DENMARK

Submission to

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

In connection with the country visit to Denmark
4-13 February 2014

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A. Police custody and police establishments

1. Ill-treatment

Mass pre-emptive arrests - COP15

In December 2010, the Copenhagen Municipal Court ruled[1] that the mass pre-emptive arrests of 1.900 demonstrators (250 plaintiffs), attending the 2009 Climate Change Conference in Copenhagen (COP15), were unlawful under the Police Act[2], and that the circumstances under which these mass pre-emptive arrests took place in 178 cases constituted a violation of art. 3 of European Convention on Human Rights.

(COP15 - Copenhagen, 12 December 2009, Amagerbrogade, photo: Mads Nissen[3])

The crucial elements in the Judgment were the facts that the detained persons (1) did not have access to water, (2) were placed on the ground, (3) were forced to sit between each other's legs, (4) had inadequate toilet facilities, (5) were wearing strips and all of this was endured under harsh weather conditions with temperatures around zero degrees for a duration of four hours for most of the detainees and with massive media attention covering the mass pre-emptive arrests.

DIGNITY would like to draw the CPT's attention to the underlying legal basis for administrative detention, the Police Act.[4] The Police Act, which regulates police activities in cases other than criminal prosecution, has been amended since the CPT's visit in 2008. The maximum hours in which the police may administratively detain a person have been increased form 6 hours to 12 hours in cases of public gatherings[5] and crowds[6].

The extension of the time limits in the Police Act, raises additional doubts as to the compatibility between the Police Act and ECHR article 5. The Police Act gives the police the authority to undertake preventive detention, which may not be compatible with the European Court of Human Rights' interpretation of article 5 of the ECHR, cf. inter alia, the interpretation in A. and Others v. the United Kingdom, pr. 71-72.

[1] High Court Judgment, U.2012.1439Ø
[2] Act No. 444 of 9 June 2004
[3] http://www.information.dk/482648
[4] Act No. 444 of 9 June 2004
[5] Section 8(3) of the Police Act
[6] Section 9(3) of the Police Act

2. Long periods of pre-trial detention

In 2011, the Danish government pledged to bring down the number of pre-trial detention. In 2012, the Director of Public Prosecution initiated a lean-project to identify best practices in handling pre-trial detention cases with the overall aim of limiting the use of pre-trial detention, particularly their length. The project led to the development of a new management concept, which was to be implemented in 2013. There is no publicly available data about the preliminary outcome of the project. However, we have informal information that the project, which has been running in selected districts on the Island of Fyn, has to some extent limited the length of the period of pre-trial detention.

Data from the Director of Public Prosecution establishes that cases of lengthy pre-trial detention have been brought down from 1764 in 2010 to 1427 in 2012. However, it is also indicated that the former statistical data was not accurate and suffered from underreporting. The length of the pro-longed pre-trial detention has also been shortened, although the average length of the pre-trial detention was still 6,8 months in 2010 and 6 months in 2012. It should be noted that there are still significant differences in the use of pro-longed pre-trial detention in the different police districts.

Director of Public Prosecutions figures conclude the following:

Lengthy pre-trial detention		
Period	Numerical change	Change in percentage
2001 – 2005	446 – 717	Increase of 61% (from 2001 to 2005)
2005 – 2007	717 – 620	Decrease of 13,5% (from 2005 to 2007)
2007 – 2010	620 – 896 (adjusted 10 1005)	Increase of 45% (from 2007 to 2010)
2010 – 2012	1764 – 1427	Decrease of 19,1% (from 2010 to 2012)

3. Pre-trial detention of children

The investigation of the causes and follow-up political initiatives with the exact purpose of shortening the time of pre-trial custody (including children in pre-trial custody) has not taken place yet.

In terms of pre-trial detention of suspected offenders under the age of 18, there has been a decrease from 464 in 2010 to 345 in 2012, and a substantial decrease in terms of lengthy pre-trial detention from 145 in 2010 to 90 in 2012.

The average length of pre-trial detention for the children and youth who were sentenced to imprisonment fell from 2010-2012 from 79 days to 63 days. The average length of pre-trial detention for young people who were sentenced to juvenile 'sanction' increased from 71 to 91 days from 2010- 2012.The longest detention period for a young person under 18 was 296 days in 2012 (Ministry of Justice, 2012).

DIGNITY respectfully urges the Committee to recommend the Danish government to take steps to limit the use of pre-trial custody of children/adolescents and consider introducing an absolute upper limit for the duration of custody for children and young people under the age of 18.

4. Conditions during pre-trial detention

Limited contact among detainees

The conditions of detention of pre-trial detainees are stricter than those of convicted prisoners, i.e. restrictions on communication and visits rights, and only one hour of exercise per day. The 'arrest houses' destined for pre-trial detainees are devised in an old-fashioned manner, which makes contact among prisoners, and especially 'high security' detainees, difficult. Due to their architecture, the premises are difficult to supervise. This has given rise to increased levels of violence. In order to prevent inter-detainee violence the staff has severely limited the detainees' access to contact with other detainees.

Conditions of detention in Greenland

Conditions of detention in the police holding centres in Greenland give rise to concern on several accounts. Firstly, due to the geography of Greenland, persons who are in their initial period of detention are being held in makeshift (interimistic) holding centres under very poor conditions. In these places, the detainees are placed in cold cells in their underwear without any access to toilet, no supervision and no contact to the outside world. Secondly, these premises do not allow for proper separation between pre-trial detainees and convicted prisoners. We have seen cases where young, alleged first-time offenders were placed together with 'hard core' recidivists giving rise to serious concerns as regards protection.

5. Health care

Withdrawal symptoms of opioid-dependent persons in detention: Risk of false confessions

In the initial 24-hour period from arrest and until the arrested person is presented before a judge (preliminary hearing), many opioid-dependent persons are forced to undergo abrupt opioid withdrawal (both from legally prescribed agonist therapy, such as methadone, as well as illicit opioids, such as heroine). The physical and psychological withdrawal symptoms may impair the detainee's capacity to make informed decisions, and heighten vulnerability to succumb to police pressure to admit to false charges or confess guilt before having had access to legal counsel, been before a judge, or been able to digest and understand the potential criminal charges and consequences, in order to avoid detention or to secure release.[7]

Although detainees are entitled to a medical examination as promptly as possible after admission to the place of detention, there are cases where the opioid-dependent detainees are being told that they are not entitled to a medical doctor until they have been presented in court.

State failure to provide available and necessary medical attention to opioid-dependent detainees raises the question whether the detainees are 'fit for interviewing' and whether interviews under such circumstances are compatible with article 3 of the ECHR. Similarly, the false information provided by the police about detainees' right to the medical doctor, is contrary to international standards, notably principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[7] For more information on this problem, we refer you to R.D. Bruce, R.A. Schleifer, *Ethical and Human Rights Imperatives to Ensure Medication-Assisted Treatment for Opioid Dependence in Prisons and Pre-trial Detention*, International Journal of Drug Policy 19 (2008) 17-23, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2366202/

During pre-trial detention in the so-called 'arrest houses', treatment is not afforded for opioid-dependency. The only intervention that is undertaken is 'motivational therapy'. Actual treatment for opioid-dependency may only begin once the person is transferred to a prison.

DIGNITY respectfully urges the CPT to recommend that opioid-dependent persons are given the necessary treatment/medication so as to avoid withdrawal symptoms, and hereby limit the risk of false confessions.

6. Other issues

Separation of different categories of prisoners

Due to the lack of capacity in the Danish prisons, convicted prisoners are sometimes serving their prison sentence in the 'arrest houses', which are destined for pre-trial detainees. As a result, untried detainees are not kept separate from convicted prisoners as required by international standards.[8]

At times, members of different – also warring – gangs are not separated from each other. Although this may not be contrary to international standards as such it may increase the risk of inter-prisoner violence.

The Independent Police Complaints Authority

In 2010 the 'Independent Police Complaints Authority' was established by Act. No. 404 of 21 April 2010, which entered into force on 1 January 2012. The Independent Police Complaints Authority is placed under the auspices of the Ministry of Justice, and is headed by the Police Complaints Council and the Chief Executive. The Police Complaints Council is the supreme governing body of the Authority and consists of a Chair, who must be a High Court judge, an attorney, a university lecturer of law and two representatives of the general public. Members of the Police Complaints Council are appointed by the Minister of Justice for four years at a time and are eligible for re-appointment once. The Chief Executive is in charge of the everyday operations of the Police Complaints Authority. The Authority is mandated to handle investigation of criminal cases against police officers and considers complaints of police misconduct. The Authority is authorized to make arrests and request orders for pre-trial from court. However, it is still the regional public prosecutor who has the power of indictment. Therefore, when the investigation is complete the application must be sent to the District Attorney General (*Statsadvokaten*) who has the power of discretion to assess whether there are grounds for prosecuting, prepare the indictment, and conduct the proceedings. The decision of the prosecution can be appealed to the Director of Public Prosecution (*Rigsadvokaten*). (See the Administration of Justice Act Chapter 11a)

The current structure and mandate of the Independent Police Complaints Authority does not fully fulfil the criteria of independence, amongst other because the Authority does not have the power to indict. Furthermore, it has been subject to debate amongst experts in criminal procedure that most investigations are carried out by former police officers and/or former prosecutors.

DIGNITY respectfully appeals the Committee to address the issue of ensuring the independence of the body and their mandate as well as necessary resources to effectively carry out its mandate.

[8] Art. 18.8. of the European Prison Rules and Art. 8 of the UN Standard Minimum Rules for the Treatment of Prisoners.

B. Prisons

1. Ill-treatment

Nervous and mental disorders among prisoners and detainees

Several studies have established that there is a high frequency of people suffering from mental illnesses within places of detention in Denmark. These are sometimes detained for a long period of time within remand institutions and prisons due to lack of capacity in psychiatric treatment institutions.

In 2009 the Prisons and Probation Service initiated a screening project on mental illness.[9] The study, which was mainly conducted at 'Vestre Fængsel' in Copenhagen, concluded in 2013. It reveals that there is a high frequency of nervous and mental illnesses amongst the pre-trial and remand population. Furthermore, that it is difficult to design a reliable screening tool that systematically supports the nurses screening of pre-trial detainees, but also that the nurses often do not react to acute suspicion of mental illnesses. The report concludes that the investigated remand population as a whole and the mentally ill in particular have complex and overlapping issues stemming not only from a mental or psychiatric disorder, but also from social marginalization. Of urgent matter the report concludes that there is not access to enough or adequate treatment offers, and that the identified problems should be targeted at several levels so to ensure that future delinquency is prevented. The report takes note of and concludes that introduction of screening methods, including systematic questions, should contribute to heightening the general health assessment and not least the early identification and transfer of inmates with mental illnesses for treatment, who are currently sitting unnoticed. One of the initiatives by the Prison and Probation Service has been to attach a psychiatric consultant to all detention centers (Arresthuse). [10]

The report has received attention in the Danish media in January 2014, which prompted the Director of 'Vestre Fængsel' to express that they are well-aware that the prisons are not geared to handle detainees and prisoners with nervous or mental illnesses and that there is a grave need for sensitization and training of health and prison staff on these issues. In this connection, the Minister of Justice Karen Hækkerup clearly acknowledged the problem and the need to take urgent action and steps to improve the situation.

DIGNITY recommendations:

- The prison health service should be structurally integrated into the public health system.
- More effective methods should be introduced to identify mentally ill detainees and mechanisms to transfer severe mentally ill and suicidal persons to the psychiatric system for treatment.
- Capacity should be built to effectively address the needs of pre-trial detainees and prisoners who are in need of treatment and access should be ensured at the same level as in the society in general.

[9] http://www.kriminalforsorgen.dk/Files/Afdelinger/Screeningsrapport%20til%20Intranettet%20Internettet%2016-12-2013.pdf

[10] DIDH Status Report 2013 "Frihedsberøvelse" - based on Henrik Steen Andersen, "Mental Health in Prison Populations" i Acta Psychiatrica Scandinavica, Supplementum to, no. 424, vol. 110, 2004 og Peter Kramp, "Klienter idømt en psykiatrisk særforanstaltning – Samarbejdet mellem Kriminalforsorgen i Frihed og psykiatrien – og noget om behandlingen af psykisk syge kriminelle", Kriminalforsorgen, august 2010.

Inter-prisoner violence

The level of inter-prisoner violence is an increasing phenomenon, which for several reasons is hard to detect. One of the reasons is the lack of a reporting obligation for prison doctors discovering signs or symptoms of violence on inmates (see below on 'reporting obligations of prisons doctors'). Furthermore, incidents of violence among inmates are often not reported by the prisoners themselves (the victims), often out of for fear of repercussions. As a result, there is a considerable level of unreported violence.

The statistics from the Prison and Probation department show that the registered violence on inmates committed by other inmates, decreased from 331 in 2011 to 295 in 2012.[11] Compared to the levels observed during the last CPT visit in 2008, the registered episodes have increased from 284 in 2008 to 295 in 2012 (See the statistic below). Statistics from 2013 are not yet available.

Table: Violence and threats of violence committed on inmates by inmates

	Incidents								
	Total no. of episodes where inmates have been exposed to violence or threats	Treats of violence	Attempts not to move	Pushed or Shoved	Beaten, without leaving visible marks	Beaten, leaving bruises	Beaten, leaving wounds or injuries	stabbed, shot or attacked with weapons	Attacked in a different way
2012	**295**	55	13	25	64	52	68	13	41
2011	**331**	50	3	35	66	70	77	24	39
2010	**353**	54	3	28	91	70	77	11	47
2009	**317**	53	7	37	75	53	78	7	40
2008	**284**	41	2	31	51	58	67	12	49

2. Conditions of detention

Isolation

In the Danish prison system there are three types of isolation: (a) isolation for protection (administrative decision), (b) voluntary isolation; and (c) isolation as a sanction (court order or administrative decision). The focus in this paper will be on (a) isolation for protection and (b) voluntary isolation

(a) Protective Isolation (Code of Enforcement of Setences, § 63, para. 2)

In 2012, the Code of Enforcement of Sentences was amended and it was made possible for the prison authorities to place prisoners in isolation for their own protection from abuse by fellow inmates. Those placed in protective isolation enjoy several safeguards: the isolation should be applied as a last resort; and the isolation should be as short as possible and not exceed 5 days. Before this 5 day-deadline, the prison authorities must take steps to protect the inmate, notably by re-location to a safe department.

[11] Department of Prisons and Probation, statistic 2012, table 5.16

However, not all persons who esteem that they are in need of protection are covered by this scheme, as this is a decision made by the authorities. Statistics from the Dept. of Prisons and Probation show that those placed in protective isolation are a rather small group compared to the total number of persons in isolation.[12] Consequently, it is questionable whether this protection scheme has had the desired effect.

(b) Voluntary isolation (Code of Enforcement of Setences, § 33, para. 3)

In 2008, the CPT recommended that the Danish authorities develop a national approach to address the issue of prisoners seeking voluntary isolation. Compared to those in protective detention, this group does not enjoy the above mentioned legal safeguards and are not entitled to a re-location. Consequently, they often have no option but to stay in isolation for excessive periods of time (over 28 days). Statistics show that 403 persons chose to go into isolation voluntarily in 2012.[13]

DIGNITY would like to direct the CPT's attention to the discrepancies between these two systems, notably the human cost and the lack of protection afforded to those choosing to go into isolation voluntarily.

Conditions of detention for Greenlandic prisoners in Herstedvester prison

Greenlandic prisoners with long prison sentences continue to serve their time in Herstedvester prison in the Copenhagen area, 4000 km away from home. This has been the practice over the past 50 years. This practice gives rise to serious concerns about the compability with article 8 of the ECHR about the right to family life. The former director of the Prison and Probation Service and the former prison governor at Herstedvester prison both agree that the current solution may violate the right to a family life.[14]

In 2007, the then Minister of Justice decided to build a prison in Greenland to be ready by 2013. The construction has since been postponed to 2014 or 2015. It is now envisaged to be ready by 2017.

3. Health care

Institutional affiliation/belonging of prison doctors and other health professionals

Prison doctors and other health professionals are employed under the auspices of the Ministry of Justice (Prison and Probation Service), and they are responsible to the Prison Governor. This raises two concerns: Firstly, there is the issue of 'dual obligations' because the prison doctors are on the one hand obliged to act in the best interest of their patients (the inmates), and they are on the other hand subordinates of the Prison management. In practice, this creates dilemmas that may be to the detriment of the best interest of the inmates. Secondly, the affiliation with the Ministry of Justice instead of the Ministry of Health means that the prison doctors are not subject to the general supervision or quality assurance, which is an integral part of the public health system. In practice, the prison sector often employs retired doctors who perform their duties with very limited accountability vis-à-vis the public health system. For instance, several doctors who are in their 70'ies use treatment methods that are not up-to-date or in alignment with the methods applied in the public health system. As a result, the inmates risk receiving sub-standard treatment.

[12] Department of Prisons and Probation, statistic 2012, table 5.4
[13] Department of Prisons and Probation, statistic 2012, table 5.5
[14] http://politiken.dk/indland/ECE1558480/faengselsinspektoer-til-angreb-paa-groenlaenderordning/

DIGNITY recommends that it be considered to change the institutional belonging of the prison health system from the Ministry of Justice to the Ministry of Health (the Regions), hereby ensuring their formal – as well as functional – independence and avoiding 'dual obligation' dilemmas.

Reporting obligations of prison doctors

Under Danish law, a prison doctor is not under an obligation to report instances in which he suspects or discovers signs of violence on a prisoner to the prison authorities. We have seen cases where prisoners with bruises – inflicted by other inmates – have been attended to by the prison doctor who, despite the visible signs of violence, did not report the incident to the prisons authorities.

C. Establishments for foreign nationals detained under aliens legislation

1. Health care

With respect to medical screening of prisoners upon admission, the CPT pointed out in its previous report on Denmark that the initial interview of new arrivals at Ellebæk Institution should be obligatory.[15] Under Danish law, such medical screening is not compulsory, but the obligation to *offer* medical screening upon entry is compulsory. In other words, new arrivals may choose not to accept the offer of medical screening.

Ellebæk Institution does (still) not have psychologists or psychiatrists who are affiliated with the institution assistance from psychologists and psychiatrists has been awarded (3 extra hours).

2. Other issues

Detention of foreign nationalities according to the Aliens Act

The decision to detain asylum seekers in Ellebaek must be approved by a court of law, in practice; Hillerød Municipal Court. The court must decide on possible further detention every four weeks, cf. section 37(3) of the Alien Act, but there is still no maximum limit on the length of the detention under the Aliens Act.

On 7-9 May 2012, Amnesty International's Medical Group carried out a medical examination of persons in custody in Ellebaek. (Participation was voluntary and covered 22 detainees out of a total of 43 detainees on the said dates). The medical examination was based on the principles laid down in the Istanbul Protocol. PTSD was assessed in pursuance of the World Health Organisation ICD-10 Classification.[16]

Conclusion of the survey

- 27% of the detained asylum seekers examined were torture survivors.
- 33% of the torture survivors suffered from PTSD.
- One person among the non-torture survivors was found to be psychotic.
- On average the examined persons suffered from pains in two organ systems. 27% were in continuous treatment with pain-relieving medication.

[15] Paras 58 and 90, CPT/Inf (2008) 26, 25 Sept. 2008, http://www.cpt.coe.int/documents/dnk/2008-26-inf-eng.htm
[16] http://www.amnesty.dk/ellebaek-det-ukendte-faengsel/artikel/udgivelser/amnestys-udgivelser-om-ellebaek

- 63% of all the examined persons had a WHO-Five well-being score below 13, equivalent of "poor well-being".
- The survey is a spot check, which describes the situation at a given time, and it deals with a relatively small group. Further research is, therefore, recommended by the Medical Group.

The Medical Group concludes that the survey indicates that the current legislation and guidelines do not ensure that particularly vulnerable groups are not deprived of their liberty in Ellebaek. The Medical Group also finds that there is a need for establishing a formalized screening system, which ensures that vulnerable asylum seekers, such as torture survivors and mentally ill persons, are not deprived of their liberty.

DIGNITY furthermore recommends that the Danish authorities consider introducing legal time limits to the detention of foreign nationalities under the Aliens Act.

D. Establishments for juveniles and minors

Incarceration of minors together with adults

In 2011, the UN Committee on the Rights of the Child urged Denmark to take measures to ensure that no child, regardless of the circumstances, is subjected to imprisonment in the ordinary prison system with adults, cf. CRC article 37.[17] Statistics from the Prison and Probation Service from 2012 reveal that young offenders under 18 years are (still) found in the ordinary prisons, and that the average number of young prisoners has risen marginally since 2011 from 6,3 persons to 7,5 persons in 2012.[18]

Solitary confinement of minors

According to Danish law solitary confinement of minors should only take place under exceptional circumstances, and no longer than four weeks at a time, except if the incumbent is charged with offences against the state, notably crimes falling within chapter 12 and 13 of the Criminal Code, e.g. terrorism. Despite the recommendation of the UN Committee on the Rights of the Child to prohibit the placement of persons under the age of 18 in solitary confinement this is still possible under Danish law.

Prevention of recidivism

DIGNITY would like to draw the CPT's attention to a recent published study by the Ministry of Justice on the closed institution "Sølager". The study examines data from 1986-2006 to trace the development of possible recidivism amongst children and youth placed in the institution. It documents a high-level of recidivism and concludes that juvenile delinquency must be targeted to a greater extent before they become first time offenders and possibly are sentenced to a juvenile institution as once children have been placed in Sølager there is a high risk of them becoming re-offenders.[19]

[17] CRC/C/DNK/CO/4, 7 April 2011, p. 15

[18] http://www.kriminalforsorgen.dk/Files/Filer/Statistik/Kriminalforsorgens%20Statistik%202012.pdf

[19] http://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningspuljen/Soelager_rapport_JM.pdf