the Danish electoral system, including local elections, in connection with the introduction programme which all aliens that achieve a residence permit following an application for asylum go through within the framework of the Danish Refugee Council. In connection with the actual holding of local elections, informative material is also distributed to all the libraries of the country and to other public instances by the Ministry of the Interior, which handles the holding of the elections. Additionally, the individual local authorities all over the country take a number of supplementary initiatives to disseminate knowledge among aliens of the holding of local elections and of the opportunity - also as an alien - to participate in it, including the preparation of informative material in a number of foreign languages.

139. It should be noted that participation in elections in Denmark is based on a so-called election card which is issued and distributed by mail to all the individuals recorded on the electoral roll. Thus, everybody - Danes as well as aliens - receives a personal reminder of the holding of the election and information on where and when he or she can vote.

Articles 26 and 27

140. Reference is made to the comments above under article 2.
