

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

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Part I: National standards

1. Cells

a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

The minimum cell space in prison facilities administered by the Prison and Probation Service (*Kriminalforsorgen*) is regulated by Circular Letter no. 66 of 29 September 2011 (*Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*).

For individual cells, the floor space shall be minimum six m² and for double cells, the floor space shall be minimum eight m².² The cell space differs in different prison and detention facilities and, in general, newer facilities are typically equipped with more cell space for each prisoner. In the newly built prison, Storstrøm prison (*Storstrøms fængsel*), the cell space is approximately 12 m² for each prisoner.

The Parliamentary Ombudsman (*Folketingets Ombudsmand*) has found that the section 1 in Circular Letter No. 66 of 29 September 2011 (*Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*), regulating cell space, does not fulfil the requirements of section 18(3) of the European Prison Rules;³ because, the ombudsman found, section 1 of the circular must be understood as meaning that it does not set minimum requirements for the floor area the individual inmate must have at his/her disposal, but only determines the minimum size of single and double cells.

On 2. December 2020, the Minister of Justice, stated in relation to overcrowding in the Danish prison system, that in 2020, 260 inmates had been placed in 130 cells that generally were ten m², which is equal to five m² per person.⁴

b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

Furniture is regulated in Circular Letter no. 66 of 29 September 2011 (*Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*), section 2,⁵ whereby the living space should, as a minimum, contain a bed with a mattress, duvet and pillow, a table, an upholstered chair, closet, mirror, ashtray, bin, bulletin board and lightning. Upon admission sheet and covers for duvet and pillow as well as a towel is handed out.⁶ If not included in the kitchen supply also a cup, plate, spoon and kitchen towel etc. is handed out.

¹ For the CEU's calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

² Denmark, [Circular Letter no. 66 of 29 September 2011](#) (*Cirkulæreskrivelse nr. 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*), Section 2.

³ Denmark, Ombudsman (*Dobbeltbelæg i enkeltceller i fængsler og arresthuse*), [FOB-2021-3](#), 3 February 2021.

⁴ Denmark, Minister of Justice, [Updated information on cells with overcrowding](#) (*Opdaterede oplysninger om celler med dobbeltbelæg i danske fængsler og arresthuse*), 2 December 2020.

⁵ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (*Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*).

⁶ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (*Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsattes opholdsrum i kriminalforsorgens institutioner*), section 3.

<p>c) Video-surveillance of cells: Are there any national standards for video-surveillance of cells? If so, what do they require?</p>
<p>There are, as far as we can find, no publicly accessible standards. Cells are not under video-surveillance. Common areas, corridors, workshops etc. can be under video-surveillance. The hPrison and Probation Service is exempt from rules requiring clear marking (e.g. by wall signs) areas under video-surveillance.⁷</p>
<p>d) Hygienic conditions in cells: Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?</p>
<p>Hygienic conditions in cells is indirectly regulated by Circular Letter no. 66 of 29 September 2011 (<i>Cirkulæreskrivelse nr. 66 af 29. september 2011 om størrelse af og udstyr af indsatte opholdsrum i kriminalforsorgens institutioner</i>).⁸ It follows from the circular that, i.e. bed linen is changed every fortnight unless special circumstances require otherwise.⁹ Moreover towels, tea towel and dishcloth are changed once a week.¹⁰ Unless, there is self-administration in the institution, the detainee can upon request have the following items handed out: disposable razor and shaving foam, toothbrush and toothpaste, brush, hand soap, shampoo, nail brush.¹¹</p>
<p>e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).</p>
<p>Standards are applicable to prisons and remand prisons.</p>
<p>f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.</p>
<p>According to Criminal Enforcement Act no. 1333 of 9 December 2019 (<i>Straffuldbyrdelsesloven nr. 1333 af 9. December 2019</i>), decisions made by a probation authority cannot be appealed to a higher administrative authority. However, the Minister of Justice may lay down rules that decisions made by the penitentiary areas or by authorities other than the probation authorities can be appealed to the Department of Prisons and Probation.¹² Within the aforementioned areas the Minister of Justice has not laid down such rules.</p> <p>Thus, detainees can appeal against certain of the Danish Prison and Probation Service's decisions to the Department of Prisons and Probation.¹³ The decisions that cannot be appealed to the directorate, as well as the directorate's decisions can be brought before the Parliamentary Ombudsman. The Ombudsman cannot change a decision but can ask the area or the directorate to look into the matter. In practice recommendations from the Ombudsman are followed.¹⁴</p>

⁷ Denmark, [Video Surveillance Act no. 1190 of 11. October 2007](#) (*Bekendtgørelse af lov om tv-overvågning af 11. oktober 2007*), section 3a.

⁸ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsatte opholdsrum i kriminalforsorgens institutioner).

⁹ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsatte opholdsrum i kriminalforsorgens institutioner), section 3 (2).

¹⁰ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsatte opholdsrum i kriminalforsorgens institutioner), section 3 (3).

¹¹ Denmark, [Circular Letter no. 66 of 29 September 2011](#) (Cirkulæreskrivelse nr 66 af 29. september 2011 om størrelse af og udstyr af indsatte opholdsrum i kriminalforsorgens institutioner), section 4.

¹² Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), Section 111.

¹³ Denmark, Prison and Probation Service, [Information on serving a prison sentence](#).

¹⁴ Denmark, [Prison and Probation Service](#) (*Kriminalforsorgen*).

Damages can be claimed pursuant to section 107 of the Criminal Enforcement Act on a statutory basis of strict liability.¹⁵

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

Visit reports from the Danish NPM (The Parliamentary Ombudsman) in the period from 1 May 2018 to 15 April 2021, are available in Danish, at: https://www.ombudsmanden.dk/ombudsmandensarbejde/ombudsmandens_sagstyper/tilsyn/tilsyn/voksenomraadet/

The NPM visited the facility 'Næstved Arrest' (remand centre in Næstved) on 30 April 2019. The NPM recommended among others that the management of the facility should consider the following, 'At retningslinjerne i cirkulære nr. 66 af 29. september 2011 om størrelsen af indsatte opholdsrum i kriminalforsorgens institutioner følges, således at der ikke anvendes opholdsrum på under 8 kvadratmeter til dobbeltbelæg'.¹⁶ In English, 'that guidelines in circular no. 66 of 29 September 2011 on the size (?) of inmates living space in facilities of the prison and probation service should be followed so that living space under 8 square meters is not used for double occupancy'.

The Danish NPM visited the facility 'Roskilde Arrest' (remand centre in Roskilde) on 9 October 2019. The NPM recommended among others that the management of the facility should consider the following, 'at retningslinjerne i cirkulæreskrivelse om størrelsen af indsatte opholdsrum i kriminalforsorgens institutioner følges, således at der ikke anvendes opholdsrum på under 8 kvadratmeter til dobbeltbelæg'.¹⁷ In English, 'that guidelines in circular on the size of inmates living space in facilities of the prison and probation service should be followed so that living space under 8 square meters is not used for double occupancy'.

In 2021, the Parliamentary Ombudsman released a statement on double occupancy in single cells in prisons (*Dobbeltbelæg i enkeltceller i fængsler og arresthuse*).¹⁸

Following its visit in 2019, the CPT noted poor ventilation in the cells of Nykøbing Falster Police Station.¹⁹

2. Sanitary conditions

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay,

¹⁵ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), Section 111.

¹⁶ Denmark, Ombudsman, [visit report of 27 June 2019](#).

¹⁷ Denmark, Ombudsman, [visit report of 20 January 2021](#).

¹⁸ Denmark, The Parliamentary Ombudsman, [statement on double occupancy in single cells in prisons](#) (*Dobbeltbelæg i enkeltceller i fængsler og arresthuse*).

¹⁹ Denmark, [Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 3 to 12 April 2019](#), para. 26.

even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?
Sanitary facilities in prison and detention facilities are not regulated in any legal instrument. Furthermore, no public guidelines or manuals on sanitary facilities is available. The conditions and standards of sanitary facilities vary from prison and detention facilities. Newer prison and detention facilities are in general considered to have better conditions and standards. The Prison and Probation Service (<i>Kriminalforsorgen</i>) has stated that it strives to establish spatial separation when toilets are located in prison cells. However, there may be physical and/or security conditions that make it difficult or impossible to establish such a separation in the existing buildings. ²⁰
b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?
Sanitary facilities in prison and detention facilities are not regulated in any legal instrument. Furthermore, no public guidelines or manuals on sanitary facilities is available. The conditions and standards of sanitary facilities varies from prison and detention facilities. In general, newer prison and detention facilities are considered to have better conditions and standards.
c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?
Sanitary facilities in prison and detention facilities are not regulated in any legal instrument. Furthermore, no public guidelines or manuals on sanitary facilities is available. In general and as a part of the principle of self-administration (<i>selvforvaltningsprincippet</i>) inmates are responsible for cleaning their own rooms. ²¹
d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
The conditions and standards of sanitary facilities vary from prison and detention facilities. Newer prison and detention facilities are in general considered to have better conditions and standards.
e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.
According to the Criminal Enforcement Act No. 1333 of 9 December 2019 (<i>Straffuldbyrdelsesloven nr. 1333 af 9. December 2019</i>), decisions made by a probation authority cannot be appealed to a higher administrative authority. The Minister of Justice may lay down rules that decisions made by the penitentiary areas or by authorities other than the probation authorities can be appealed to the Directorate of Correctional Services. ²² Within this area the Minister of Justice has not laid down such rules. Thus, detainees can appeal against certain of the Danish Prison and Probation Service's decisions to the Department of Prison and Probation Service. The decisions that cannot be appealed to the department, as well as the department's decisions can be brought before the Parliamentary Ombudsman. The ombudsman cannot change a decision but

²⁰ Denmark, [Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visit to Denmark from 3 to 12 April 2019](#), page 24.

²¹ Denmark, Denmark, [Criminal Enforcement Act No. 1491 of 13 December 2017](#) (*Straffuldbyrdelsesloven nr. 1491 af 13. December 2017*), Section 43 (1).

²² Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), Section 111.

can ask the facility or the department to look into the matter. In practice recommendations from the Ombudsman is followed.²³

- f) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

An overall review of reports from the NPM shows that no particular criticism has been raised by the NPM regarding sanitary facilities in prison and detention facilities.²⁴

However, Danish NPM (The Parliamentary Ombudsman) visited the facility Ellebæk Detention Centre for Foreigners on 7 February 2019. The NPM recommended among others that the management of the facility should consider the following, 'At ledelsen sikrer, at den generelle vedligeholdelsestilstand forbedres i mændenes indkvarteringsafdelinger samt navnlig i isolationsafdelingen'.²⁵ In English, 'that the management ensures that the general standard of maintenance is improved in the male department and in particular in the department for solitary confinement'.

The CPT reiterated its recommendation to the Danish authorities that steps should be taken to ensure that all prisoners have unimpeded access to toilet facilities without undue delay at all times (including at night), at the Copenhagen Police Headquarters Prison and Odense Remand Prison, as well as in all other prisons in Denmark.²⁶ Moreover the Committee noted in relation to Ellebæk Detention Centre for Foreigners and Nykøbing Falster Holding Centre (*Nykøbing Falster Arrest*), '[...] the vast majority of rooms and the (common) sanitary facilities were in a deplorable state of repair.'²⁷

3. Time out of cell

- a) What is the national standard set for time per day/week spent by detainees outside of their cells:
- Outdoors (within the boundary of the prison)?
 - Indoors in the common area?

Outdoors: prisoners in both prison and detention facilities have outdoor access minimum one hour a day.²⁸

²³ Denmark, [Prison and Probation Service](#) (*Kriminalforsorgen*).

²⁴ This conclusion is based on a review of the annual reports from 2018 from the Danish NPM, the Danish Parliamentary Ombudsman (Folketingets Ombudsmandsberetninger fra 2018 til 2021). For an overview of annual reports and visit reports from the Danish NPM, see: [The Parliamentary Ombudsman](#).

²⁵ Denmark, Ombudsman, [visit report of 25 June 2019](#).

²⁶ [Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 3 to 12 April 2019](#), para. 45.

²⁷ [Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 3 to 12 April 2019](#), page 55.

²⁸ Denmark, [Criminal Enforcement Act No. 1491 of 13 December 2017](#) (*Straffuldbyrdsloven nr. 1491 af 13. December 2017*), Section 43 (3).

Indoors: inmates in most prisons and detention facilities have wide access to common areas and to association with other prisoners. In closed facilities inmates may be locked in their cells for a maximum of 12 hours between 20h00 and 09h00 or engaged in other activities such as work, education or other recreational activities.²⁹ Whereas in detention facilities in Copenhagen (*Københavns Fængsler*) inmates may be locked in their cells all day.³⁰ The right is not absolute as section 63 and 64, in the Criminal Enforcement Act, allows exclusion from association for up to 3 months in order to (1) prevent escape, criminal activity or violence, (2) take measure in order to ensure safety or avoid danger of infection or (3) if the prisoner demonstrates inadmissible behaviour.³¹ In addition, prisoners can be imposed solitary confinement in a number of cases.

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

Pursuant to the Criminal Enforcement Act, Section 38, and the Executive order No. 746 of 27 April 2021, post-trial prisoners have the right and duty to attend work, education or other approved activities for 37 hours a week (*Beskæftigelsespligt*).³² Exemption can be made in relation to i.e. retirees.³³ In addition, prisoners have access to several recreational activities such as sport, hobby activities or library visits.³⁴

c) Is there a national standard for time spent in cells? If so, what does it require?

The Executive order no. 866 of 25 June 2018 on access to common areas regulates both pre- and post-trial prisoners' access to time out of cell in all prison and detention facilities administered by the Danish Prison and Probation Service.³⁵

d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

Pursuant to the Criminal Enforcement Act, the Prison and Probation Service (*Kriminalforsorgen*) is required to offer activities to detainees in their spare time.³⁶ The inmate has the right to spend at least one hour daily in fresh air save for security reasons or placement in security cell.³⁷

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

²⁹ Denmark, [Ministeriel order No. 415 of 9 April 2015](#) (*Bekendtgørelse nr. 415 af 9. april 2015 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), section 6.

³⁰ Denmark, [Ministeriel order No. 415 of 9 April 2015](#) (*Bekendtgørelse nr. 415 af 9. april 2015 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), section 6 (2).

³¹ For detailed information on the limit of access to common areas see: Dragsted, Ane, and Schiøler, Jakob. *Straffuldbyrdsloven Med Kommentarer*. 2. Udg. ed. København: Jurist- Og Økonomforbundets Forlag, 2017, p. 313 – 324.

³² Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. December 2019*), Section 38, available in Danish, and [Executive order No. 746 of 27 April 2021](#) (*Bekendtgørelse om beskæftigelse m.v. af indsatte i kriminalforsorgens institutioner*), section 1.

³³ Denmark, [Guidance note no. 9286 of 3 May 2021](#) (*vejledning nr. 9286 af 3. maj 2021 om beskæftigelse m.v. af indsatte i kriminalforsorgens institutioner (beskæftigelsesvejledningen)*).

³⁴ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. December 2017*), Section 43 (2), and [The Danish Prison and Probation Service](#).

³⁵ Denmark, [Executive order No. 866 of 25 June 2018](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (Fællesskabsbekendtgørelsen)*).

³⁶ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. December 2017*), Section 43 (2).

³⁷ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. December 2017*), Section 43 (3).

Prisoners in closed prison facilities can be confined in their cells in the period from 20.00 to 08.00.³⁸

In detention facilities in Copenhagen (*Københavns Fængsler*) prisoners can be confined in the cell for 24 hours,³⁹ if it is not possible to establish access to common areas.⁴⁰

In open prison facilities, prisoners can be confined in the cell in the period from 21.00 to 08.00, if it is considered appropriate in order to ensure order and security. In the remaining period, prisoners have access to the common area.⁴¹

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

Pursuant to section 20 of Executive order no. 866 of 25 June 2018 (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*) there is an administrative right of appeal.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

The NPM visited '*Esbjerg Arrest*' (remand centre in *Esbjerg*) on 17 April 2018.⁴² Among other things the NPM recommended that, 'det sikres, at det bliver muligt for de indsatte at føre private telefonsamtaler, uden at det kan overhøres af andre indsatte'. In English, 'It is ensured that it becomes possible for the inmates to have private telephone conversations without it being overheard by other inmates'.

CPT noted in relation to the closed prison Storstrøm Prison (*Storstrøms Fængsel*) that it had a range of modern, high-quality facilities for prisoners' work, education and leisure-time activities. Work was provided in a series of workshops (metal-work and welding, painting, fitting and assembly work, packaging work, bookbinding, carpentry, etc.) (...).⁴³

4. Solitary confinement

³⁸ Denmark, [Executive order No. 866 of 25 June 2018](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), Section 6.

³⁹ Denmark, [Executive order No. 866 of 25 June 2018](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), Section 6 (2).

⁴⁰ Denmark, [Executive order No. 866 of 25 June 2018](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), Section 6.

⁴¹ Denmark, [Executive order No. 866 of 25 June 2018](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*), section 7.

⁴² Denmark, Ombudsman, [visit report of 27 September 2018](#).

⁴³ Denmark, [Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 3 to 12 April 2019](#), para. 46.

a) What are the national standards regarding solitary confinement?

In Denmark, solitary confinement is regulated by the Criminal Enforcement Act, section 63 and 64, executive order no. 866 of 25 June 2018 on inmates' access to community etc. with other inmates within the prison and probation service⁴⁴ as well as a guidance note.⁴⁵ The following four types of solitary confinement are regulated by the Criminal Enforcement Act⁴⁶ and subsequent executive orders:

1. Exclusion from association, cf. the Criminal Enforcement Act, Section 63. Exclusion from association limits the prisoner's access to association with other prisoners, but the prisoner can still to some degree participate in work, education or other recreational activities. Exclusion from association in order to (1) prevent escape, criminal activity or violence, (2) take measure in order to ensure safety or avoid danger of infection or (3) if the prisoner demonstrates inadmissible behaviour. Exclusion from association may not extend more than 3 months, unless extraordinary circumstances exist. The use of exclusion from association, access to information and procedural rights are regulated in executive order no. 866 of 25 June 2018 on inmates' access to community etc. with other inmates within the prison and probation service. There is a continuation in the drop in the use of exclusion from association from 751 cases in 2010 to 298 cases in 2019.⁴⁷ Of the cases in 2019, 109 cases was between 1-3 days, 81 cases was between 4-7 days, 46 cases was between 8-14 days, 44 cases was between 15-28 days and 18 was for more than 28 days.

2. Voluntary exclusion from association, cf. the Criminal Enforcement Act, section 33. A prisoner can choose to be excluded from association. If a prisoner chooses so, the prisoner will be excluded completely from association or placed in a special department with limited association.⁴⁸ Prisoners have the right to revoke the decision at any time, cf. section 33 of the Criminal Enforcement Act.

3. Solitary confinement in a security cell, possibly under forced physical restraint, cf. Criminal Enforcement Act, section 66. The use of security cell is in detail regulated in the Executive order no. 1111 of 17 August 2016 on the use of security cell.⁴⁹ There are no fixed time limits on the use of security cell in general, but the duration shall be as short as possible, cf. section 66 of Criminal Enforcement Act. Furthermore, solitary confinement in a security cell under forced physical restraint may only in special circumstances exceed 24 hours, cf. section 8 of the executive order. In 2019, security cell was used in 297 cases.⁵⁰ 79 % of these were under forced physical restraint. In more than 50 % of the cases, the use of security cell was for less than six hours.⁵¹

4. Solitary confinement as a disciplinary sanction, cf. the Criminal Enforcement Act, section 68. The maximum duration for solitary confinement as a disciplinary measure is four weeks, cf. the Criminal Enforcement Act, section 70. However, the use of solitary confinement of minors is limited to seven days unless the matter concern violence against staff. The use of solitary confinement as a disciplinary sanction, access to

⁴⁴ Denmark, [Executive order No. 866 of 25 June 2018 on inmates access to community etc. with other inmates within the prison and probation service](#) (Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)).

⁴⁵ Denmark, [Guidance note no. 9229 of 13 April 2015](#) (Vejledning om udelukkelse af indsatte fra fællesskab, herunder anbringelse i observationscelle m.v., i fængsler og arresthuse (vejledning om udelukkelse fra fællesskab)).

⁴⁶ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (Straffuldbyrdsloven nr. 1333 af 9. December 2017).

⁴⁷ Denmark, The Prison and Probation Service, [Statistic 2019](#) (Kriminalforsorgen Statistik 2019), page 43, available in Danish at:.

⁴⁸ Denmark, Dragsted, Ane, and Schiøler, Jakob. Straffuldbyrdsloven Med Kommentarer. 2. Udg. ed. København: Jurist- Og Økonomforbundets Forlag, 2017, p. 159.

⁴⁹ Denmark, [Executive order No. 1111 of 17 August 2016 on the use of security cell](#) (Bekendtgørelse nr. 1111 of 17 August 2016 om anvendelse af sikringsmidler i kriminalforsorgens institutioner).

⁵⁰ Denmark, The Prison and Probation Service, [Statistic 2019](#) (Kriminalforsorgen Statistik 2019), page 45.

⁵¹ Denmark, The Prison and Probation Service, [Statistic 2019](#) (Kriminalforsorgen Statistik 2019), page 40.

information and procedural rights are regulated in the Executive order no. 105 of 30 January 2019.⁵² There has been a soaring increase in the use of solitary confinement as a disciplinary measure of more than 14 days in recent years. From 2.995 cases in 2016 to 4752 cases in 2018.⁵³

Exclusion from association pursuant to the Administration of Justice Act, Section 770a. Prisoners can be excluded from association if there are particular reasons to assume that pre-trial detention in itself is insufficient to prevent obstruction of legal proceedings or collusion. The use of exclusion from association, including conditions, procedure and durations, are in detail regulated in Sections 770a – 770d of the Act.

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

Pursuant to guidance no. 9212 of 13. April 2015 on inmates' access to community,⁵⁴ after 14 days of forced exclusion from community, there are certain rights offered such as increased staff contact, supervision of a doctor, including a psychiatrist, opportunity to work together, leisure activities with one or more others inmates or with the staff, and offers of regular and long conversations with e.g. priest, doctor or psychologist. Similar safeguards for the wellbeing of detainees are not applicable to persons subject to solitary confinement as a disciplinary sanction.⁵⁵

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The Criminal Enforcement Act, the Administration of Justice Act and subsequent executive orders regulate the use of all types of solitary confinement in facilities administered by the Prison and Probation Service.

Juveniles placed in prison facilities administered by the Prison and Probation Service are subjected to the same rules as adults on solitary confinement pursuant to the Administration of Justice Act and the Criminal Enforcement Act as mentioned above, but with lower time limits.⁵⁶

d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.

The use of exclusion from association, access to information and procedural rights are regulated in the Executive order no. 866 of 25 June 2018;⁵⁷ Pursuant to section 20 there is an administrative right of appeal.

There is an administrative right of appeal applicable to solitary confinement as a disciplinary measure.⁵⁸ However a complaint does not have stay of execution unless the

⁵² Denmark, [Executive order no. 105 of 30 January 2019 on disciplinary punishment](#) (*Bekendtgørelse om udståelse af strafcelle, anvendelse af forhørselle og behandlingen af disciplinærsager (disciplinærstrafbekendtgørelsen)*).

⁵³ Denmark, The Prison and Probation Service, [Statistic 2019](#) (*Kriminalforsorgen Statistik 2019*), page 42.

⁵⁴ Denmark, [Guidance no. 9212 of 13 April 2015 on inmates access to community](#) (*Vejledning om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsvejledningen)*).

⁵⁵ Denmark, Ombudsman, [thematic report on solitary confinement](#) as a disciplinary measure (*Temarapport om Strafceller*), available in Danish at page 32.

⁵⁶ Denmark, [the Administration of Justice Act no. 1445 of 29 September 2020](#) (*Bekendtgørelse af lov om rettens pleje*).

⁵⁷ Denmark, [Executive order No. 866 of 25 June 2018 on inmates access to community etc with other inmates in institutions of the prison and probation service](#) (*Bekendtgørelse nr. 866 af 25. juni 2018 om indsattes adgang til fællesskab m.v. med andre indsatte i kriminalforsorgens institutioner (fællesskabsbekendtgørelsen)*).

⁵⁸ Denmark, [Executive order no. 105 of 30 January 2019 on disciplinary punishment](#) (*Bekendtgørelse om udståelse af strafcelle, anvendelse af forhørselle og behandlingen af disciplinærsager (disciplinærstrafbekendtgørelsen)*), section 10.

department of the prison and probation service so decides.⁵⁹ Pursuant to Criminal Enforcement Act, sentenced, placed in solitary confinement as a disciplinary measure for more than seven days, have access to judicial review without undue delay pursuant to .⁶⁰ However such access to judicial review is not applicable to prisoners on remand.

- e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

For an overview of visit reports from the Danish NPM in the period from 1 May 2018 to 15 April 2021, see: The Parliamentary Ombudsman, information available in Danish, at: https://www.ombudsmanden.dk/find/?query=&mat_type=Tilsyn&aarstal=&myndighed=&inspektionstyp%20e=&inspektionsomraade=&sagsomraade=&forvrettemne=&viewmode=grid#cp-title

In 2018 NPM had a visit focus on exclusion from association. In this regard, the NPM visited four closed prisons, four open and nine remand facilities. The NPM generally recommended that, '1) at fængsler og arrester øger fokus på præcis og dækkende dokumentation i rapporter og ugenotater om udelukkelse fra fællesskabet samt sikrer løbende kvalitetskontrol. 2) at fængsler, arrester og Direktoratet for Kriminalforsorgen følger udviklingen i brug af tvungen og frivillig udelukkelse fra fællesskabet og analyserer årsager til udviklingen'.⁶¹ In English, '1) that prisons and custody facilities increase focus on exact and comprehensive documentation in reports and weekly notes on exclusion from association as well as ensures ongoing quality control. 2) To prisons, custodies and the Directorate of The Danish Prison and Probation Service monitors the development in the use of forced and voluntary exclusion from the association and analyses reasons for the development'. In 2019, the Ombudsman released a thematic report on the exclusion from association in institutions of the Prison and Probation Service.⁶²

In 2019 the NPM had a visit focus on solitary confinement as a disciplinary measure. In this regard the NPM visited three closed, two open prisons, eleven custodies and Ellebæk Detention Centre. The NPM generally recommended that, '1) at kriminalforsorgens institutioner sikrer, at den indsatte forstår, hvad der bliver sagt under disciplinærførhør, og øger brugen af tolk. 2) at kriminalforsorgens institutioner sikrer præcis og dækkende dokumentation i forhørsprotokoller samt løbende kvalitetskontrol 3) at Direktoratet for Kriminalforsorgen overvejer at udarbejde retningslinjer om forebyggelse af negative skadevirkninger som følge af anbringelse i strafcelle. 4) at sundhedspersonalet orienteres om indsatte anbragt i strafcelle'.⁶³ In English, '1) that the penitentiary's institutions ensure that the inmate understands what is being said during disciplinary hearings and increases the use of interpreters. 2) that the Danish Prison and Probation Service's institutions ensure accurate and comprehensive documentation in interrogation protocols and ongoing quality control. 3) that the Danish Prison and Probation Service considers preparing guidelines on the prevention of negative harmful effects as a result of placement in solitary confinement as a disciplinary measure. 4)

⁵⁹ Denmark, [Executive order no. 105 of 30 January 2019 on disciplinary punishment](#) (*Bekendtgørelse om udståelse af strafcelle, anvendelse af forhørscelle og behandlingen af disciplinærsager (disciplinærstrafbekendtgørelsen)*), section 10(1)(1).

⁶⁰ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. december 2019*), Section 112(3).

⁶¹ Denmark, Ombudsman, [annual report to Parliament 2018](#), page 36.

⁶² Denmark, Ombudsman, [thematic report on Exclusion from association within the Prison and Probation Service \(Udelukkelse fra fællesskabet i kriminalforsorgens institutioner\)](#).

⁶³ Denmark, Ombudsman, [annual report to Parliament 2019](#), page 62.

that health personnel are informed about inmates placed in solitary confinement as a disciplinary measure'. In 2020, the Ombudsman released a thematic report on solitary confinement as a disciplinary measure containing several recommendations.⁶⁴

The NPM visited Aarhus arrest (remand centre in Aarhus) on 8 May 2019.⁶⁵ The NPM recommended among other things that, 'at ledelsen sikrer, at den mundtlige vejledning om muligheden for at indbringe direktoratets afgørelse om strafcelle for domstolene, jf. straffuldbyrdslovens § 112, er korrekt, og at ledelsen følger udviklingen i antallet af afgørelser og strafcelledage og – i det omfang det er muligt – foretager analyser af årsager til udviklingen, herunder i relevant omfang foretager sammenligning med andre sammenlignelige institutioner'. In English, 'the management ensures that the oral guidance on the possibility of bringing the directorate's decision on solitary confinement as a disciplinary measure before the courts, cf. section 112 of the Execution of Sentences Act, is correct, and that the management monitors the development in the number of decisions and days in solitary confinement and – to the extent possible – conducts an analysis of the reasons of development, including, where appropriate, the comparison with other comparable institutions.

The NPM visited the Prison in Horserød (*Horserød Fængsel*) on 9 June 2019.⁶⁶ The NPM recommended among other things that, 'at ledelsen sikrer øget fokus på præcis og dækkende dokumentation i forhørsprotokollerne, bl.a. i forhold til: (...) at ledelsen sikrer øget fokus på præcis og dækkende dokumentation i forhørsprotokollerne, bl.a. i forhold til: præcis angivelse af den overtrådte bestemmelse, præcis angivelse af hjemlen for disciplinærsanktionen'. In English, 'that the management ensures increased focus on accurate and comprehensive documentation in the interrogation protocols, i.e. including: (...) precise specification of the infringement and precise specification of the legal basis for the disciplinary sanction'.

5. Access to healthcare

a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?

Prisoners' access to health care is regulated by the Act on Health Care,⁶⁷ the Criminal Enforcement Act, section 45, and the Executive order no. 399 of 9 June 2015 on health assistance to prisoners in the institutions under the Prison and Probation Service.⁶⁸ Pursuant to the Act on Health Care, prisoners are exempted from certain health care services (prisoners cannot access a medical practice et cetera outside the prison facility), but are otherwise entitled to enjoy regular access to health care.⁶⁹ The Executive order

⁶⁴ Denmark, Ombudsman, [thematic report on solitary confinement as a disciplinary measure](#) (*Temarapport om Strafceller*), page 35.

⁶⁵ Denmark, Ombudsman, [visit report of 8 May 2019](#).

⁶⁶ Denmark, Ombudsman, [visit report of 5 September 2019](#).

⁶⁷ Denmark, the Act on Health, [Consolidated Act No. 903 of 26 August 2019 with amendments](#) (*Sundhedsloven, lovbekendtgørelse nr. 903 af 26. august 2019 med senere ændringer*).

⁶⁸ Denmark, [Executive order No. 399 of 9 April 2015 on Prisoners' Access to Health Care in Danish prison facilities](#) (*Bekendtgørelse nr. 399 af 9. april 2015 om sundhedsmæssig bistand til indsatte i kriminalforsorgens institutioner*).

⁶⁹ Denmark, [answer from the Minister of Justice to Judicial Committee question no. 479](#) (*Retsudvalget 2017-18, REU Alm.del endeligt svar på spørgsmål 479*).

regulates the access for prisoners to be examined and treated by a doctor, psychiatrist or dentist. Typically, the prison facilities also have in-house medical staff such as nurses.

b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

The availability of qualified medical and nursing personnel in prison and detention facilities are not regulated in any legal instrument. Furthermore, no public guidelines or manuals thereon is available.

c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainees? If so, what do they require?

It follows from section 7(1) of Executive Order no. 399 of 9 April 2015 on health assistance to prisoners in the institutions under the Prison and Probation Service that prisoners shall be given a general briefing on the health services of the institution as soon as possible after the incarceration and offer the prisoner a consultation with a medical doctor or nurse affiliated with the Prison and Probation Service area.

There is not as such a national standard for an initial medical examination upon deprivation of liberty, as it is a basic principle that contact with health-care providers is only established if the patient wants this. The health-care services in the Prison and Probation Service are organised in accordance with this principle, so that a prisoner who is considered capable of making decisions about his or her own life and does not express a desire to be examined or receive treatment, is not forced to be examined or treated.⁷⁰

d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

Prisoners have access to treatment of somatic diseases and mental illnesses. Typically, prisoners will be granted access to the local hospital or be placed in the special hospital section at Vestre Prison (*Vestre Fængsel*) for treatment of somatic diseases or at Herstedvester Prison (*Herstedvester Fængsel*) for treatment of mental illnesses.⁷¹ In addition, prisoners have access to treatment of drug addiction and alcohol abuse, anger management and specialized treatment for young offenders. Prisoners under treatment will typically be placed in special treatment units.⁷²

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

It follows from section 3 of Executive Order no. 399 of 9 April 2015 on health assistance to prisoners in the institutions under the Prison and Probation Service that remand prisoners have access to call their own doctor. Such call may be refused by the police if it runs counter to the purpose of placement on remand.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The rules on prisoners' access to health care applies to inmates in all facilities administered by the Prison and Probation Service.

⁷⁰ Denmark, [Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visit to Denmark from 3 to 12 April 2019](#), page 37.

⁷¹ [The Danish Prison and Probation Service](#).

⁷² Denmark, [Criminal Enforcement Act](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. december 2019*). For more information, see also: [The Danish Prison and Probation Service](#).

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.

According to Criminal Enforcement Act no. 1333 of 9 December 2019 (*Straffuldbyrdsloven nr. 1333 af 9. December 2019*), decisions made by a probation authority cannot be appealed to a higher administrative authority. However, the Minister of Justice may lay down rules that decisions made by the penitentiary areas or by authorities other than the probation authorities can be appealed to the Department of Prisons and Probation.⁷³ Within the aforementioned areas the Minister of Justice has not laid down such rules.

Thus, detainees can appeal against certain of the Danish Prison and Probation Service's decisions to the Department of Prisons and Probation.⁷⁴ The decisions that cannot be appealed to the directorate, as well as the directorate's decisions can be brought before the Parliamentary Ombudsman. The Ombudsman cannot change a decision but can ask the area or the directorate to look into the matter. In practice, recommendations from the Ombudsman are followed.⁷⁵

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

On a visit to the prison in Nyborg (*Nyborg fængsel*) on 14 to 15 May 2018, the NPM recommended among others, 'at LiveAids delegeringsaftale er tilgængelig for personalet i stedet for de ældre (forældede) medicinhåndteringsinstrukser, som findes i den interne regelsamling.'⁷⁶ In English, 'that LiveAid's delegation agreement is available to staff in place of the older (obsolete) medication handling instructions contained in the internal rule set'.

On visit to *Slagelse arrest* (remand centre in Slagelse) on 20 January 2019, the NPM recommended amongst others, that 'at ledelsen sikrer, at indsatte bliver tilbudt lægeundersøgelse ved indsættelsessamtalen'.⁷⁷ In English, 'that the management ensures that prisoners are offered a medical examination upon arrival'.

Following a visit to Frederikssund arrest (remand centre in Frederikssund) on 25 February 2019, the NPM recommended amongst other things that, 'at ledelsen og lægen sikrer, at medicininstrukserne revideres, så de lever op til gældende krav'.⁷⁸ In English, 'that management and the doctor ensure that the medication instructions are revised so that they follow applicable requirements'.

The NPM visited Aarhus arrest (remand centre in Aarhus) on 8 May 2019. The NPM recommended amongst other things that, 'at der udarbejdes en instruks for observation af indsatte i abstinensbehandling'.⁷⁹ In English that, 'an instruction is prepared for observation of inmates in abstinence treatment'.

On visit to Køge arrest (remand centre in Frederikssund) on 1 October 2019, the NPM recommended amongst others that, 'Sikre, at det sundhedsfaglige personale er bekendt

⁷³ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdsloven nr. 1333 af 9. December 2019*), section 111.

⁷⁴ Denmark, Prison and Probation Service, [Information on serving a prison sentence](#).

⁷⁵ Denmark, [Prison and Probation Service](#).

⁷⁶ Denmark, Ombudsman, [visit report of 27 August 2018](#).

⁷⁷ Denmark, Ombudsman, [visit report of 20 January 2019](#).

⁷⁸ Denmark, Ombudsman, [visit report of 25 February 2019](#).

⁷⁹ Denmark, Ombudsman, [visit report of 8 May 2019](#).

med de særlige forhold, der gør sig gældende for sundhedsbetjening af frihedsberøvede, og at der reageres hurtigst muligt på cellekald, så ventetiden højst er 20 minutter.⁸⁰ In English, 'Ensure that the health professionals are aware of the special conditions that apply to the health care of detainees, and that cell calls are responded to as quickly as possible, so that the waiting time is a maximum of 20 minutes'.

For an overview of visit reports from the NPM in the period from 15 May 2018 to 15 April 2021, see: The Parliamentary Ombudsman, information available in Danish, at: https://www.ombudsmanden.dk/find/?query=&mat_type=Tilsyn&aarstal=&myndighed=&inspektionstyp%20e=&inspektionsomraade=&sagsomraade=&forvrettemne=&view_mode=grid#cp-title

The CPT noted concern 'that, despite its reiterated recommendations, there was still no systematic and prompt medical screening of newly-arrived prisoners in the prisons visited, nor was there a proper recording and reporting system for injuries recorded by doctors (vis-à-vis newly admitted prisoners or following a violent episode in prison). In addition, medical confidentiality needs to be strengthened and additional action taken to tackle substance use in prisons.'⁸¹

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

Pursuant to the Criminal Enforcement Act, section 78 (2) and (4), juveniles in pre-trial detention should not be placed in prison facilities administered by the Prison and Probation Service. If necessary, juveniles can as an exemption be placed in a detention facility near the residence of the juvenile in question.⁸² In accordance with section 78 (2) and (4) of the Criminal Enforcement Act, juveniles who are sentenced to imprisonment shall be placed outside of prison unless critical reasons demand otherwise. Juveniles will typically be placed in an institution which is not part of the Prison and Probation Service or in one of the Prison and Probation Service's pensions. In the exceptional case where such placement is not deemed suitable and the juvenile does not qualify for home detention with an electronic foot shackle, the juvenile will serve the sentence in a special section for young people at Søbysøgård Prison (*Søbysøgård Fængsel*).⁸³ If deemed vital for the juvenile to keep in contact with family and/or attend an educational institution, the juvenile can be placed in a regular prison facility.⁸⁴ Juveniles shall have the opportunity to associate with other juvenile offenders separated from other inmates, cf. the executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service, Section 2 (3), Section 3, Section 5 and Section 9. If a juvenile is placed in a prison or detention facility administered by the Prison and Probation Service, a treatment programme shall be initiated focusing on educational or other recreational activities based on the juveniles

⁸⁰ Denmark, Ombudsman, [visit report of 17 December 2019](#).

⁸¹ Denmark, [Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) from 3 to 12 April 2019](#), page 5.

⁸² Denmark, [Executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service no. 1413 of 29 September 2020](#) (*Bekendtgørelse om behandlingen af 15-17 årige, der anbringes i kriminalforsorgens institutioner nr. 1413 af 20. September 2020*), section 1.

⁸³ Denmark, [Executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service no. 1413 of 29 September 2020](#) (*Bekendtgørelse om behandlingen af 15-17 årige, der anbringes i kriminalforsorgens institutioner nr. 1413 af 20. September 2020*), section 4.

⁸⁴ Denmark, [Executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service no. 1413 of 29 September 2020](#) (*Bekendtgørelse om behandlingen af 15-17 årige, der anbringes i kriminalforsorgens institutioner nr. 1413 af 20. September 2020*), Section 5.

wishes and motivation, cf. the Executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service, section 12. Pursuant to the executive order on juveniles aged 15 -17 years placed in facilities administered by the Prison and Probation Service, section 13, juveniles shall have daily access to two hours of physical activities, including one hour access to outdoor areas.

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

The minimum age of criminal responsibility is 15 years; thus juveniles are between 15 and 17 years old.⁸⁵

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Juveniles who are placed in prison facilities administered by the Prison and Probation Service are subjected to the rules on penal sanctions, including solitary confinement, in accordance to the Administration of Justice Act and the Criminal Enforcement Act. Juveniles who are placed outside prison facilities administered by the Prison and Probation Service are subject to the Consolidated Act on Adult Responsibility for Children in Places of Care, Section 14, which has much stricter limits on the use of solitary confinement and a maximum of four hours.⁸⁶

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

According to Criminal Enforcement Act no. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), decisions made by a probation authority cannot be appealed to a higher administrative authority. However, the Minister of Justice may lay down rules that decisions made by the penitentiary areas or by authorities other than the probation authorities can be appealed to the Department of Prisons and Probation.⁸⁷ Within the aforementioned areas the Minister of Justice has not laid down such rules.

Thus, young detainees can appeal against certain of the Danish Prison and Probation Service's decisions to the Department of Prisons and Probation.⁸⁸ The decisions that cannot be appealed to the directorate, as well as the directorate's decisions, can be brought before the Parliamentary Ombudsman. The Ombudsman cannot change a decision but can ask the area or the directorate to look into the matter. In practice recommendations from the Ombudsman are followed.⁸⁹

Damages can be claimed pursuant to section 107 of the Criminal Enforcement Act on a statutory basis of strict liability.⁹⁰

e) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as

⁸⁵ Denmark, the Criminal Code, [Consolidated Act No. 1650 of 17 November 2020](#) (*Straffeloven, lovbekendtgørelse nr. 1650 af 17. november 2020*), section 15.

⁸⁶ Denmark, Act on Adult Responsibility for Children in Places of Care, [Consolidated Act no. 764 of 1 August 2019](#) (*Bekendtgørelse af lov om voksenansvar for anbragte børn og unge nr. 764 af 1. august 2019*), section 14.

⁸⁷ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), section 111.

⁸⁸ Denmark, Prison and Probation Service, [Information on serving a prison sentence](#).

⁸⁹ Denmark, [Prison and Probation Service](#).

⁹⁰ Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), section 111.

well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

Following visits to prison facilities in Ringe and Nyborg, the NPM initiated a case concerning the lack of separation of juveniles and adults in institutions of the prison and probation service, in 2018.⁹¹

7. Special measures in place to protect detainees from violence

- a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

Security in the Prison and Probation Service institutions is based on a static security approach (walls, locks and CCTV in the common areas and outdoors) and an relational approach focusing on constructive interaction between prison guards and prisoners in order to prevent threats and violence.⁹² In addition, the prison staff has a number of coercive measures available, including disciplinary punishment such as fines, solitary confinement and other forcible means.

According to the Criminal Enforcement Act No. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), section 62 and Executive order no. 296 of 28 March 2017 on the use of force (*Bekendtgørelse om anvendelse af magt over for indsatte i kriminalforsorgens institutioner (magtanvendelsesbekendtgørelsen)*),⁹³ the prison and probation service may use force, if necessary i.e. to avert threatening violence, to overcome violent resistance or to prevent suicide or other self-harm. Section 9 in the executive order decisions of the Prison and Probation on the use of force grants inmates an administrative right of appeal.

The Prison and Probation Service do not have public information on the regulation or policy considerations concerning the prevention of sexual violence in prison. Detainees who feel that their security is threatened can file a general complaint to the prison administration or alternatively file a police report if the threat amounts to a criminal offence.

- b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

It is a core task for the Prison and Probation Service to maintain safety and security, including to be able to handle conflicts in the prison and protect prisoners from violence from other prisoners. Conflict handling is a theme to the education as a prison officer.⁹⁴

⁹¹ Denmark, Ombudsman, [news release of 31 May 2018](#).

⁹² Denmark, Prison and Probation Service, [Safety \(Sikkerhed\)](#).

⁹³ Denmark, [Executive order no. 296 of 28 March 2017 on the use of force \(Bekendtgørelse om anvendelse af magt over for indsatte i kriminalforsorgens institutioner \(magtanvendelsesbekendtgørelsen\)\)](#).

⁹⁴ Denmark, Prison and Probation Service, [about the education \(Om uddannelsen\)](#), see theme five.

The latest survey (2015) on violence between detainees shows that about every fourth detainee in the Danish prisons and detention centres state that they have been threatened by fellow inmates one or more times during their current detention.⁹⁵ In addition, between every 6th and 8th inmate has been a victim of violence at least once. However only about 1/3 of the detainees have reported incidents to staff.

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

The Prison and Probation Service do not have public information on the regulation or policy considerations concerning the protection of LGBTI prisoners.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The level of security and the security approach differs in the various prison facilities, depending on the security assessment of the prison population and whether it is an open or closed regime. The Prison and Probation Service has categorised all prison and detention facilities into four security categories. The categories are not described in detail but relate to the intensity of security measures, extent of visitations, technical equipment in the prison facility and access control of visitors.⁹⁶

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

It follows from section 8 of executive order no. 296 of 28 March 2017 on the use of force (*Bekendtgørelse om anvendelse af magt over for indsatte i kriminalforsorgens institutioner (magtanvendelsesbekendtgørelsen)*),⁹⁷ that, when force has been used, the Prison and Probation Service shall as soon as possible make a report in the case handling system, including on the notification of the inmates' right to file a complaint on the use of force to the Directorate of the Prison and Probation Service.

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

Visit reports from the Danish NPM in the period from 1 May 2018 to 15 April 2021, are available in Danish, at:

http://www.ombudsmanden.dk/find/?query=&mat_type=Tilsyn&aarstal=&myndighed=&inspektionstype=&inspektionsomraade=&sagsomraade=&forvrettemne=&viewmode=grid

On a visit to Nyborg Prison (*Nyborg fængsel*) on 14 to 15 May 2018, the NPM recommended among others, that, 'at ledelsen sikrer, at der sker systematisk registrering af vold og trusler mellem patienter med henblik på dokumentation, viden og læring'.⁹⁸ In English, 'that management ensures that there is systematic registration

⁹⁵ Denmark, Prison and Probation Service, [survey 2015](#), Prisoners' vulnerability and propensity to report abuse (*Indsattes udsathed og tilbøjelighed til at anmelde overgreb*).

⁹⁶ Denmark, [answer from the Minister of Justice to Judicial Committee question no. 248](#) (*Retsudvalget 2017-18, REU Alm.del endeligt svar på spørgsmål 248*).

⁹⁷ Denmark, [Executive order no. 296 of 28 March 2017 on the use of force](#) (*Bekendtgørelse om anvendelse af magt over for indsatte i kriminalforsorgens institutioner (magtanvendelsesbekendtgørelsen)*).

⁹⁸ Denmark, Ombudsman, [visit report of 27 August 2018](#).

of violence and threats between patients for the purpose of documentation, knowledge and learning’.

The Danish NPM visited the prison facility in Nr. Snede Prison (*Nr. Snede Fængsel*) on 7 and 8 June 2018. The NPM recommended among others that the management of the facility should consider the following, ‘at ledelsen og områdekontoret udarbejder en voldspolitik på områdeniveau’.⁹⁹ In English, ‘that the management and area of the prison and probation service should develop a policy on violence on a district level’.

8. Women in detention

a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

Until recently, women have served sentences together with men in mixed prisons and sometimes also in the same wings/department. In 2018, due to questions of safety during imprisonment and ambitions of improving rehabilitative means for women, it was decided to establish a ‘women only’ facility.¹⁰⁰ In 2020 Jyderup Prison (*Jyderup Fængsel*) reopened as ‘women only’ facility.¹⁰¹

b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

Section 33(4) of the Criminal Enforcement Act,¹⁰² provides inmates a right to serve a sentence without inmates of the opposite gender, except during working hours and provided it is possible.

c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

Female inmates have access to the same health-care treatment as male prisoners. The Prison and Probation Service may disburse a daily amount for self-administration (*selvforvaltningsbeløb*).¹⁰³

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

Female inmates have access to the same health-care treatment as male prisoners. Thus they are, as male prisoners, offered a consultation with a medical doctor or nurse at the admission. If the woman wants such a consultation, it will be possible to request advice on gynaecological issues and/or help with other more woman-specific health problems. After a specific medical professional assessment, reference can be made to a specialist, including a gynaecologist.¹⁰⁴

Section 10 and 11 in the Executive order no. 399 of 9 June 2015 on prisoners’ access to health care in Danish prison facilities, regulates treatment of female detainees in case

⁹⁹ Denmark, Ombudsman, [visit report of 22 August 2018](#).

¹⁰⁰ Denmark, Fængslede kvinder er andet og mere end stereotyper - Kvindefængsel i Danmark anno 2021, Charlotte Mathiasen, Lektor ved Aarhus Universitet, DPU, Nordisk Tidsskrift for Kriminalvidenskab – nr. 1/2021, page 289.

¹⁰¹ Denmark, The Prison and Probation Service, [News release of 21 June 2018](#).

¹⁰² Denmark, [Criminal Enforcement Act no. 1333 of 9. December 2019](#) (Straffuldbyrdsloven nr. 1333 af 9. December 2019).

¹⁰³ Denmark, [Executive order no. 746 of 27 April 2021](#) (*Bekendtgørelse om beskæftigelse m.v. af indsatte i kriminalforsorgens institutioner*), section 21.

¹⁰⁴ Denmark, [Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visit to Denmark from 3 to 12 April 2019](#), para. 72.

of pregnancy as well as the termination thereof.¹⁰⁵ Prison staff are obliged to immediately contact a doctor and as soon as possible provide access for the female detainees to talk with the doctor.

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

According to section 54 of the Criminal Enforcement Act no. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), an inmate has the right to have his/her child, who is less than 1 year old, living at the institution.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

There are no differences with regard to the standards applicable to the detention regimes for female detainees.

g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

There are no special remedies available to female detainees in case of a breach or violation of standards addressed under 8. a) – f).

As to question e) a refusal of the request can be appealed to the directorate of the prison and probation service pursuant section 26 (1)(6) of Executive Order no. 108 of 30 January 2019 on access to visits, etc. for prisoners who are serving prison sentences or detention in the penitentiary's institutions (the Executive Order on Visitors), (*Bekendtgørelse om adgangen til besøg m.v. til indsatte, der udstår fængselsstraf eller forvaring i kriminalforsorgens institutioner (besøgsbekendtgørelsen)*).¹⁰⁶

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

Visit reports from the Danish NPM in the period from 1 May 2018 to 15 April 2021, are available in Danish, at:
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On a visit to Jyderup Prison (*Jyderup Fængsel*) on 8 to 9 October 2020, the NPM recommended among others, that, 'at der kommer øget fokus på, at indsattes anmodninger om kontakt til en læge eller sygeplejerske viderebringes direkte til relevant sundhedspersonale'.¹⁰⁷ In English, 'That there will be an increased focus

¹⁰⁵ Denmark, [Executive order no. 399 of 9 April 2015 on Prisoners' Access to Health Care in Danish prison facilities \(Bekendtgørelse nr. 399 af 9. april 2015 om sundhedsmæssig bistand til indsatte i kriminalforsorgens institutioner\)](#).

¹⁰⁶ Denmark, [Executive Order no. 108 of 30 January 2019 on access to visits, etc. for prisoners who are serving prison sentences or detention in the penitentiary's institutions \(the Executive Order on Visitors\) \(Bekendtgørelse om adgangen til besøg m.v. til indsatte, der udstår fængselsstraf eller forvaring i kriminalforsorgens institutioner \(besøgsbekendtgørelsen\)\)](#).

¹⁰⁷ Denmark, Ombudsman, [visit report 21 January 2021](#).

on prisoners' requests for contact to a doctor or nurse directly to relevant health personnel'.

There are no specific recommendations on women in detention from the Danish NPM in the reference period.

9. Nutrition

a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

Sentenced prisoners cook for themselves, whereas for persons on remand this activity is generally not possible due to the physical design of remand facilities.¹⁰⁸ They receive a food allowance from the Ministry of Justice and can usually purchase food products from a supermarket on the prison premises.¹⁰⁹

Circular no. 9301 of 4 May 2015 on catering of inmates not included by the self-catering scheme,¹¹⁰ regulates nutrition in detention, for instance the circular applies to persons deprived of their liberty in Ellebæk detention centre for Foreigners.¹¹¹

b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

It follows from section 1 of circular no. 9301 of 4 May 2015 on catering of inmates, that inmates not covered by the self-catering scheme are provided three meals per day.

c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?

It follows from section 3 of the circular that vegetarian diet can be offered for the inmates and from section 4 that the prisoners can be offered diet according to the doctor's instructions for diabetes or other types of diseases that require a specially adapted diet. As far as possible, the religious beliefs of inmates are taken into account in preparing and in the delivery of the meals, cf. section 5.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Please refer to answer to question a).

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.

According to Criminal Enforcement Act no. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), decisions made by a probation authority cannot be appealed to a higher administrative authority. However, the Minister

¹⁰⁸ Dragsted, Ane, and Schiøler, Jakob, *Straffuldbyrdelsesloven med Kommentarer*. 2. Udg. ed. København: Jurist- Og Økonomforbundets Forlag, 2017, page 196.

¹⁰⁹ Denmark, [Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\) on its visit to Denmark from 3 to 12 April 2019](#), page 28, footnote 33.

¹¹⁰ Denmark, [Circular no. 9301 of 4 May 2015 on catering of inmates not included by the self catering scheme](#) (*Cirkulære om forplejning af indsatte, som ikke er omfattet af selvforplejningsordningen i fængslerne og arresthusene*).

¹¹¹ Denmark, [Reply from the Minister of Justice to question no. 686](#) (*Besvarelse af spørgsmål nr. 686 (Alm. del) fra Folketingets Retsudvalg*).

of Justice may lay down rules that decisions made by the penitentiary areas or by authorities other than the probation authorities can be appealed to the Department of Prisons and Probation.¹¹² Within the aforementioned areas the Minister of Justice has not laid down such rules.

- f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

Visit reports from the Danish NPM in the period from 1 May 2018 to 15 April 2021, are available in Danish, at:

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On a visit to Nykøbing Prison (*Nykøbing Fængsel*) on 4 April 2019, the NPM recommended among others, that, 'at ledelsen sikrer, at fængslet ved fremtidige sikringscelleanbringelser er opmærksom på, at den indsatte ikke må være anbragt i sikringscelle længere end nødvendigt, at den indsatte skal aktiveres og have tilstrækkelig med væske for at forebygge blodpropper, og at en indsat, der er anbragt i sikringscelle, skal have adgang til mad og drikke og til at urinere mv.'¹¹³. In English, 'the management ensures that the prison, in the event of future security cell placements, is aware that the inmate must not be placed in a security cell longer than necessary, that the inmate must be activated and have sufficient fluid to prevent blood clots, and that an inmate who is placed in a security cell, must have access to food and drink and to urinate, etc.'

¹¹² Denmark, [Criminal Enforcement Act No. 1333 of 9 December 2019](#) (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), section 111.

¹¹³ Denmark, Ombudsman, [visit report of 1 August 2019](#), page 2.

Part II: National jurisprudence

Denmark, Eastern High Court (Østre Landsret), 16541/2019-OLR (U.2020.5Ø), 2 October 2019

Thematic area	<i>Solitary confinement</i>
Decision date	2 October 2019
Reference details	Eastern High Court judgement case number: 16541/2019-OLR (U.2020.5Ø), available in Danish at: https://pro.karnovgroup.dk/b/documents/7000844443 .
Key facts of the case	The plaintiff was excluded from association. The decision thereon was made due to written threats to the prison personnel at the plaintiffs' workstation, along with other allegations of conflicts. The plaintiff disputed the allegations and sought compensation for being excluded from association. The High Court found that the plaintiffs' exclusion from association was not justified, the question before the court was the amount of the compensation.
Main reasoning/argumentation	The plaintiff argued that the compensation for being excluded from association should be set at 800kr per day corresponding to the rate of unjustified deprivation of liberty. The Prison and Probation Service argued that compensation for unjustified exclusion from association, be set at an amount per day corresponding to the difference between the daily rates for unjustified remand in solitary confinement and unjustified deprivation of liberty. This difference amounted to DKK 200kr.
Key issues (concepts, interpretations) clarified by the case	The amount of compensation for unjustified exclusion from association pursuant to section 106(1) of the Sentence Enforcement Act No. 1333 of 9 December 2019. ¹¹⁴
Results (sanctions) and key consequences or implications of the case	The plaintiff was rewarded a compensation of 200DKK per day corresponding to the Prison and Probation Service claim.
Key quotation in original language and translated into English with reference details	<p><i>"Landsretten fandt efter karakteren af indgrebet over for A, der afsonede en idømt fængselsstraf, ikke grundlag for at tilkende ham erstatning udover, hvad der følger af Kriminalforsorgens praksis i tilsvarende sager."</i></p> <p>"Given the nature of the intervention against A, who served a prison sentence, the High Court did not find a ground to award compensation in addition to what</p>

¹¹⁴ Denmark, Sentence Enforcement Act No. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), available in Danish, at: <https://www.retsinformation.dk/eli/lt/2019/1333>

	follows from the Prison and Probation Service's practice in similar cases."
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Denmark, Supreme Court (Højesteret), 142/2019 (U.2020.3389H),
11. August 2020

Thematic area	Access to healthcare
Decision date	11. August 2020
Reference details	Supreme Court judgement case number: 142/2019 (U.2020.3389H), available in Danish at: https://domstol.dk/hojesteret/aktuelt/2020/8/om-forvaring/
Key facts of the case	In 2009 the plaintiff, a Romanian national, was found guilty of attempted rape and rape under particularly aggravating circumstances, the plaintiff received a restriction order (<i>forsvaringsdom</i>) and deportation from Denmark with a permanent ban on entry. In 2014 the plaintiff requested that his case be brought before the court to i.e. repeal his indeterminate sentence. In 2020 the Supreme Court found that the plaintiffs rights under the ECHR had been violated, but that the violation did not repeal his sentence.
Main reasoning/argumentation	The case processing time of six years amounted to a violation of the plaintiffs' rights under ECHR art. 5, (4). A psychiatric statement from 2017 found that the plaintiff had not shown signs of danger in at least 4 years, and that it was necessary to evaluate him under freer circumstances. The Prison and Probation Service had not commenced such a process. The plaintiff was therefore disadvantaged in relation to Danish prisoners indeterminately sentenced. This amounted to a violation of the plaintiffs right under ECHR art. 14 in conjunction with art. 5.
Key issues (concepts, interpretations) clarified by the case	A processing time of the case for six years amounted to a violation of the plaintiffs' rights under ECHR art. 5 (4). The plaintiffs' disadvantage in relation to Danish prisoners amounted to a violation of the plaintiffs right under ECHR art. 14 in conjunction with art. 5. The violation of the plaintiffs rights did not amount to a repeal of his sentence.

Results (sanctions) and key consequences or implications of the case	Violation of the plaintiffs rights under ECHR art. 5, (4) and ECHR art. 14 in conjunction with art. 5. The violation did not lead to the repeal of indeterminate sentence as the prosecution in cooperation with the Prison and Probation Service would immediately initiate a process to change conditions of the Plaintiff's imprisonment that could provide a sufficiently basis for assessing Plaintiff's danger.
Key quotation in original language and translated into English with reference details	<i>"Selv om T's rettigheder efter EMRK var blevet krænket, kunne dette på nuværende tidspunkt ikke føre til, at forvaringsforanstaltningen skulle ophæves."</i> <i>"Even though Plaintiffs' rights under the ECHR had been violated, this could not at the present time led to the repeal of the detention measure."</i>

Denmark, Western High Court (Vestre Landsret), BS-49689/2019-VLR (U.2021.1221V), 2. December 2020

Thematic area	
Decision date	2. December 2020
Reference details	Western High Court Judgement case number: BS-49689/2019-VLR (U.2021.1221V), available in Danish at: https://pro.karnovgroup.dk/b/documents/7000863543
Key facts of the case	The plaintiff was remanded in custody for violation of section 114c of the Criminal Code ¹¹⁵ by having traveled to Syria in 2013 and being recruited by the terrorist organization Islamic State. The Prison and Probation Service decided that the plaintiff should be subjected to special heightened attention, and that a cell and personal examination should be performed daily, referring to i.e. a high risk of illegal communication. The original decision was made to last 3 months, but the plaintiff was subject to it for 11 months and had over 300 personal and cell examinations performed.
Main reasoning/argumentation	The court concluded that in several occasions the examinations of the plaintiff had been justified pursuant of section 60 of the Sentence Enforcement Act No. 1333 of 9 December 2019. ¹¹⁶ However, the more than 300 examinations of the cell and person had been carried out routinely over a long period, without an assessment of the necessity of the individual

¹¹⁵ Denmark, Criminal Code No. 1650 of 17 November 2020 (*Straffeloven nr. 1650 af 17. November 2020*), available in Danish, at; <https://www.retsinformation.dk/eli/lt/2020/1650>

¹¹⁶ Denmark, Sentence Enforcement Act No. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), available in Danish, at; <https://www.retsinformation.dk/eli/lt/2019/1333>

	<p>examination. There was no legal basis for routine examinations.</p> <p>The court found that, given the nature and scope of the examinations of the plaintiff, there had been degrading treatment which entailed a violation of art. 3 of the ECHR.</p>
Key issues (concepts, interpretations) clarified by the case	<p>An examination pursuant of section 60 of the Sentence Enforcement Act No. 1333 of 9 December 2019¹¹⁷ did not justify routine examinations and an assessment of the necessity of the individual examination is necessary prior to examinations. The nature and scope of the examinations amounted to degrading treatment which entailed a violation of art. 3 of the ECHR.</p>
Results (sanctions) and key consequences or implications of the case	<p>The court concluded that a violation of art. 3 had been made and that the plaintiff was entitled to compensation for the violation, pursuant of the principle in section 26 of the Liability Act¹¹⁸ in conjunction with Article 13 of the ECHR, compensation was set at 30.000DKK</p>
Key quotation in original language and translated into English with reference details	<p><i>"Landsretten fandt efter en samlet vurdering, at der efter karakteren og omfanget af undersøgelserne af A havde været tale om nedværdigende behandling, som indebar en krænkelse af EMRK art. 3."</i></p> <p>"After an overall assessment, the High Court found that, given the nature and scope of the investigations of A, there had been degrading treatment which entailed a violation of Article 3 of the ECHR."</p>

¹¹⁷ Denmark, Sentence Enforcement Act No. 1333 of 9 December 2019 (*Straffuldbyrdelsesloven nr. 1333 af 9. December 2019*), available in Danish, at; <https://www.retsinformation.dk/eli/lta/2019/1333>

¹¹⁸ Denmark, The Liability Act no.1070 of 24. August 2018 (*Erstatningsansvarsloven nr. 1070 af 24. August 2018*), available in Danish at; <https://www.retsinformation.dk/eli/lta/2018/1070>