



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Fifth periodic reports of States parties due in 2004**

**DENMARK - GREENLAND**

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## **I. THE POLICE FORCE IN GREENLAND**

1. The Greenlandic police is a unified police, meaning that it carries out both the tasks incumbent on uniform police and investigation and prosecutions. Most staff are Greenlanders. This also applies to the chiefs of station of the 17 subordinate local districts of the police district of Greenland. So far, the Chief Constable has been Danish (with one exception). The police district is subordinate to the Danish Ministry of Justice, its policing activities are subordinate to the Danish National Commissioner of Police, and prosecutions come under the Danish Director of Public Prosecutions [rigsadvokaten]. The police handles several tasks which are not traditional police tasks, including a rescue service and civil authority functions. Prison sentences are enforced with accountability to the Department of Prisons and Probation.

2. The Police College [politiskolen] in Greenland engages approximately 10 trainees every year, who go through basic training for about two years and nine months. All police officers undergo a compulsory in-service training after 6 to 8 years' employment, and again after 8 to 12 years' employment. In addition to this, courses in special fields are offered such as courses related to drugs offences.

## **II. PERSONS SENTENCED TO INCARCERATION FOR AN UNDETERMINED PERIOD UNDER THE CURRENT PENAL CODE OF GREENLAND**

3. Pursuant to the current Penal Code of Greenland, an offender can be sentenced to incarceration in an institution in Greenland for an indeterminate period in case of aggravated offences against the person. Such sentence may be passed if the offender must be assumed to present immediate danger to the life, limb, health or freedom of others, and incarceration is found necessary to avert such danger.

4. The court may also sentence an offender to incarceration for an indeterminate period in an institution under psychiatric management associated with the Prison and Probation Service in Denmark if, due to mental abnormality, the offender is unsuited for incarceration in an institution in Greenland, or if such incarceration would not provide adequate security. In practice, the offender is incarcerated in the Herstedvester Institution in Denmark. On 27 April 2004, the Greenlander unit of the Herstedvester Institution held 18 offenders.

5. The unit has both Danish and Greenlandic staff. In their work, the employees are very attentive to the differences of language and culture between Greenlanders and Danes and seek to take such differences into account in their daily work. The unit has Greenlandic interpreters and teachers to ensure communication between the offenders, the therapeutic staff and the rest of the staff. The institution has various initiatives to counter the special problems faced by the Greenlandic offenders, who are away from Greenland for long periods.

6. Most of the offenders need treatment for alcohol abuse, and the institution has therefore received funds for setting up a pilot project for treatment of Greenlandic offenders with alcohol problems. The institution has established contact with an alcohol rehabilitation centre with special experience in the treatment of Greenlanders according to the Minnesota Model. A final

agreement between the Herstedvester Institution and the Rehabilitation Centre Frederiksberg was made in the autumn 2004. A pilot project was launched by the end of September along the lines of the Minnesota principles.

7. The institution is also working to set up self-help groups in the institution in cooperation with AA (Alcoholics Anonymous) as an offer to all inmates in the institution. According to the plan, a Greenlandic AA person is to participate in order to be trained in taking charge of special AA self-help groups for Greenlandic offenders.

8. The offenders are offered psychiatric/psychological treatment in the form of consultations with a psychologist or a psychiatrist on the basis of several therapeutic frames of reference. At the same time, environmental therapy work is also made, and the institution has recently received funds for establishing new treatment offers in the form of cognitive behaviour group therapy in a modified form adapted to the offenders' special needs. Those treatments are now offered to the offenders. Finally, the so-called psycho-education, meaning that the inmates are taught about mental illnesses, problems of abuse, the behaviour of addicts, etc., has been established.

9. The incarcerated Greenlanders who are sentenced for offences of sexual abuse are offered psychiatric/sexological treatment, possibly combined with treatment with libido-suppressing drugs, along with Danish offenders.

10. In 1996, according to a proposal of the Commission on Greenland's Judicial System, a scheme was set up under which administrative decisions to transfer to an institution in Greenland can be made in preparation of an actual change of measure. This option has been applied twice since then. The Greenland Prison and Probation Service, the Chief Constable's Office in Greenland and the Herstedvester Institution cooperate on an ongoing basis to lay down a procedure for administrative transfers to Greenland.

### **III. COMMISSION ON GREENLAND'S JUDICIAL SYSTEM**

11. In 1994, in view of the changes in society, the Danish Government and the Greenland Home Rule set up the Commission on Greenland's Judicial System (Den Grønlandske Retsvæsenkommission), chaired by Per Walsøe, Supreme Court Judge, and comprising 16 members appointed by the Danish Government and the Greenland Home Rule. The main task of the Commission has been to perform a thorough review and reassessment of the entire judicial system of Greenland and on that basis to make proposals for its - possibly fundamental - revision.

12. The Commission delivered its report to the Danish Minister of Justice on 3 August 2004. An English summary of the report is enclosed.\* The report has been circulated for comments with the relevant organizations and authorities in Denmark and Greenland. The Government will hereafter, in cooperation with the Greenland Home Rule, decide on the proposals and recommendations in the report of the Commission.

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\* Available for consultation at the Secretariat.

13. An account of the report's content of the Commission's proposals concerning the administration of justice in criminal proceedings, sanctions, enforcement of sanctions, treatment of remand prisoners and other detainees, and police complaints boards will be given below. The account is particularly relevant to articles 11 and 12 of the Convention.

#### **IV. ADMINISTRATION OF JUSTICE IN CRIMINAL PROCEEDINGS**

##### **A. General comments on investigation and coercive measures**

14. A large number of the current rules on criminal proceedings are unchanged in relation to the 1951 Administration of Justice Act for Greenland. Several procedural issues are not governed by this Act, however, and in practice, principles of the Danish Administration of Justice Act have provided inspiration to the courts in Greenland in these fields. The Commission's discussions on the drafting of new provisions in this field were therefore based on the current Greenlandic and Danish rules.

15. Coercive criminal justice measures is the designation used for some of the measures applied by the police during investigation. The measures include arrest and detention, interference with the secrecy of communications, bodily interference, seizure, searches, and the taking and storing of fingerprints, photos and other material.

16. The Standing Committee on Administration of Criminal Justice of the Ministry of Justice (Justitsministeriets Strafferetsplejeudvalg) has reviewed these coercive measures in a number of reports, on which the provisions of the Danish Administration of Justice Act are based. The Commission finds that the Danish rules will also basically be suitable for Greenland.

17. According to the Standing Committee, the Administration of Justice Act should provide an exhaustive catalogue of all coercive criminal justice measures, and the predominant rule should prohibit application of such measures unless their application is expressly permitted. The Commission endorses this view.

18. As a condition for a coercive criminal justice measure, a number of provisions of the Danish Administration of Justice Act have a requirement of crime, that is, a requirement that an offence of some severity is involved, for example an offence carrying a maximum penalty of 18 months or more of imprisonment. Other provisions require a maximum penalty of six years or more. The principle is that the severity of the measure should match the severity of the offence.

19. Both the current Penal Code and the Penal Bill proposed by the Commission differ from the Danish Criminal Code in that the individual offences are not associated with any particular type of penalty (such as a fine or prison), or minimum or maximum penalties. The penal law of Greenland is mainly based on a system of sanctions.

20. The Commission proposes that the guidelines for the requirements of crime applied in current practice be maintained. The following is not intended to imply any change, but is simply a clarification of current practice.

21. Where the provisions of the Danish Administration of Justice Act prescribe a maximum penalty of 18 months or more, it is proposed that the corresponding provisions of the

Administration of Justice Act for Greenland should require an aggravated offence. An “aggravated offence” means an offence for which the sanction in practice would be expected to be more severe than a fine in the sanction ladder model (see paragraphs 44 ff below).

22. Where the provisions of the Danish Administration of Justice Act require a maximum penalty of six years or more, it is proposed that the corresponding provisions of the Administration of Justice Act for Greenland should require an offence “of such particular severity” that the relevant coercive measure is necessary, or a “particularly aggravated” offence. No difference between these two wordings of the criterion is intended. As a main rule, a “particularly aggravated” offence and an offence “of such particular severity” that the measure in question is necessary are to mean offences for which a prison sentence of a not-inconsiderable length must be expected in practice.

23. For any kind of coercive measure of criminal justice, a principle of proportionality is assumed to apply, that is, the harm and the disturbances caused by the measure to those affected by it must not be disproportionate to the severity of the case and the necessity of the measure. It is proposed to lay down express provisions of proportionality for the individual measures to ensure that the court takes this consideration into account.

24. Besides the principle of proportionality, a general principle of consideration applies, according to which any coercive measure should be implemented in the most considerate way possible against the person or persons affected by the measure. It is proposed to enter this principle expressly in the law as concerns arrest and detention and all other coercive criminal justice measures where a requirement of consideration makes sense.

## **B. The individual measures**

25. It is proposed to maintain and expand the few current rules on investigation and questioning to make them correspond to the rules of the Danish Administration of Justice Act.

26. The general rules on arrest and detention largely correspond to the Danish rules and are proposed to be continued substantially as they are. However, it is proposed to introduce a right for the court to uphold an arrest for up to three times 24 hours if the detainee cannot be released immediately and the court cannot decide on the question of detention promptly due to the inadequacy of the information available, or for any other reason.

27. The Commission proposes that the main principles governing the detainees’ situation - in the detention rooms or the prison - should be governed by the Administration of Justice Act in the same way as in Denmark. In addition, the court should be authorized to decide on alternative placement of a detainee (alternative detention).

28. The current Administration of Justice Act has no provision on solitary confinement of detainees. The Commission proposes introduction of the Danish procedural safeguards for detainees in solitary confinement in Greenland. Solitary confinement of detainees in view of the investigation will only be possible in future by prior decision of the court, and the conditions for solitary confinement and its duration must be fixed by law.

29. Under the current rules on interference with the secrecy of communications, the district judge may decide, at the request of the police, that letters, telegrams and other consignments to or from a suspect must be surrendered to the court. Moreover, at the request of the police the district judge may permit the police to tap telephone conversations, order Tele Greenland to give the police information on transmission data and allow the police interceptions other than telephone tapping.
30. It is proposed to tighten the conditions for interference with the secrecy of communications. As for telephone tapping and data interception, it is proposed to change the requirement of crime from the current list of offences to a requirement that the investigation concerns a “particularly aggravated offence, invasion of privacy or child pornography”.
31. As concerns tapping other than telephone tapping, such as room tapping, it is proposed that the investigation should concern a “particularly aggravated offence that has endangered or may endanger the life, health or welfare of others or essential societal assets”.
32. As opposed to the Danish Administration of Justice Act, the current Administration of Justice Act has no separate provisions on bodily interference, and so far the rules on searches have been used. In practice, the police have had an eye to the Danish rules, so the proposal to introduce rules on bodily interference corresponding to the rules of the Danish Administration of Justice Act involves no major change of substance.
33. Under the current rules, a search of premises without the consent of the person whose premises are to be searched usually requires authorization from the district judge.
34. The Commission finds the current rules too lenient and proposes a tightening of the conditions for searches and the rules of procedure so as to correspond to the Danish rules. One implication of this is that a search of the homes, other premises and locked objects of suspects can only be performed if there are reasonable grounds for suspecting the person of an offence that may result in imprisonment according to law, or there are specific reasons for assuming that a search will bring to light evidence for a case or seizable objects.
35. The current rules allow seizure of objects if they are assumed to be of importance as evidence, if they should be forfeited, or if a person has been deprived of them by an offence and may claim them back.
36. It is proposed to tighten the rules on seizure to align them with the corresponding Danish rules. Accordingly, seizure should be possible in three kinds of situations:
- (a) To secure evidence, or a public authority claim for confiscation of proceeds or forfeiture of objects, or a victim’s claim for return of objects;
  - (b) To secure a public authority claim for confiscation of articles of value or a fine or a victim’s claim for compensation, etc.;
  - (c) When the defendant has evaded further prosecution in the case.
37. Discovery is not mentioned in the current Administration of Justice Act. Discovery means surrender or presentation to the court of documents and other things of importance to the

conduct of criminal proceedings. In practice, the police have had an eye to the Danish rules, so the proposal to introduce discovery rules corresponding to the rules of the Danish Administration of Justice Act involves no major change of substance.

38. Showing photos to persons other than the police will often be an essential part of police investigation. When, in connection with the description of a suspect, a person believes that he or she can recognize the suspect from a photo, the police may show photos of persons to the witness to determine the identity of the offender.

39. To have one's photo shown to outsiders in connection with the investigation of an offence is a major coercive measure. It is therefore proposed that the person involved must previously have been convicted of an offence of a certain qualified nature that may generally justify subsequent use of his or her photo for showing in connection with a criminal investigation. If the person has only been found guilty of an offence that cannot be characterized as an aggravated offence, it should not be possible to show the photo to persons outside the police unless there are specific grounds for suspicion against the person involved.

40. The current provisions on pre-sentence reports have proved satisfactory in practice. However, if the suspect has to undergo a mental examination, it often takes a long time. The Commission finds that provisions on time limits and procedural rules, etc. corresponding to those applicable to detention should be introduced.

## V. SANCTIONS

41. The Penal Code for Greenland from the 1950s differs from other criminal codes by not using the concept of punishment and by not stipulating maximum or minimum penalties for the individual offences. The Code allows a number of very diverse sanctions. The court can freely choose from among sanctions for any offence.

42. The Commission has dealt with the sanction system, its development and function in practice and its future design.

43. The general provision on application of sanctions only provides limited guidance to the courts on what sanction to impose in a specific criminal case. Therefore, various models are considered of how to provide more detailed guidelines for the choice and meting out of the sanction in the specific case.

44. The Commission has considered several models of how to rank the offences, and in the model proposed, the conditions for applying the individual sanction are governed by the Penal Code. Depending on their coerciveness, the sanctions are ranked on a "sanction ladder", with a caution as the mildest sanction and indeterminate imprisonment (safe custody) as the most severe sanction. By constructing the sanction system by severity, the regards for proportionality and equality are emphasized to a higher degree than heretofore. The court has to assess in the individual criminal case which type of sanction basically equals the offence committed, including an assessment of how far up or down the sanction ladder the relevant reaction has to be found. This assessment of severity should not focus solely on the criminal act in question, but should be an overall assessment which may also include considerations such as age, motive, and whether the offence is a first-time offence or a repeated crime. Aggravating circumstances, such



as previous similar crime, may lead to a sanction one rung further up than would otherwise have been applied and conversely, with mitigating circumstances such as young age. A specific need of rehabilitation may result in a sanction one rung lower, and the rehabilitation elements of each rung must appear from the new scheme.

45. Stating the criteria for use of the individual sanction in the particular chapter on that sanction ensures that the legislator has a greater, more overall influence on the field of application of the individual sanctions than previously. With this wording, it has not been found necessary or expedient to introduce other limitations, such as maximum or minimum penalties, to the judge's opportunities of having, in principle, the entire catalogue at his or her disposal in each case. At the same time, the sanction ladder model emphasizes more clearly than today the relative severity of the sanctions. This means that annual reports on sentencing practice may provide increased public and political insight into the application of the sanctions. This will provide a starting point for general political deliberations on the function of the system.

#### **A. Presentation of individual sanctions**

46. The description of the individual sanctions is introduced below with the proposed criteria for their field of application. The contents are also roughly outlined.

47. Cautions can be used according to the proposal "if the offence is of particularly little severity, and particularly when the offender has not previously been sentenced to a sanction". It is proposed to rank cautions as the mildest sanction on the sanction ladder, and they should be used, as heretofore, in the special cases where the offence is so small that there is no basis for imposing fines or other sanctions.

48. Fines can be used "if a more severe sanction is not necessary". In addition, a fine can be imposed as an additional sanction to other sanctions, "particularly when the defendant has obtained or intended to obtain a financial gain for himself or others by the offence". In determining the amount of the fine, regard should be had to the offender's ability to pay and the gain obtained or intended.

49. The use of fines should be limited as the sanction system is expanded in general. The power to collect fines should remain with the police, according to the proposal. In addition, the court should still be able to convert the fine into imprisonment of short duration (not exceeding 60 days).

50. Suspended imprisonment can be used according to the proposal "if:

"(1) it is deemed sufficient to prevent the offender from committing further offences;  
and

"(2) regard for the severity of the offence does not make such sanction inappropriate".

Suspended sentences in their present version - with deferred fixing of the sanction during a probation period - are used to a very limited extent because the sanction is not perceived as any real coercion and therefore enjoys no respect with the offenders. For crime prevention reasons, among other things, it is proposed to apply suspended sentences with a fixed sanction so that the offender knows what it will "cost" to commit another crime. The court thus fixes the length of

the imprisonment in the sentence and decides at the same time that enforcement of the sanction will be suspended and will lapse at the end of a probation period. No other conditions than a crime-free probation period are imposed on the offender. However, the possibility of combining a suspended prison sentence with a fine is retained.

51. If the court finds that a suspended prison sentence is not sufficient to keep the offender from committing further offences, but the offender needs the support implied by supervision, the court should instead choose a sentence of supervision.

52. Sentences of supervision can be used according to the proposal “if:

“(1) the offender needs support or treatment;

“(2) he or she needs the control implied by the supervision; and

“(3) regard for the severity of the offence does not conclusively make such sanction inappropriate”.

53. At the introduction of the Penal Code and at subsequent revisions, probation sanctions were intended to have a prominent place in the sanction system. So far, due to lack of resources, probation sentences (or as proposed: “sentences of supervision”) have not had any prominent place among sanctions.

54. In accordance with the desire expressed in the terms of reference for the Commission of maintaining as the original fundamental idea of the Penal Code rehabilitation as the basis for sanctions, it is recommended that rehabilitation sanctions, including sentences of supervision, take a prominent place in future in the sanction system. The Commission’s proposal of expanding the local probation offices of the Prison and Probation Service and of rationalizing the supervision activities must be seen in this light. As part of the rationalization, it is proposed to replace the old term “sentence of probation” with “sentence of supervision”, thus also marking the control aspect of the sanction.

55. The Penal Bill lists a number of conditions that can be attached to a sentence of supervision. Conditions may aim directly at keeping the offender from committing new crime, for example a prohibition from staying at specific places, and aim at rehabilitation of the offender, such as conditions of education or training, treatment for abuse, etc. If the offender breaches the conditions, the supervisory authority will bring the case before the court via the police, who can also in such cases promptly arrest and detain the offender until the court can consider the case.

56. Community service sentence - which is proposed as a new sanction - can be used according to the proposal, “if:

“(1) the offender is found suited for it; and

“(2) a suspended prison sentence or sentence of supervision is found inadequate in view of the severity of the offence”.

57. A community service sentence corresponds to a (suspended) supervision sentence where the court also decides that the offender must perform unpaid community service in his or her spare time for at least 40 and not more than 240 hours. The work duty must be satisfied within a maximum period not exceeding two years, to be determined by the court. During the period, the offender is subject to the supervision of the Prison and Probation Service concerning observance of the work duty and any other conditions found expedient by the court. If the offender violates the decision of community service or any other conditions, the case will promptly be brought before the court which can quash the sentence and in that connection impose another sanction.

58. A working group appointed by the Commission to consider initiation of community service in Greenland - chaired by the Chief Constable and with representatives from all relevant organizations - has considered and recommended the tasks intended to be carried out in connection with community service and the provision of these tasks, including how to ensure that community service does not conflict with the general labour market, for example, by occupying jobs that would otherwise be available to other citizens.

59. The proposed model has been compared with international obligations (European Convention on Human Rights and the ILO of Forced or Compulsory Labour Convention). Community service should not be confused with the sanction (forced) labour formerly used in Greenland. The international obligations are assumed not to prevent a community service scheme along the proposed guidelines. Importance is attached to the type and nature of the work to be imposed on the offender, so as not to be hard, physical labour only intended to act as a punishment, but meaningful, manageable work well defined in terms of time and suited to involve the offender in activities with other people in a way that promotes rehabilitation.

60. It has also been emphasized that the court is allowed great leeway in terms of choosing the most appropriate sanction in each case reflecting the specific circumstances of the case. The sanction is therefore not limited to any particular types of offences.

61. Sentence of imprisonment and supervision as a combination is proposed as a new sanction to be used, according to the proposal, "if a sentence of supervision or community service is not found adequate in view of the severity of the offence". With this sentence, the court decides that the offender is to be imprisoned for a specific period not exceeding three months and also decides that the offender shall subsequently be subject to supervision and any other conditions fixed in the sentence.

62. The field of application is cases where regard for the public's sense of justice, including victims, makes imprisonment appropriate, while regard for the offender's personal situation makes initiation of supervision and perhaps other rehabilitation measures appropriate upon release. This neutralizes the criticism against the sanction system as being too lenient without thereby compromising rehabilitation considerations. Together with the community service sentence, this sanction serves to reduce the gap between less coercive sanctions, such as suspended prison sentences and supervision sentences, and the sentence of imprisonment. If required, the offender can also quickly be removed from his or her current environment so that the Prison and Probation Service has an opportunity to plan the supervision period together with the offender.

63. Imprisonment can be used, according to the proposal, “when it is necessary:

“(1) to prevent the offender from committing further crime; or

“(2) in view of the severity of the offence”.

64. The conditions for applying imprisonment as a sanction do not differ in nature from those currently applicable. The court determines the length of the incarceration, which still cannot exceed 10 years (imprisonment for an indeterminate period - safe custody - is separated as a specific sanction, cf. below). In view of victims, the local community and the public’s sense of justice, it is proposed to design the prisons so that the Prison and Probation Service can place offenders who have committed offences against the person under a semi-closed regime for a period after the judgement so that they have no opportunity to leave the prison for employment or other lawful purposes. Access to administrative release on parole under the current rules is maintained, but subject to special judicial review. In case of breach of conditions, it is proposed that the matter will have to be brought before the court (and not, as now, the Prison and Probation Service Board (Kriminalforsorgsnævnet), which it is proposed to dissolve).

65. Relatively, the number of detainees is very high in Greenland compared with other countries. Part of the explanation is that although the aggregate level of crime is slightly lower in Greenland than, for example, in Denmark, proportionately more offences against the person are committed in Greenland. In addition, the law enforcement authorities have a high clearing-up rate, thereby prosecuting relatively more cases. It should be noted in this connection that the Commission does not intend to raise the sanction level by its proposals.

66. Safe custody for an indeterminate period can be used according to the proposal, “if:

“(1) the offender is found guilty of homicide, robbery, deprivation of liberty, aggravated violence, threats of the type referred to in section 94, rape or other aggravated sexual offence or arson or an attempt of any of the offences mentioned; and

“(2) the offender is assumed to present immediate danger to the life, limb, health or freedom of others in view of the nature of the offence committed and the information on the offender, including particularly on previous offences; and

“(3) application of safe custody is necessary to avert such danger”.

Safe custody is the last step on the sanction ladder (and thus not an alternative to it).

67. The conditions for applying safe custody widely correspond to the current access to incarceration of offenders. It is proposed to reintroduce the term “safe custody” in the Penal Code as a designation of indeterminate placement of the group of criminals who have committed offences against the person and who present an immediate danger to other people.

68. The terms of reference assume that the Commission will consider and describe how the persons held in safe custody in the Herstedvester Institution in Denmark can be returned, that is, serve their sentences in a special prison in Greenland. According to the Commission proposal,

safe custody should be served in future in a newly established, closed safe-custody unit in Nuuk. The sanction is otherwise served according to the rules on imprisonment, but with the essential modification that variation and termination of the sanction can only be determined by the court.

69. Sentence of special remedial measures for young people can be used according to the proposal “if the offender is under 18 years of age, or in special cases under 20 years of age, at the time of the judgement”.

70. In a sentence of special remedial measures for young people, the court decides that the offender should be subject to supervision by the social authorities with remedial measures according to the social legislation. The court also determines that the young person must submit to the rules imposed on him or her by the social authorities. However, this can only be done to the extent that the social authorities have accepted such supervisory role. The court must fix a maximum period for the sanction, generally not to exceed two years (and never more than three years).

71. A similar provision of the current Penal Code has only been used to a very limited extent as the social authorities still only have limited resources. In view of both consistent and constructive efforts towards young people, the Commission therefore considers it extremely important to establish a binding partnership between the police, the Prison and Probation Service and the social authorities based on local cooperation agreements and applying the resources available locally.

72. Within the framework of this provision, a wide range of initiatives of varying intensity can be applied - from guidance and supervision to institutional placement. The sanction therefore cannot be fitted into the sanction ladder, but is an alternative to it. As so far, it will not be possible to sentence young people under 18 years of age to imprisonment “unless special circumstances necessitate such placement”. In special cases, cautions, fines and possibly community service can be applied upon a specific assessment.

73. So as not to make it difficult for the young person to find his or her place in society, it is recommended that this sanction should not appear from the personal criminal record when exhausted (after expiry of the maximum period of the sanction fixed by the court).

74. If, at the time of the offence, the offender was mentally ill or in a state of equal unsoundness of mind, or was mentally retarded, the proposal allows sanctions to be imposed under special provisions “when it is necessary to prevent the offender from committing further offences”. These sanctions are basically imposed for an indeterminate period in case of offences against the person. In other cases the proposal sets out a maximum period, with the possibility of extension in special circumstances. The court will decide on variation or termination of sanctions.

75. According to the proposal, the contents of the special sanctions for the mentally ill, etc. will be so flexible that the court can fix the sanction deemed expedient in the specific case with due regard to both security and treatment aspects. The sanctions available largely correspond to the forms of sentence used at present, that is, ranging from a sentence of committal to a psychiatric hospital, over a treatment sentence, to a supervision sentence with conditions of

psychiatric treatment. However, the special sanctions for the mentally ill are alternatives to the ordinary sanctions on the sanction ladder, which - depending on the offender's condition - can also be applied.

76. The Home Rule Government is responsible for the health service, including the treatment of mentally ill criminals. The Home Rule Government has planned an expansion of the current psychiatric treatment system within a number of years, both in the district psychiatry and establishment of a closed psychiatric ward - in addition to the existing open ward - at the Queen Ingrid Hospital in Nuuk. This means that the psychiatric patients committed to a psychiatric hospital in Denmark by court sentence can return to Greenland. There is no prospect of being able to take back for treatment the most dangerous mentally ill, who are committed to the safe custody institution of Nykøbing Sjælland, and the mentally retarded persons. According to the proposal, the court will still be able to decide on treatment at a hospital or other institution in Denmark as well.

77. Forfeiture of rights can be applied in addition to other sanctions. Under the current provisions, forfeiture of rights (to carry on a trade) is conditional upon "immediate danger of abuse". The direct reason for forfeiture of rights is prevention. Therefore, forfeiture of rights cannot be imposed for penal reasons, that is, as a "punishment" in itself. In addition, the danger of abuse must be associated specifically with the activity in question (criterion of foreseeability).

78. It is proposed that the current rules, which correspond to the Danish rules on forfeiture of rights with a few deviations of a linguistic and procedural nature, be maintained with a few updates.

79. Confiscation and forfeiture can be applied in addition to other sanctions. The current provisions on confiscation and forfeiture largely correspond to the Danish provisions, and it is proposed to maintain them with a few updates.

### **B. Transfer and cessation of sanctions**

80. Enforcement of a sanction imposed can only be transferred to one of the other parts of the realm if expressly authorized by law. With the increasing intercommunication and the greater mobility, including for criminals, it is proposed to introduce a possibility of transferring all sanctions with supervision, except for special remedial sanctions for young people (who are locally anchored) to and from Greenland and Denmark. It should also be possible to transfer custodial sanctions between the two parts of the realm, but in view of its nature, a right to judicial review of the transfer decision is introduced.

81. Under the current rules, the sanction ceases by limitation under provisions which are simpler in their structure than Danish legislation. In addition, sanctions cease at the offender's death and may cease by pardon.

82. The current rules are generally worded in an expedient and up-to-date manner, and it is therefore proposed to maintain them.

## **VI. ENFORCEMENT OF SANCTIONS**

### **A. Enforcement of supervision sanctions**

83. Under current law, supervision sanctions comprise sentences of probation, supervision of parolees, supervision of mentally ill offenders sentenced to treatment, including upon discharge from hospital, supervision of released offenders sentenced to safe custody (at present from Denmark), and supervision of offenders placed in halfway houses, institutions or family care. Other tasks are pre-sentencing work, handling of the probation obligations towards prison inmates and crime prevention work. The work is performed by the staff at the branches and offices of the Prison and Probation Service located in about half of the 18 municipalities. In most other municipalities, the Prison and Probation Service is represented by a contact person.

84. The supervision sanctions never at any time worked efficiently as intended, mainly due to lack of professionalization and inadequate geographical expansion. If the supervision sanctions are to function efficiently, there must be persons in the offender's local environment who can assume the supervision obligation, who can intervene when conditions are breached and who can also provide support at need. If an otherwise expedient supervision sanction cannot be effected, the court consequently has to impose another, less expedient sanction. The most conspicuous problem is that, to a very considerable extent, lack of representation in towns and settlements makes the work of the Prison and Probation Service difficult and in some cases even impossible.

85. The Commission finds it necessary that the Prison and Probation Service should be represented in all judicial districts, in principle by trained staff, but otherwise by use of contact persons, private supervisors and pre-sentence reporters. And structured so that these private individuals get adequate support from the professionals. This expansion is emphasized as a prerequisite for the accomplishment of the rest of the Commission proposals.

86. The demands to be made of an efficient supervisory authority, the tasks to be carried out and the duties of the supervised client should be prescribed by the Penal Code, according to the proposal. They include:

- Guidance to the sentenced person on the contents of the supervision sanction;
- Initiation of the supervision at the earliest possible date, if possible as voluntary supervision;
- Determination of the contact frequency between the offender and the supervisory authority;
- Preparation of an action plan for the supervision and possibly the time thereafter;
- Effective control of the offender's observance of the conditions fixed;
- Rapid intervention by the police and the court at breach of the conditions;
- Guidance and assistance for resolution of social and personal problems;

- Close and good cooperation with other authorities, both judicial and non-judicial ones.

87. To strengthen the ability of the court to choose the most expedient sanction, it is proposed to intensify the pretrial efforts of the Prison and Probation Service. The efforts concerned are:

- Preparation of a proper pre-sentence report when coercive measures may be involved (supervision, prison);
- Certainty in that connection that a potential sanction is well prepared before the case is heard by the court; and
- Active canvassing efforts to find and conclude provisional agreements with suitable educational institutions, care families, etc.

88. It has been particularly difficult to find suitable supervisors and to carry out supervision of clients released on parole after having served a prison sentence. It is therefore recommended to provide resources to strengthen performance of the probation tasks in the prisons and rationalize the supervision of parolees. The potential for a beneficial influence of the prison according to the Commission proposal must be utilized, and housing and work or other maintenance must be clarified. This need will become particularly urgent when semi-closed and closed facilities are introduced. Moreover, it is proposed that the probation officers of the relevant prison cooperate closely with the future local probation branch or office, and that any private supervisor, care family, etc. must be involved in the planning. As known from experience, supervision of parolees must be very close. The consequence is more travel activities for the purpose of visiting towns and settlements where parolees are subject to supervision by the Prison and Probation Service contact person on site or by a private supervisor.

89. Enforcement of community service sentences. According to the Commission proposal, the Prison and Probation Service must provide the necessary workplaces and, by agreement with each individual one, determine the conditions for the participation of the workplace in the scheme, including ensuring an understanding of the importance of prompt notification of the Prison and Probation Service (the supervisor) of all absences and similar failures in connection with performance of the work obligation. It must be ensured through approval of potential workplaces for community service by the National Labour Council (Landsarbejdsrådet) that community service will not take up jobs that would otherwise be available to the ordinary labour market.

90. Enforcement of special sanctions for young offenders. Already in connection with preparation of a pre-sentence report for young offenders, the Prison and Probation Service must be especially aware of the possibilities implied by the statutory cooperation, as proposed by the Commission, between the social authorities, the police and the Prison and Probation Service via a sentence of special sanction. As now, the social authorities are responsible for implementation, but the Prison and Probation Service should take the initiative and then be the prime mover in keeping up the cooperation. The purpose of the binding partnership according to the proposal is to give local authorities a flexible tool for finding those particular initiatives for the young person which are deemed suitable in the specific case and which it is feasible to implement locally.



91. Enforcement of sanctions for mentally ill criminals. The Commission proposal on the duties of the Prison and Probation Service to this clientele involves intensive contact with the offender, including to check the offender's observance of the special treatment condition. The proposal presupposes that both the Prison and Probation Service and the health service have resources available for this cooperation - also for prior planning of the sanction - and particularly for guidance and rapid intervention in acute situations. The Prison and Probation Service is also presupposed to employ psychological and psychiatric expertise.

92. Supervision of offenders sentenced to safe custody. It must be assumed that the cooperation on the resource-intensive phase of preparing for the inmate's return to the local community will be facilitated somewhat after implementation of the proposal to place offenders sentenced to safe custody in a prison in Greenland. However, it must be emphasized that the nature and scope of the special probation obligations to this clientele, who are placed for an indeterminate period as being dangerous to other persons, do not otherwise change at this implementation.

### **B. Enforcement of prison sentences**

93. The current rules comprise all forms of imprisonment, that is, prison sentences for a fixed period of up to 10 years, sentences for indeterminate periods (safe custody), placement as preparation of a sentence of probation, and imprisonment of fine defaulters. Inmates are placed in the three open prisons with 74 places, to some extent in police detentions and in the halfway houses of the Prison and Probation Service. Placement in the Herstedvester Institution in Denmark must be added to these.

94. It is a special feature of the prisons in Greenland that imprisonment cuts off the inmate as little as possible from the local community, and therefore occupation and leisure-time activities take place outside the prison, if possible. The track record of this arrangement is quite positive, and since violent conflicts, disciplinary measures or other measures occur rather rarely compared with prisons in other countries, it is proposed that inmates should in principle still be imprisoned in open prisons. It is proposed to exempt the following offender categories from this rule:

- Offenders who have committed aggravated offences against the person can be placed under a semi-closed regime for a period without the possibility of leaving the prison for work, etc. in consideration of the victim and the local community. Such a semi-closed regime will be provided in the otherwise open prisons;
- Offenders who do not respect the restrictions of open and semi-open regimes can be placed in a closed disciplinary unit to be opened in Nuuk Prison;
- Offenders sentenced to safe custody and so far sent to the Herstedvester Institution in Denmark will be placed in a closed safe custody unit attached to Nuuk Prison so that psychiatric assistance, etc. can be provided from the psychiatric unit at Queen Ingrid's Hospital in Nuuk.

95. Establishment of two closed units in Nuuk Prison presupposes the establishment of occupational facilities and leisure-time facilities as these inmates will only be able to leave the prison in special cases.

96. All three existing prisons are located on the west coast. In connection with transfer of the safe custody clientele from Denmark, it is proposed to build a new small prison on the east coast of Greenland, corresponding in size and occupancy to the two small prisons. The capacity will then remain unchanged.

97. It is recommended to expand the possibility of stationing inmates in halfway houses, to maintain the possibility of short-term service in detentions, and to resume placement in family care, etc.

98. So far, a stay in prison has mainly consisted in surveillance of the inmates in their leisure time and at night. Various measures are proposed for a more suitable utilization of the incarceration period in future, such as

- Providing occupational facilities in the prisons, particularly for inmates in the closed unit and under a semi-closed regime;
- Making training and education equal work;
- Introducing self-management and other leisure-time offers;
- Introducing treatment options in the form of cognitive skills programmes, etc.; and
- Strengthening probation efforts, also with the aim of crime prevention.

99. The existing rules on prison stays have been revised in recent years in view of international recommendations on the treatment of inmates. The proposed new rules emphasize both community security against crime and procedural safeguards and treatment possibilities for sentenced offenders.

100. As has been the case so far, the point of departure is that the inmate can exercise his or her usual civic rights to the extent that the deprivation of liberty does not in itself bar him or her from doing so. It is proposed to prescribe that, during enforcement of a sentence, no restrictions may be imposed upon a person other than such as are prescribed by law or are a consequence of the deprivation of liberty itself. The restrictions that may be involved according to the bill of the Commission - besides the regard for security and order to maintain the deprivation of liberty - are partly the regard for a special risk of new serious crime, partly regard for the public's sense of justice. The proposed rules on the right to the application of force and imposition of disciplinary measures and the rules for other coercive decisions are based on the rules set out in criminal justice to safeguard due process for the individual concerned. Moreover, they provide for particularly easy access to judicial review of certain administrative decisions. The decisions concerned are those that imply (further) deprivation of liberty, such as refusal of release on parole, as well as certain decisions normally made by courts, but made administratively during the deprivation of liberty, such as decisions on confiscation and forfeiture.

## **VII. TREATMENT OF REMAND PRISONERS AND OTHER DETAINEES**

### **A. Detentions**

101. A defendant may be arrested and possibly detained (remanded in custody) before the trial. Custody is effected in local detentions, which are also used for other detainees (intoxicated persons) and - as concerns the best detentions - for short-term sentence enforcement. Detainees may also be placed in a special unit in Nuuk Prison and - exceptionally - in the prisons at Asiaat and Qaqortoq.

102. The detentions are situated in the 17 police districts and have a total of 51 detention cells. Eight detentions were built in the early 1990s and are equipped with television monitoring, calling/intercommunication systems and fire alarms. The other detentions were similarly equipped at the same time.

103. Moreover, there are detentions in six minor towns and settlements without permanent police staff. They are not used very often. No electronic monitoring has been installed.

104. A study in 1998 of the need for detentions in settlements showed that people deprived of their liberty are often placed under inexpedient conditions and in premises not suited for the purpose. Because of the very small need, there seemed to be no immediate reason to build actual detention premises in the settlements, and the police has therefore cooperated with the local authorities to find out whether existing suitable premises in the settlements could be used for deprivation of liberty. The Commission accordingly found no need to build actual detention premises in the settlements, but recommends that deprivation of liberty in the settlements be limited as much as possible, and that intoxicated persons be placed in their own homes instead, possibly attended by the local bailiff. If it is impossible to avoid deprivation of liberty, it is recommended that persons deprived of their liberty be placed in already existing detentions or premises.

### **B. Attention to and treatment of detainees**

105. The common provisions on supervision, etc. for all detainees are included in the "Chief Constable's orders on local prisons and detentions". These orders include provisions on order and security, on staff tasks and on the rights and duties of detainees. The provisions include rules on searches, locking up of cells and frequency of attendance, measures in case of illness and guidelines for complaints. The Commission has no comments on the common rules.

106. Notable rules specifically aimed at intoxicated persons state, that intoxicated persons should be released from the detention when the basis for the arrest has ceased to exist, and that the time of release must be recorded in the record of arrests. The rules applicable to prison inmates also apply to sentenced offenders placed in detentions, but with the necessary modifications following from differences in building facilities and staff, etc. The Commission proposes no amendments thereof.

107. Concerning detainees, particular note should be taken of the provisions of the Administration of Justice Act (and the Enforcement Order), according to which the rules for

prison inmates also apply to detainees to the extent regard for ensuring the purpose of the detention or regard for maintaining order and security renders it necessary and it is compatible with the purpose of the detention. The Commission recommends the Management of the Prison and Probation Service to cooperate with the Chief Constable on the preparation of a special set of rules for treatment of detainees. Such rules should be based on the Commission's proposed rules for treatment of persons sentenced to imprisonment. Most of these rules can be applied immediately to detainees, while special rules should be prepared on the right to visits, correspondence by letter, leave and occupation.

### **C. Probation work**

108. According to an express provision to that effect in the Penal Code, the probation offices of the Prison and Probation Service handle the welfare and probation work with persons incarcerated in prisons. The task is assumed in practice also to include detainees and sentenced offenders placed in the detention. By agreement with the Chief Constable, the local police must immediately notify the Prison and Probation Service of arrests and particularly detainees.

109. The Commission recommends that the Prison and Probation Service should be ordered, under the authority of the Administration of Justice Act, to prepare detailed rules on the probation assistance to be given to detainees to limit the employment, social and personal drawbacks following from the detention. The contact should be made as soon as possible and within one week of the arrest. Such a scheme had already been initiated when the Report was submitted. The task comprises both arrangements for the future sanction and assistance for relief of personal and social problems.

## **VIII. POLICE COMPLAINTS BOARDS**

110. Complaints of police activities were not subject to any special rules until 1 January 2000. For use in the Commission's deliberations on the processing of complaints and criminal cases concerning police staff, the Chief Constable's Office prepared a list of all complaints of police considered in writing between 1992 and 1998. One fourth of the complainants (in 15 out of 60 cases) in 1992-1996 had succeeded according to decisions by the Chief Constable, the Director of Public Prosecutions or the Ministry of Justice (the ordinary right of appeal). In 1997 and 1998 the police considered a total of 14 complaints of police conduct, 43 appeals of police decisions, and 17 reports of criminal acts committed by police while in service.

111. On one hand, the Commission's deliberations on a new and up-to-date complaints system were based on the current Danish complaints system. On the other hand, the Commission desired to keep a unified and simple system that also had to be based on the options available in Greenland, while participants had to have the requisite knowledge of Greenlandic conditions. With these requirements in mind, involvement of regional public prosecutors or the Director of Public Prosecutions seemed both remote and inadequate. Due to the special structure of the police district and the regular replacement of the incumbents, the Chief Constable of Greenland has a more independent position in relation to his or her police staff than chief constables in Denmark. If a Greenlandic "chief constable model" were combined with a police complaints board according to the Danish model, the unified system could be maintained while, to reassure the public, it would be under the supervision of an impartial complaints board. This was deemed, as a whole, to constitute a functional and credible complaints system.

112. Against this background a Police Complaints Board for Greenland (Politiklagenævn for Grønland) has been appointed, chaired by an attorney practising law in Greenland and with two laymen as members. The members are appointed by the Ministry of Justice upon recommendation by the Council of the Bar and Law Society and the Home Rule Government of Greenland. The Board has to receive the files of both complaints of police conduct and criminal proceedings against police staff. The Board may request the Chief Constable to carry out certain further steps of examination or investigation and may indicate to the Chief Constable how, in the Board's view, the case should be processed and decided. The Board can bring disputes with the Chief Constable, including disputes on his decisions of complaints, before the Director of Public Prosecutions. Complaints can be filed both with the police and the Board.

113. The Commission did not want a new complaints system to have to await completion of the remaining work of the Commission. The proposal was then implemented as Act No. 905 of 16 December 1998 on consideration of complaints and criminal proceedings concerning police staff in Greenland (*lov om behandling af klager og kriminalsager vedrørende politipersonale i Grønland*). The Act entered into force on 1 January 2000 and is followed up by annual reports from the Director of Public Prosecutions. In his report from 2002 on examination of complaints against the police in Greenland, the Director of Public Prosecutions stated, inter alia, that - after having operated for three years - the police complaints board scheme in Greenland was working well, and that like in Denmark it had the effect of engendering confidence in the relationship between citizens and the police.

114. During the year under review, there had been a decline of complaints. In 2002, 14 complaints were received. In 2001 and 2000, respectively 24 and 36 complaints were received. Thus, the number of cases received has declined by 42 per cent since 2001, and 61 per cent since 2000.

115. It appears from the report of the Director of Public Prosecutions, that during the year under review, no complaints had been made where a person had died or been seriously injured as a consequence of police intervention or while in police custody. In 2001, three complaints of this type were received.

116. It appears from the report that the Chief Constable of Greenland found that the decline in this type of case was due to greater focus and attention on the problems of detention, including attendance, security and documentation. The Director of Public Prosecutions indicated in his report that he found this trend highly satisfactory and that the trend would hopefully continue in the coming years.

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