UNITED NATIONS

CAT

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

Distr.
RESTRICTED*

CAT/C/32/D/202/2002
11 May 2004

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirty-second session
3 - 21 May 2004

DECISION

Communication No. 202/2002

Submitted by:	Ms Helle Jensen. (represented by counsel, Mr. Tyge Trier and Mr. Brent Sørensen)
Alleged victim:	Ms Helle Jensen.
State party:	Denmark
Date of complaint:	15 January 2002
Date of the decision:	5 May 2004

[ANNEX]

* Made public by decision of the Committee against Torture.

ANNEX

DECISION OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22 OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Thirty-second session

Concerning

Communication No. 202/2002

Submitted by:	Ms. Helle Jensen. (represented by counsel, Mr. Tyge Trier and Mr. Brent Sørensen)
Alleged victim:	Ms. Helle Jensen.
State party:	Denmark
Date of complaint:	15 January 2002

The Committee against Torture, established under Article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 2004,

Having concluded its consideration of complaint No. 202/2002, submitted to the Committee against Torture by Ms Helle Jensen, under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

DECISION ON ADMISSIBILITY

1. The complainant is Ms. Helle Jensen, a Danish citizen, currently residing in North Western Zealand. She claims to be a victim of a violation of articles 1, paragraph 1, 12 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. She is represented by counsel.

The facts as presented:

2.1 On 29 April 1998, the complainant was arrested in her home in North Western Zealand and charged with smuggling cigarettes, under Section 289 of the Danish Criminal Code, and Section 73(3), subsection (2), of the Danish Customs Act. She was later also indicted with the "attempted participation" in agreeing to "receive and distribute" hash, under Sections 191(2), subsection (1), and Section21 of the Criminal Code.

2.2 On 30 April 1998, the complainant was brought before a judge of the District Court of Kalundborg. Pursuant to a request by the Chief Constable, the Court ordered the complainants detention and solitary confinement, pursuant to Section 762(1)(iii) and 770 a) of the Administration of Justice Act (hereinafter "the Act"). The Court considered that she should be held in solitary confinement, as there were reasonable grounds to suspect that she was guilty as charged and would attempt to obstruct the investigation by contacting others involved. The pre-trial detention period was set to expire on 26 May 1998, and the solitary confinement period on 12 May 1998. On 4 May 1998, the High Court of Eastern Denmark upheld the order on the grounds stated by the District Court.

2.3 On 11 May 1998, the District Court considered whether to continue the complainant's solitary confinement. Counsel submitted that the measure was disproportionately hard, as the complainant had three children — twins of 3 years and a child of 7. The District Court ordered her continued detention in solitary confinement until 26 May 1998, as the grounds for such confinement continued to apply. On 13 May 1998, the High Court upheld the order on the grounds stated by the District Court.

2.4 On 26 May 1998, the District Court considered whether to prolong pre-trial detention and solitary confinement. Counsel objected to continued detention, as "the detainee's personal health has deteriorated substantially during her pre-trial detention from 30 April 1998 until now, which is confirmed by the detainee's condition and the two medical records. The District Court ordered that she remain in solitary confinement until 23 June 1998, "on the grounds of the complexity of the case, and as

some of the persons involved are still at large…". On 28 May 1998, the High Court upheld the District Court's order.

2.5 On 28 May 1998, at the request of the complainant's counsel, the prison doctor reported on her state of health. The doctor had treated the complainant on 15 and 28 May 1998, and the emergency service physician, a crisis therapist, on 22 May 1998. The report concluded that the complainant appeared to be close to a psychotic breakdown……The inmate's condition can fully be explained as the result of incarceration and solitary confinement. I most urgently recommend that solitary confinement be discontinued promptly and that it is considered whether alternative placement can be found that will enable the inmate to have more association with her children. I find the inmate's health threatened and will monitor her closely." This report was produced in the High Court, when it considered the complainant's appeal of the District Court's order of 26 May 1998. On 29 May 1998, the complainant was admitted to the County Hospital of Nykøbing, Zealand. She discharged herself the next day, as she wanted to be near her children.

2.6 On 18 June 1998, the complainant's solitary confinement was terminated. On 19 June 1998, the prison physician forwarded another report to the Chief Constable of KaIundborg. It stated, "it is of the utmost importance that Ms Jensen's solitary confinement is terminated; this should on health grounds have been done already, and I understand that the solitary confinement was terminated yesterday evening". Finally, he refers to a report of the same date from a psychotherapist, in which he "must clearly express Ms Jensen's need not only for getting out of solitary confinement, but also for being released from prison during the further investigation, until the final judgment. Otherwise, all parties involved must anticipate an unnecessary spontaneous psychotic condition that will affect Ms Jensen for the rest of her life." These reports were produced during a hearing before the District Court on 22 June 1998. The Court established that the complainant was no longer held in solitary confinement but ordered the extension of the pre-trial detention period until 20 July 1998. It also ordered, with the complainant's consent, that she should be examined as an out-patient by a forensic psychiatrist during the rest of her stay in prison.

2.7 On 9 July 1998, the consultant of the Department of Forensic Psychiatry of the

County Hospital of Nykøbing, Zealand forwarded his opinion on the complainant's mental health, concluding that "the only proper treatment would be to unite [the complainant] with her children as soon as possible, either with her parents or in one of the institutions of the Prison and Probation Service, and to give her adequate psychotherapeutic help in this environment". On 14 July 1998, this report was produced before the District Court, which decided to extend the complainant's pre-trial detention but also decided, with her consent, that she be placed in alternative detention at the Lyng Halfway House of the Prison and Probation Service, together with her three children. She was transferred there on 17 July 1998 and remained in this facility until her trial on 29 October 1998.

2.8 On 30 April 2001, the complainant's representative, Professor Bent Sørensen, an expert in the field of torture identification and research, wrote to the Director of Public Prosecutions (thereinafter "the DPP") requesting an investigation into the possibility that the complainant had been subjected to psychological torture by virtue of her detention in solitary confinement. On 14 August 2001, the DPP responded that he found no basis for initiating such an investigation as, in his opinion, "there is no basis for believing that the pre-trial detention in solitary confinement was effected for the purpose of obtaining information or a confession from the person charged or a third party, making it an act of torture as defined in the Convention against Torture." Despite two further subsequent requests to initiate an investigation, the DDP refused to reconsider his decision.

The complaint:

3.1 Ms. Jensen claims that the State party violated articles 1, paragraph 1, and 16 of the Convention, by subjecting her to psychological torture and acts of cruel, inhuman or degrading treatment or punishment, by detaining her in solitary confinement from 29 April to 18 June 1998, despite medical evidence demonstrating its adverse effect on her mental health.

3.2 The complainant contends that the State party violated article 12 of the Convention, as the DPP failed to carry out a prompt and impartial investigation into the allegations of psychological torture, as requested by her representative.

3.3 The complainant argues that she exhausted domestic remedies, as in the last letter written to the DDP her representative had indicated that if the DPP did not respond to his letter, he would assume that domestic remedies were deemed to have been exhausted. The complainant's representative did not receive a response.

The State party's submission on admissibility and merits:

4.1 By submission of 26 April 2002, the State party challenges the admissibility and merits of the complaint. It invokes Section 762 of the Criminal Procedure Act, which at the time of the complainant's imprisonment, provided for pre-trial detention. Under the applicable terms of this Act, the court decides, at the request of the police, whether the person charged should be held in pre-trial detention. The order must fix a period for the pre-trial detention, which must be as short as possible and may not exceed four weeks. The period may be extended, but not by more than four weeks at a time. An order for detention may be appealed to a superior court. Finally, it states that pre-trial detention must be terminated, if necessary by court order, when the charges are dropped or the conditions for detention no longer exist. If the court finds that the investigation is not pursued with adequate expediency or continued pre-trial detention is not reasonable, the court must terminate it.

4.2 The State party furnishes Section 770 of the Administration of Justice Act, which provides for detention in solitary confinement. Under this Section, it is necessary to have reasonable grounds for suspecting that the person charged has committed an offence, which is subject to public prosecution and, under the law, may result in imprisonment for at least one year and six months. Proportionality is a precondition for any decision on initiation and continuation of pre-trial detention in solitary confinement. The State party notes that the provisions on pre-trial detention in solitary confinement were substantially amended by Act No. 428 of 31 May 2000. The new provisions entered into force on 1 July 2000. The purpose of the amendment was to limit the resort to, and duration of, pre-trial detention in solitary confinement; it provides for more specific criteria for initiating and continuing solitary confinement,

and shorter periods of such confinement.[1]

4.3 The State party challenges the admissibility of the complaint for failure to exhaust domestic remedies. Firstly, the complainant could have applied to the Board of Appeal for leave to appeal the orders of the High Court to the Supreme Court. Under Section 973 of the Act, the Board could have granted leave to appeal, "if the appeal relates to questions of a fundamental nature or specific reasons otherwise make it appropriate". In support of her application, she could have argued that her pre-trial detention in solitary confinement was contrary to the Convention. The State party notes that the European Court of Human Rights has held that an application to the Board of Appeal for leave to appeal is a remedy that must be exhausted for the purposes of admissibility of a complaint under the European Convention.[2]

4.4 Secondly, although the complainant was convicted, she could have made a claim for compensation under Section 1018 a (2) or h of the Act. Pursuant to Section 1018 a (2), a person who was arrested or held in pre-trial detention as part of a criminal prosecution is entitled to compensation for injury caused while detained if "the deprivation of liberty applied during the case is not reasonably proportionate to the outcome of the prosecution, or if it is found reasonable for other specific reasons". The fact that pre-trial detention in solitary confinement is alleged to have harmed the complainant would have been particularly relevant to such a claim for compensation. Pursuant to Section 1018 h, anyone may claim compensation in respect of criminal proceedings on the basis of the general rules of tort law.

4.5 A claim for compensation under Section 1018 a (2) is considered by the Regional Public Prosecutor, with the possibility of appeal to the DPP, and a claim under Section 1018 h is considered by the DPP with the possibility of appeal to the Ministry of Justice. In both cases, the complainant would have the possibility of filing a claim before the court, under Section 1018 f (1), in the event of a refusal on appeal. To demonstrate that this remedy is available and effective in the circumstances of the present complaint, the State party invokes the following example of a similar case, in

[1] The State party refers the Committee to the account given in Denmark's fourth periodic report, paras. 117-123 (CAT/C/55/Add.2).
[2] Application No. 45485/99, Ali Lanewala v. Denmark.

a Supreme Court judgment of 5 September 2000, a person who had been acquitted in a criminal case filed a claim for compensation for loss of employment and permanent disablement as a consequence of pre-trial detention in solitary confinement, which had caused mental illness.[3] In support of the claim, the claimant submitted, inter alia, that he had been subjected to torture contrary to article 3 of the European Convention on Human Rights. The Supreme Court found that the pre-trial detention in solitary confinement was the main cause of the claimant's mental illness and awarded compensation.

4.6 On the merits, the State party submits that for an act to be characterized as torture,it must fulfill all the conditions of article 1, paragraph 1, of the Convention. It submits that it cannot be inferred from the wording of article 1 that pre-trial detention in solitary confinement would come, in principle, within the definition of "torture" in article 1. Although the Committee's Concluding Observations on Denmark's third periodic report notes that the Committee was concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention", it did not state that pre-trial detention in solitary confinement, in principle, comes within the definition of torture. [4] Nor, indeed, can this be inferred from Committee's jurisprudence.

4.7 The State party submits that solitary confinement, is not, and in this particular case was not, effected to obtain information or a confession from the complainant, to punish her for an act she committed or was suspected of having committed, to intimidate or coerce her or a third person or for any reason based on discrimination of any kind. Under the current rules, pre-trial detention in solitary confinement presupposes that there are "specific reasons for assuming, in the circumstances of the case, that the person charged will hamper the prosecution of the case, particularly by removing clues or warning or influencing others", and that "there are specific reasons to assume that the pre-trial detention is not in itself sufficient to prevent the detainee from influencing other persons charged through other inmates or from influencing others by threats or in another similar way".[5] If solitary confinement during pre-trial

[3] Danish Law Reports 2000, p. 2385, Supreme Court, U 2000, p. 2385 H.
[4] A/52/44
[5] Section 762(l)(iii) and 770 a(l)(ii) of the Act, respectively.

detention is decided for any other purpose, it would be contrary to the rules of the Act and thus unlawful.

4.8 The State party denies that solitary confinement during pre-trial detention is in principle contrary to article 16 of the Convention. Article 16 supplements article 1, and both articles correspond to the first sentence of article 7 of the International Covenant on Civil and Political rights (hereinafter the "ICCPR"). Article 7 provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." According to the State party, it can be inferred from the Human Rights Committee's General Comment 20 that solitary confinement during pre-trial detention is not in principle contrary to article 7 of the ICCPR, as the General Comment states that prolonged solitary confinement of the detained or imprisoned person *may amount* to acts prohibited by article 7" (emphasis added), that is, in *specific* cases depending on the circumstances of the individual case.

4.9 The State party acknowledges that there may be cases in which pre-trial detention in solitary confinement may constitute "cruel, inhuman and degrading treatment or punishment". It invokes the principle adopted by the European Court of Human Rights in considering the possibility of violations of article 3 of the European Convention on Human Rights ("No one shall be subjected to torture or to inhuman or degrading treatment or punishment.") In the case of Rasch v. Denmark, it was stated that "when a measure of solitary confinement is considered, a balance must be struck between the requirements of the investigation and the effect which the isolation will have on the detained person. Where solitary confinement is applied, the authorities must therefore ensure that its duration does not become excessive."[6] Under the European Convention, pre-trial detention in solitary confinement may, in certain circumstances, constitute "inhuman treatment".[7]

4.10 In challenging the alleged violations of articles 1, paragraph 1 and 16, the State party describes the complainant's conditions of detention in solitary confinement. The cells of the prison measure approximately 8 m^2 and have television and radio. It is

[6] Application No. 10263/83, decision of 11 March 1985.
[7] According to the State party, this principle has been followed by the European Court in the following cases: Application No. 38321/97, Erdem v. Germany, decision of 9 December 1999, and Application No. 25498/94, Messina v. Italy, decision of 8 June 1999.

possible to borrow newspapers, and books can be ordered from the Kalundborg Public Library. There are two daily outdoor exercise periods, one in the morning, one in the afternoon, each for half an hour. It is possible to use a fitness room.

4.11 The State party submits that the complainant was not completely cut off from contact with other people during her 50-day period of detention in solitary confinement. She had contact with the prison staff on a daily basis; her parents and children nine times; a social worker twice; the prison physician/doctor six times; the emergency service physician twice; and a psychotherapist three times. She could contact her counsel, a minister of religion or someone from the Prison and Probation Service. From 29 to 30 May 1998, she was hospitalized at the County Hospital of Nykøbing, Zealand; she was brought before the District Court three times in connection with the requests for continued solitary confinement.

4.12 According to the State party, the charge of smuggling against the complainant was of a particularly aggravated nature. At the hearing on 30 April 1998 charges against the complainant related to the smuggling of about 1.1 million cigarettes. This was subsequently extended, and the High Court judgment convicted her of participation in the smuggling of 6.6 million cigarettes. The investigation was comprehensive and difficult. Several individuals were involved in the case, including some who were still at large. For this reason, it was feared that the complainant might warn or otherwise contact these individuals, thus obstructing the investigation. Moreover, solitary confinement was terminated as soon as the investigation was over, i.e. on 18 June 1998, even though the period of her solitary confinement did not expire until 23 June 1998. During the 50-day period, both the District and High Courts considered the question of whether the conditions for solitary confinement were met on six occasions - 30 April, 4, 11, 13, 26 and 28 May 1998. Thus, the State party argues, the courts continuously struck a balance between the requirements of the investigation and the needs of the complainant.

4.13 On the issue of the complainant's mental health, the State party emphasises that only oral information on her psychological state had been produced before the District Court when it made its order on 26 May 1998. Prior to this date neither written nor

oral information had been produced on the state of her mental health. The report of 28 May 1998 was produced in the High Court, when it made its order on the same date, but it did not find that this information was such as to make the complainant's continued detention in solitary confinement disproportionate. The subsequent report of 19 June 1998 was produced at the following hearing on 22 June 1998, when the complainant's solitary confinement had already been terminated. Nevertheless, the Court decided to initiate an examination by a forensic psychiatrist, whose report was submitted at the hearing on 14 July 1998. The Court complied with the recommendation of the report and ordered that the complainant be placed in alternative detention in the Lyng Halfway House, where she could stay with her children.

4.14 On the alleged violation of article 12, the State party submits that it is characteristic of the complaints previously considered by the Committee under this provision that the authorities involved were executive authorities that had carried out actions which could be characterized as torture or ill-treatment, and which had taken place in connection with an arrest or detention.[8] By contrast, the State party is not aware of any case in which article 12 was invoked in relation to decisions made by judicial authorities. The State party argues that the decision on pre-trial detention in solitary confinement was made by an independent and impartial court on the basis of a procedure which fully protected the complainant's right to a fair hearing. In its view, there is no basis for interpreting article 12 in a way that an administrative authority, here the DPP, is obliged to proceed to an investigation in a case where a detainee is dissatisfied with the court decisions in his/her case. Such an arrangement would clearly be contrary to the principle of the independence of the courts. To the extent that article 12 applies at all in relation to the present complaint, the State party reiterates its comments above on the proportionality test used by the courts in deciding on detention in solitary confinement.

Complainant's comments:

5.1 By submission of 13 October 2003, the complainant submits that an application for leave to appeal to the Board of Appeal is a mere theoretical possibility. The

[8] The State party refers to Radivoje Ristic v. Yugoslavia, Complaint No. 113/1998 of 11 May 2001; Khaled M'Barek v. Tunisia, Complaint No. 60/1996 of 10 November 1999; Encarnacion Blanco Abad v. Spain, Complaint No. 59/1996 of 14 May 1998; Henri Unai Parot v. Spain Complaint No. 6/1990 of 2 May 1995; and Qani Halimi-Nedzibi v. Austria, Complaint No. 8/1991 of 18 November 1993.

records of the Board show that in 1996 (when it was established) and 1999 no grants for leave to appeal were made in cases concerning pre-trial detention and solitary confinement for that eave to appeal to be granted, it is necessary to prove exceptional circumstances, such as youth or prior mental problems. Moreover, the few cases concerning remand in solitary confinement in which leave to appeal to the Supreme Court was granted, are unlikely to be overturned. Thus, the complainant argues, exhaustion of domestic remedies is not necessary, as "it is established that the application of domestic remedies… would be unreasonably prolonged or would be unlikely to bring effective relief to the presumed victim".[9]

5.2 The complainant argues that in her merits response below, it is demonstrated that the violation of her rights is not solely attributable to the Danish judiciary but also to the prison authorities and the Kalundborg Police, for failure to secure had her removal from solitary confinement, when, as early as 15 May 1998, medical experts did document the devastating psychological harm she had suffered through solitary confinement. Furthermore, it is within the remit of the DPP to initiate investigations of local police districts, such as the Kalundborg Police.

5.3 On the argument that she should have sought compensation, the complainant submits that her purpose in submitting a complaint to the Committee is not to seek compensation, but to establish that the State party violated her rights under the Convention. Denmark is a "dualist" state, which chose not to incorporate the Convention into Danish law. Consequently, the Danish courts have no power to hear complaints brought by individuals based on the provisions of the Convention. A complaint before the Danish courts seeking to establish a violation of her Convention rights would have been futile, thus rendering a compensation claim under Section 1018 a (2) an ineffective remedy for an alleged violation of the Convention. The complainant also notes that the Danish courts have consistently refused to acknowledge that illness during police custody can entail violations of the Convention and article 3 of the European Human Rights Convention.

[9] L.O. v. Canada, Complaint No. 95/1997 of 19 May 2000. The State party also refers to T.P.S. v. Canada, Complaint No. 99/1997 of 16 of May 2000.

5.4 On the argument that her allegations do not fulfill the conditions of article 1, paragraph 1, the complainant submits that the medical evidence, in the form of statements from several doctors and therapists in the spring of 1998, demonstrates that she did experience "severe pain and suffering", within the meaning of this provision. The serious symptoms experienced by her are said to be commonly found in those who have been held in solitary confinement. She refers to studies by the Danish NGO "Isolations-gruppen", who have lobbied for the abolishment of solitary confinement, to show that persons held in such confinement are more likely to commit suicide. Therefore, the State party was aware of the "severe pain and suffering" generally experienced by those held in solitary confinement, and particularly in the complainant's case. Moreover, it was aware that the complainant had three young children, a fact which would only increase her pain and suffering to be held in solitary confinement. Ms. Jensen argues that her claim that the State party was aware of the shortcomings of the legislation governing on solitary confinement for pre-trial detainees at the time of her remand, is supported by the subsequent change in the relevant provisions of the Act.

5.5 The complainant agrees that the purpose of the Act is not to obtain confessions or information, but whether the third requirement of article 1 is fulfilled is not dependent on the wording or purpose of the legislation but rather its effect in the individual case. By interrogating the complainant on 4 and 5 June 1998 in the absence of her lawyer, the Kalundborg Police went beyond what her lawyer had authorised them to question her on during counsel's absence. Prior to these interrogations, several doctors and therapists had documented the complainant's deteriorating mental state. It is also alleged that the police investigator tried to force the complainant to confess to being an accomplice to smuggling of hashish, despite there being no evidence for this. Against this background, it is submitted that the Kalundborg Police (as a public authority) used the instrument of solitary confinement to obtain information and confessions in such a manner required for the purposes of proving a violation of torture pursuant to article 1.

5.6 The complainant invokes the Committee's concluding observations on several State reports to demonstrate that articles 1 and 16 can be interpreted as including a general prohibition against pre-trial detention in solitary confinement. Thus, in the

concluding observations on the fourth periodic report of Denmark, the Committee stated that: "…(c) The State party should continue to monitor the effects of solitary confinement on detainees and the effects of the new bill, which has reduced the number of grounds that can give rise to solitary confinement and its length."[10] It is clear from the Committee's concluding observations that solitary confinement, particularly in cases of pre-trial detention, is considered to have extremely serious mental and psychological consequences for the detainee; States parties are encouraged to abolish the practice. Although abolition is preferable, the concluding observations of the Committee reveal that solitary confinement should be applied only in exceptional cases and not for prolonged periods of time.

5.7 The complainant refers to other review bodies to demonstrate the harmful effects of such confinement, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the "CPT") which has produced several reports focusing on this issue. In the CPT's report to the Danish Government following its visit to Denmark from 28 January to 4 February 2002, it stated, inter alia, that "Solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible." The Human Rights Committee, which has considered the issue of solitary confinement in the examination of individual complaints, country reports and general comments, as expressed its concern about its practice. Upon consideration of Denmark's fourth period report, it noted, inter alia, "that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in cases of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant. Denmark should reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity."[11]

5.8 The complainant also invokes the case law of the European Court of Human Rights in particular to the judgment, in the case of McGlinchey and Others v. United Kingdom[12], in which the Court found that article 3 "provides that the State must

[10] CAT/C/55/Add.2
[11] CCPR/C/DNK/99/4
[12] Application no. 50390/99.

ensure that a person is detained in conditions which are compatible with respect for her human dignity, that the manner and method of the execution of the measure do not subject her to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, her health and well-being are adequately secured by, among other things, providing her with the requisite medical assistance." [13].

5.9 As to the claim that the District Court only had oral evidence before it when it assessed the continuation of the complainant's pre-trial detention in solitary confinement on 26 May 1998, the complainant submits that the prison authorities should ex officio have had the complainant examined by a doctor and then requested the Prosecutor to have her removed from solitary confinement, upon learning that she suffered serious psychological harm. In the complainant's view, the State party's liability for the violation of articles 1 and 16 began on 15 May 1998 when the Kalundborg Police did not act upon the prison physician's report in which he considered that: "The inmate exhibited clear signs of mental instability, which can be explained freely on the basis of general knowledge on normal people's reaction to incarceration and solitary confinement. I assessed that there was a risk that this condition might become worse and that it was important that the inmate's situation could be resolved as soon as possible." On 22 May 1998, even though the emergency service physician and crisis therapist described the complainant as "…strongly mentally troubled by the solitary confinement" and "claustrophobic, near-psychotic and deeply distressed", respectively, the Kalundborg Police still ignored the fact that the complainant was experiencing the harmful effects of her solitary confinement.

5.10 The complainant acknowledges that the nature of the overall criminal operation was serious but emphasises that she was only a peripheral and minor player and thus not likely to have extensive knowledge about the illegal operations, which were organised by her former husband and his accomplices. Moreover, she cooperated with the police and gave them the name of a suspect who the police failed to apprehend

[13] She also refers to the case of Price v. United Kingdom, judgment of 10 July 2001 in which the Court decided that "In considering whether treatment is "degrading", within the meaning of Article 3, one of the factors which the Court will take into account is the question of whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3.

while at the same time claiming that her removal from solitary confinement would jeopardise police investigations as she might try to contact suspects who had not yet been arrested.

5.11 On the conditions of detention in solitary confinement, the complainant notes that the cell measured 8 m^2 and had no windows, that she had no radio, that TV was only available upon payment of a fee and that she was never informed about the access to certain books from a local library. Whilst she did receive certain visits from her family, the form and duration of those visits were not sufficient to overcome her natural frustration, grief and anxiety.

5.12 With respect to the State party's arguments on article 12, the complainant submits that the Convention is binding on all public authorities in Denmark, including prison authorities and prosecutors. Accordingly, an investigation of the way in which the Kalundborg Police and Prison authorities handled her case, by repeatedly prolonging her solitary confinement, despite medical evidence demonstrating its harmful effects on her, would not have interfered with the independence of the Danish judiciary. Thus, in the complainant's view, when her representative, an expert in the field of torture identification and research, expressed his professional opinion to the DPP and requested an investigation into these allegations, such an investigation should have been initiated, as prescribed by article 12 of the Convention.

Issues and proceedings before the Committee:

6.1 Before considering any claim contained in a complaint, the Committee must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention that the same matter has not been, and is not being examined under another procedure of international investigation or settlement.

6.2 With respect to the question of exhaustion of domestic remedies and the complainant's initial argument that by failing to respond to her representative's letter to the Director of Public Prosecutions, in which he stated that if he did not receive a response, he would assume that domestic remedies were deemed to have been

exhausted, the Committee considers that it is not the function of the DPP to inform counsel on possible or available remedies for an alleged violation, and that no such inference can be drawn from the DPP's failure to do so.

6.3 The Committee notes the State party's arguments that by failing to apply for leave to appeal to the Supreme Court and/or for compensation under the Administration of Justice Act, the complainant has not exhausted domestic remedies. In the complainant's view, both remedies would have been ineffective, as, an application for leave to appeal is only a "theoretical possibility" and, in an application for compensation, she could not have invoked her rights under the Convention. On the issue of compensation, the Committee is not persuaded that, in the circumstances of the case, compensation was a remedy that the complainant should have pursued for the purposes of exhausting domestic remedies. As to an application for leave to appeal, the Committee observes that although the complainant claims that an application for leave to appeal may only have been a theoretical possibility, she does concede that leave to appeal has been granted in several cases. The Committee considers that mere doubts about the effectiveness of a remedy do not absolve the complainant from seeking to exhaust such a remedy. For this reason, the Committee finds that the complaint is inadmissible for failure to exhaust domestic remedies, as required under article 22, paragraph 5 (a), of the Convention.

7. Accordingly, the Committee decides:

a) that the complaint is inadmissible;
b) that this decision may be reviewed under rule 109 of the Committee's rules of procedure upon receipt of a request by or on behalf of the complainant containing information to the effect that the reasons for inadmissibility no longer apply;
c) that this decision will be transmitted to the complainant, her representative and the State party.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]