



Retspolitisk Forening



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 2019

DENMARK

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Annex A	Peter Scharff Smith: Punishment Without Conviction? Scandinavian Pre-trial Practices ¹
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¹ Published in Peter Scharff Smith and Thomas Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice. Embraced by the Welfare state?*, London (2017)

Introduction

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has undertaken five periodic visits to Denmark. In relation to the upcoming visit, this report is submitted to the CPT as a joint report prepared by the below mentioned 13 organisations and Peter Scharff Smith, Professor, Department of Criminology and Sociology of Law, Oslo University:

- Amnesty International
- Association of Aliens Law Lawyers
- Better Psychiatry – National Association of Relatives
- Danish Association of Legal Affairs
- Danish Helsinki Committee for Human Rights
- Danish Organisation for Persons with Disabilities
- Danish Refugee Council
- DIGNITY – Danish Institute Against Torture
- Joint Council for Child Issues
- KRIM
- Refugees Welcome
- Union for Civil Staff in the Probation and Probation Service
- United Nations Association Denmark

Positive developments

Since the last visit by the CPT to Denmark in 2014, progress has been made in some areas, notably with regard to the functioning of the Independent Police Complaints Authority (IPCA); continuation of the reduction of solitary confinement during pre-trial detention; revision of the regulation of disciplinary measures used against minors in prisons and the parliamentary decision to introduce number-tags on police uniforms so as to ensure proper identification of police officials and hereby enhance accountability.

Issues of concern

However, in many other areas, improvements are lacking and the recommendations of the CPT, the UN Committee against Torture and Inhuman or Degrading Treatment or Punishment (CAT) and other UN treaty bodies have not been implemented. As documented in this report, Denmark has not followed up on a number of CPT's 2014 recommendations.² Furthermore, new areas of concern have emerged, and we urge the Committee to examine these areas carefully and issue relevant recommendations in order to assist Denmark in fulfilling its obligation to prevent torture and inhuman or degrading treatment or punishment.

² We draw the Committee's attention to its comment made in 2014 regarding some of the 2008 recommendations: "the principle of cooperation also requires that decisive action be taken to improve the situation in the light of the CPT's key recommendations, and the findings of the 2014 visit suggest that such action has not been taken since the 2008 visit as regards the imposition of judicial restrictions on remand prisoners, the practice of the use of fixation in prisons and prolonged application of mechanical restraints on psychiatric patients", see Report to the Danish Government on the visit to Denmark carried out by the CPT, February 2014 (CPT Report 2014).

Since the CPT's last visit, we have witnessed shifts of paradigm within immigration legislation and policy and, to some extent, also within the area of criminal justice and especially prison policy. In our view, and as documented in this report, these recent developments, which may not be what you expect from an egalitarian, rich and advanced welfare state, have negative consequences for many individuals and for our society in large, notably:

- In spite of the long-standing criticism of Denmark's use of solitary confinement as a disciplinary sanction against juveniles and adults in remand institutions and prisons and despite the authorities' pledge to work on reducing such measures, the most recent numbers indicate that **solitary confinement is still used extensively**, and its use has increased dramatically over the past decade with **2018 setting new record with 4.752 cases of (unconditional) solitary confinement of which 674 cases included a disciplinary sanction that lasted for more than 15 days.**³ Many stakeholders, including the Union of Prison Staff (Fængselsforbundet), Danish Institut for Human Rights (DIHR), civil society and the media, have urged the authorities to take action, but to no avail.
- Similarly, **the use of pre-trial detention** continues to be extensive, including against young persons, and respect for the legal safeguards of pre-trial detainees is at times lacking.
- In addition, **coercive measures in psychiatric institutions continue to be practiced excessively** and the statistics show an increase in the use of coercive measures, also when used against minors, despite the government's pledge to reduce such measures, notably mechanical restraints.
- Furthermore, over the last years, and especially since the election of the current government in 2016, we have witnessed **further restrictions on the protection granted to asylum seekers and refugees.**

The documentation presented in this report primarily derives from the NGOs' ongoing monitoring of Danish laws, policies and practice within the mandate of the CPT. Secondly, the report draws on publicly available monitoring reports, research findings and official statistics.

We look forward to providing the Committee with further information during a meeting in Copenhagen.

³ Statistics from the Danish Prison and Probation Service, January 2019 (Tal fra Kriminalforsorgen) (DPPS Statistics 2019), at <https://www.kriminalforsorgen.dk/wp-content/uploads/2019/01/tal-fra-kriminalforsorgen-januar-2019.pdf>

A. Police custody

1. Preliminary remarks

We would like to draw the CPT's attention to the legal basis for administrative detention, i.e., the Police Act⁴, that regulates police activities in cases other than criminal prosecution. The Police Act has been amended since the CPT's visit in 2014 and most recently in January 2019.⁵ The maximum hours in which the police may administratively detain a person is 12 hours in cases of public gatherings⁶ and crowds.⁷

Last year, the European Court of Human Rights ruled that the use of preventive detention by the Danish Police under the specific circumstances (*S., V. and A. v. Denmark* (2018)) was compatible with article 5(3) of the European Convention on Human Rights (ECHR).

We urge the Committee to recommend Denmark to ensure that administrative detention is used as a last resort, with appropriate safeguards and that all persons preventively detained by the police are held in appropriate conditions.

We note that the issue of deportation of asylum seekers under police custody is addressed under section C.

2. Safeguards against ill-treatment

In 2014, the CPT expressed concern about the measures in place to ensure that all detainees enjoy in practice all fundamental legal safeguards from the outset of their deprivation of liberty. The CAT has repeated a similar recommendation, most recently in June 2018.⁸

In some cases, criminal suspects have informed their defense lawyers that they have been subjected to 'informal talks' following their apprehension, while being transported to the police station. During such informal talks, the lawyer was not present, and the information yielded by the police from such talks was allegedly subsequently entered into the custody record.

We urge the Committee to examine whether any questioning by Danish police takes place without the presence of a lawyer (e.g., during transportation to the police station).

3. The Independent Police Complaints Authority

The 'Independent Police Complaints Authority' (IPCA), which began operating in 2012, is placed under the auspices of the Ministry of Justice and is headed by the Police Complaints Council and the Chief Executive. The Authority is mandated to handle investigation of criminal cases against police officers and to consider

⁴ Act No. 956 of 20 August 2015.

⁵ Act No. 83 of 20 January 2019.

⁶ Section 8(4) of the Police Act.

⁷ Section 9(4) of the Police Act.

⁸ List-of-Issues-Prior-to-Reporting of 13 CAT/C/DNK/QPR/8, para 4.

complaints of police misconduct. However, it is still the regional public prosecutor who has the power of indictment.⁹

During the examination of Denmark by the CAT in November 2015, the Danish delegation mentioned that IPCA would begin to collect data on complaints against the Police that would fall within the scope of the UNCAT.¹⁰ Upon request, the IPCA has informed DIGNITY of the number of submitted complaints related to torture and ill-treatment in 2016 and 2017 (4 cases in 2016 and 1 case in 2017). However, such data and statistics are not yet published.

We urge the Committee to recommend the Danish authorities to ensure that the IPCA publishes statistics on allegations of torture and ill-treatment, notably the number of complaints submitted, and the number of such complaints that, after investigation, have resulted in prosecution or further measures being taken.

B. Prisons

1. Preliminary remarks

Since 2014, Denmark has had one government led by the Social Democratic Party (Prime Minister Helle Thorning Smith) and two governments led by Venstre under Prime Minister Lars Løkke Rasmussen. A general election must take place in Denmark by June 2019.

Over the last years, Danish governments and their supporting political parties have taken “a tough on crime” approach with a stronger focus on punitive measures and less focus on rehabilitation. This has included tightening security in prisons; adopting legislative amendments introducing more severe disciplinary measures in prisons and introducing “double punishment” for certain crimes, if committed by gang members or if committed in heightened penalty zones defined by the police (likely within so-called “ghetto” areas).¹¹ This context provides an indication of the policy of the current Minister of Justice who, on numerous occasions, has claimed to be “tough on crime” and noted that the conditions in Danish prisons are “too lenient”; that it should be tougher to be an inmate serving a prison sentence; and that the disciplinary measures for violating the rules should be tougher.¹²

The recent 4-year agreement (year 2018-2021) between the government (supported by the Social Democratic Party and the Danish People’s Party (Dansk Folkeparti)) and the Danish Prison and Probation Service (DPPS) will set the framework for the operation of prisons in the coming period and for how to address the significantly higher number of inmates.¹³

⁹ The Administration of Justice Act Chapter 11a.

¹⁰ CAT Concluding Observations of 16 February 2016 (CAT CO 2016), para 48.

¹¹ Ghetto-law adopted by the Parliament in November 2018 and entered into force 1 January 2019.

¹² See for example an interview with the Minister of Justice to the news channel TV2: <http://nyheder.tv2.dk/politik/2017-03-13-pape-vil-gore-det-hardere-at-sidde-i-faengsel>

¹³ DPPS Statistics 2019.

Since autumn 2017, the prison population has increased significantly with a total occupancy rate of over 100% at the end of 2018, especially for remand prisons. This development is expected to continue in 2019.¹⁴

It is also worth noting that due to the lack of capacity in the Danish prisons, convicted prisoners are sometimes serving their prison sentence in remand institutions, which are designed for pre-trial detainees and have few or no facilities for rehabilitative and meaningful activities. **We urge the CPT to examine this issue, ask for statistics about the number of convicted prisoners in remand institutions and how long and for what reason they are placed in these institutions.** Moreover, as a result, pre-trial detainees are not kept separate from sentenced prisoners as required by international standards.¹⁵

The increase in the number of foreigner prisoners poses new challenges for the DPPS, for example in relation to translation service.¹⁶ **We recommend the CPT to ask for the translation budget of the DPPS and how the prison staff ensure that communication with foreign inmates is conducted in a language that they understand.**

Finally, the government has announced that it will aim at ensuring that the highest possible number of foreigners will serve their sentence in their home country and that the government will work towards establishing or renting prison space abroad for foreign criminals.¹⁷ This proposal has not yet been implemented, but if it would be adopted, it may pose challenges in ensuring protection against ill-treatment. Furthermore, such solution is likely to cause the jurisdictional problems concerning responsibility for the protection of inmates sentenced in Denmark, but serving their sentence abroad, and for the National Preventive Mechanism (NPM) to be able to monitor the treatment and conditions of such prisoners, as also seen in *Norgerhaven* prison in the Netherlands, which held a number of prisoners sentenced in Norway.

2. Pre-trial detention

The use of pre-trial detention is high

Pre-trial detention is regulated in the Danish Administration of Justice Act (Chapter 70). Denmark has traditionally used pre-trial detention more extensively than its neighbouring countries, including Sweden and Norway. Pre-trial detention can have severe psychological consequences for the detainees, and the first weeks of pre-trial detention entail increased vulnerability, as identified in studies establishing evidence for a relatively high number of suicides during pre-trial detention. The uncertainty about the length of the pre-trial detention period is another important factor.

We refer to the CPT's recommendations in 2014 and the information provided to the Committee that "there was a conscious policy by the public prosecutor's office to address the question and that the numbers on remand were decreasing".¹⁸ However, we question whether that is actually the policy of the Director of

¹⁴ DPPS Statistics 2019, page 2.

¹⁵ CAT CO 2016, para 47.

¹⁶ DPPS Statistics 2019.

¹⁷ See the webpage of the government, <https://www.regeringen.dk/regeringens-politik-a-%C3%A5/retspolitik/>

¹⁸ CPT 2014 Report, para 25.

Public Prosecutors as the number of remand detainees continues to be high (over 30 % of the total prison population),¹⁹ and there was an increase of 3% in the use of pre-trial detention from 2016 to 2017.²⁰

In 2011, the Danish government pledged to bring down the number of pre-trial detentions, and the following year, the DPPS 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. However, we are concerned about the occurrence of pre-trial detention continuing to be high – even among young persons - and not being restricted to an exception, as noted by Professor Peter Scharff Smith:

“the result is that remand imprisonment is a routine practice used extensively in Denmark and by no means only as an “exception” or as a “last resort”.”²¹

With regards to pre-trial detention of juvenile suspects (under the age of 18), we note that the use of long pre-trial detention of juveniles (more than 3 months) increased with 31,5% from 2016 to 2017.^{22 23}

We hear from defence lawyers that in many criminal cases regarding juveniles, pre-trial detention is being used and for long periods, and **we urge the CPT to examine this issue and verify the procedure for using alternative measures to pre-trial detention.** There have been successful stories of young persons staying at home during the pre-trial detention period and thereby being able to continue attending school. However, the law was amended two years ago and now it is no longer possible for the judge to order such an alternative to pre-trial detention for juveniles charged with violence.

We recommend the CPT to examine the issue and the reasons for the high use of pre-trial detention in Denmark and to make recommendations to Denmark about how to reduce the use of pre-trial detention.

The conditions of detention of remand prisoners, especially the use of restrictions on their contacts with the outside world

The conditions of detention of pre-trial detainees - despite not being sentenced - are stricter than those of convicted prisoners, i.e. restrictions on communication, activities, education, visits rights and contact with the outside world, and outdoor exercise (only one hour of exercise per day). In many remand institutions, the pre-trial detainees risk spending most of the time in their cell in de-facto isolation (for example in Vestre Fængsel typically 23 hours pr. day).

Professor Peter Scharff Smith²⁴ has stated:

“remand imprisonment is in fact the toughest and most restrictive prison experience in Denmark save for what is offered in a very limited number of special isolation units, most notably the small 24-cell prison called “Politigårdens

¹⁹ The percentage is around 35% in the first three months of 2019.

²⁰ See letter of 31 May 2018 from the Director of Public Prosecution to the Ministry of Justice.

²¹ See Peter Scharff Smith: Punishment Without Conviction? Scandinavian Pre-trial Practices and the Power of the “Benevolent” State, published in Peter Scharff Smith and Thomas Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice. Embraced by the Welfare state?*, London: Palgrave 2017 (Annex A).

²² See letter of 31 May 2018 from the Director of Public Prosecution to the Ministry of Justice.

²³ We refer to a weekly occupancy average of 2 juvenile in remand institutions or prisons in 2018, see Kriminalforsorgen, årsstatistik: <https://www.kriminalforsorgen.dk/wp-content/uploads/2019/01/indsatte-under-18-2018.pdf>

²⁴ See further Peter Scharff Smith and Janne Jakobsen: Varetægtsfængsling – Danmarks hårdeste straf? (2017)

fængsel” (the “Police station prison”) and the “E unit” at East Jutland, which could be termed as the closest we come to anything resembling Supermax conditions in a Danish context”.²⁵

During the criminal investigation, restrictions may be imposed on the remand prisoners’ contact with the outside world (e.g., visits, letters, and telephone calls). The CPT criticized, again during its visit to Denmark in 2014, the high proportion of remand prisoners with restrictions on visits and letters (so-called “B&B” restrictions, *kontrol med brev og besøg*).²⁶ Denmark replied to the CPT in March 2014 that the Ministry of Justice had taken steps to examine the use of “B&B” judicial restrictions in Denmark²⁷, however, today, still around 50% of the pre-trial detainees have “B&B” restrictions and not only for the initial period of the remand period.²⁸

In practice, it appears that when a person is detained prior to trial, with the justification that it is necessary for the sake of the criminal investigation, pursuant to section 762 in the Criminal Procedure Code, the restrictions on B&B are almost automatically imposed without a consideration of the specific circumstances, as required in section 770 of the Administration of Justice Act.²⁹ These restrictions could be applied throughout the remand period, including during any appeal and while awaiting sentence. This effectively means that they could continue for many months and up to a year or more entailing restrictions on the pre-trial detainees’ right to contact with the outside world.

Remand prisoners’ contacts with the outside world is further restricted as they do not have the right to make telephone calls. Thus, we know of pre-trial detainees who have been in detention for a year without the possibility to make a telephone call to children and who are entitled to only a short visit of 30 min pr. week monitored by a police officer. These restrictions make it difficult for pre-trial detainees to maintain contact with their children and other family members.

Moreover, we are concerned that some organizations experience that visits to remand detainees in Vestre Fængsel are monitored by staff even when the organization has been security approved.

Professor Peter Scharff Smith refers to the following experience based on his many visits to Danish remand institutions:

“The prisoners respond by talking about two things: the lack of contact with their families and, especially, their experiences sitting in a remand prison awaiting their trial. Directly questioned “what is punishment?” one prisoner simply answer “B and B”, which refers to the special restrictions on visits and correspondence which the Danish legal system allows during pre-trial (field notes 2015). The reason is not that these inmates have recently left remand imprisonment; it is simply because they seem to have had their worst and toughest prison experience there

²⁵ See Peter Scharff Smith: Punishment Without Conviction? Scandinavian Pre-trial Practices and the Power of the “Benevolent” State, published in Peter Scharff Smith and Thomas Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice. Embraced by the Welfare state?*, London: Palgrave 2017 (Annex A).

²⁶ CPT/Inf (2014) 25, para 36.

²⁷ CPT/Inf (2015) 16, page 18 re para 36.

²⁸ See Chapter 7 in Peter Scharff Smith and Janne Jakobsen: *Varetægtsfængsling – Danmarks hårdeste straf?* (2017)

²⁹ A remand prisoner always has the right to unsupervised exchanges of letters with the court, the defence attorney, the Minister for Justice, the Director of the Prison and Probation Service and with the Parliamentary Ombudsman. See further Remand Custody Order (*varetægtsfængslingsbekendtgørelsen*.)

before they were even sentenced. Their current stay under maximum security conditions feels much less like punishment to these prisoners.”³⁰

Regarding juveniles, we remain concerned that the majority of juveniles on remand have restrictions placed on their contacts with the outside world, often for extensive periods.

We urge the CPT to focus particularly on this issue and ask the Danish authorities which measures have been taken to implement the Committee’s previous recommendations, including to ensuring that the use of restrictions on remand prisoners’ contacts with the outside world be limited to the strict minimum necessary for investigation purposes; that there should be a more rigorous supervision of their application; and that every effort should be made to promote contact with the outside world.

3. Ill-treatment

We have witnessed an increase in the use of force in Danish prisons. The Danish Institute for Human Rights (DIHR) has in its briefing to the CPT provided the statistics for the use of force in prison facilities and also concluded that the use of force against prisoners is increasing.³¹

With regard to the use of pepper spray, which has been examined by DIHR, we would like to add that the legislative amendments (i.e., the Executive Order on Power Use) make it possible and easier for prison staff to use pepper spray although the staff are required to use less restrictive measures if possible. Previously, pepper spray was kept in lockers and a supervisor’s permission was required before it could be used. Today, however, the use of pepper spray in prisons (i.e., confined spaces) is less restrictively regulated than the use of pepper spray by the police. **We urge the CPT to ask during interviews with inmates about how they perceive the increased use of pepper spray, including situations when the staff have pulled the pepper spray as a “warning”.**

Regarding the use of forced physical restraint (fixation), a High Court judgment of 4 June 2014 found that an inmate had been treated inhumanely in breach of article 3 of the European Convention on Human Rights. The inmate had on several occasions been placed in a security cell and fixated to a restraint bed. The High Court found that four of the fixations were wrongful, and that eight of the fixations lasted longer than necessary. The Danish Ombudsman has examined the use of fixation and recommended some changes to the regime.³² However, in a more recent case from 2016, a young man died in prison after having been subjected to fixation.³³

We urge the CPT to examine this issue and make relevant recommendations.

³⁰ See Peter Scharff Smith: Punishment Without Conviction? Scandinavian Pre-trial Practices and the Power of the “Benevolent” State, published in Peter Scharff Smith and Thomas Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice. Embraced by the Welfare state?*, London: Palgrave 2017 (Annex A).

³¹ DIHR Submission of 6 March 2019, page 3.

³² See http://www.ombudsmanden.dk/find/nyheder/alle/faengsler_strammer_op_i_brugen_af_sikringsceller/

³³ <https://www.tv2lorry.dk/artikel/ung-mand-laa-fastspaendt-i-9-doen-i-vridsloeselille-faengsel-doede-faa-dage-senre>

4. Inter-prisoner violence

The level of inter-prisoner violence is increasing, and the actual levels are likely to be higher than those officially recorded. Incidents of violence among inmates are often not reported by the prisoners themselves (the victims), often for fear of repercussions. As a result, there is a considerable level of unreported violence. In particular in open prisons, inter-prisoner violence is a larger problem as inmates are more together than in closed prisons. Lack of prison staff entails that power hierarchy among inmates is domineering.

We urge the CPT to examine this issue and make relevant recommendations.

5. Special Regimes

Incarceration of juveniles (under 18 years)

Statistics from the Prison and Probation Service from 2018 reveal that juveniles (under 18 years) continue to be detained in the ordinary prisons³⁴ often under the same conditions as adult prisoners. However, the average number of juvenile prisoners has decreased since 2016 from 11,9 persons to 8,2 in 2017 and 2018.³⁵ The UN Committee on the Rights of the Child and other UN Treaty Bodies³⁶ have urged Denmark to assess the effects of the system of imprisonment of juveniles in the ordinary prison system with adults **and we urge the CPT to look into the matter during visits to prisons.**³⁷

We would like to add that the CPT should be aware of the new reform of the criminal justice system for minors aged 10 – 14 years who are suspected of having committed serious crimes and who can then be imposed a punitive sanction or be obliged to follow an “improvement courses” up to 2-4 years. This will be decided by a special board chaired by a judge and with one member from the police and one from the community.

According to the Danish Legal and Criminal Policy Thinktank Forsete, the recent amendments of the regime are of great concern, *inter alia*, as closed secure juvenile institutions will be receiving children and young people with very different problems ranging from anxiety and self-harm to difficult externalizing behavior. Forsete notes in the attached note (Annex D) that there is a risk that the stay in these juvenile institutions will amount to degrading treatment in breach of article 3 of the ECHR.

Foreigners in Danish prisons

With regard to detained asylum seekers in Denmark, the Danish Refugee Council (DRC) offers legal counselling to them. However, over the last years, DRC has noticed that they do encounter asylum seekers, who have finished serving their sentence, but who continue to be detained in the same ordinary prison even if they are no longer detained according to a criminal sentence but pursuant to the Danish Aliens Act, e.g., to secure their presence in order to be deported. DRC is concerned that such persons are not moved to Ellebæk

³⁴ If detained in a closed prison, the juveniles are placed at the closed section for juveniles at Søbysøgård.

³⁵ <http://www.kriminalforsorgen.dk/Files/Filer/Statistik/Kriminalforsorgens%20Statistik%202012.pdf>

³⁶ CAT 2016 Concluding Observations, para 35: The State party should be attentive that measures in place continue to protect minors placed with adults, and women in mixed gender prisons, against abuse and exploitation. The Committee encourages the State party to undertake a study on both regimes, identifying the advantages and risks, as well as the impact on minors and women's reintegration in society after their release from prison.

³⁷ CRC/C/DNK/CO/4, 7 April 2011, p. 15

and generally do not experience any change of their situation, but remain imprisoned among criminal offenders.

We encourage the CPT to ask about the procedure for transferring asylum seekers from a prison to Ellebæk and we urge the CPT to recommend to Denmark that persons detained pursuant to the Danish Aliens Act do not stay in prisons.

Gang members

On 24 March 2017, the Danish government made a political agreement with the Danish People's Party and the Social Democratic Party concerning an initiative to reduce and combat gang-related conflicts and serious crime called: "Anti-Gang-Package III – Gangs behind bars." The agreement consists of 35 initiatives to step up the efforts to fight gangs. The assumption in this political agreement is that gang members should stay imprisoned for as long as possible to prevent them from harassing, intimidating and shooting at ordinary citizens, and if someone turns their back on society more far-reaching and significant consequences are necessary. The focus areas of the agreement are: safety for the citizens, removing gang members from the streets, and putting a pressure on gang members.³⁸

According to the agreement, gang members who are serving a "double punishment" are no longer entitled to be released on probation. Moreover, after release, they are only entitled to a lower social allowance and they may be restricted from movements in certain areas or a period from 1 to 10 years.³⁹

Registration of gang members: We would like to draw CPT's attention to the policy regarding registration of gang members **and recommend CPT to ask the Danish authorities for information about the criteria for registering a person on the gang list and the procedure for how to be deleted from the list again.** As severe consequences follow from being on the list (e.g., double punishment), it is important to be transparent about criteria and procedures for updating the list.⁴⁰

6. Mental disorders among prisoners

Several studies have established that there is a high frequency of prisoners 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 institutions. As a result, mentally ill prisoners are often not transferred to appropriate medical setting, such as psychiatric institutions, as required by the law.

Importantly, the Union of Prison Staff has noted that the prison system is not currently able to address all the special needs of prisoners with mental disorders.⁴¹

³⁸ <https://www.regeringen.dk/nyheder/aftale-om-bandepakke-iii/>

³⁹ Law no 1526 of 18 December 2018 regarding a 3-year suspension of some social allowances.

⁴⁰ See further editorial in the newspaper Politiken written by former prison director Bodil Philip (in Danish): <https://politiken.dk/debat/kroniken/art5621782/Kampen-mod-radikalisering-har-taget-overh%C3%A5nd>

⁴¹ See reply by the Ministry of Justice to a question by the Parliament's legal committee (<https://www.ft.dk/samling/20171/almindel/reu/spm/828/svar/1500574/1917033/index.htm>) and comments by experts (<https://menneskeret.dk/handicap/forstaa-konvention/retsikkerhed/artikel-14/eksperter-mener> <https://www.tv2lorry.dk/artikel/efter-overfald-paa-betjent-psyisk-syge-fylder-meget-i-faengslerne>

We urge the CPT to recommend Denmark to focus on the situation of (severely) mentally ill prisoners and the arrangements made for transfer to psychiatric institutions where the prisoners can receive appropriate care.

7. Disciplinary measures

In the Danish prison system, disciplinary measures can be used in the form of a warning/caution, a fine or solitary confinement (punishment cell “strafcelle”). The focus in this section will be on solitary confinement used as a disciplinary sanction.

The use of solitary confinement as a disciplinary measure has “exploded” in Danish prisons. In 2018, some 4.752 cases of the use of solitary confinement as a disciplinary measure were reported and of these, in 674 case the measure lasted for more than 15 days.⁴² The majority of these cases relate to the compulsory punishment for possession of mobile phones in Danish prisons.

The negative development over the last decade was discussed at the Conference on the Use of Solitary Confinement held in Copenhagen in April 2017 (see Annex B). Moreover, DIGNITY presented its concerns to the Parliamentary Legal Committee in the Parliament in April 2017 (see Annex C). DIGNITY underlined the fact that international health experts concluded that isolation – even after a few days – may have very severe health consequences.

It is worth noting that the Danish Sentence Enforcement Act has been amended so that solitary confinement as a disciplinary measure now is mandatory whereas previously the prison authority had the discretion to decide whether or not to use the measure in each individual case. Moreover, the use of such measures is now also applicable in relation to the possession and use of mobile phone (since August 2016), smoking in the cell (since April 2017) and use of offensive language (since September 2017). The extensive use of “strafcelle” negatively affects the relationship between the staff and the inmates, and disciplinary measures do not necessarily lead to a change of behavior: instead alternative measures need to be found, notably dialogue and motivation.

The Danish Sentence Enforcement Act provides for a complaint system, but inmates very rarely submit complaints about isolation and even more rarely do the Danish courts adjudicate such cases.

With regards to minors, the rules for adults mentioned above applied. However, recently, a legislative amendment of the Danish Sentence Enforcement Act⁴³ entails that minors in “strafcelle” may, depending on the specific circumstances, spend less time in the cell and may be entitled to be engaged in activities in the morning. Moreover, the length of the isolation is reduced to no more than 3 days as a general rule, and to a maximum of 7 days under specific circumstances. These new rules do not, however, apply to minors who have used violence against prison staff and in these cases the maximum of 4 weeks of isolation continues to be applicable.

⁴² See DIGNITY’s story in the newspaper Politiken, November 2018, at <https://politiken.dk/indland/art6833363/F%C3%A6ngsler-brug-af-strafcelle-eksploderer>

⁴³ See https://www.ft.dk/ripdf/samling/20181/lovforslag/l21/20181_l21_som_fremsat.pdf

DIGNITY and other organizations are very critical of the fact that the law still permits isolation of minors for up to four weeks, and we have on numerous occasions urged the Danish authorities to implement the international recommendations not to isolate young persons.⁴⁴

We would urge the CPT to closely examine the use of solitary confinement as a disciplinary sanction in general and in particular vis-à-vis juveniles.

8. Visits by Danish Red Cross volunteers and others

The Danish Red Cross Prison Visitor Service have visited and arranged social activities in prisons and detentions since 1985. In 2018, over 700 inmates were supported by the Red Cross. During the last two years, the volunteers have experienced a significant decrease in the possibilities for visiting inmates in prisons and detentions. This is mainly due to: a) a general reduction of the visiting hours; b) closing of the possibility for Red Cross visitors to visit inmates outside official visiting hours; and c) a stricter prioritization by the prison personnel of who among the inmates are recommended for a Red Cross Visitor. The Danish Refugee Council (DRC), who offers legal counselling to asylum seekers in detention, confirms this situation.

Moreover, we are also concerned about a recent amendment to the Danish Sentence Enforcement Act (concerning § 53 and § 66) that entered into force on 1st of February 2019.⁴⁵ The amendments lead to a new practice whereby it is questionable whether visitors like the Red Cross volunteers can have contact with an inmate without the risk of being exposed to interventions - either that the visit will be witnessed by prison officers or the risk of personal investigation. It will be sufficient for the Prison and Probation Service to refer to 'safety considerations' or 'consideration of control or crime prevention' if they want to launch investigations against visitors to whom prisoners have contact.

C. Immigration Facilities

1. Context: Legislation and policies

When the CPT visited Denmark in 2014, the Committee focused on the conditions at Ellebæk – Aliens Center under the Prison and Probation Service.⁴⁶ Today – five years later – it is still necessary to focus on Ellebæk, and several new issues of concerns have emerged related to foreign nationals held under aliens' legislation which falls within the mandate of the CPT. Recently, the Danish News Channel TV2 broadcasted a documentary about Ellebæk during which a prison guard and union representative describes the institution as a "forgotten, closed prison" and states that this is not a place for anyone to live.⁴⁷

⁴⁴ See DIGNITY's comments to the legislative amendments (in Danish):

<https://www.ft.dk/samling/20181/lovforslag/L21/bilag/1/1946655.pdf>

⁴⁵ LOV 1541 of 18/12/2018, see <https://www.retsinformation.dk/Forms/R0710.aspx?id=205571>

⁴⁶ Section C of the CPT 2014 Report.

⁴⁷ See TV2: <http://nyheder.tv2.dk/2019-03-10-afviste-sidder-indespaerret-i-ellebaek-i-op-til-halvandet-aar-det-her-havde-jeg-aldrig>

Since 2014, the major Danish political parties have significantly changed their immigration policies and today “tough on immigrants” has almost become mainstream. Recently, a major change of legislation entered into force (1 March 2019) and entails a **new shift of paradigm** in Danish immigration policies so that in the future, refugees should be considered to stay only temporarily in Denmark and their rights will generally be further restricted (for example the amount of the “integration allowance” will be lower). Danish judges are now more regularly issuing a deportation order in connection to foreigners committing crimes in Denmark – even minor crimes. This means that refugees can be expelled or end up on tolerated stay for minor offences if they cannot be returned to their home country (see below). Thus, in our view, in the future with the shift of paradigm, we will likely see a further increase in the use of detention of refugees who no longer have a residence permit.

At the same time, violations of internal regulations at detention facilities are more severely criminalized, for example the obligation to stay at a specific asylum center for rejected asylum seekers and persons on tolerated stay (Deportation Center). By way of example, a person on tolerated stay, who is not present at his center for two days and fails to report this, can be sentenced to 40 days in prison. It is expected that the punishment will increase in the future. **We find that there is a disproportionality between the punishment and the violation in these cases.**

As of the time of writing this report, the Ministry of Immigration and Integration had issued 112 amendments to legislation, mainly to the Danish Aliens Act, and policies since November 2016.⁴⁸ In 2017, the Minister of Immigration and Integration publicly celebrated the issuing of restriction no. 50 in national legislation.⁴⁹

Many of the legislative amendments entail new restrictions, for example those which were introduced in the wake of the war in Syria (for example related to temporary stay for some Syrian refugees and 3-year temporary ban on family reunification for refugees with temporary residence permit (Aliens Act section 7(3)). These have been prolonged in 2017, 2018 and 2019 – and with further restrictions for rejected asylum seekers and persons on tolerated stay.

Finally, the Danish Aliens Act now permits the Minister of Immigration and Integration to suspend some of the normal legal safeguards during periods of high influx of refugees, including the right to a hearing on the legality of the arrest within 72 hours after an arrest, and then the hearing must take place as soon as possible with no upper time limit mentioned (section 37k of the Danish Aliens Act). This has been criticized by the UN Human Rights Committee.⁵⁰

2. Detention of foreign nationalities pursuant to the Aliens Act

This section addresses the issue of administrative detention of foreigners by the police used for example against rejected asylum seekers awaiting deportation. **Despite strong recommendations from the CPT and**

⁴⁸ See further MII’s website www.uim.dk

⁴⁹ <http://nyheder.tv2.dk/samfund/2017-03-15-stoejbergs-kage-skabte-kagekrig-paa-facebook>

⁵⁰ See Concluding Observations 2016, para 32: Repeal the amendment introduced to the Aliens Act in November 2015 in order to ensure that, in all cases, detained migrants have full access to fundamental legal safeguards, in particular to judicial review of the legality of their detention.

UN Treaty Bodies, Denmark continues to use administrative detention of asylum seekers too extensively in our view.

The Danish Aliens Act provides for the possibility for the police to *administratively* – thus not in contemplation of prosecution on criminal charges - detain foreigners, including asylum seekers, pursuant to section 35 and section 36 of the Aliens Act.⁵¹ The former relates, for example, to foreigners who have been criminally convicted and received a deportation order. The Aliens Act provides that the police should first consider less restrictive measures against foreigners. As an exemption to this main rule, the police may decide – if these less restrictive measures are considered insufficient - to detain foreigners and deprive them of their liberty pursuant to section 36 of the Aliens Act. Thus, detention should be the exception to the main rule of using less restrictive measures. After a maximum of three days, the court will consider the detention (section 37 of the Aliens Act). During the initial max 3-day period, there is no review of the decision by the police.

In 2011, the authorities introduced a maximum limit of six months for administrative detention pursuant to section 36 (section 37 (8) of the Aliens Act) that can in exceptional cases be extended by 12 months (hence a total of 18 months). There is no maximum to the detention pursuant to section 35 of the Aliens Act.

It is our experience that in practice, the rules in section 36 (with reference to section 34) and 37 of the Aliens Act are not administered in accordance with the intention that administrative detention and extension beyond six months should be the exception. The trial every 4th week regarding extension of the detention often appears as a formal procedure (short video conference) that almost always leads to the detention being upheld. In 2010, Amnesty International attended 50 such court hearings at Hillerød Ret, and in all of these cases, the judge decided to uphold the detention.⁵²

Lengthy administrative detention without basic safeguards would present a severe risk of arbitrary deprivation of liberty, and may also raise concerns in relation to the mandate of CPT.

Imprisonment can be particularly damaging to those who are already psychologically vulnerable because of past trauma, such as torture⁵³, and may violate their rights under the UNCAT. The UN Special Rapporteur on the human rights of migrants has pointed out that “[detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability, and persons living with HIV/AIDS.”⁵⁴ Research also shows that detention of specifically asylum seekers has widespread and seriously damaging effects on the mental (and sometimes physical) health of those incarcerated.⁵⁵

⁵¹ See strategy of the Prosecution Office (*Strategi for anvendelse af varetægtsfængsling og frihedsberøvelse efter udlændingeloven*), 25 August 2009 with later amendments.

⁵² Amnesty February 2011.

⁵³ Zachary Steel and Derrick M Silove (2001), ‘The mental health implications of detaining asylum seekers’, (2001) MJA 2001 175: 596-599, http://www.mja.com.au/public/issues/175_12_171201/steel/steel.html.

⁵⁴ The Special Rapporteur on the Human Rights of Migrants: Detention of Migrants in an Irregular Situation, *supra* n. 23, para. 43.

⁵⁵ See, e.g. Coffey et al. (2010), ‘The Meaning and Mental Health Consequences of Long-Term Immigration Detention for People Seeking Asylum’, 70 *Social Science & Medicine* 2070-2079. See also Newman, Dudley and Steel (2008), ‘Asylum, Detention and Mental Health in Australia’, 27(3) *Refugee Survey Quarterly* 110-127.

Specifically, with regard to minors, CPT noted after its visit to Ellebæk:

*The CPT wishes to recall its position that every effort should be made to avoid resorting to the deprivation of liberty of an irregular migrant who is a minor.*⁵⁶

From our experience, it appears that minors are no longer detained at Ellebæk. **We recommend the CPT to verify this issue and to obtain the confirmation from the Danish authorities that there has been a positive change of practice compared to the situation in 2014.**

We urge the CPT to reiterate its recommendation to Denmark to ensure that asylum seekers are only detained as a last resort, for the shortest possible duration, and after other, less coercive measures have proven insufficient to ensure the presence of the persons concerned and to ensure that minors are not detained.

3. Conditions at immigration institutions

We would also like to underline that we are of the fundamental opinion that living conditions in deportation centers must be decent and never risk placing persons in situations that may be characterized as inhuman or degrading. **We therefore urge the CPT during its visit to Denmark to focus on the living conditions in these institutions and to provide Denmark with specific recommendations to improve the conditions.**

Finally, we would particularly like to draw the attention of the CPT to the conditions for refugee children to ensure that Denmark offers adequate protection in accordance with international standards.⁵⁷

Ellebæk Aliens Center

The decision to detain asylum seekers in Ellebæk must be approved by a court of law, in practice Hillerød Municipal Court. Our experience is that the judge typically extends the stay without discussion if the police argues that the person might go underground, or deportation will soon be possible. Thus, there is no thorough assessment of whether the detention is necessary and continues to be necessary (see above).

In practice, possession of mobile phones at Ellebæk is not permitted despite the recommendation made by the CPT in 2014.⁵⁸ The prohibition of possession of mobile phones seems unnecessary, as the detainees are not detained in the context of a criminal investigation, but for the reason of preventing them from leaving

⁵⁶ CPT 2014 Report, at para. 76.

⁵⁷ In April 2018, the Danish Refugee Council published a report concerning the conditions and welfare for children in the Danish Asylum Centers (Trivsel og udvikling hos børn på asylcentre, see <https://flygtning.dk/media/4413364/trivsel-og-udvikling-hos-boern-paa-asylcentre.pdf>). The report points to a number of reasons for the difficulties amongst asylum seeking children, including long waiting periods in the asylum system, no ordinary everyday life, no ordinary family life and often moving around between different asylum centers, as well as the lack of cooperation between the asylum system and the social legislation designed to help children and families in need of support.

⁵⁸ CPT 2014 Report, para 82.

Denmark or of having their identity confirmed. **We urge the CPT to examine the reasons for the ban on mobile phone and ask the authorities for the legal basis pursuant to which this ban has been issued.**

Use of solitary confinement (punishment cells) is common. Asylum seekers, who possess a mobile phone, are punished with solitary confinement. Attempts have also been made to punish pursuant to the Criminal Code if they. However, there has been a decision by Court of Hillerød concluding that there was no legal basis in the Criminal Code to punish for possession of mobile phone as Ellebæk is not a remand institution or a prison.⁵⁹ This decision was confirmed by the High Court. **We urge the CPT to examine this issue and to ask the authorities for the legal basis pursuant to which disciplinary measures are being used.**

Generally, there seems to be overcrowding and lack of staff at Ellebæk. Foreigners are placed in this old and worn-down prison for immigration purposes alone, as they have not committed any crimes. They can end up being detained up to 18 months if the police decide it to be necessary and the court rules in their favour. We refer to a case from last year when 9 Iranian men were detained for 6 months in Ellebæk, although there was no prospect of expelling them to Iran in any foreseeable future, as it is common knowledge that Iran does not accept to receive any of its citizens against their will. It seemed therefore that the men were detained for no valid reason. We also hear of cases in which a family will be split with the husband detained at Ellebæk and the rest of the family obliged to stay at Sjælsmark.

Access to phone calls is sometimes not granted, and we are aware of one example of an inmate who was not allowed to call his lawyer for many days because another inmate broke the phone at the institution.

Access to doctors is not sufficient. Inmates with severe mental problems (and some at suicide risk) are detained at Ellebæk, and we refer to a recent example of an Afghan man who attempted suicide several times, but nevertheless he was taken directly from Ellebæk to the airport and deported.

With respect to medical screening of detainees upon admission, including to screen for torture victims, the CPT has previously made recommendations and the CAT has urged Denmark to ensure obligatory screening by qualified medical staff⁶⁰. However, the practice is still that no thorough screening takes place.

We urge the CPT to examine the treatment and conditions of foreigner held at Ellebæk and to recommend immediate improvements in order to ensure that the rights of the detainees are respected.

Nykøbing Falster⁶¹

Nykøbing Falster is an old remand prison and is one of the institutions that continue to be used to detain rejected asylum seekers (opened for immigrants in February 2018). The institution was meant to be used temporarily, and asylum seekers should ultimately be moved to Ellebæk, but its closing has been postponed several times. There are 24 cells in the detention, but often around 30 detainees.

⁵⁹ Judgement of 24 October 2016, case 8-2671/2016.

⁶⁰ CO 2016, para 23: The State party should (a) put into place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at reception centres and places of detention such as the Ellebæk Prison.

⁶¹ See www.kriminalforsorgen.dk/steder/nykoebing-falster-arrest/

Danish Red Cross volunteers visit the immigrants in Nykøbing Falster once a week. The primary purpose of the visits is psychosocial support for the detainees. They bring snacks, have conversations and if possible refer the detainees to other services. Red Cross volunteers have since May 2018 observed some conditions that can have a negative influence on the detainees' wellbeing: Limited access to common areas (one small room); limited access to outdoor areas only 3 times 30 min pr. day (outdoor area is a small concrete yard); no access to work or educational activities; no connectivity to the outside world via mobile phone or the internet (exclusively via a single phone handed over by the guards); no access to supplementary clothes other than what was in their possession when detained; and the guards do not receive any supplementary training in handling the special target group and the vulnerability of the detainees. In general, there seems to be a lack of staff at the old remand prison.

We recommend CPT to urge Denmark to no longer use this old remand institution as a deportation center.

4. Special Regimes

Tolerated stay

The tolerated stay regime is governed by the Aliens Act and common for all persons on tolerated stay is that they have lost their residency permit in Denmark but cannot be deported for various reasons. As of end 2018, 78 persons were on tolerated stay and 52 of them were obliged to stay at a Deportation Center (opholdspligt)⁶², but this number is likely to increase in the future due to the shift of paradigm. Since 2007, as far as we know, not a single person on tolerated stay has been deported. We would like to note that the obligation to report daily to the police (meldepligt) could satisfy the authorities' need to know the location of the person (in case of deportation) whereas the obligation to stay at the center is an additional burden not necessarily in proportion to the objective of being able to execute the deportation order.

From March 2016, Kærshovedgård has been used for persons on tolerated stay. The stay at Kærshovedgård, which previously functioned as an open prison, has many similarities with being an inmate in a prison – and may even be considered more severe than serving a sentence (see attached report by the Danish Helsinki Committee Annex E). Kærshovedgård is located in the country side in mid-Jylland with no public transportation to and from the place. The residents are obliged to report to the authorities daily and it is penalized not to do so. They have no access to individual kitchens and are obliged to eat in the canteen at 7, 12 and 17 hrs.

When the immigration authorities administratively decide to assign residence for a person at Kærshovedgård, no lawyer is offered to the person, and the decision is not referred to the courts, as it is the case for rejected asylum seekers detained pursuant to section 31 of the Aliens Act. There is no upper time limit to the duration of the stay – despite two decisions by the Danish Supreme Court in 2014 and 2017 concluding that the continuous use of tolerated stay under the specific circumstances was a violation of the person's right to

⁶² Statistics from February 2019 by MII ("Halvårlig redegørelse vedr. personer på tålt ophold og udlændinge med kriminel meldepligt").

freedom of movement - in that it grew to become a disproportionate measure in the course of time (app. 4 years).

In 2017 and in May 2018, the Parliamentary Ombudsman visited Kærshovedgård in the context of the NPM and concluded that the conditions at the center were extremely stressful. However, the regime has not been improved. Danish Refugee Council has since 1 April 2018 been present at Kærshovedgård and can confirm the poor living conditions for the persons living there and they many suffer from psychological problems.

With the adoption of the shift of paradigm in Danish asylum policies and the decision to establish a deportation center at the island Lindholm in the coming years, it is likely that the conditions for persons on tolerated stay will be even more restrictive.

DIGNITY has on several occasions argued that the cumulative effect of the conditions for persons on tolerated stay – including no upper time limit – likely is a violation of the prohibition of inhuman and degrading treatment.

We are concerned about the conditions for persons on tolerated stay and the increasing number of people on this regime, and we therefore urge the CPT to recommend Denmark to significantly improve the conditions for these persons.

Sjælsmark

Deportation Center Sjælsmark is an old military facility (can accommodate 400 persons) now functioning as a deportation center for families with children whose application for asylum has been rejected and who are not cooperating with the police about their return.⁶³ The open institution is run by the DPPS (with staff in uniforms) and subjected to video surveillance and access restrictions. Families with children often live in one room without their own toilet and bathing facilities. The families are not allowed to cook but are referred to the cantina at the center. The persons living in Sjælsmark are obliged to live at the institution, although they are free to leave, and they are obliged to inform the police daily that they are present at the center. Lack of fulfilment of this obligation is criminalized with 40 days imprisonment (after 2 days absence).⁶⁴

Rejected asylum seeking families with children are in practice placed in deportation center Sjælsmark regardless of how long the family has been living in Denmark. Some 45 children have been living in Sjælsmark for more than a year and their stay there cannot be considered temporary or short-term.⁶⁵ **We find it very problematic that children are placed under these difficult living conditions for long periods of time.**

The Parliamentary Ombudsman visited Sjælsmark last year and was critical of some of the conditions at Sjælsmark, including the stressful situation of uncertainty for the children and long stay at Sjælsmark without any prospect of a meaningful future. The social authorities in Hørsholm local council have noticed that they receive many reports from Sjælsmark about children living under conditions that can be regarded as threats to their development and health.

⁶³ As of 9 September 2018, some 93 children lived at Sjælsmark, see 2018 Report by the Ombudsman.

⁶⁴ See the Financial Act 2019.

⁶⁵ See recent feature in the media: <https://politiken.dk/indland/art6947113/Kun-sm%C3%A5-b%C3%B8rn-m%C3%A5-f%C3%A5-broccoli-og-kogte-kartofler>

We strongly urge the CPT to visit the Deportation Center, although persons at Sjølsmark are not detained pursuant to the Aliens Act, to verify whether the conditions are in violation of the prohibition of inhuman and degrading treatment.

5. Forced deportation of asylum seekers under police custody

This group of foreigners, who are awaiting deportation either following a judgement or an administrative decision, is diverse and would include, for example, foreigners who have been illegally in Denmark; asylum seekers who have been rejected; or foreigners who have been convicted of a crime. The group would generally include many less resourceful people and various vulnerable groups, including victims of torture and children. **We urge the CPT to recommend to Denmark to ensure the systematic delivery of a ‘fit to fly’ certificate issued by a medical doctor for foreigners awaiting deportation.**

Deportation cases in which the police assist the asylum seeker home has caught the attention of UN Treaty Bodies and the CAT has recommend Denmark the following:

“to put into place mechanisms to monitor the situation of vulnerable individuals and groups in receiving countries after their deportation, even in cases where return is voluntary, and act upon reports of torture and ill-treatment, including for the purpose of informing its asylum policies.”⁶⁶

Denmark has not implemented this recommendation.

Moreover, during enforced deportation, a legal question arises about jurisdiction of the Danish police. In a recent case, a rejected asylum seeker was sent to Kabul in Afghanistan. In the airport – while the Danish plane was still parked at the runway – authorities subjected him to ill-treatment while the Danish police did not intervene. As far as we have been able to ascertain, the Afghan man was still in the Danish plane and as such effectively in the custody of the Danish police, when he was physically assaulted by representatives of the Afghan authorities, and, therefore, it would be the responsibility and legal obligation of the Danish police to protect the Afghan man from treatment counter to article 3 of the ECHR. We would argue that such situations would generally fall within Danish jurisdiction and therefore the Danish police would be under an obligation to protect the rights of the asylum seekers.

As the number of forced deportation is likely to increase in the future and it is unclear who has the obligation to protect the asylum seeker from ill-treatment upon arrival in his/her home country, **we urge the CPT to focus on this issue during the coming visit and also to consider whether there have been cases of ill-treatment taking place during the process of deportation (for example due to the use of nappies for adults, the use of helmets and the physical holding of the foreigner’s head between his legs or other forms of interventions during the transportation).**

6: Implementation of the Principle of Non-Refoulement

The CAT has repeatedly called on Denmark – in its Concluding Observations and in individual decisions - to bring its legislation and practice relating to deportation of migrants and asylum seekers in line with the

⁶⁶ CAT CO 2016, para 21.

principle of non-refoulement. We remain concerned about the implementation of the principle in practice, including in relation to vulnerable individuals.

We would like to highlight the change of practice of the Refugee Appeals Board in the past year in following up on cases in which the CAT or one of the other UN Committees have concluded that deportation would constitute a breach of the principle of non-refoulement. Previously, standard procedure was for the Refugee Appeals Board to reopen the case, and until a few years ago the Board would normally in these cases grant asylum. However, according to our information, the Board has since December 2016 in some cases decided to reject asylum - after reopening the case - and to decide that the person could be forcibly deported.⁶⁷

Finally, we refer to Denmark's lack of implementation of the judgement by the European Court of Human Rights, *Paposhvili v. Belgium*⁶⁸, and raise concern that deportation of rejected asylum seekers who are seriously ill, including severely traumatized victims of torture, may raise an issue in relation to article 3 of ECHR. It should be mentioned that the Ministry of Immigration and Integration is currently reopening cases and attempting to locate the seriously ill individuals who since December 2016 were deported after rejection of humanitarian residence permits.

We urge the CPT also to focus on the implementation of the principle of non-refoulement in order to ensure that Denmark fulfils its obligation to prevent torture and other forms of ill-treatment.

D. Psychiatric institutions

The CPT focused on the issue of use of force in psychiatric institutions in 2014 and concluded that "the CPT trusts that the Danish authorities will invest the necessary resources in psychiatry to implement the plans to reduce the use of coercion."⁶⁹ On the contrary, despite the adoption of the Action Plan 2015-2020, an increase of budget and further allocation of resources, the use of coercion has not been reduced since 2014 and according to government data the use of force has become more frequent in recent years.⁷⁰

The CAT Committee, the Committee on the Convention of the Rights of Persons with Disabilities, the Human Rights Committee and the Committee for the Rights of Children also remain concerned about the frequent recourse to coercive measures in Danish psychiatric institutions.⁷¹

With regards to forensic psychiatry, we refer to the briefing by DIHR to the CPT (para 3.3). In addition, we would like to add that persons with mental illnesses often are moved around in the system, and that the police is increasingly involved in their cases. By way of example, in 2016, 12,8% of the cases in which the

⁶⁷ Refugee Board decision of 14 March 2017 (<http://www.fln.dk/da/GlobalMenu/Nyheder/Nyhedsarkiv/2017/04042017.aspx>) and decision of 23 August 2017 (<http://www.fln.dk/da/GlobalMenu/Nyheder/Nyhedsarkiv/2017/29092017.aspx>)

⁶⁸ Judgement of 13 December 2016 in case no. 41738/10.

⁶⁹ CPT 2014 Report, para 115.

⁷⁰ See the website of the Danish Health Authority: <https://www.sst.dk/da/udgivelser/2017/monitorering-af-tvang-i-psykiatrien-juli-2016-juni-2017> and the Danish Health Data Authority: <http://esundhed.dk/sundhedsregistre/tip/Sider/tip01.aspx>

⁷¹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fDNK%2fCO%2f1%2fAdd.1&Lang=en para 38 and 39

police was involved related to a person with mental illnesses and in the period 2009-2016 the number of forced institutionalizations initiated by the police increased with 45 %. ⁷²

1. The use of coercion in psychiatric institutions

The Psychiatry Act was amended in 2007, 2010 and 2015. The 2010 amendment was aimed at reducing the use of coercion in psychiatric institutions, by restricting the criteria for applying medical restraint and requiring a minimum frequency of medical supervision and simultaneous assessment of whether restraint – fixation – should cease or continue. The 2015 amendment aimed at tightening the criteria for and supervision of the use of immobilisation. A Commission on Mental Health was established in 2012 and this led to the adoption of an action plan for a 50% reduction of the level of coercion by 2020, including a 50 % reduction in the use of mechanical restraint with belts. The Danish Health Data Authority (DHDA) (Sundhedsstyrelsen) now concludes that it will be very difficult to reach the goals of the Action Plan and it raises serious concern about the lack of improvement while referring to the fact that the total number of persons subjected to coercive measures is higher than when the agreement was reached in 2015.⁷³

The use of coercion on patients in psychiatric institutions is still rather extensive, also when compared to other countries, although there has been a downward trend as regards the overall use of immobilization with belt in recent years. ⁷⁴ There are significant differences between various regions of Denmark both in terms of scope of the problem and the methods used. We also note that in some regions of Denmark, a decrease of the use of belts is followed by an increase in use of other coercive measures.

In 2014, a High Court judgment concluded that the Odense University hospital was found to have breached article 3 of the European Convention on Human Rights because the plaintiff was subjected to coercive measures (fixation) that lead to such intense physical and psychological suffering.⁷⁵

We are concerned about this development and urge the CPT to particularly focus on this issue and to make relevant recommendations to Denmark.

2. Children below the age of 15 years

On several occasions, Denmark has stated that improvements should be made in the psychiatric system with regards to the use of coercion in general (tvangsanvendelse) against children that includes involuntary placement, involuntary treatment and coercive measures. However, the number of children subjected to such measures has increased since baseline and the Danish Health Data Authority has expressed particular concern about these figures, including in relation to the use of involuntary psychiatric placements (tvangsindlæggelser).⁷⁶

⁷² 2018 report by the Danish Police: <https://politi.dk/rigspolitiet/nyhedsliste/politiet-bruger-mere-tid-paa-psykisk-syge/2018/0/28>

⁷³ See DHAD Rapport of 28 October 2018, at Chapter 2.

⁷⁴ See <https://www.sst.dk/da/udgivelser/2018/monitorering-af-tvang-i-psykiatrien-juli-2017-juni-2018>

⁷⁵ Eastern High Court decision of 8 July 2014.

⁷⁶ The Danish Health Data Authority (2018): Monitorering af tvang i psykiatrien, opgørelse for perioden 1. juli 2017-30. juni 2018.

The Danish Parliamentary Ombudsman has been very critical towards the use of belt and straps for children below 15 years of age.⁷⁷

The Committee on the Rights of Persons with Disabilities and the Committee on the Rights of the Child have expressed concern and the latter has recommended Denmark to ensure that “children with disabilities, including with psychosocial and/or intellectual disabilities are under no circumstances forcibly hospitalized or institutionalized but provided with assistance in a community care environment, and ensure that until this aim is achieved, those children who are residing in an institution or psychiatric hospital are under no circumstances subjected to excessive restraint”.⁷⁸

We urge the CPT to particularly focus on this issue and to make relevant recommendations to Denmark.

⁷⁷ http://www.ombudsmanden.dk/find/nyheder/alle/psykisk_syge_born_og_unge_fastspaendes/pdf

⁷⁸ CRC/C/DNK/CO/5, para 29.