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DIGNITY's consultation response in relation to the draft bill for the Danish Sentence Enforcement Act etc., the Danish Criminal Code, the Danish Administration of Justice Act of various other acts (rental of prison places abroad, revision of the disciplinary sanctions system, confinement at home with leg irons or rehabilitation centre etc.)

DIGNITY would like to thank the Danish Ministry of Justice for the opportunity to submit comments to the draft of the proposal to amend the Danish Sentence Enforcement Act etc., the Danish Criminal Code, the Danish Administration of Justice Act etc. (hereafter referred to as the "draft bill").

Our comments are limited to the part of the draft bill that falls within DIGNITY's mandate and field of expertise:

- Introduction of the option of transferring citizens of third countries who are to be deported to serve their sentence or be detained in Kosovo (Part 1)
- Revision of the disciplinary sanctions systems (Part 2).

DIGNITY's analysis, conclusions and recommendations are outlined in the attached consultation response.

We are, of course, available for further comments.

Kind regards,

[Signature]

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DIGNITY's consultation response

in relation to the draft proposal for the Danish Sentence Enforcement Act etc., the Danish Criminal Code, the Danish Administration of Justice Act of various other acts (rental of prison places abroad, revision of the disciplinary sanctions system, confinement at home with leg irons or rehabilitation centre etc.)

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Introductory comments

In *Part 1* of this consultation response, we will comment on the introduction of the option of transferring citizens of third countries who are to be deported to serve their sentence in Kosovo, including the question of the legal basis (Section 1.1), jurisdiction (Section 1.2), Kosovo's legal status (Section 1.3), persons covered by the draft bill (Section 1.4), the prohibition of torture and other inhuman treatment etc. (Section 1.5), the right to a private and family life (Section 1.6), the prohibition of discrimination (Section 1.7), healthcare services (Section 1.8) and the Administration Act's significance to the decision on transferral (Section 1.9).

In Part 2 of the consultation response, we will comment on the proposal to amend the disciplinary sanction system, including regulation of the use of punishment cells (Section 2.1), to introduce none of the new disciplinary sanctions (Section 2.2) and the introduction of sanction tightening for every third disciplinary infringement (Section 2.3).

Above all, DIGNITY will recommend that the part of the draft bill relating to the introduction of the option of transferring citizens of third countries who are to be deported to serve their sentence in Kosovo, is *not* presented in its current form, but that thorough research is carried out with a view to establishing the specific areas within which it would be necessary to introduce rules that diverge from the Danish Sentence Enforcement Act and regulate the prison healthcare services in Kosovo.

Part 1: Introduction of the option of transferral of citizens of third countries who are to be deported to serve their sentence in Kosovo

1.1. Legal basis

1.1.1. The legal basis

The draft bill includes, a proposal to amend, inter alia, the Danish Sentence Enforcement Act with a view to ensuring the legal frameworks for persons who are to be deported being able to service their prison sentence or be detained at *Giljan Detention Facility* in Kosovo. The point of departure is that the serving of a sentence in Kosovo should be done in accordance with the Danish Sentence Enforcement Act and rules issued as a result of this, and also within the frameworks of Denmark's international obligations. Similarly, any treatment that may be necessary provided by the healthcare services in the Kosovo prison should, as far as possible, be provided on the same terms as they would if serving their sentence in Denmark. It is assumed that the serving of the sentence, will, as a rule, take place in accordance with the rules and under physical conditions that basically correspond to the conditions in Danish prisons.

At the same time, it is urged that the *Danish Minister of Justice* is granted the power to deviate from the Danish Sentence Enforcement Act to the extent that it is *necessary* for the practical completion of the sentence in Kosovo.

In the comments, a non-exhaustive list of examples is provided of which provisions in the Danish Sentence Enforcement Act the Danish Minister of Justice will be able to deviate from. However, there is no clarification in the draft bill of the "imperative reasons" that could justify a divergence from Danish legislation. Conversely, the Danish Ministry of Justice indicates that it is difficult to clarify which divergences will, or could be necessary. On that basis, the draft bill prepares the ground for the minister to grant a *general power* to introduce rules which diverge from the Danish Sentence Enforcement Act and executive orders in this area to an unspecified extent.[1]

In the area of healthcare, the Danish Minister of Health is granted the power to set out rules on healthcare and patient-related conditions in the prison. Furthermore, it is stated that the rules that have set out will not be applied to treatment in the Kosovan healthcare system. Thus, it is unclear how inmates will stand in such a situation, for example, in relation to which treatment is provided and whether it lives up to the applicable Danish standard, but also in relation to rules on consent, access to documents, complaints and compensation etc. Basically, when it comes to healthcare, the Minister can decide that the existing rules in that area must be applied in Kosovo with the necessary adaptations and divergences. In other words, it is not being suggested that they will be applied as a rule, as in accordance with the Danish Sentence Enforcement Act.

Thus, even broader powers are being proposed for the Danish Health Minister are being proposed for administrative rule setting. At the same time, it is acknowledged that, following the Danish Ministry of Health's assessment, it is difficult to fully clarify beforehand which rules with the necessary adaptations and divergences should be applied to ensure patient safety.[2]

In terms of legal certainty, it is worrying that there is no clear and precise legal basis which indicates which rules will apply to the execution of prisoners' sentences and in the healthcare area, but that the setting or rules to a great extent - and in a number of unspecified areas - will be administered outside the Danish parliament. Thus, a wide-ranging discretion is left to the administration and it results in limited predictability for those persons who will be encompassed by the rules.

Major analysis work is required in order to provide the necessary clarity and

[1] General comments on the draft bill , page 42.
[2] Special comments on the bill, page 177.

predictability before the legislator can assess in which situations it will not be possible for the serving of sentences and healthcare treatment to be carried out on the same terms as they are in Denmark. There should be some clarification of what will be done in situations where rules cannot be introduced which ensure the same terms for serving a sentence as those in Denmark.

In that regard, there may be some concerns that the bar may be set no higher than merely ensuring that there is no violation of Article 3 of the European Convention on Human Rights, which falls far below what, under normal circumstances, would be regarded as a satisfactory level for the serving of sentences and the healthcare area.

DIGNITY recommends that the draft bill is not presented in its current form, but that thorough research is carried out with a view to establishing the specific areas within which it would be necessary to introduce rules that diverge from the Danish Sentence Enforcement Act and regulate the prison healthcare services in Kosovo. The final draft bill should enumerate these areas. The general powers for the Minister of Justice and the Minister of Health respectively to introduce rules that diverge from the Danish Sentence Enforcement Act and set new rules in the area of healthcare should, we recommend, be replaced by a precise and limited power.

1.1.2. The treaty basis

The draft bill does not include a full assessment of the actual treaty basis but merely an outline of the *expected* treaty basis.[3] This means that, when debating the bill, the Danish parliament will not know how absolutely crucial issues will be regulated in the relationship between Denmark and Kosovo. This applies, for example, to:

- Which matters will be regulated by Danish and Kosovan legislation respectively.
- The competencies and responsibilities of the prison management.
- The processing of complaints from inmates.
- Punishable offences committed in prison (legal basis and investigation).
- Legal cooperation at the request of third countries.
- Terms and conditions for the rental of the prison.

Furthermore, it is unclear whether the treaty will include reasons for suspension, grounds for breach of the treaty and the consequences of breaching the treaty. These questions may be of crucial importance as to whether or not the draft bill

[3] The general comments on the bill, pages 23- 25.

should be passed.

In the case of Norway's rental of prison places in the Netherlands, a treaty was also signed[4] between the two countries in which a number of the aforementioned matters were regulated. The draft treaty was presented to Norway's parliament (Stortinget) in connection with the debating of the draft bill on amending the Sentence Enforcement Act.[5]

DIGNITY recommends that the draft bill is not presented before a final draft of the treaty between Denmark and Kosovo - attached to the draft bill - is available so that the Danish parliament has the chance to make up its mind on the draft bill on an adequately informed basis.

1.2. Jurisdiction

As stated in the bill, the exercising of jurisdiction is a prerequisite for a member state being able to have responsibility for actions or failures that contravene the European Convention on Human Rights that can be blamed on the state.[6] En stats jurisdiktion er som udgangspunkt begrænset til statens eget territorium, men staten kan også ifalde ansvar for handlinger foretaget af dens myndigheder uden for statens territorium.[7] This extraterritorial jurisdiction can be established by the state's authorities exercising control and authority over person's from a foreign territory.[8] A typical form of effective control is detention.[9]

In relation to Kosovo, it is the assessment that "Denmark will be regarded as exercising jurisdiction in relation to the serving of sentences in the prison in Kosovo, which will, among other things, be subject to Danish management and Danish sentence execution rules. This applies to, for example, the physical frameworks and general conditions in the prison. Furthermore, it has been assessed that Denmark, *where appropriate*, will be regarded as exercising jurisdiction over certain conditions pertaining to the serving of the sentence,

[4] The agreement between Norway and the Netherlands on the use of a prison in the Netherlands for the execution of Norwegian prison sentences - The agreement between the Kingdom of Norway and the Kingdom of the Netherlands on the use of a prison in the Netherlands for the execution... - Lovdata

[5] Norway Parliamentary OM Annual Report 2015 EN (1).pdf

[6] The general comments on the bill, pages 97.

[7] See *Loizidou v.Turkey*, case no. 15318/89, ruling of 18. December 1996, paragraph 52, and *Al-Skeini*, case no. 55721/07, ruling of 7 July 2011, para. 139.

[8] Cf. EMD, *Hirsi Jamaa and Others v. Italy* (2012, pr. 74); *Kebe and Others v. Ukraine* (2017, pr. 74)

[9] Since *Al-Skeini and Others v. the United Kingdom* (2011) it is confirmed that it is enough that the state, through its empowered persons, exercises (physical) control over a person in a foreign territory, irrespective of the location of the detention.

including those relating to transportation to the prison.[10]

While this general distinction between the domestic and the foreign prison is useful, it does not provide clarity on the precise reach of Denmark's jurisdiction, namely, when it comes to "certain conditions pertaining to the serving of the sentence" or conditions "in the prison" which may have consequences which extend beyond the prison walls. For example, it is unclear whether the abuses by the authorities (for example, inhuman treatment) or other punishable acts in the prison (for example, violence between inmates) will be investigated by Danish or Kosovan authorities. The demarcation is crucial as the member states are only obliged to abide by the European Convention on Human Rights when they exercise jurisdiction.[11]

Also, in connection with the practice of transferring inmates to serve their sentences outside the country's own borders, the UN Special Rapporteur on Torture had this to say:

> [...] there is no vacuum of human rights protection that is due to inappropriate and artificial limits on territorial jurisdiction.[12]

DIGNITY recommends that there is a clear demarcation of which conditions will be covered by the jurisdictions of Denmark and Kosovo respectively, which should include a more detailed definition of "certain conditions". This is crucial as Denmark and Kosovo do not have the same international obligations, cf. point 1.3 on Kosovo's legal status.

As a rule, Denmark alone will be responsible for actions if they are *imputable* to the state. It follows from the draft bill that the prison in Kosovo will be established as an autonomous Danish authority under the auspices of the Danish Prison and Probation Service. The institution will be subject to a Danish institution manager, called the Governor, who will be the most senior link in the management chain. The Governor shall be responsible for the prison, including ensuring that the inmates are treated in accordance with the Danish Sentence Enforcement Act and Denmark's international obligations. Under the governor, a local administrative manager will be employed, called the Director, who shall administer the prison facilities and be responsible for the *locally employed* prison personnel.[13]

As Denmark will have jurisdiction in relation to the serving of the sentence,

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[10] The general comments on the bill, pages 97- 98.
[11] Kjølbro, *Den Europæiske Menneskerettighedskonvention - for practitioners, 5th edition, 2020*, page 48. (hereafter Kjølbro)
[12] The UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Juan Mendez, report to the UNGA, 7. August 2015, A/70/303, paras. 11-13.
[13] The general comments on the bill, Section 2.1.1.3., pages 25- 26.

Denmark will also be responsible for the actions of the locally employed prison personnel. You see, a member state is responsible for actions carried out by and misconduct on the part of public employees as part of their employment.[14] This also applies in cases where the employee has acted ultra vires, that is to say, in violation of guidelines and by overstepping their authority.[15] Thus, Denmark will also be responsible for the actions of the Kosovan prison personnel if these actions are connected to the serving of the sentence,

DIGNITY recommends that the draft bill addresses the question of imputability, and clearly states the conditions under which actions carried out by Kosovo's prison personnel will be imputed to Denmark. This is of crucial importance to the inmates' legal status.

1.3. Kosovo's status under international law

Under international law, Kosovo is not regarded as an independent state. Therefore, Kosovo is a member of neither the United Nations nor the Council of Europe and is not bound by the European Convention on Human Rights (EHRC) or the UN's human rights conventions, including the UN's Convention Against Torture.[16] Consequently, Kosovo *cannot* be brought before the European Court of Human Rights (ECHR) or the UN's human rights committees, nor is it subject to the UN Committee for the Prevention of Torture's periodic examination of member states.[17]

Kosovo has incorporated the European Convention on Human Rights and the UN's Convention Against Torture into its national law, and they are directly applicable and take precedence over national legislation in Kosovo,[18] but this only means that Kosovo is bound by the human rights provisions in accordance with *national* law, not international law.

Kosovo's non-participation in international human rights conventions is significant in cases where Kosovo - and not Denmark - is found to have jurisdiction over inmate's sentenced to deportation. In these cases, the individuals in question will be worse off than if they were serving their sentences in a Danish prison.

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[14] *Kurt Nielsen v. Denmark*, case no. 33488/96, ruling of 15th February 2000, paragraph 25.
[15] *A* v. France, case no. 14838/89, ruling of 23rd November 1993, paragraph 36: The case concerned a police officer who had helped procure recordings of a private citizen's telephone conversations in contravention of national rules. As he acted while carrying out his job as a police officer, the European Court of Human Rights found that the public authorities were involved in the procurement of illegal evidence, and that the state's responsibility under the Convention was applicable.
[16] For more details on this, see *Notat om leje af fængsel i Kosovo* (*Note on the rental of prisons in Kosovo*), DIGNITY and Institute for Human Rights, 9th February 2022, Section 2.
[17] UN's Convention Against Torture, Article 19.
[18] It follows from Kosovo's constitution, Article 22, Microsoft Word - Constitution.of.the.Republic.of.Kosovo.doc (rks-gov.net)

1.4. Persons encompassed by the bill

The draft bill encompasses a number of individuals due for deportation who have been given a prison or custodial sentence. It states that there can be no transfer of "persons who are terminally ill or, due to serious mental illness will require treatment outside the prison". It is somewhat surprising that, as far as serious physical illness is concerned the only exception is persons who are terminally ill i.e. persons for whom no treatment is available any longer and whose death is inexorable in the shorter or medium term. A number of people, even including inmates in prisons, are living with chronic physical illnesses which require frequent contact with a doctor and continuity in treatment without them being regarded as being terminally ill for that reason.

DIGNITY recommends that persons with somatic diseases are also exempted so that physical and psychological illnesses are put on an equal footing.

1.5. Experiences from the Norwegian model

Norway has previously established a similar scheme whereby some inmates were transferred to the Netherlands to serve their sentences. First of all, however, it should be noted that the Netherlands, unlike Kosovo, had modified the European Convention on Human Rights and was a member of the Council of Europe. Unlike the Danish model, under which only third country citizens due for deportation will be transferred, the Norwegian model only encompassed men over 18 who had been given an unconditional prison sentence. All men who received regular visits from their children, and inmates who required specialist treatment were exempted from the scheme.[19] The Danish scheme also entails individuals without children who are due for deportation being transferred first, but as there is no talk of a direct exemption for those with children it cannot be said to offer the same protection.

Norway made use of the model in the period from 2015 to 2018, after which Norway chose to discontinue the agreement following criticism from the Norwegian ombudsman who concluded that the scheme contravened the country's human rights obligations.

This was because, among other things, Norway was not able to fulfil its obligations under Articles 12 and 16 of the Convention Against Torture whereby participant countries must ensure that competent authorities rapidly institute an impartial investigation wherever there is a suspicion of torture or other inhuman or degrading treatment or punishment, see more about this under Section 1.6. This

[19] The Norwegian NPM's submission to United Nations Committee Against Torture's 63rd session, ref. no. 2017/1555, of 22nd March 2018, Section 2.1., page 6.

is because Norway, on the basis of a treaty with the Netherlands, had agreed that Dutch criminal law would be applied for punishable offences committed in prison in the Netherlands.[20]

Thus, experience from the Norwegian model shows that the implementation of such a scheme is problematic when put into practice. This was even where it involved transferral to an EU country that had signed up to the European Convention on Human Rights and was a member of the Council of Europe.

1.6. The prohibition of torture and other inhuman treatment etc.

1.6.1. The prohibition of torture etc.

The draft bill states that Denmark will be bound by the prohibition of torture and other inhuman or degrading treatment in Article 3 of the European Convention on Human Rights.[21] Thus, Denmark will be responsible for ensuring that the prisoners due for deportation are not subjected to treatment that contravenes the aforementioned ban. This does not just mean a responsibility for ensuring that Danish prison personnel comply with the ban, but also that Kosovan prison officers respect the *absolute* ban at all times.

Conditions in Kosovan prisons give cause for concern with regards to the question of whether Denmark will be able to ensure that the transferred inmates will be treated humanely by Kosovo's prison personnel. This is because international monitoring bodies, including the Council of Europe's Committee for the Prevention of Torture (CPT) and the UN's Special Rapporteur on Torture, have reported a number of credible allegations of the torture of sentenced prisoners inflicted by the prison personnel.[22]

According to the CPT's most recent report on Kosovo (2020), the Committee received a number of credible allegations of the prison officers' physical ill-treatment of prisoners in two of Kosovo's prisons. The ill-treatment allegedly consisted of slaps, punches and kicks to various parts of the body. In some cases, the ill-treatment was allegedly inflicted while they were lying prone on the floor in handcuffs and under the control of the authorities:

> *67. [...] However, at Dubrava Prison and at the High Security Prison, the delegation received a number of credible allegations of physical ill-treatment of sentenced prisoners by custodial staff. The alleged ill-treatment consisted of slaps, punches and kicks to various parts of the*

[20] Ibid, page 8.
[21] The general comments on the bill, pages 99.
[22] UN Special Rapporteur's report based on a visit to Serbia and Kosovo, A/HRC/40/59/ADD.1 25th January 2019 A/HRC/40/59/Add.1 (un.org)

> *body. In some cases, the ill-treatment was allegedly inflicted following instances of inter- prisoner violence, even after the prisoners involved had been brought under control, they had been handcuffed behind their back and were lying prone on the floor.* [23]

In the light of the delegation's findings in the prisons in Kosovo, the CPT authorities recommended that the prison managements should be constantly vigilant and deliver a clear and unambiguous message to all prison personnel that any form of ill-treatment is illegal and will be punished. Further, the authorities should strongly impress on the prison officers that they must not use more force than is strictly necessary and proportional when it comes to bringing an agitated or violent inmate under control, and that nothing can justify the use of force once the inmate has been brought under control:

> *67. [...] In the light of these findings,* ***the CPT recommends that the management of Dubrava Prison and the High Security Prison, as well as that of Mitrovica/Mitrovice and Prishtine/ Pristina Detention Centres, remain constantly vigilant and deliver a clear message to all custodial staff that all forms of ill-treatment, including verbal abuse, are unlawful and will be punished accordingly. Further, it should be reiterated to custodial staff that no more force than is strictly necessary and proportionate should be used to bring an agitated and/or violent prisoner under control and that, once under control, there can be no justification for striking them.***

Despite this documentation of allegations of the ill-treatment of inmates, the draft bill does not state which concrete initiatives Denmark will take to ensure that the personnel in Kosovo do not subject the inmates to inhuman or degrading treatment in contravention of Article 3 of the European Convention on Human Rights. The draft bill only states in general terms that the Danish management will be responsible for ensuring that the sentence is served in accordance with Danish sentence execution rules and Denmark's international obligations and that this will be ensured by means of ongoing monitoring and inspection of the sentence serving conditions.[24]

DIGNITY recommends that the draft bill addresses how Danish authorities will ensure, for example, how they will use preventive measures to ensure that inmates in Kosovo are not subjected to inhuman or degrading treatment in

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[23] *Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo * carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 16 October 2020, Strasbourg*, 23 September 2021, page 31, para. 67, 1680a3ea32 (coe.int)

[24] The general comments on the bill, page 99.

contravention of Article 3 of the European Convention on Human Rights.

1.6.2. Prevention of torture etc.

The UN's Convention Against Torture obligates member states to prevent torture and other inhuman or degrading treatment etc., cf. UNCAT, articles 2 and 16.[25] As Denmark, according to the bill, Denmark will have jurisdiction over the prison in Kosovo, Denmark has a positive obligation to to make sure that sentences are served under conditions that comply with the requirements in the European Convention on Human Rights and the UN's Convention on Torture. This means that Danish authorities must take effective legal, administrative, judicial and other measures to prevent inhuman and degrading treatment from occurring.

Instruction and training of the prison personnel

The draft bill requires that the locally employed prison officers will be trained in Danish rules for the exercising of authority etc.,[26] which is positive.[27] However, Danish authorities must be aware that it will be a case of prison officers who have been trained in accordance with Kosovan law and practice, and as far as many of them are concerned, Kosovan norms will be ingrained in their practice (which would be the case in any country).

As documented by the Council of Europe's Committee for the Prevention of Torture, the level of corruption in Kosovo's prisons is extremely high, and there are reports that prison officers smuggle in illegal substances and mobile telephones in return for receiving bribes from inmates.[28]

DIGNITY recommends that the instruction of Kosovo's prison personnel, in part, covers an introduction to the prohibition of torture etc. and, in part, is organised in such a way that account is taken of the fact that there won't just be a need for brief training in Danish rules, but also for periodic 'refresher' training in practical matters, such as conflict management combined with supervision.

Meaningful activities

The European Prison Rules regulate a number of the conditions pertaining to

[25] Article 3 of the European Convention on Human Rights and Articles 1, 2 and 16 of the UN's Convention on Torture.
[26] The general comments on the bill, page 24.
[27] Cf. also Article 10 of the UN's Convention on Torture..
[28] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the United Nations Interim Administration Mission in Kosovo on the visit to Kosovo, 23. September 2021, page 5. In this regard, see also DIGNITY's and the Institute for Human Rights' joint note on Leje af fængsel i Kosovo (*Rental of prisons in Kosovo*).

prisoners serving their sentences. Rule 25, for example, states that all inmates must be offered a comprehensive programme of activities. The Council of Europe's Committee for the Prevention of Torture has, for a number of years now, also been pointing out the importance of prisoners - irrespective of the nationality and legal status - being guaranteed meaningful activities. This is not just an essential part of rehabilitation, but it also helps establish a more secure environment in the prisons. Consequently, the CPT recommends that every inmate spends eight hours or more a day outside their cells, engaged in meaningful activities, such as work, education, sport etc. It is well documented that the lack of meaningful activities is detrimental to well-being and the mental health of prisoners and can create fertile ground for increased tension, conflict and violence between the inmates and between inmates and personnel.

Despite these international standards, the draft bill prepares the ground for those due for deportation (just like their counterparts in Denmark) *not*being able to be engaged in training, instruction or programme activities unless special circumstances call for it. This already follows from the Section 38, sub-section 2 of the Danish Sentence Enforcement Act.[29]

DIGNITY recommends that the draft bill is harmonised with international minimum standards for inmates, including the European Prison Rules, and ensures that the inmates' participation in meaningful activities becomes the rule rather than the exception. This will also contribute to security in the prison.

1.6.3. Investigation and prosecution

The UN's Convention Against Torture obligates a member state to ensure that its competent authorities quickly institute an impartial investigation in any case where there are reasonable grounds to assume that torture or other inhuman or degrading treatment has been carried out on any territory under its jurisdiction.[30] Further, member states are obligated to ensure that allegations of torture etc. are to be investigated quickly and impartially by its competent authorities. Medlemsstaterne er endvidere forpligtet til at sikre, at klager om tortur mv. skal undersøges hurtigt og upartisk af dens kompetente myndigheder.[31]

It also follows from the European Court of Human Rights' legal practice that the state has a *duty* to conduct an effective investigation of reasonable allegations of a person having been subjected to treatment that contravenes Article 3 of the European Convention on Human Rights.[32] Thus, it is a case of an *unconditional*

[29] The general comments on the bill, page 41.
[30] Article 12 of the Convention on Torture, also see Article 16.
[31] Article 13 of the Convention on Torture, also see Article 16.
[32] ECHR, *Assenov and Others v. Bulgaria*, 1998, para. 102; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, para. 182. See also, Guide on Article 3 - Prohibition of torture (coe.int)

obligation to institute an investigation in the above cases and not only an obligation "where appropriate" as stated in the bill. [33]

Further, the authorities have an ex officio obligation to quickly initiate an independent and impartial investigation in the event of clear indications of torture having taken place under the state's jurisdiction.[34]

The draft bill does not state whether it is the Danish or Kosovan authorities who are to conduct the investigation in cases where there is an allegation or a substantiated suspicion of torture or other inhuman or degrading treatment. However, this is especially significant to the inmate's rights, as Kosovo, as mentioned above, is not subject to the same human rights obligations as Denmark.

If Kosovo's police are granted jurisdiction to investigate allegations of substantiated suspicions of torture etc., there is cause for concern as the Council of Europe's Committee for the Prevention of Torture has received a number of allegations of regarding Kosovan police's ill-treatment of persons in connection with their arrest and questioning with a view to obtaining a confession:

> *14. [...] the delegation still received a number of allegations of physical ill-treatment at the time of apprehension, in particular kicks and punches after the person concerned had been brought under control, was lying prone on the ground and was handcuffed behind his back. Several allegations were also heard of ill-treatment during police questioning, such as slaps and punches to various parts of the body, inflicted with the aim of extracting a confession. Further, a few persons interviewed by the delegation complained of threats of physical ill-treatment during interviews [...].*[35]

The Committee for the Prevention of Torture hereafter recommends that the authorities continue with their endeavours to combat the police's ill-treatment of persons in their care. In addition, it should be made clear to all police officers that the purpose of police questioning is to obtain precise and reliable information with a view to establishing the truth about the matter under investigation and not to obtain a confession from a person who is already presumed to be guilty in the eyes of the interrogating police investigators:

> ***The CPT encourages the relevant authorities to pursue their efforts to combat ill-treatment by the police. [...]***
>
> ***In addition, it should be made clear to all police officers that the aim of***

[33] The general comments on the bill, page 99.
[34] ECHR, *Mladenovic v Serbia* (application no. 1099/08), para. 31.
[35] CPT, Report to UNMIK on the visit to Kosovo, 23 September 2021, para. 14.

> ***police questioning is to obtain accurate and reliable information in order to discover the truth about the matter under investigation, not to obtain a confession from somebody already presumed, in the eyes of the interviewing officers, to be guilty.***[36]

DIGNITY recommends that the draft bill is brought into conformity with Denmark's international obligations so that it is expressly stated that Danish authorities have an *obligation* to quickly conduct an effective investigation of reasonably substantiated allegations or suspicions of a person having been subjected to torture or other inhuman or degrading treatment.

1.7. The right to a private and family life

It follows from the draft bill that inmates who are serving their sentence in Kosovo will, as a rule, have the same opportunities for visits as those serving their sentence in Denmark,[37] which means at least one visit a week of at least one hour's duration and, as far as possible, two hours.[38]

The right to respect for a private and family life, cf. European Convention on Human Rights (ECHR), Article 8, sub-section 1, does not cease as a result of a prison stay, even though this results in an unavoidable limitation of and controls on the inmate's rights under the ECHR.[39] Begrænsninger i retten til besøg kan udgøre en krænkelse af artikel 8, stk. 1, da muligheden for at modtage besøg af nærtstående er afgørende for indsattes bevarelse af familielivet.[40] Under Article 8 of the ECHR, any encroachment on an inmate's right to a private and family life must pursue a legitimate goal, as enumerated in Sub-section 2 of Article 8, and could be regarded as being proportional and necessary in a democratic society.

It follows from the draft bill that this scheme is due to there being too few prison places in Denmark and such a scheme is therefore necessary to free up space. The European Court of Human Rights has recognised overcrowding as being a legitimate consideration which may justify an encroachment on the inmate's right to a family life since reassignment due to overcrowding helps prevent disorder and criminality and safeguards the rights and freedoms of others.[41] However, whether or not the encroachment is proportional and necessary may give rise to discussion. It follows from practice from the European Court of Human Rights (ECtHR) that it may result in a violation of Article 8 if an inmate serves their sentence in a prison

[36] CPT, Report to UNMIK on the visit to Kosovo, 23 September 2021, para. 15.
[37] The general comments on the bill, page 44, and page 100.
[38] Section 51, sub-section 1 of the Danish Sentence Enforcement Act.
[39] Kjølbro, page 1005.
[40] Khoroshenko v. Russia, case no. 41418/04, ruling of 30 June 2015, paragraphs 116-122.
[41] *Khadorkovskiy and Lebedev v. Russia*, case nos. 11082/06 and 13772/05, ruling of 25th July 2013, paragraph 845.

located so far away from their family that a visit is not practically possible or is associated with disproportionate difficulties. This is what happened in the case of *Khoderkovskiy and Lebedev v. Russia*, where the ECtHR found that allegations without reasonable justification were being made in a prison located several thousand kilometres from the complainants family home, and that this alone was not substantiated by the fact that there was overcrowding in all prisons close to his home. Thus, the ECtHR believed that this argument was not well grounded and consequently found that there was violation of Article 8 as the encroachment was not proportional.[42]

The transfer of deported foreigners to Kosovo will mean that it, in purely practical terms, it will be very difficult for the inmate's relatives to visit them. Kosovo is more than 2,000 km away from Denmark, and visits will thus require a considerable amount of travelling time and be associated with great financial costs. It will entail a financial burden that would not be the case if the sentence was being served in Denmark. For more about this, see below under the reference to Article 14 of the ECHR.

It is stated in the draft bill that rules may be set out in relation to the possibility of travel support for visits from the children and families of inmates.[43] However, this does not entail an encroachment on family life. On the contrary, it entails a possibility of and not a right to travel support. Thus, travel support can be dismissed. Moreover, it only entails support for visits from children and not other family members, such as spouses and parents.

In light of the considerably limited chances of visits due to the significant distance and the great financial burden, it is DIGNITY's assessment that this scheme, in specific cases, could possibly constitute a violation of Article 8 of the ECHR as the encroachment on the inmate's private life is not assumed to be proportional.

DIGNITY recommends that there is a re-assessment of Denmark's positive obligation to promote the inmate's private and family life, cf. ECHR, Article 8.

1.8. The prohibition of discrimination

The enjoyment of the rights and freedoms acknowledged in the ECHR must be ensured without any form of discrimination, cf. Article 14 of the ECHR.

As stated above, the draft bill entails an encroachment in the rights to a family life of the transferred prisoner who is being deported in accordance with Article 8 of the ECHR as the opportunity to receive visits will be minimised. This hindrance to

[42] *Khadorkovskiy and Lebedev v. Russia*, case nos. 11082/06 and 13772/05, ruling of 25th July 2013, paragraphs 847-850.
[43] The general comments on the bill, Section 2.1.4.3.1, page 45.

receiving visits would not be present in the case of prisoners due for deportation being detained in Denmark, and for that reason it is a case of differential treatment. If this differential treatment is not unbiased it would amount to discrimination in contravention of Article 14 of the ECHR. It follows from the draft bill that, as far as possible, there will firstly be a transfer of the inmate due for deportation who does not have children, but it must be assumed that some of those individuals who are *not* transferred to Kosovo do not have children either, which is why the differential treatment appears to be random.

If it is assumed that the differential treatment is happening because the inmate subject to deportation has children it will be a case of differential treatment on the basis of the inmate having children. For this differential treatment to be legal, it must have an unbiased justification. Children and other close family members, including partners, parents and siblings have, as a rule, the same right to a family life as children. Therefore, the criteria does not appear to be unbiased.

DIGNITY recommends that the Danish Ministry of Justice reconsiders the bill's compatibility with Article 14 of the ECHR, cf. Article 8.

1.9. Healthcare services

1.9.1. Payment for healthcare services

In a letter to the Danish Ministry of Health dated 2nd August 2021, the Danish parliament's ombudsman examined the rules relating to the options available to foreign inmates to have their hospital treatment in Denmark paid. Prior to this letter, the ombudsman had obtained information from the Danish Ministry of Justice and Health. On the basis of the information obtained, the ombudsman concluded the following:

> *'In view of what the Danish Ministry of Health has stated in its statement, I assume that the authorities will ensure that the provisions in Sections 80 and 81 of the Danish Healthcare Act, including the discretionary rights granted in relation to the provision, will be administered in accordance with Article 3 of the European Convention on Human Rights.*
>
> *'On this basis, and as I will, through my monitoring activities, continue to keep a close eye on the authorities' practices in relation to the aforementioned provisions, including ensuring that hospital treatment and the charging of payment for it are carried out in compliance with Article 3 of the European Convention on Human Rights, I will, on that basis, I will not take any further action in the case'.*

Thus, the ombudsman has previously already acknowledged that he will be aware of the authorities' practices in this area.

As the set of rules referred to will also apply to inmates in Kosovo, and in light of the state's obligation to ensure that inmates receive the appropriate treatment, it appears reasonable that an evaluation is conducted of any consequences the rules in question may have had for inmates in Danish institutions before the set of rules also comes into force for inmates in Kosovo.

In this regard, it should be noted that other foreigners encompassed by the provisions will have the opportunity to seek treatment in other countries if they, for example, find that hospital treatment in a Danish hospital is too expensive. This is not an option for inmates held in Danish Prison and Probation Service institutions.

1.9.2. Obligatory healthcare insurance

The draft bill entails an obligation that will require inmates in Kosovo to take out healthcare insurance with the cost of this, where applicable, can be taken from the inmates compulsory savings. In addition, it states that rules on such an obligation will only be introduced if it proves possible to implement such a scheme in practice. Such an obligation to take out healthcare insurance will not apply, as far as it is known, to inmates in prisons in Denmark. Therefore, it is a case of differential treatment. Furthermore, it is problematic that it is not stated how the inmates will gain access to treatment if it is not possible for them to take out healthcare insurance.

DIGNITY recommends that the obligation for inmates in Kosovo to take out healthcare insurance is re-evaluated in light of the European Human Rights Convention's prohibition of discrimination.

1.9.3. Treatment location

It is stated in the draft bill that, as a rule, hospital treatment should take place in Denmark, however, not "if the treatment requires admission to a hospital for a few days and where the condition does not clearly require transferral to Denmark and can therefore be carried out at a Kosovan hospital".

It is unclear what is meant by "a few days" and "where the condition does not clearly require transferral to Denmark". It should be clarified how this is to be interpreted, for example, through pre-admission assessment guidelines, and it should be clarified in the act who is to draw up such guidelines.

In addition, it is stated that "A decision on transferring an inmate to Denmark for treatment is ultimately taken by the institution manager with the involvement of

the healthcare personnel".[44]

DIGNITY recommends that there is clarification that the healthcare professional decision on transferral is made by the healthcare personnel alone and that the task of the institution manager in this regard is solely to ensure that the transferral can take place safely.

1.9.4. Inspection by healthcare professionals

It is stated in the draft bill that "The prison will, like every other Danish treatment centre be subject to inspections by the Danish Patient Safety Authority. However, in this case, it will be suggested that they should carry out a frequency-based and reactive healthcare inspection." However, it is unclear whether or not only frequency-based inspections will be carried out.

It appears from the quotation above that reactive inspections may also be carried out, while elsewhere it is stated and the inspections will only be frequency-based. It will be problematic if only frequency-based inspections are intended as this will deny STPS of the opportunity to carry out extra inspections if they receive information that gives cause for concern with regard to patient safety - as they have the opportunity to do in the rest of the healthcare system in Denmark.

DIGNITY recommends that it is clarified that frequency-based inspections alone cannot be carried out but that reactive healthcare inspections of the prison in Kosovo should also be conducted.

1.9.5. Transfer of personal information

It is not stated in the draft bill whether the Danish healthcare personnel will be able to transfer - without any problems - information about an inmate held in prison in Kosovo to Kosovan and Danish hospitals, for example, in the event of an emergency admission.

1.10. The significance of the Danish Public Administration Act when deciding on a transferral

Decisions on transferral will, according to the bill, be encompassed by Section 11, sub-section 3 of the Danish Public Administration Act, from which it follows that the rules in the said Act pertaining to the parties' access to documents, consultation between the parties and full justification will not be applicable in decisions relating to the choice of custodial prison or prison institution.

[44] The general comments on the bill, page 44.

As we are talking about a decision that will have a significant bearing on the inmate's family life, opportunities for treatment etc. there should be access to consultation between the parties so that the inmate will get the opportunity to present their reasons why the person in question should not be transferred. Moreover, it is not stated whether the inmate will have the opportunity to lodge a complaint against the decision.

DIGNITY recommends that the inmate who has been given a decision on transferral to serve their sentence in Kosovo shall have full rights in relation to the Danish Public Administration Act, including the right to consultation between the parties, full justification, access to documents and access to the complaints process.

1.11. Independent monitoring of conditions for the prisoners due for deportation.

The draft bill pre-supposes that the Danish Parliament's Ombudsman's inspections and complaints process shall also apply to prisoners due for deportation in Kosovan prisons on the same terms as their counterparts in prisons in Denmark.[45]

This will require that the Ombudsman's powers in accordance with the Law on the Ombudsman and the Supplementary Protocol to the UN's Convention for the Prevention of Torture are applicable[46] in their entirety. This means, inter alia, that he should be able to carry out unannounced inspections, have access to all facilities in the prison and all documentation, as well as have the opportunity to conduct confidential interviews with inmates and employees.

In order for him to be able to monitor whether Denmark is fulfilling its human rights obligations, he should also have the opportunity to carry out inspections with the examination of punishable offences in the prison, including allegations or cases raised on the basis of a suspicion of torture and other inhuman treatment etc. and violence between inmates.

In this regard, it should be noted that Norway just decide to break the treaty with the Netherlands following criticism from the Norwegian ombudsman, who concluded that the arrangement contravened the country's human rights obligations. This is because, as mentioned above, among other things, that Norway could not fulfil its obligations under Articles 12 and 16 of the Convention on the Prevention of Torture whereby the participant states must ensure that the competent authorities must quickly institute an impartial investigation where

[45] The general comments on the bill, page 22.
[46] Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR

there is any suspicion of torture or other inhuman treatment etc. This is because Norway, on the basis of a treaty with the Netherlands, had agreed that Dutch criminal law would be applied for punishable offences committed in prison in the Netherlands.[47]

DIGNITY refers to the recommendation above concerning jurisdiction in relation to the investigation of allegations and cases of suspected torture etc. (Section 1.6.3).

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Summarizing, it is DIGNITY's view that the Danish Ministry of Justice should reconsider the outlined scheme and conduct a re-evaluation of the draft bill in light of the above comments. It is recommended that the draft bill is not presented in its present form.

Part 2: Revision of the disciplinary sanctions system

Overall, DIGNITY is very positive about the desire to revise the Danish disciplinary sanctions system and to limit the use of punishment cells.[48] Dette er helt på linje med praktikerudvalgets anbefalinger og anbefalinger fra internationale komitéer, herunder FN's Komité mod Tortur[49] og Europarådets Komité for forebyggelse af tortur (CPT).[50]

Our comments on this section of the draft bill are split into 1) regulation of the applicable rules on the use of punishment cells, 2) the proposed new disciplinary sanctions, and 3) introduction of the consequence arrangements.

2.1. Regulation of the applicable rules on the use of punishment cells

2.1.1. The duration of the stay in the punishment cell

DIGNITY notes that the general rule according to the proposed changes will be an

[47] Ibid, page 8.
[48] DIGNITY has been critical of regulatory instruments and the use of punishment cells as a disciplinary sanction in Danish prisons, and we have expressed this criticism to, among others, the Danish Parliament's Committee on Legal Affairs and at two conferences in 2017 and 2021, see https://www.dignity.dk/strafcelle/. See also DIGNITY's consultation response to the draft proposal to amend the Danish Sentence Enforcement Act (Limitation of the rights of prisoners serving life and indeterminate custodial sentences) of 13th October 2021.
[49] Committee Against Torture, Concluding observations on the combined sixth and seventh periodic reports of Denmark, UN doc. CAT/C/DNK/CO/-7, 04 February 2016, Paragraph 33 (a).
[50] CPT Report to the Danish Government on the visit to Denmark from 3 to 12 April 2019, Strasbourg, of 7th January 2020, paragraph 81.

upper limit of 14 days for stays in punishment cells. It follows that stays in punishment cells, in *special* cases, can exceptionally be imposed for more than 14 days and for up to 4 weeks. The exception will be applied in the event of repeated serious breaches, or where the imposition of punishment cells for more than 14 days is found to be necessary in order to deal with particularly challenging or externalising inmates.[51]

Young people under the age of 18 are exempted from this rule as, for them, the general rule of an upper limit of 7 days still applies, and the possibility for exemption in cases involving violence against personnel.[52]

There is medical/health scientific evidence that placing inmates in punishment cells can have serious negative consequences for their health, including physical symptoms, anxiety, difficulty concentrating, depression, increased risk of certain psychological conditions and increased risk of self-harm and suicide.[53] Risikoen for sundhedsmæssige følger er tæt forbundet med risikoen for umenneskelig behandling i strid med EMRK artikel 3 og FN's Torturkonvention artikel 16, og denne risiko stiger i takt med varigheden af anbringelsen.[54]

There is no lower limit for the length of time during which inmates cannot be said to suffer damage from solitary confinement, which is why the Mandela Rules state that solitary confinement generally should be used only in exceptional cases, cf. rule 45, sub-section 1, and that vulnerable groups, including inmates with mental or physical illnesses and young people should be exempted as they generally are at greater risk of harm, cf. the Mandela Rules, rule 45, sub-section 2.

The UN's Committee Against Torture,[55] the CPT[56] and the Mandela Rules[57] state,

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[51] The general comments on the bill, Section 2.2.4.2., page 116.

[52] DIGNITY has previously criticised the use of punishment cells for young people under 18 due to the considerable consequences for their health, see DIGNITY's consultation response in relation to draft proposal to amend the Danish Sentence Enforcement Act etc., the Danish Administration of Justice Act, the Penal Code and the Primary and Lower Secondary Education Act (conditions for inmates in the Danish Prison and Probation Service's institutions, alternative detention etc.) of 10 September 2018.

[53] DIGNITY, Solitary confinement conference report, af 3. April 2017. See also DIGNITY's interview with a former inmate who had been placed in punishment cells: https://www.dignity.dk/strafcelle/. See also the Council of Europe Committee for the Prevention of Torture's (CPT) criticism of punishment cells in Danish prisons: 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 3rd to 12th April 2019, Strasbourg, of 7th January 2020, paragraph 81.

[54] DIGNITY, Solitary confinement conference report, of 3rd April 2017; See also DIGNITY fact sheet, health no. 6: https://www.dignity.dk/wp-content/uploads/fact-sheet-6-solitary-confinement-1.pdf.

[55] Committee Against Torture, Concluding observations on the combined sixth and seventh periodic reports of Denmark, UN doc. CAT/C/DNK/CO/6-7, of 4th February 2016, paragraph 33(c).

[56] 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 3rd to 12th April 2019, Strasbourg, of 7th January 2020, paragraph 81.

[57] The Mandela Rules, rule 43, sub-section 1 and rule 44.

due to to the significant consequences of punishment cells, that the *absolute* limit should be 14 days, and that this should apply with absolutely *no exceptions*.

DIGNITY recommends, in light of the international norms and evidence from healthcare professionals, that the new upper time limit of 14 days for punishment cells is introduced *without* the possibility of exceptions, and that punishment cells cannot be used for the vulnerable groups mentioned in the Mandela Rules, including young people under 18, pregnant women, inmates with children in prison, nursing women and inmates with psychological or physical functional impairment when their health can be worsened by the solitary confinement, cf. rule 45, sub-section 2.

2.1.2. Application of the principle of proportionality

The draft bill states that disciplinary sanctions must meet the proportionality requirement so that the punishment should be reasonably proportional to the nature of the offence. The purpose of the proposed changes is to ensure more effective responses so that the type of response is in accordance with the seriousness of the offence to a greater extent.[58]

DIGNITY finds this change positive and notes that it may mean that punishment cells cannot be imposed for minor offences, including smoking and the use of bad language, and that the interrogator, who carries out the professional assessments, is given greater discretion in his/her concrete assessment of the case.

DIGNITY recommends that the legal comments clarify that punishment cells can only be used for serious offences and must only be used in exceptional cases, as stated in the Mandela Rules, rule 45, sub-section 1. In accordance with the Committee of Practitioners' recommendations, there may be a need to support the interrogators even more professionally in the form of on-the-job training and professional supervision.[59]

2.2. New disciplinary sanctions

The draft bill expands the number of disciplinary sanctions from the present three (warning, fine and punishment cell, cf. the Danish Sentence Enforcement Act, Section 68, sub-section 1) to seven. The four new disciplinary sanctions encompass 1) temporary curfew, 2) temporary removal of the right to visits, 3) temporary restriction of the right to exchanging letters, 4) temporary restriction of the right telephone calls, however, with the limitation that the three aforementioned disciplinary sanctions, which relate to special rights, do not cover contact with

[58] The general comments on the bill, Section 2.2.1.2., page 104.
[59] Committee of Practitioners Report, page 33.

close relatives.[60]

It puzzles us that the restrictions on the right to visits, exchanging letters and telephone calls, which were not mentioned in the Committee of Practitioners' report and the political multi-year agreement, have been incorporated without any decision on the ECHR and human rights generally and without any evidence that they are appropriate to changing an inmate's behaviour. As stated in Part 1 of the consultation response, as a rule, inmates must keep all basic rights – with the exception of the restrictions which naturally follow from the serving of the sentence, cf. Section 14 of the Danish Sentence Enforcement Act (the normalisation principle) and the Mandela Rules, rule 58, sub-section 1. Thirdly, the rehabilitation principle, according to which it is one of the Danish Prison and Probation Service's main duties to help and support the prisoners to live a criminality-free existence after their release, see Section 3 of the Danish Sentence Enforcement Act.[61]

The restrictions on these rights – which were introduced because they were a positive thing for the inmates' mental health and important in connection with their rehabilitation that they are able to maintain contact with the outside world – in our view, constitute an encroachment on the inmates' right to a private and family life, cf. EHRC, Article 8. We also explained our reasoning behind this in our consultation response in relation to the restriction on the right to visits for prisoners serving life etc. [62]

As stated in Part 1 of the consultation response, the right of prisoners to a private and family life does not cease as a result of the stay in prison.[63] The state even has a positive obligation to promote the inmates' right to a private and family life, cf. Article 8 of the EHRC, and must, as far as possible, help inmates to maintain a certain degree of contact with the outside world.[64]

Encroachments on the inmates' right to a private and family life are only legal if they meet the conditions set out in Article 8 of the EHRC, sub-section 2, namely, the pursuit of a legitimate goal and, moreover, it must be possible to regard the encroachment as necessary in a democratic society.

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[60] "Close relatives" are defined as spouses or co-habitees, children, grandchildren, parents, siblings, grandparents, great-grandparents and other persons with whom the inmate has such a special connection that it can be put on an equal footing with these family ties, cf. the general comments on the bill, Section 2.2.2.2., page 105.
[61] The Danish Prison and Probation Service's Principle Programme (2008).
[62] DIGNITY's consultation response of 13th October 2021 to the draft proposal to amend the Danish Sentence Enforcement Act (Limitation of the rights of prisoners serving life and indeterminate custodial sentences) (Annex 1).
[63] Kjølbro, page 1005.
[64] *Khoroshenko v. Russia*, case no. 41418/04, ruling of 30th June 2015, paragraph 123.

We believe that there may be a risk of the bill, in concrete cases, leading to a violation of the right to a private and family life, especially as inmates must have the opportunity to maintain and develop relationships in a normal way, and since the prison authorities must assist inmates and provide the necessary support for this purpose.[65] Therefore, the new disciplinary sanctions' compliance with Article 8 of the EHRC requires that, in concrete cases, there is a thorough and individual assessment of whether the imposition of the disciplinary sanction will be in contravention of Article 8. This requires, for example, that the interrogator, who has to make the decision on the imposition of disciplinary sanctions, possesses the right to make such an assessment.

DIGNITY recommends that the Danish Ministry of Justice gives an account of the relationship between the new disciplinary sanctions, which relate to the right to a private and family life, and Article 8 of the EHRC.

2.3. Introduction of the "consequence arrangement"

The draft bill introduces a new *consequence arrangement*, under which for every third disciplinary offence a substantial and *significant* response is triggered.[66] Under the arrangement, when determining the sanction, account must be taken of the number of offences the inmate in question has committed previously. Thus, there will be a tightening of the sanction for every 3rd, 6th, 9th and so on offence an inmate commits. In our opinion, this "consequence arrangement" goes against the desire to ensure proportionality in the sanction system.[67] Moreover, such an arrangement is inconsistent with the Danish Prison and Probation Service's primary task, which is to rehabilitate the inmates.

DIGNITY recommends that there is a re-assessment of the so-called "consequence arrangement" with a view to establishing whether it complies with the principle of proportionality, and whether this arrangement will have the intended effect.

Appendices

Appendix 1: DIGNITY's consultation response of 13th October 2021 to the draft

[65] The Mandela Rules, rule 588 and the European Prison Rules, rule 24.5. Recommendation Rec (2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, Adopted by the Committee of Ministers on 11th January 2006 and revised and amended by the Committee of Ministers on 1st July 2020. See also Rule 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. See also previously referenced consultation responses relating to the restriction of life prisoners' and detainees' rights (Annex 1).

[66] The general comments on the bill, Section 2.2.3.2., page 110.

[67] ibid.

proposal to amend the Danish Sentence Enforcement Act (Limitation of the rights of prisoners serving life and indeterminate custodial sentences)