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**OPEN-ENDED INTERGOVERNMENTAL GROUP
OF EXPERTS ON THE STANDARD MINIMUM RULES
FOR THE TREATMENT OF PRISONERS
BUENOS AIRES, ARGENTINA, 11 – 13 December 2012**

RESPONSE OF THE GOVERNMENT OF DENMARK[1] TO NOTE CU 2011/26

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MINISTRY OF JUSTICE
Department of Prisons and Probation

JULY 2011

Memorandum on best practices, etc.

As part of the work of revising the existing United Nations Standard Minimum Rules for the Treatment of Prisoners, the Danish Department of Prisons and Probation is delighted to have the opportunity to give comments at this preliminary phase of the work.

The Department would like to give the following comments:

The European Prison Rules

On 11 January 2006, the Committee of Ministers of the Council of Europe adopted the Recommendation Rec(2006)2 regarding the European Prison Rules. In the recommendation it is indicated that the European Prison Rules from 1987 need extensive revision and updating to reflect the development in criminal law policies, sentencing practices and the general managing of prisons in Europe. It is furthermore indicated that in the preparation of the new regulations regard has been given to the case law of the European Court of Human Rights, to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and also to recommendations adopted by the Committee of Ministers concerning specific aspects of policies and practices regarding prison matters.

The Danish Department of Prisons and Probation assumes that the European Prison Rules will form part of the further work of the UNODC concerning the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Principles of the Danish Prison and Probation Service

In 1993, the Prison and Probation Service adopted a Programme of Principles for its work. According to this programme enforcement of punishments must be based on six principles: Normalisation, openness, exercise of responsibility, security, the least possible intervention and an optimum use of resources.

Please find enclosed the Programme of Principles for Prison and Probation Work in Denmark.

Parliamentary Ombudsman

Denmark has a Parliamentary Ombudsman. In addition to considering complaints from citizens, the Ombudsman carries out a wide array of inspection activities and has a special inspection division, which systematically inspects all local and state prisons.

The Ombudsman has a special obligation to monitor the conditions for persons placed in institutions more or less against their own will. As regards the institutions of the Prison and Probation Service, the Ombudsman is thus, as mentioned, responsible for systematic inspections.

The main focus of the Ombudsman's inspections is on the physical conditions, the opportunities for occupation, education and training available to the inmates, nutrition, leisure-time conditions, medical supervision and the legal situation of the inmates. Among other things, the inspections are based on interviews with institution managements and employee representatives, interviews with inmate representatives and interviews with the inmates who have requested such interview.

Moreover, on 14 May 2004, the Danish Parliament (Folketinget) adopted the motion for Denmark's ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Protocol (Part IV) presupposes that the States Parties have an independent national preventive mechanism for the prevention of torture. This mechanism must be granted at least the powers to regularly examine the treatment of the persons deprived of their liberty in places of detention.

Please find enclosed a description of how the OPCAT inspections are managed in Denmark.

Comments on the existing rules

Re: Rule 8 (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separated

Currently, in Denmark female inmates are placed in institutions where the majority of inmates are male. As a rule, female inmates are given the choice to be placed either in units primarily reserved for other female inmates or in units with inmates of both genders. Under certain circumstances it is also possible to serve a sentence as a couple/family. At present, female inmates can serve their sentence in five prisons in Denmark.

The practice of placing inmates of both genders in the same units is partly due to the principle of normalisation. The female prison population in Denmark comprises a very small number of inmates, and separating female inmates in a special institution for women only would imply that some of the female inmates would be placed far away from their children.

However, Denmark is currently reconsidering the placement of female inmates in terms of whether there are specific reasons that call for a greater degree of separation of female and male inmates, despite the above. These might be the protection of the female inmates from sexual harassment, etc., or the need to expand the possibilities concerning occupation, education and treatment programmes for women, as the current programmes have primarily been established with a view to addressing the needs and interests of the (male) majority group of inmates.

Re: Rule 8 (b) Untried prisoners shall be kept separate from convicted prisoners

In Denmark untried prisoners are placed in local prisons. According to the Danish Act on Enforcement of Sentences a short prison sentence may be enforced in a local prison to the extent necessary in view of the overall utilisation of the places in the institutions of the Prison and Probation Service. In other specific cases a prison sentence may also be enforced in a local prison.

Denmark holds the opinion that a more flexible rule than Rule 8 (b) would be appropriate and in the best interest of the inmates. If it is possible to use the same facilities for both untried and convicted prisoners, the conditions for both categories of prisoners could be improved because it may result in a wider range of workshops, sports and hobby activities, etc. If untried prisoners must be detained separately from convicted prisoners, the consequences could be an inappropriate utilisation of prison capacity. This may ultimately increase the risk of prison overcrowding.

For that reason, Denmark proposes that this Rule be amended so that there is no prohibition against detaining untried prisoners together with for instance short-term prisoners.

Re: Rule 8 (d) Young prisoners shall be kept separate from adults
This wording is found to be too categorical and has moreover been tightened compared to Article 37 c of the United Nations Convention on the Rights of the Child. Denmark proposes that the wording should be the same as in the Convention on the Rights of the Child.

In countries like Denmark where very few children (under the age of 18) are detained, such absolute rule would mean that the children would be placed far away from their homes – or *de facto* placed in solitary confinement (see the commentary on the European Prison Rules on this issue – Rule 11).

Treatment of young inmates
The Danish practice for placement and treatment of young inmates is as follows:

> *Detainees under the age of 18 from the Copenhagen area, who are placed in the prison, will be detained in a special unit at the Copenhagen Prisons where they are protected from older inmates.*
>
> *In the rest of the country young detainees are placed in local prisons.*
>
> *As a rule, the young offenders only have social intercourse with other offenders under the age of 18. If that is not possible, the local prison will try to move the offender to a local prison where there are other offenders under the age of 18. If there is no current possibility of social intercourse with other young offenders, the staff has to consider if it is in the young offender's interest to have social intercourse with older inmates to avoid social isolation. The staff has to be particularly aware that the young offender is not exposed to negative influence from the older inmates and that the social intercourse is to the benefit of the young offender.*
>
> *If none of these options is possible, the local prison must inform the Department of Prisons and Probation.*
>
> *As a main rule, young offenders of the age between 14 and 17 who have to serve a sentence are placed in a half-way house within the Prison and Probation Service or in a similar institution outside the Service if such placement outside prison or local prison is not inappropriate for decisive law enforcement reasons (according to section 78 (2) of the Act on Enforcement of Sentences).*
>
> *Young offenders who have to serve a sentence in prison will normally be placed in a special unit in the open Jyderup State Prison, which was established in September 2009. Those who have to serve their sentences in a closed prison will be placed in a special unit in Ringe State Prison.*
>
> *The Prison and Probation Service has laid down general rules in this field.*

Re: Rule 20 (1) Every prisoner shall be provided at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
On the basis of the normalisation principle, inmates in most Danish prisons cook their own meals, either individually or in groups, from food purchased from the prison shop.

As such scheme is found to be vital for normalisation purposes and for making the individual inmate self-dependent as regards daily living skills, the wording of the text should provide for the feasibility of such self-catering principle.

Reference is made to the commentary on the European Prison Rules on this issue (Rule 22):

> *'There is no prohibition of self-catering arrangements in the Rule, but where there are such arrangements they must be implemented in a way that enables prisoners to have three meals daily. In some countries prison authorities allow prisoners to cook their own meals, as this enables them to approximate a positive aspect of life in the community. In such cases they provide prisoners with adequate cooking facilities and enough food to be able to meet their nutritional needs.'*

Re: Rule 24. Medical screening
In the Executive Order on Health Care for Inmates in the Institutions of the Prison and Probation Service, the Ministry of Justice has laid down routines according to which all new inmates are offered a consultation with the nurse or doctor of the institution. In Denmark, it is a statutory principle that any contact with health services is normally only made with the consent of the patient.

The Executive Order is therefore worded so that initial contact with health staff will only take place if the inmate consents to it. It is important for the doctor-patient relationship that the health staff is independent of the prison system so that the inmate experiences that his or her relationship with the health staff constitutes a doctor-patient relationship proper, similar to the doctor-patient relationship existing in the outside community.

In accordance with the Executive Order, the institution must give the inmate a general briefing on the health care arrangements of the institution as soon as possible following admission and orally offer the inmate a consultation with the doctor or nurse of the institution. However, this does not apply if:

- The stay will presumably be quite brief; or
- The inmate has been transferred from another institution of the Prison and Probation Service where the inmate has previously been offered a consultation with a doctor or nurse.

It must be recorded in the inmate's file whether the inmate wants a consultation with a doctor or a nurse. In the affirmative, the consultation must take place as soon as possible.

In connection with admission inmates are given a leaflet with a set of guidelines which include a description of the access to health care. As appears in the guidelines, the wording under the heading 'Sickness' reads as follows: 'There is a doctor's consultancy in the local prison. You will be offered a talk with the doctor or a nurse. If at any other time you feel that you need a doctor, you must inform the staff who will then inform the doctor/nurse.'

So far, the Department has been of the opinion that the existing rules, under which an inmate must be given a general briefing on the health care arrangements of the institution as soon as possible following admission and must orally be offered a consultation with the doctor or nurse of the institution, are sufficient.

However, the health of the clientele of the Danish prisons generally seems to have deteriorated. There is also an increasing number of foreign inmates who are assessed to be in generally poorer health than Danish inmates. In view of this development, the Department has been granted funds for a four-year pilot project on screening for mental illness. The purpose of the project is to identify persons with mental illnesses earlier than is the case today so that they may be offered treatment sooner or possibly be transferred to a psychiatric ward. The project has been launched to test a screening model in order to better be able to assess whether such screening should be introduced on a national scale. The project is run by The Copenhagen Prisons and the results are expected to be available mid-2012.

Moreover, the Department has been granted funds for a pilot project on screening for somatic illnesses for the purpose of assessing, on the basis of the experiences from the project, whether the existing health care arrangements of the state and local prisons need to be changed – and, in the affirmative, how. The project runs until the end of 2012 and the results of the project are expected to be presented mid-2013.

Re: Rule 30. No prisoner shall be punished twice for the same offence
Denmark finds it important that it is possible to impose a disciplinary sanction even though the offence may also give rise to a sanction under criminal law. The possibility of imposing a disciplinary sanction on an inmate immediately is of vital importance for order and security reasons in certain situations.

The Danish rules do actually allow the imposition of an administrative disciplinary sanction even where the offence may also result in a court-imposed sanction under criminal law. In cases where a disciplinary sanction has been imposed on an inmate and the offence has also been reported to the police, the police will be notified of the disciplinary sanction so that the court may take it into consideration when determining the sentence, if any. Under those conditions it is found acceptable that both a disciplinary sanction and a sanction under criminal law can be imposed on an inmate for the same offence.

Denmark would find it appropriate that the Rule or the Explanatory Memorandum reflected that, under the circumstances referred to above, the imposition of a disciplinary sanction is not precluded even though the offence may also result in a sanction under criminal law.

Re: Rule 32 (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health
Denmark has made a reservation concerning Rule 43.2 of the European Prison Rules. The Rule states that the medical practitioner or a qualified nurse reporting to such a medical practitioner must pay particular attention to the health of prisoners held under conditions of solitary confinement, *must visit such prisoners daily*, and must provide them with prompt medical assistance and treatment at the request of such prisoners or the prison staff.

The reservation is based on the fact that Danish medical practitioners find the rule to be incompatible with medical ethics, and they will therefore not carry out routine inspections of prisoners held under measures by force. Even though the commentary expressly determines that it is not the medical practitioner's job to guarantee that the prisoner can in fact endure the measures, daily visits by a doctor could easily be interpreted by the prisoner as a medical acceptance of the measure and could therefore result in doubts concerning the fields of responsibility of the medical practitioner and the prison management, respectively.

The only role of the prison doctor is to provide the necessary medical treatment or assistance. Articles 65 and 66 of Recommendation R (98) 7 on the ethical and organisational aspects of health care are in accordance with the Danish position.

Re: Rule 53. Staff in women's units
As mentioned above, Denmark supports a so-called normalisation principle, meaning that conditions in the general community must be kept in view when planning the daily life in the prisons. As a result of this principle, staff of both genders are employed in men's as well as in women's units.

Currently, female prison officers make up about one-third of the supervisory staff.

The Prison and Probation Service has good experience with having staff of both genders in men's units as well as in women's units. This provides a form of daily life that makes the best possible use of both female and male characteristics. A balanced distribution of male and female staff is believed to have a positive impact on the prison environment.

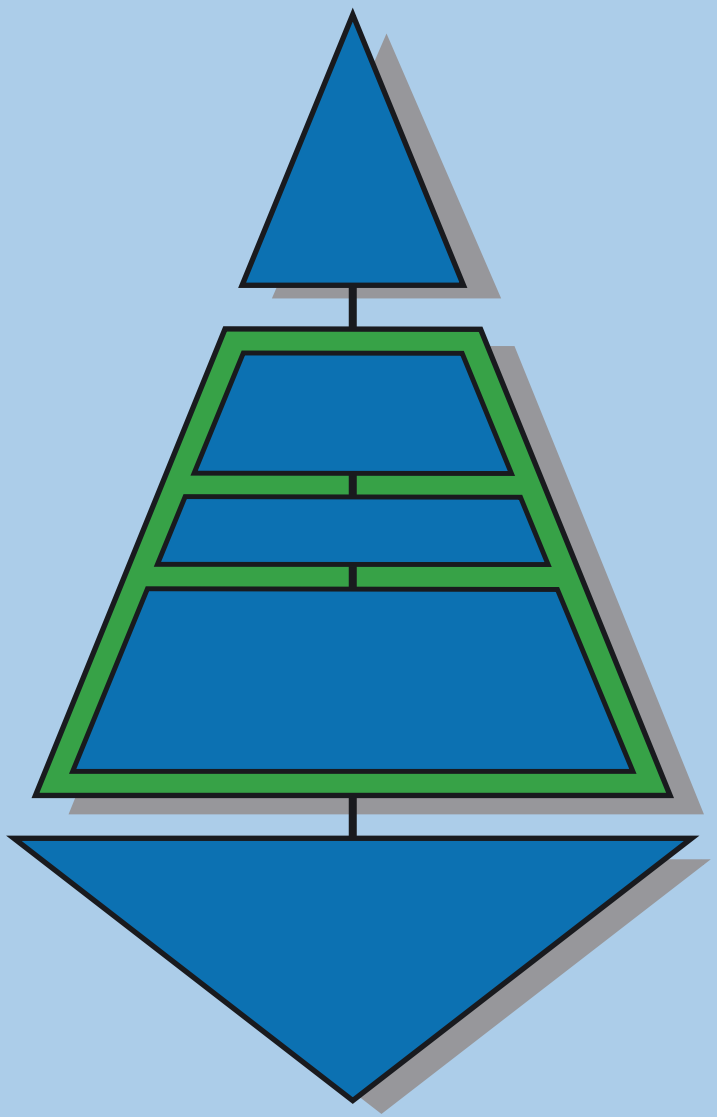
Moreover, a provision prescribing a majority of women in some units may conflict with the Danish Act on the Equal Treatment of Men and Women in respect of Employment and Parental Leave, etc. Under the Act, all employers must treat men and women equally in connection with employment, transfers and advancements. Job advertisements may not state that persons of a specific gender are wanted or will be preferred for employment, see section 6 of the Act. It will be impossible to comply with such provisions if women's units were mainly to have female staff, as gender would then have to be taken into account in connection with employment, transfers and advancements to the units in cases where the number of male employees amounted to almost fifty per cent of the staff.

The Folketinget has laid down rules stipulating that a search of an inmate must be made and witnessed by persons of the same gender as the inmate. Against that background, the Prison and Probation Service has been granted an exemption from the above Equal Treatment Act so that the gender of staff can be taken into account in the planning of working hours.

It is therefore important that female staff is present in a women's unit for searching the inmates.

However, Denmark finds it inexpedient to lay down rules on the distribution of male and female staff in women's units.

A Programme of Principles for Prison and Probation Work in Denmark



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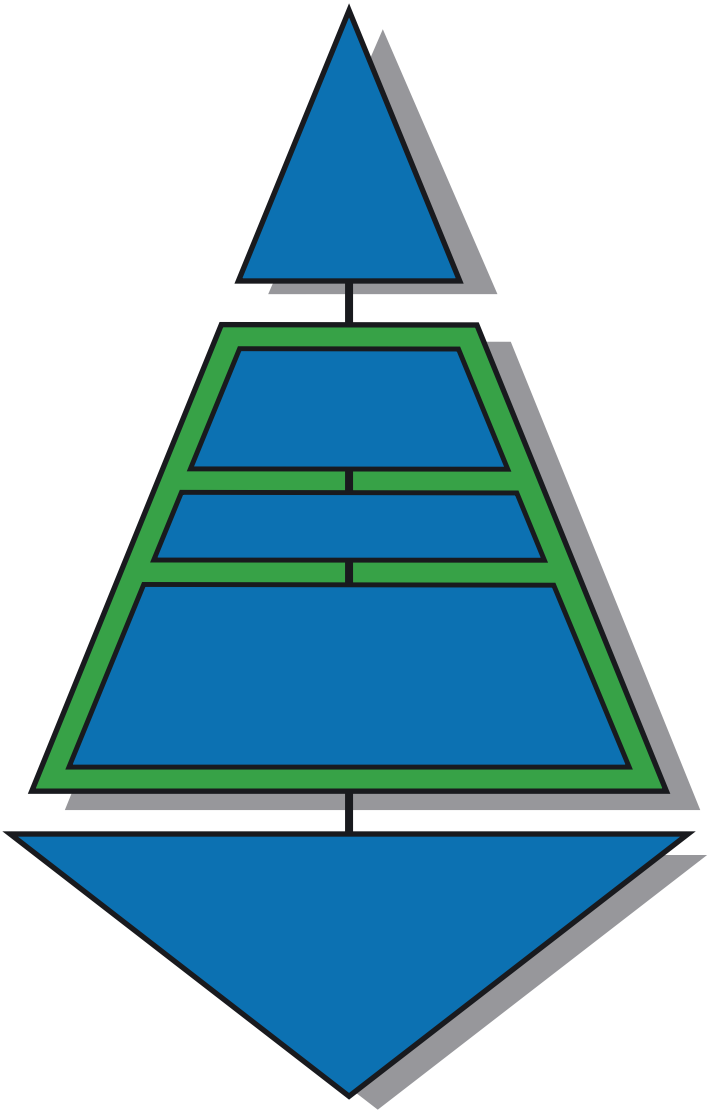
A Programme of Principles for Prison and Probation Work in Denmark



Foreword

Prison and probation work has a ***main purpose.***

Society lays down certain ***requirements*** for the fulfilment of this main purpose upon which prison and probation work must build. These requirements should therefore be accepted by all employees of the Danish Prison and Probation Service.[1]

The requirements for the fulfilment of the main purpose enable a ***primary task*** to be formulated.

The requirements also provide the frames of reference for carrying out the primary task and achieving the main purpose. They can be seen as ***principles*** for accomplishing the primary task.

Each of the principles can have as ***outcome a number of*** practical precepts and directives, i.e. the principles become operationalised.

Outcomes in terms of precepts and directives can be formulated for the ***Prison and Probation Service as a whole***, for its ***various service stations (prisons, probation offices, etc),*** for ***particular units within service stations*** and finally, in relation to the daily conduct of ***individual staff members***, i.e. outcomes can relate to different levels of the organisation.

The present programme of principles concludes with outcomes for the whole prison and probation system. Outcomes in relation to service stations, constituent units and individual staff members can be formulated at the appropriate organisational levels.

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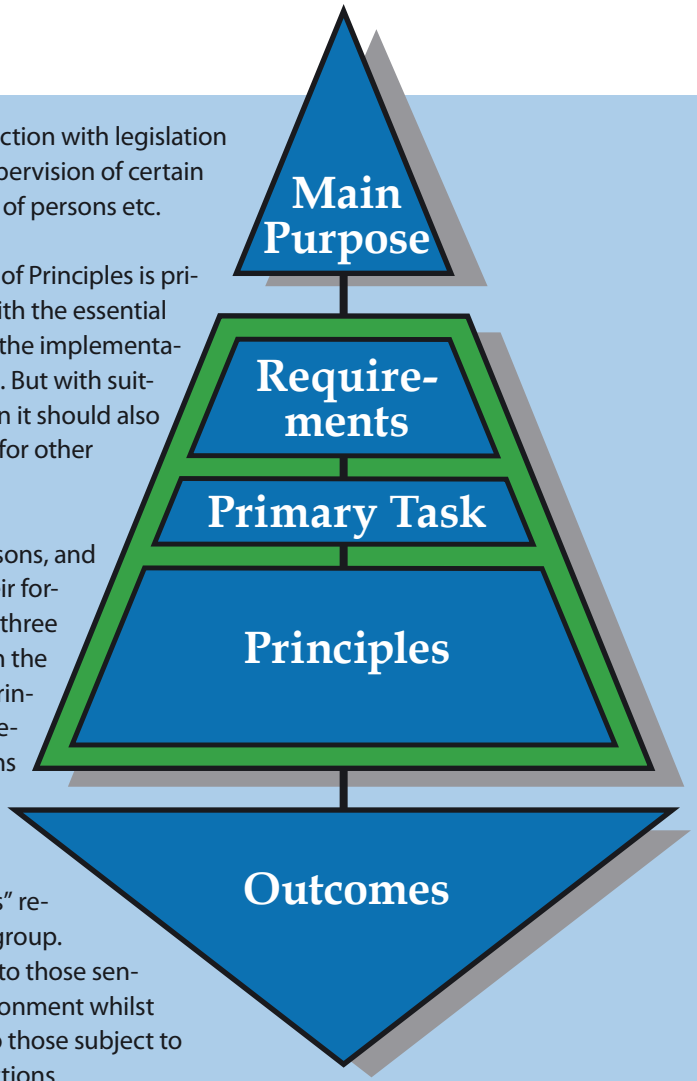
The essential task of prison and probation work is the implementation of the sanction imposed, i.e. imprisonment (including supervision of parole cases), probation and community service. But the Danish Prison and Probation Service also undertakes other tasks such as providing social inquiry reports to the courts, deprivation of liberty or de-

tention in connection with legislation on aliens, the supervision of certain other categories of persons etc.

The Programme of Principles is primarily written with the essential task in mind, i.e. the implementation of sanctions. But with suitable modification it should also serve as a guide for other formsof activity.

For practical reasons, and regardless of their formal legal status, three terms are used in the Programme of Principles to characterise those persons who are the object of prison and probation work. "Offenders" refers to the total group. "Inmates" refers to those sentenced to imprisonment whilst "clients" refers to those subject to community sanctions.



Main purpose

The main purpose of prison and probation work is to contribute to reducing criminality.

This main purpose is valid for the entire criminal justice system – the police, the prosecution authorities, the courts and the prison and probation system.

It is essential to the understanding of this main purpose to realise that the criminal justice system is not alone in influencing criminality and patterns of crime. Attitudes to criminality, demographic trends, family relationships, the general living conditions of the community and many other factors also play an important part.

The notion of "reducing criminality" means that the main purpose is to bring the level of criminality down to an acceptable level. What is to be considered an acceptable level is, in the final analysis, a political question.

Requirements

1. HUMAN WORTH
All prison and probation work shall respect the individual person and generally accepted human rights.

These generally accepted human rights relate, for example, to the right to work and rest from work, social security, a reasonable living standard, medical treatment, access to education and cultural opportunities and the prohibition of torture, inhuman treatment and discrimination. They come to expression in, ***inter alia***, the Danish Constitution and other legislation as well as the United Nations Convention on Human Rights, the United Nations Convention on Civil and Political Rights, the United Nations Convention on Torture, the European Convention on Torture, the European Prison Rules, ***et al***.

2. NON-ENCROACHMENT

Prison and probation work shall not place more restrictions on offenders than follow from legislation and the implementation of the sanction.

The principle implies firstly that all administration shall be based upon the principle of legality.

In addition, the principle asserts that the sanction or other lawful decision shall be implemented in accordance with its content, i.e. the content as defined in legislation.

It is not therefore permissible to encroach upon the daily life of an inmate or client unless this is necessary for the implementation of the sanction or the safety of some other person.

This standpoint has already come to expression in certain earlier official Danish reports on the enforcement of imprisonment, on occupational activities in prison establishment and, more recently, in a draft Bill on Implementation of Sanctions. The same standpoint is also to be found in the European Prison Rules.

3. ENFORCEMENT OF LAW

When arranging for the implementation of sanctions, prison and probation work shall respect the generally accepted considerations which underlie the sanction.

The requirement makes reference to the generally accepted aims of sanctions – general prevention, individual prevention, punishment, etc. In particular, day-to-day prison and probation work shall seek to protect citizens from criminality. The requirement also means that decisions taken in other parts of the criminal justice system shall be loyally supported. Contrariwise, the Prison and Probation Service has the right to expect other parts of the criminal justice system to respect its own activities.

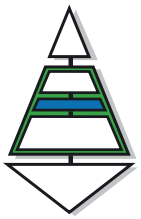
This requirement is ***inter alia*** a point of departure for the necessary control activities associated with the tasks of the Prison and Probation Service.

4. SENSE OF JUSTICE
The Prison and Probation Service shall take account of the general sense of justice in society and among the victims of crime.

To a large extent this requirement is satisfied when the court makes its decision. But to some extent the requirement is carried over into the implementation of the sanction. Legislation and administrative regulations make clear, where this is the case, to what extent a general sense of justice can or shall be given weight.

Primary task

The primary task of the Prison and Probation Service is the implementation of the sanction.



In this connection, the Prison and Probation Service will:

- exercise such control as is necessary for the implementation of the sanction

CONTROL AND SECURITY

- support and motivate the offend er to live a crime-free life by asisting personal, social, vocational and educational development.

SUPPORT AND MOTIVATION

These two facets of the primary task are complementary. Thus, there can be no question of asserting that one is more important than the other.

Principles

1. NORMALISATION

The daily activities of the Prison and Probation Service shall in general, and whenever specific agreements are reached, be related to normal life in the general community.

Experience has shown that the ***traditional prison situation*** can endanger attempts to help prisoners. A variety of side-effects associated with a traditional sojourn in prison can put a stop to positive effects which may be achieved through efforts to provide assistance measures.

By establishing conditions which differ as little as possible from those obtaining in daily life outside prison, the grounds for aggression and apathy are reduced and the negative effects of a prison sojourn are limited. A better basis for assistance measures, undertaken in a spirit of broad agreement, is thereby obtained.

This principle is both fundamental and broad and can be said to embrace several of the following principles. Precisely because the principle is so broad, it can be useful to distinguish a number of independent principles such as, for instance, openness and responsibility.

The normalisation principle implies, ***inter alia***, that both the inmates and clients are included in general societal guarantees of justice and fairness. Having regard to the very nature of imprisonment there is a special need to ensure such guarantees for inmates.

The principle also means that the physical conditions of the prisons should be related to those obtaining in the general community. They should, therefore, be altered in accordance with changes occurring in the community.

2. OPENNESS

Prison and probation work shall be organised so that the offender is offered good opportunities to make and maintain contact with the ongoing life of the community. Similarly, contact between the various parts of the Prison and Probation Service and society shall be strengthened to the greatest possible extent.

This principle contains two elements of equal importance. The first concerns the inmate, the second the system as such.

The principle of openness lies close to that of normalisation and is, together with the latter, a cornerstone of the sanction system in a democratic society. So far as the inmate is concerned, openness is especially important since deprivation of liberty ***under traditional circumstances*** results in a number of side effects extending beyond those arising from the purpose of the sanction. These side effects include, for example, the risk that the offender will be deprived of his family, his work and his self-respect. They arise primarily because the traditional prison is a total institution in which the prisoners' daily life consists of following fixed routines which limit the possibilities for personal development.

Openness is a condition of the necessary interaction between the Prison and Probation Service and its collaborative partners in the community. It is also necessary if ordinary citizens, politicians and the massmedia are to be able to follow the work and activities undertaken. Openness is the best antidote against any suspicion of the misuse of power, a suspicion which easily arrise when a system, and the staff working in that system, are endowed with as much power as is the Prison and Probation Service.

3. EXERCISE OF RESPONSIBILITY

Prison and probation work shall be so organised that the offender has the opportunity to develop a sense of responsibility, self-respect and self-confidence and become motivated to actively strive for a crime-free life.

The background to this principle is, ***inter alia***, that the so-called lodging and service functions which traditionally are an integral part of imprisonment, lessen the inmate's capacity to cope with daily life after release. The principle is, however, applicable to situations other than those of deprivation of liberty.

The essential content of the principle is that offenders shall themselves take responsibility for their own lives. The staff's helping efforts shall in the first place consist of motivating, counselling and guiding those in their charge. Guidance includes assisting offenders to be aware of their rights and obligations in the context of implementation of the sanction. These activities must be combined with a general human concern and support for individual inmates or clients, who may not be in a position to deal with their problems by themselves.

A necessary condition for offenders to learn and exercise a sense of responsibility is that there shall be a logical and sensible context within which the prison or probation work is carried out.

4. SECURITY

Prison and probation work shall ensure that the sentence of the court is carried out with due attention paid to the protection of the community from crime as well as protecting the inmate from aggression or damaging influences emanating from other persons.

The principle of security is chiefly of weight in relation to the enforcement of imprisonment. The purpose of security is partly to ensure that the sentence is carried out and partly to prevent inmates from committing further offences during the period of imprisonment or in connection with granted absence from the prison.

It is important to keep in mind that the maintenance of security has multiple aspects. It does not depend on physical barriers and technical means alone (passive security) but also on the staff's personal contact with inmates and its knowledge of what is going on in the institution (dynamic security).

The security principle is also relevant to work in connection with community sanctions. In this context the aim is to provide supervision which will lessen the risk of fresh criminality and violation of the rights of others to the greatest possible extent. The principle is therefore of importance for the control aspects of the work of the probation service.

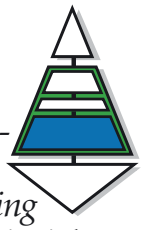
5. LEAST POSSIBLE INTERVENTION

The Prison and Probation Service shall choose the least intervenient means for dealing with any particular task.

Day-to-day work with inmates, clients and their problems is characterised by the fact that there exist a variety of ways of performing the necessary tasks. To make use of maximum resources of powers is not necessarily the most effective method. On the contrary, the aim should be to develop problem-solving methods which make use of the least possible intervention in the lives of the inmates or clients whilst, at the same time, ensuring that the difficulties which have to be faced are effectively dealt with.

It will often be the case that effectiveness is ensured by undertaking an early intervention so as to prevent the development of unacceptable situations.

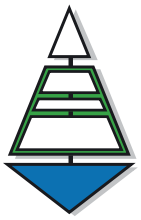
6. OPTIMUM USE OF RESOURCES



The Prison and Probation Service will use resources effectively, flexibly and in relation to perceived needs. It will therefore make all necessary provision to have well-qualified staff who are capable, both in terms of professional training and personal competence, of carrying out their tasks in accordance with the Programme of Principles.

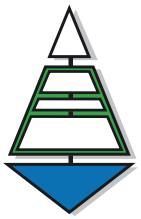
No social system can obtain all the resources it might wish to use in the fulfilment of its goals. The way in which allocated resources are used is, therefore, of great significance. The most valuable resource of the Prison and Probation Service is its staff. Hence it is of decisive importance that the conditions of entry into and work within the Prison and Probation Service are such as enable the recruitment and retention of genuinely proficient personnel at all levels and for all functions.

Outcomes



The six principles for prison and probation work which have been described are independent principles. But at the point where they culminate in practical outcomes it is important to remember that there is an underlying relationship between them. When dealing with day-to-day problems, therefore, it is not sufficient to apply only one or two of the principles. ***All of them should be used as a basis for daily work.***

Although in what follows each principle has its own outcome, this is primarily for pedagogical reasons. Thus, for instance, the outcome precepts which follow from the principle of normalisation must also be consonant with the other five principles.



1. NORMALISATION

The outcome precepts from this principle are as follows:

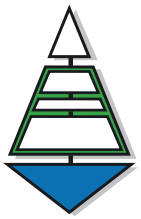
1.1 The Prison and Probation Service will strive to ensure that offenders are given the opportunity to exercise their civil rights and to the greatest possible extent are given the same opportunities as other citizens for training and education, work, social help and benefits, medical assistance, cultural and leisure activities, etc.

1.2 Inmates will be allocated to prisons that, at far as possible, enable them to maintain contact with their own home environment ("proximity principle"). When there are special reasons for doing so, inmates will be differentiated on grounds of age, gender, criminality, mental or physical health etc.

1.3 The Prison and Probation Service will strive to ensure that the physical conditions of the prisons (size of institutions, wings, rooms, etc.) conform, to the greatest possible extent, to contemporary standards and to the requirements of the community in general.

1.4 The Prison and Probation Service will work to eliminate a climate of institutionalisation by allowing inmates reasonable opportunities to have personal property in their possession. Staff clothing and ways of behaving and speaking to inmates shall be such as will promote sound social contact between the staff and the inmates.

1.5 The Prison and Probation Service will utilise the helping services of the community to the greatest possible extent rather than set up parallel services. However, where inmates have no possibility to make use of community services, the Prison and Probation Service will endeavour to provide relevant forms of help and treatment.



2. OPENNESS

The outcome precepts from this principle are as follows:

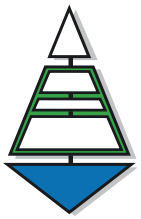
2.1 The point of departure for the allocation of inmates is that they shall be placed in open prisons where the possibilities of contact with the community are greatest.

2.2 Opportunities for correspondence, visits and leaves, etc shall be given which enable inmates to maintain and develop their contacts with relatives and with life in the community.

2.3 Inmates shall be given opportunities for association to the greatest possible extent.

2.4 The Prison and Probation Service will collaborate both generally and in practical matters with other parts of the criminal justice system and other relevant sections of society. It will strive to provide as full an information as possible on criminal policy and the content of, and conditions for, its work.

2.5 The Prison and Probation Service will give full co-operation to external inspectorial and supervisory bodies and be open for visits by the press and generally accepted humanitarian organisations.



3. EXERCISE OF RESPONSIBILITY

The outcome precepts from this principle are as follows:

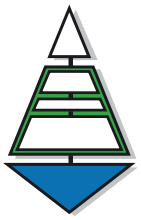
3.1 Every effort will be made to ensure congruity in the work of the different sectors of the Prison and Probation Service ("continuity and co-ordination principle"). This shall at all times seek to motivate offenders to take responsibility for their own lives.

3.2 Inmates will be required to the greatest possible extent to take responsibility for daily doings such as preparing food and the laundering and repair of clothing (self-management).

3.3 Guidance will be given to offenders so that they may solve their own problems rather than having problems solved for them. They will be allowed to choose between relevant offers of help rather than having specific arrangements thrust upon them.

3.4 Offenders will be given the opportunity to exercise influence on the planning of measures of help and to carry out the particular parts of such plans.

3.5 Inmates will be given flexible opportunities to exercise influence and share responsibility for conditions in the prisons.



4. SECURITY

The outcome precepts from this principle are as follows:

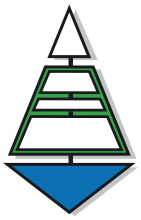
4.1 Control and security tasks will be dealt with using a combination of technical, disciplinary and helping measures and close contact between staff and inmates.

4.2 Every effort will be made to try to prevent absconding and escapes, elusion of supervision and the commission of further offences during the period of implementation.

4.3 Good order and necessary discipline will be upheld in the prisons ***inter alia*** in order to try to avert the risk of inmates being exposed to aggression or harmful influence by other inmates.

4.4 Efforts will be made to prevent offenders from using narcotic drugs or misusing alcohol or medicines.

4.5 Efforts will be made to reduce the risk of recidivism by assisting in preparing for the release situation so as to help inmates lead law-abiding lives.



5. LEAST POSSIBLE INTERVENTION

The outcome precepts from this principle are as follows:

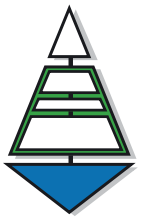
5.1 The necessarry professional knowledge and skills shall be acquired which will enable conflicts to be prevented or dealt with using pacific means so that the use of disciplinary punishment or other similar reactions by authority are avoided to the greatest possible extent.

5.2 The notion of proportionality will be used in connection with disciplinary punishment or other reactions by authority so that reasonable interventions are achieved in concrete situations. Similar considerations apply to the imposition of conditions in connection with conditional release etc.

5.3 The quality of forbearance will be used with all interventions by authority so that any given intervention is as lenient as circumstances permit.

5.4 Control, special conditions and other measures not involving deprivation of liberty, will be used in conjunction with supervision to the extent necessary to ensure the effective carrying-out of supervision.

5.5 Resources will be brought into use at an early stage ("early prevention principle"). The Prison and Probation Service will play an active part in general preventive efforts, ***inter alia*** through collaboration with schools, the police and social agencies and through general information activities.



6. OPTIMAL USE OF RESOURCES

The outcome precepts from this principle are as follows:

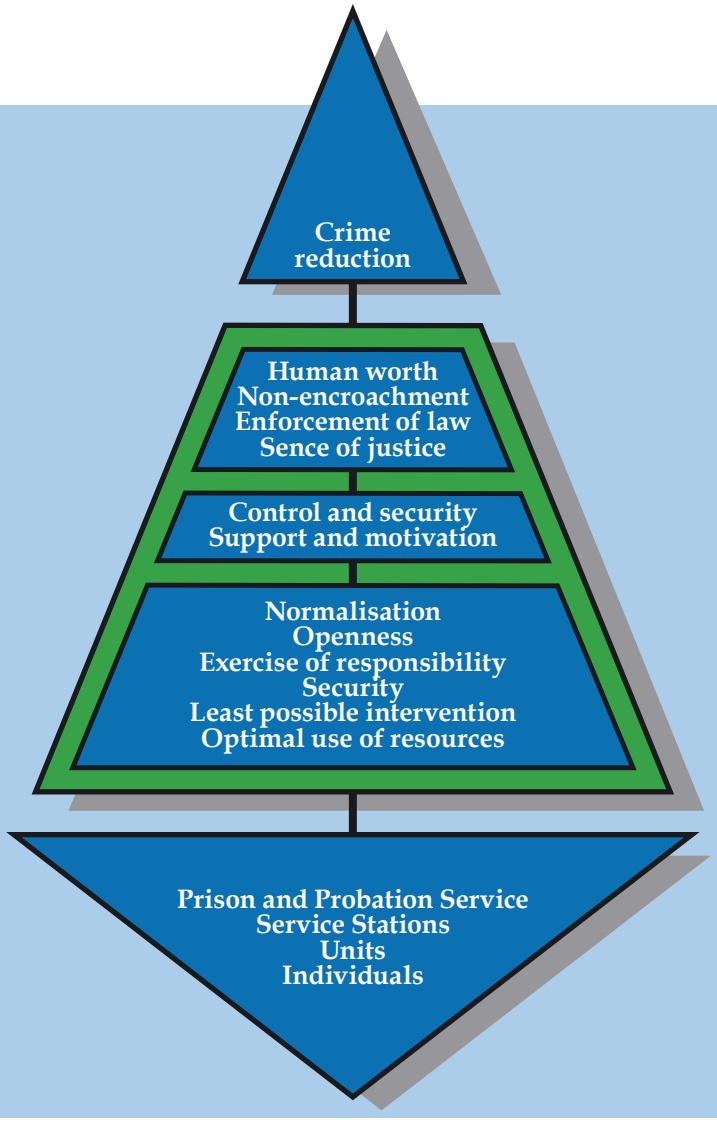
6.1 The staff policy of the Prison and Probation Service shall be one of assisting the staff to deal with their responsibilities and tasks, enhancing job satisfaction and ensuring a good staff practice compatible with contemporary standards.

6.2 Staff facilities shall be of good quality as shall conditions of work, in particular with regard to personal safety.

6.3 A staff structure will be estalished that makes possible a close contact with inmates and a suitably differentiated contact with clients.

6.4 Responsibility and the exercise of competence will be delegated as thoroughly as possible so as to stimulate staff to independent and creative initiatives.

6.5 Staff policy will promote opportunities for the further training of staff – in particular for management training – using both the internal system of training as well as external courses and developmental activities.


Crime
reduction
Human worth
Non-encroachment
Enforcement of law
Sence of justice
Control and security
Support and motivation
Normalisation
Openness
Exercise of responsibility
Security
Least possible intervention
Optimal use of resources
Prison and Probation Service
Service Stations
Units
Individuals

The Danish Prison and Probation Service is part of the Ministry of Justice. It is a single administration, which deals with sanctions involving deprivation of liberty as well as community sanctions and measures.

Ministry of Justice
Department of Prisons and Probation
Copenhagen 1994
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Translation: Norman Bishop

The OPCAT Tasks: General Principles

including the cooperation between the Danish Parliamentary Ombudsman, The Rehabilitation and Research Centre for Torture Victims and The Danish Institute for Human Rights

1. Background and objective

On 19 May 2004 the Folketing (the Danish Parliament) agreed to ratify the UN's Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), cf. motion for parliamentary resolution No. B 129 of 19 February 2004.

The OPCAT direct the member States to establish a system of regular visits undertaken by independent bodies to places where people are deprived of their liberty, in order to prevent torture, etc. Each of the member States are obligated to establish one or more national authorities for the prevention of torture, etc.: The National Preventive Mechanism – NPM.

In the autumn of 2007 the Danish government appointed the Parliamentary Ombudsman (PO) the Danish NPM. When authorising the appropriation for the PO to undertake the task, the Folketing presupposed that the Rehabilitation and Research Centre for Torture Victims (RCT) and the Danish Institute for Human Rights (DIHR) have the ability to provide the NPM with specialist medical and human rights experts.

Below, the legal framework for the NPM and the cooperation between the PO, the RCT and the DIHR will be outlined.

2. The legal framework for the establishment of the NPM

Part 4 of the OPCAT Protocol contains seven articles on the NPM, including a description of the conditions which the state shall implement in order for the NPM to carry out its tasks.

Among other things, the States shall guarantee the functional independence of the NPM and take the necessary steps to ensure that the NPM has the required capabilities and professional knowledge (Article 18, paragraph 1 and 2). The PO's cooperation with the RCT and the DIHR is stipulated precisely in order to ensure that the NPM may carry out its tasks with the required medical and human rights expertise. Consequently, when authorising the appropriation for the PO's function as NPM, the Folketing stipulated that the RCT and the DIHR likewise be granted the financial resources to participate in the NPM's task.

The NPM's tasks are described in detail in Article 19. The NPM's main task consists of visiting places where persons are deprived of their liberty, with a view to strengthening the protection against and prevention of torture and other degrading and inhuman treatment. In addition, the NPM shall submit recommendations and observations concerning existing or proposed legislation.

Both the inspection activity and the other part of the NPM's work are presumed to have a particular preventive perspective. This implies first and foremost a special duty to pay attention to general conditions which may in the long term indicate a risk of torture or other degrading or inhuman treatment. The Chairman of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Ms. Silvia Casale, has made the following statement with regard to the preventive perspective:
"The preventive perspective is forward looking. It does not dwell on past mistakes, except for the purpose of identifying where improvement needs to occur. In order to bring state officials to an acceptance of the problems in their systems, the SPT will deliver the results of its careful empirical fact-finding, with information triangulated from different sources. Producing a clear picture of shortcomings, gaps or negative practices should not be undertaken or received as an exercise in blaming; nor is it intended to assist the prosecution in pursuing individual cases. The preventive focus is on generic weaknesses and systemic faults. The object is to reach a common understanding of current problems and of the need for change, in order to prevent recurring abuse."
(The Optional Protocol to the UNCAT: Preventive Mechanisms and Standards, Conference Proceedings, University of Bristol 2007)

In order to enable the NPM to fulfil its mandate, the State shall i.a. undertake to grant it access to all places of detention, including private institutions, and grant access to all information thereof, cf. Article 20. The Danish Ombudsman Act has been amended accordingly in order to grant said access.

Confidential information collected by the NPM shall be privileged and must not be published without the express consent of the person concerned (Article 21, paragraph 2).

The competent authorities shall examine the NPM's recommendations and enter into a dialogue with the NPM on possible implementation measures (Article 22).

The State is obligated to publish and disseminate the annual reports of the NPM (Article 23).

As stated, the PO has been appointed as the Danish NPM. Greenland and the Faroe Islands have also ratified the OPCAT. The PO is competent vis-à-vis the institutions under the Community of the Danish Realm in Greenland and on the Faroe Islands. The Danish Ministry of Foreign Affairs has not yet decided who should be appointed NPM for those

institutions which belong under the respectively Greenland and Faroese home rule, including private institutions, but it will probably be the Ombudspersons for Greenland and the Faroe Islands.

3. The PO, the RCT and the DIHR

3.1. The Parliamentary Ombudsman / NPM
The mandate of the Danish Parliamentary Ombudsman is laid down in the Ombudsman Act (act No. 473 of 12 June 1996).

The Ombudsman is elected by the Folketing after every general election and the Folketing may dismiss him if he ceases to enjoy its confidence (Section 1 and 3). In the discharge of his functions the Ombudsman is independent of the Folketing (Section 10). The Ombudsman engages and dismisses his own staff (Section 26). The Ombudsman and his staff must observe confidentiality (Section 28).

The jurisdiction of the Ombudsman extends to all parts of the public administration (Section 7).In June 2009 the Ombudsman Act was amended by Folketinget in order to include private companies, etc. in the Ombudsman's jurisdiction for the purpose of fulfilling his NPM function (act No. 502 of 12 June 2009).

Authorities under the Ombudsman's jurisdiction are obligated to provide the Ombudsman with all the information and all the documents which the Ombudsman may demand. The Ombudsman may demand written statements from the authorities under his jurisdiction and may subpoena persons to give evidence in court on any matter of importance to his investigations. The Ombudsman may inspect any place of employment and shall have access to all premises (Section 19). In the 2009-amendment of the Ombudsman Act, a provision has been included by which the NPM may also demand information from private companies and inspect private premises.

When the Ombudsman carries out his functions as NPM, he does so with reference to the basis of assessment which may be gathered from OPCAT (see item 6 and 7). The NPM is not affected by the Ombudsman's limitations under the Ombudsman Act (or in practical terms), for example the limitations in relation to the courts, the demand that other appeal options be fully explored, and the 1-year period of limitation.

3.2. The Rehabilitation and Research Centre for Torture Victims

The Rehabilitation and Research Centre for Torture Victims (RCT) was established in 1982 as one of the first specialised centres for treatment of torture victims. The RCT is an independent private institution which since its establishment has developed into one of the leading resource centres in the international network of human rights organisations in the fight against torture. The RCT carries out rehabilitation of torture victims in Denmark and research into the causes and effects of torture, including research into conditions in prisons. In an international context the RCT carries out development undertakings in which promoting the ratification and implementation of OPCAT constitutes one of its major target areas. The RCT participates in the OPCAT contact group together with big international human rights organisations and, in addition, works directly with the UN Subcommittee for the Prevention of Torture (SPT). Furthermore, the RCT contributes to the capacity build-up of those civil society organisations which carries out independent monitoring visits to prisons and other places of detention.

3.3. The Danish Institute for Human Rights

The Danish Institute for Human Rights (DIHR) was established in 2002 by the act on establishment of the Danish Centre for International Studies and Human Rights. The DIHR replaced the Danish Centre for Human Rights which had been established through a parliamentary resolution in 1986.

The DIHR is an independent national human rights institution which monitors and counsels on human rights matters. It follows directly from the act that the institute "shall advise Parliament and the government on Denmark's obligations in the area of human rights". This is i.a. done through the institute's national functions and on the basis of the human rights research that is carried out at the institute. The institute researches specifically in the conditions and rights of the inmates in Danish prisons, including e.g. the issue of solitary confinement of prisoners remanded in custody and the presence of the inmates' children in the prison.

In addition, the institute functions as a connecting link between regional and international human rights institutions.

4. The cooperation between the PO, the RCT and the DIHR

The PO has been appointed NPM but the Folketing has presupposed that the in connection with the OPCAT task the Ombudsman may call upon the special medical and human rights expertise of the RCT and the DIHR.

Formally, the RCT and the DIHR function only in an advisory capacity within the OPCAT cooperation. However, the Ombudsman has stated that he will attach decisive significance to the opinion of two organisations, and that the reports will always reflect any divergent views.

The cooperation between the PO, the RCT and the DIHR is implemented in the OPCAT council and the OPCAT work group, respectively. Each of the three institutions may independently decide to carry out teaching and course activities about OPCAT matters or any other ancillary activities.

4.1. The OPCAT council – the general cooperation

The management of the three institutions meet at regular intervals – in the beginning probably every quarter and later on every six months – to discuss and prepare the overall guidelines for the OPCAT activities, the collected annual debriefings from the NPM and joint press releases. This part of the cooperation is called the OPCAT council.

The council will first of all decide on the design of an inspection manual and a structure for the reports to the relevant authorities concerning the individual inspections.

4.2. The OPCAT work group – the day-to-day cooperation

Each of the three institutions will appoint regular contact persons/staff members who will participate in the continuous OPCAT tasks – both the inspection activity itself as well as the drafting of reports and statements concerning new legislation. The staff of the PO acts as secretariat for the working group's tasks and has the overall responsibility for organising the activities.

4.2.1. The activities of the OPCAT working group in connection with inspections
Staff members from the PO and a physician from the RCT always participate in an inspection. The DIHR will participate in the start-up stage of a number of inspections but will eventually only be involved on an ad hoc basis.

The number of people participating in the inspections must be limited, preferably not exceeding four people. The RCT members of the inspection team will participate as employees of the Ombudsman. DIHR employees, who are already bound by confidentiality as civil servants, will participate as the Ombudsman's guests at the various inspections.

In those instances when the DIHR does not participate in an inspection, the report is sent in draft to the DIHR's representative in the working group for comment, either written or verbal, perhaps at a working group meeting, before the NPM submits the report in its final form. Before the NPM submits the report, the working group has discussed and decided which follow-up activities, including dialogue, which may need to be implemented on the part of the NPM after the report has been submitted, and who has to participate in these activities. The DIHR's experience of dialogue and preventive measures may be included even though the DIHR has not participated in the inspection.

4.2.2. The OPCAT working group's activities in relation to observations on existing law or proposals for new provisions
The NPM shall submit proposals and observations concerning existing or draft legislation cf. Article 19 (c).

Today, the DIHR already goes through proposals for new legislation. The DIHR will brief the working group on issues relevant to the NPM and will in agreement with the working group make draft statements for the NPM which will be presented and discussed in the working group and perhaps the OPCAT council. If it proves impossible to reach an agreement in the OPCAT council on the contents of a statement, the DIHR and the RCT may of course give the statement on their own behalf.

5. Practical tasks in connection with the OPCAT inspections, including coordination with the Ombudsman's general inspections

5.1. OPCAT inspections

The main objective of the NPM is to carry out visits to places where people are deprived of their liberty, in order to prevent torture, etc. These inspections are called OPCAT inspections.

An annual rate of 40 OPCAT inspections is expected. During the first year, 2009, only a smaller number of inspections will be carried out. In 2010 the number will rise, and it is expected that the full rate of 40 inspections annually will be reached in 2011, corresponding to approximately 1 inspection a week during the year's working weeks.

The special OPCAT unit under the Ombudsman's office is in charge of planning and organising the inspections.

In as far as it is possible, the working group agrees a year in advance which inspections to carry out, and when (an inspection plan). The inspection plan must be approved by the OPCAT council. The aim is that the 2010 inspection plan be agreed and approved before the end of October 2009. The 2011 inspection plan should be agreed and approved before the end of October 2010, and so on and so forth.

Should circumstances arise which demand an inspection outside the agreed plan, the OPCAT working group is contacted and it is arranged when this special inspection shall take place and who should participate in it.

Usually, the inspections will take place after prior notification to the institutions concerned. The Ombudsman's OPCAT unit takes care of correspondence with the institutions and obtains relevant information before the visit. The content of standard letters, information material, etc. is discussed in the working group in connection with the drafting of the manual.

Reports on each separate inspection are submitted. These reports are sent to the inspected institutions and other responsible authorities. Before the reports are submitted, the working group must discuss and agree which measures the NPM may take in connection with follow-ups and dialogue on possible implementation actions.

A collected annual report on the OPCAT activities is drafted, meaning both on the OPCAT inspections as well as on any observations on legislation and possible extracts from the PO's general inspection activities. The annual report is submitted to the OPCAT council, including a draft for a joint press release. The annual report is published on the PO's web page.

The OPCAT team will coordinate with the Danish Ministry of Foreign Affairs how the ministry will publish and disseminate the NPM's annual report, cf. Article 23. This includes the question of whether the ministry will effect an English translation of the annual report and inform the UN's Sub-committee. As a minimum, the NPM shall itself send the annual report to the parliamentary Legal Affairs Committee, the Supervisory Board in accordance with Section 71 (7) of the Danish Constitutional Act, and the Foreign Affairs Committee.

5.2. Coordination with the Ombudsman's general inspections

The Ombudsman already carries out inspections in accordance with Section 18 of the Ombudsman Act. These inspections – general inspections – are not just carried out in places where people are deprived of their liberty, and they concern a wide range of conditions of which some fall inside but a considerable number fall outside those special focus areas which the NPM must monitor in accordance with OPCAT.

The general inspection activity, which is carried out by the PO's Inspection Division, is maintained and continues the usual practice. The annual number of such inspections is around 25.

The reports from the PO's general inspections are prepared in accordance with the usual practice and sent to the parliamentary Legal Affairs Committee, the Supervisory Board in accordance with Section 71(7) of the Danish Constitutional Act, and the authorities involved.

In addition, the Ombudsman's general Inspections Division will prepare an extract of their inspection reports in those instances where they have encountered conditions which may be characterised as torture or other cruel, degrading or inhuman treatment or punishment.

The extracts are submitted to the OPCAT working group which may decide that an OPCAT inspection should be carried out or that other kinds of investigation should be instituted with a view to giving an OPCAT opinion or report.

6. The subject of the OPCAT inspections

The inspections shall be aimed at places where people either are or may be deprived of their liberty (see item 6.1), with a view to protecting against or preventing torture and other cruel, inhuman or degrading treatment or punishment (see item 6.2).

6.1. Places where people are or may be deprived of their liberty

The supervision is aimed at the treatment of people in places where they are or may be deprived of liberty in accordance with Article 4.2 of the OPCAT protocol which defines deprivation of liberty as: "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave by order of any judicial, administrative or other authority".

The supervision is particularly aimed at institutions such as prisons, county gaols, police stations, psychiatric hospital wards and asylum centres. Social residential institutions, private social care homes and other social institutions may, according to circumstances, be included in the supervisory activities. Inspections of such places will be effected as random checks following a concrete assessment based on external indications.

It must be supposed that the NPM may demand information on Danish authorities' detention of persons outside Denmark and that, according to circumstances, the NPM will be allowed to visit such places of detention, cf. Article 4 and 20 of the protocol.

6.2. Torture and cruel, inhuman or degrading treatment and punishment

The inspections are aimed at prevention of torture and cruel, inhuman and degrading treatment. Attention during these visits will be aimed at actions and conditions which may fall within these categories.
Article 1 of the UN Convention against Torture defines torture as follows: "For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions or wider application."
Section 157 a (2) of the Danish Criminal Code contains the following definition of torture: "[Torture means] to inflict harm on body or health or severe physical or mental pain or suffering
1) in order to obtain information or confessions from someone,
2) to punish, intimidate or force somebody to do, suffer or abstain from something or
3) because of a person's political beliefs, sex, race, colour, national or ethnic origin, faith or sexual orientation."
[Unauthorised translation]

It follows from this definition that special attention must be paid to information on the detainees' health conditions, medical treatment, medical aid provisions, use of force and violence and other physical harm. As discrimination is part of the definition of torture, the inspection team must be especially mindful of whether groups which may be particularly vulnerable to discrimination are in fact being treated or risk treatment in contravention of the prohibition on torture, etc. OPCAT also includes the prevention of cruel, inhuman and degrading treatment. In the practice of the European Court of Human Rights on the interpretation of the corresponding provision in Article 3 of the European Human Rights Convention, these expressions cover a great variety of conditions.
The European Court of Human Rights has defined "inhuman" treatment as "intense physical or mental suffering". The court has made special efforts to define and clarify degrading treatment, allegedly because it constitutes the least serious form of illegal treatment and it is important to attempt to define this illegal act as opposed to legitimate use of force.

In the assessment of whether or not a treatment can be termed "degrading" the court has focused on the treatment as a source of feelings of fear, anguish or inferiority which are aimed at humiliating and possibly breaking down the victim. Thus, in the Pretty case from 2002 the court stated:
"As regards the types of 'treatment' which fall within the scope of Article 3 of the Convention, the Court's case-law refers to 'ill-treatment' that attains a minimum level of severity and involves actual bodily injury or intense physical or mental suffering. Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral or physical resistance, it may be characterized as degrading and also fall within the prohibition of Article 3."

In resolution A/RES/43/173 of 9 December 1988 the UN General Assembly has established that:
"The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time."

As this shows, the treatment must be of a certain severity in order to be termed degrading. The definition may e.g. include the physical conditions, the way in which those deprived of liberty is actually treated, neglecting the care of sick individuals, acceptance of abuse and exploitation by fellow inmates, restrictions in the contact with others and advanced psychological interrogation techniques.

Human rights supervisory bodies have stressed that the assessment of whether or not a specific treatment may be defined as torture, inhuman or degrading is individual, relative and dependent on the specific circumstances. In this context it is of particular importance to consider how long the victim in question has been subjected to the treatment, the physical and mental effects of the treatment, the victim's sex, age and health, cultural and ethnic background, etc. One person may feel a specific treatment to be extremely painful while another person may not feel like that at all. In principle, it is thus impossible to make an exhaustive list of illegal methods which will always be torture and therefore illegal.

Harsh conditions and punishment during imprisonment for i.a. the elderly or weakened individuals may thus, according to circumstances, constitute a violation of the prohibition against degrading or inhuman treatment. Information that may shed light on such conditions is consequently also included in the OPCAT inspections' special field of interest.

The UN Committee against Torture has declared that the supervision should not only concern the conditions for those deprived of liberty but also include the legality of deciding to deprive the individual of his or her freedom and the attending case processing.

7. Basis of assessment according to OPCAT

According to Article 19 of the protocol, the NPM may "make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

" These may i.a. be:
- Relevant UN conventions ("hard law") concerning torture and inhuman treatment, here specifically the UN Convention against Torture, the UN International Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child.
- Relevant UN declarations, resolutions and principles ("soft law"), here specifically "The Standard Minimum Rules for the Treatment of Prisoners", 1997, "The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment", 1988, "United Nations Rules for the Protection of Juveniles deprived of their Liberty", 1990, "Code of Conduct for Law Enforcement Officials", 1979, and "Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment", 1982.
– Relevant practice from human rights monitoring bodies, here specifically the UN Human Rights Council and the UN Committee against Torture.

Furthermore, national rules may be included (e.g. the Danish Criminal Code) and Danish legal usage on the subject.

In addition, it will be natural to include the European Human Rights Convention and case law from the European Human Rights Court together with the European Council's 2006 prison rules and case law from the European Convention for the Prevention of Torture (CPT).

Moreover, a number of international human rights organizations have drawn up guidelines and manuals for prison visits. Among others, the Association for the Prevention of Torture (APT) has drawn up a detailed manual for the inspection activity, "Monitoring Places of Detention", on the basis of the OPCAT protocol.

28 August 2009 / Hans Gammeltoft-Hansen

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Date / Danish Parliamentary Ombudsman