CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 69332/01
by Peter ROHDE
against Denmark

The European Court of Human Rights (First Section), sitting on 4 December 2003 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs N. VAJIĆ,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged on 19 February 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Peter Rohde, is a Danish national, who was born in 1965. His domicile is unknown. He is represented before the Court by Ms Merethe Stagetorn, a lawyer practising in Copenhagen. The Government were represented by their Agent, Mr Hans Klingenberg of the Ministry of Foreign Affairs, and their Co-Agent, Ms Nina Holst-Christensen of the Ministry of Justice.

A. The circumstances of the case

On 25 October 1994 a warehouseman found 5.684 kg of cocaine hidden in a consignment of green papaya fruits from Brazil, ordered by the applicant.

The discovery was reported to the police, which on the same day interviewed the applicant. He denied having any knowledge of the cocaine and explained that he had ordered the fruits because he contemplated to develop a health product made from the seeds.

On 13 December 1994 at Copenhagen Airport when the applicant set about to emigrate to England he was arrested and charged with drug trafficking. On 14 December 1994 the City Court in Copenhagen (*Københavns Byret)* decided with reference to Section 762, Subsection 1 (iii) and Section 770a of the Administration of Justice Act *(Retsplejeloven)* that the applicant be detained on remand and in solitary confinement. The time limit was fixed at 28 December 1994 with regard to the solitary confinement and at 10 January 1995 as concerns the pre-trial detention. The City Court referred notably to the facts that a person, PL, whom the applicant had known as one of his acquaintances for just under six months had been arrested in the same case, that PL had picked up a load of papaya fruits shortly after the applicant's consignment of papaya fruits had been delivered to the applicant, that co-offenders were assumed still to be at large, that further investigation was required in the case, and that the applicant had taken up residence in London after the commencement of the case.

On appeal to the High Court of Eastern Denmark, the decision was upheld on 17 December 1994 on the grounds stated by the City Court.

During a police interview on 21 December 1994 the applicant stated that in October 1994 he had been contacted by a Brazilian papaya fruit farmer, called RS, in search of a business partner in Denmark. RS had found the applicant via a friend, RB, whom the applicant knew from the USA. Accordingly, the applicant had contacted PL in order to obtain his assistance with the import.

On 28 December 1994 the City Court extended the solitary confinement until 10 January 1995. It appears from the court record that the applicant's

counsel had confirmed in writing that the applicant had consented to this extension without appearing in court.

The detention on remand in solitary confinement was prolonged by the City Court on 10 January 1995, upheld on appeal on 16 January 1995 by the High Court, which found among other things that no reasonable explanation of the applicant's import of papaya fruits had been brought to light, and that the applicant's import of the fruits seemed to constitute the link between PL and the cocaine.

The applicant's pre-trial detention in solitary confinement was prolonged anew by the City Court on 7 February and 7 March 1995. The applicant appealed against the latter decision to the High Court, and submitted in this connection his diary, which contained notes as to RS and RB on the dates 11 and 14 October 1994. The applicant explained that RS and RB had been supposed to come to Denmark on 14 October 1994, but that they had never showed up. On 24 March 1995 the High Court confirmed the City Court's decision of 7 March 1995 on the following grounds:

> "...Despite the new information on [the applicant's] diary book notes, his import of papaya fruits is still found to constitute the link between [PL], also charged, and the discovery of the cocaine. This is supported by the telephone call made by [the applicant] on 24 October 1994 [to PL]. Therefore, the reasons for continued detention on remand under Section 762, Subsection 1 (i) and (iii), and for continued solitary confinement are still justified as stated in the City Court order of 7 March 1995."

The pre-trial detention in solitary confinement was further extended as follows; by the City Court on 4 April 1995, upheld on appeal by the High Court on 20 April 1995; by the City Court on 25 April 1995, upheld on appeal by the High Court on 11 May 1995; by the City Court on 30 May 1995; on 27 June; 7 July; 25 July; 22 August; 19 September; 3 October; 17 October; and 31 October 1995, the latter upheld on appeal by the High Court on 2 November 1995.

At a court hearing before the City Court on 28 November 1995 the applicant confirmed an explanation, he had given to the police at an interview on 26 September 1995, namely that he and PL had planned to smuggle diamonds in the papaya fruits. After the papaya fruits had been delivered on 24 October 1994, PL had informed the applicant that the diamonds had well arrived and that PL had sold them with a profit amounting to 500,000 Danish kroner (DKK). When the applicant had been confronted by the police and the press with the discovery of the cocaine, he had panicked and decided to emigrate to England. Also, the applicant admitted that his previous explanation about RS and RB, and the notes in his diary had been construed, and made up by him and PL before their arrest as a "cover story".

The City Court thereafter lifted the solitary confinement. Nevertheless, the applicant remained voluntarily in solitary confinement until 12 December 1995.

During the period when the applicant was detained in solitary confinement he was placed in the Western Prison *(Vestre Fængsel)*. The cells there have an area of about eight square metres. They are furnished with a bed, a table, a chair, a lamp, a bookcase, a cupboard, a radio, a refrigerator/ freezing compartment, a duvet, a pillow, a mirror, a sink, bed linen, a tea-towel and a towel.

Persons detained on remand in solitary confinement in the Western Prison can use a fitness room, borrow various games, borrow books once a week, occupy themselves with hobby activities, buy goods in the shop, including newspapers, and receive tuition, including school tuition. Also, a television is available, which includes access to the local text TV of the prison. Persons detained in solitary confinement have access to two daily exercise periods (morning and afternoon), each lasting half an hour. It is up to the detainee himself to decide whether to make use of the outdoor exercise option.

During the period from 14 December 1994 until 28 November 1995 the applicant, like other detainees in solitary confinement, regularly received visits by doctors and nurses. In the applicant's case, he was attended to twenty-seven times by a prison doctor, and forty-three times by a nurse. Also, during this period, twelve times he had contact with a welfare worker (social worker). The applicant had daily contact with the prison staff when food was dispensed, at outdoor exercise etc., and the applicant's counsel was a frequent visitor. Furthermore, the applicant could write to and receive visits from family, although under surveillance.

After the solitary confinement had been lifted on 28 November 1995, the applicant's detention on remand was prolonged several times by the courts until 14 May 1996, when the High Court sitting with a jury acquitted the applicant of the drug offences. However, in keeping with the applicant's confession he was convicted of aggravated tax fraud and sentenced to 8 months' imprisonment and an additional fine of DKK 875,000 (or in the alternative 60 days' imprisonment).

By a City Court judgment of 21 June 1996, a co-accused, MP, who in the meantime had been extradited from the USA, and PL were convicted of the cocaine smuggling.

Subsequently, on 12 July 1996, the applicant claimed compensation for pecuniary and non-pecuniary damage pursuant to Section 1018a of the Administration of Justice Act for having been detained from 14 December 1994 until 14 May 1996. The total claim for compensation amounted to more than DKK 19 million, thereof DKK 10 million for injury to his feelings and reputation. In support of the latter counsel referred to the unusually long unjustified pre-trial detention, the massive press attention given to the case, and to the fact that the applicant was a known person and that the case therefore had been unusually and extraordinarily insulting to him. The prosecution first considered the claim, where upon in June 1997 it

was brought before the City Court. In a letter of 10 July 1997 counsel stated that she also wished to invoke Article 3 of the Convention and for this purpose she requested that a report be procured from the Legal-Psychiatric Clinic (*Retspsykiatrisk Klinik)* concerning the applicant's mental state of health during and after his detention on remand. On 18 September 1997 the City Court complied with his request, and the report was submitted on 19 January 1998 stating, *inter alia*:

> "The subject is a now 32-year-old male, who had never exhibited any signs of a mental disorder until just over three years ago. From his early youth and until 1992 he was a successful competition swimmer. As from 1990 he was self-employed in a business which he ran successfully until his arrest in December 1994. Until his arrest he seems always to have functioned well. He has never abused any drugs or alcohol.
>
> During this examination he was found of normal to good intelligence. There is no basis for assuming that he suffers from epilepsy or any other organic brain disease. [The applicant] states having delusions of persecution and that he suffers from megalomania, and he appears distrustful and on guard. His perception of reality is lacking to such an extent that he can be characterised as psychotic. A final clarification of his illness cannot be made, but most likely he suffers from a paranoid psychosis. Since his release, probably due to his psychotic condition, the [applicant's] way of living has been affected by a considerable and vagrant travel activity, which to some degree has been characterised by a lacking capability to maintain human contacts, to make bond or to root himself in localities.
>
> On the basis of the information available it must be assumed that [the applicant's] mental suffering coincided with the period when he was detained on remand in solitary confinement. Moreover, taking into account [the applicant's] distinct personality and mental vulnerability, it is probable that the out-break and the progress of [his] illness are causally linked to the fact that he was solitary confined during a longer period".

In addition, statements of 30 March and 4 May 1998 from the Medico-Legal Council (*Retslægerådet*) were submitted before the City Court. In the former it was stated *inter alia*:

> "... the Medico-Legal Council states that until about three years ago [the applicant] did not seem to exhibit any signs of a mental disorder or personality disorder. He is of good intelligence.
>
> During his prolonged pre-trial detention and solitary confinement in the period from December 1994 until May 1996, he developed a psychosis, characterised particularly by failing perception of reality and grandeur. It is difficult to fix the exact time when the psychosis developed during the pre-trial detention. At a psychiatric visit on 18 January 1995 no psychosis-like symptoms were found, but a "situational reaction" and a hunger strike. During the forensic psychiatric examination - completed in January 1998 - he was found both by clinical psychiatric testing and by psychological testing to be psychotic, probably suffering from a paranoid psychosis (mental disorder with delusions).
>
> In the Medico-Legal Council's view it is very difficult to establish [the exact cause for the applicant's mental illness], but it is reasonable to assume that the considerable

> and long lasting mental strain which the case involved, presumably in conjunction with a distinct personality characterised by sensitivity and vulnerability significantly influenced the progress of the mental illness. The solitary confinement was a particular and severe mental strain, but also other circumstances like the charge and the subsequent indictment may have contributed to the progress of the applicant's mental disorder."

In the latter the Medico-Legal Council supplemented:

> " ... The Council finds it substantiated that the main diagnosis is paranoid schizophrenic and not a post traumatic stress reaction, as the condition is a psychosis-like condition. But heavy mental strain is one of the prerequisites both for development of [the applicant's] psychosis and for the development of a post-traumatic stress reaction, and in addition to the psychotic symptoms [the applicant] exhibits symptoms which are characteristic of a post-traumatic stress reaction (irritability, concentration difficulties, sleeping difficulties, nightmares, depressive tendencies with suicidal thoughts).
>
> ... the Council cannot assess or make any statement as to whether the mental disorder is permanent."

Moreover, an assessment of 3 August 1998 by the National Board of Industrial Injuries (*Arbejdsskadestyrelsen*) was submitted as to the applicant's degree of disablement and loss of working capacity as a result of his mental illness. The Board estimated that the degree of the applicant's disablement amounted to approximately 30 % and that he had lost 1/3 of his working capacity.

From the prison medical journals submitted it appeared that the applicant from 13 December 1994, the day of his arrest, until 14 December 1994 12.30 p.m. was placed in an observation cell as he had expressed contemplation of suicide. During this period he was observed thirty-six times by the prison staff. In January 1995 the applicant went on hunger strike for several days, during which a nurse and a doctor monitored him, and on 18 January 1995 a psychiatric assessment was made, which concluded:

> "Visit to a thirty-year-old male, charged with Article 191[of the Penal Code (*straffeloven*)], of which, according to himself, he is innocent. He is now carrying out a hunger strike, as a protest against his conception that the press and others have convicted him in advance, and he is fully aware of the consequences of such an act and is at present writing farewell letters, his will, etc. Diagnosis: situational reaction."

During the applicant's detention on remand in solitary confinement from 13 December 1994 until 28 November 1995 medical inspections were carried out forty-three times by a nurse and twenty-seven times by a doctor.

During the proceedings before the City Court the applicant raised his claim for compensation to DKK 22,556,334. Having heard the applicant and 15 witnesses, by judgment of 1 October 1998 the City Court granted the applicant compensation in the amount of DKK 790,475 and stated *inter alia:*

"... Having regard to the findings on the evidence in the High Court's verdict of 14 May 1996, and to the evidence produced during these proceedings, the court finds it established that an agreement had been concluded between PL and MP on the smuggling of cocaine from Brazil to Denmark so that the cocaine was to be hidden in a consignment of papaya fruits. Accordingly, in Brazil MP placed the cocaine in a pallet with green papaya fruits to be imported by the firm..., from which [the applicant] had ordered the fruits. However, PL had tricked [the applicant] into establishing ... a health firm, and ordering the papaya fruits via this firm by stating that the import of green papaya fruits was to cover smuggling of diamonds, although to PL cocaine was involved. After the arrival [of the papaya fruits] complications arose whereby the smuggled cocaine was discovered.

[The applicant] had taken initiatives as to the potential commercial exploitation of green papaya fruits for health products, etc.

The court finds that [the applicant] has exhibited considerable contributory negligence by embarking on an agreement with PL on the smuggling of diamonds from Brazil. He knew that PL was trained gemmologist, but their acquaintance was of recent date and his efforts to ensure that PL's criminal intention was limited to diamond smuggling were poor. PL's statement to the effect that at some time he briefly remarked to [the applicant] that he had previously tried to smuggle cocaine is contested by [the applicant] and no decisive weight has been attached to it in this assessment of the evidence.

...On the evidence [before it] the court finds that [the applicant] started establishing [the health firm] to be in charge of the import of papaya fruits etc. after having agreed with PL to assist in smuggling diamonds from Brazil hidden in consignments of papaya fruits. According to the evidence it cannot be excluded that [the applicant] also intended to obtain a commercial profit from [the health firm]. However, having regard to the applicant's knowledge of the discovery of the cocaine and to the police interviews in general, the courts finds that [the applicant] should have realised that the investigation theory of the police was that [his established health firm] was only a cover for the import of cocaine, and that any profit from the sale of health products made from papaya fruits was quite immaterial. Furthermore, the court notes that [the applicant's] rather experimental/impulsive way of starting up his firm was suited to strengthen this assumption by the police, and that the applicant should have realised this.

After the police had found the cocaine and after the press publicity on 26 October 1994, but before his own arrest, [the applicant] chose together with PL to agree on a false statement about the background of his import of papaya fruits, ...[the story about RS and RB] supported by construed diary notes. [The applicant] maintains that he asked PL repeatedly at this stage whether PL had anything to do with the cocaine. Despite PL's denials [the applicant] should have suspected serious mischief at least at this stage.

[The applicant] was arrested on 13 December 1994. He did not change his statement until 26 September 1995, when during an interview [with the police] he told about the planned diamond smuggling. This statement was repeated at the hearings before the court on 28 and 30 November 1995 and then maintained. The solitary confinement was terminated at the court hearing on 28 November 1995.

... accordingly, the court finds that [the applicant] has exhibited contributory negligence by way of his suspicious conduct/failure to clear himself of suspicion, partly by having embarked on the alleged smuggling of diamonds and taking relevant steps, having construed and made use of a false cover story and having failed to explain the true facts of the case until the autumn of 1995, whereby he must also have realised that with this course of events in the autumn of 1995 he himself had considerably contributed to causing doubts about the correctness of his present statement, cf. in this respect [the High Court decision of 15 January 1996 as to the continued pre-trial detention].

The court finds that the contributory negligence exhibited by [the applicant] therefore entails that he has basically forfeited the right to compensation for the harm inflicted on him by the arrest and the pre-trial detention...

In accordance with the opinion of the Medico-Legal Council the court finds that the applicant did not show any signs of mental disorder or personal disorder [before his arrest], but that during the prolonged pre-trial detention and solitary confinement he developed a psychosis, particularly characterised by a failing perception of reality, delusions of reference as well as delusions of persecution and of grandeur. It is impossible to fix the exact time when the psychosis developed during the pre-trial detention as no psychosis-like symptoms were found at a psychiatric visit on 18 January 1995, but a "situational reaction" and a hunger strike, whereas in the forensic psychiatric examination - completed in January 1998 - [the applicant] was found psychotic, probably suffering from a paranoid psychosis (mental disorder with delusions) ...

Particularly concerning the European Convention on Human Rights and the basis of responsibility in general:

... generally, any kind of deprivation of liberty constitutes a strain on the person involved. Such a strain manifests itself even more with regard to pre-trial detention in solitary confinement, which entails complete exclusion from association with other inmates, and visits only to a limited extent and subject to surveillance. In some cases this strain may, for a particular individual, prove to have consequences beyond what is generally foreseeable and predictable by the legislator owing to that individual's mental preparedness and life situation in general.

It must be presumed that the legislator considers solitary confinement necessary for the sake of the investigation, particularly in grave criminal cases committed by a group of persons acting in a more organised way, in which the clearing up to a great extent depends on the persons' lack of opportunities to harmonise their statements mutually and with others.

In order to balance the interests of the detainee against the interest of the society in prosecuting crimes, the legislator has laid down provisions on solitary confinement cf. Sections 770a to 770c of the Administration of Justice Act. Thus, the use of totally solitary confinement is limited to a continuous period of eight weeks [except for] cases, where the charge concerns an offence being punishable under the law by imprisonment for six years or more, which are not subject to any restriction in time. The charge against [the applicant] for drug offences under Article 191 of the Penal Code satisfies this condition. Under Section 770b, the courts must check whether the purpose of the solitary confinement can be fulfilled by less radical measures, and they must ensure that the measure is not disproportionate to the

importance of the case and the sanction that may be expected if the person charged is found guilty. Furthermore, under this provision the court must "take into account the special potential strain on the person charged owing to his youth, or physical or mental weakness" when it orders solitary confinement.

In the opinion of the court, the legislator has thus realised that solitary confinement may at worst result in an unintended harmful effect owing to the mental weakness of the person charged. This is attempted countered by imposing a duty on the Prison and Probation Service staff *(kriminalforsorgens personale*), including the prison doctor, to be aware off any danger signals, according to which psychiatric monitoring may prove relevant.

The question of medical monitoring may be raised by everybody who is in contact with the detainee, including counsel, as well as the detainee himself and the prison staff. If so, the judge responsible for a continuation of the pre-trial detention in solitary confinement must decide whether the interest of society in prosecution must give way for the mental wellbeing of the person charged, with particular regard to the risk of permanent mental harm.

It is a matter for the courts to check and apply the provisions of the law compared with general principles of law, including the principles expressed in the European Convention on Human Rights... as incorporated into Danish law by Act No. 285 of 29 April 1992.

Article 3 of the European Convention on Human Rights sets out that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". Article 5 of the Convention provides for the situations in which a person may exceptionally be deprived of his liberty.

[The applicant's] detention on remand was ordered due to the risk of influencing others and the risk of evasion, and solitary confinement was imposed in addition due to the risk of influencing others.

Pursuant to the case-law of the European Commission of Human Rights, a decision as to whether Article 3 of the Convention is violated depends on a specific assessment of the circumstances of the case, particularly the stringency of the solitary confinement, its duration, the purpose of the solitary confinement and its effect on the inmate's health. In addition to the specific elements of the case, the court has taken into account the assessments made by the European Commission of Human Rights, the Human Rights Committee of the United Nations (CCPR), the Committee against Torture of the United Nations (CAT), and the Committee for the Prevention of Torture of the Council of Europe (CPT) on the conditions of solitary confinement in Denmark as well as national deliberations, most recently report *(betænkning)* No. 1358/1998 on pre-trial detention in solitary confinement...

The court finds that the pre-trial detention in solitary confinement and the subsequent ordinary pre-trial detention did not involve any violation of Article 3 of the Convention by virtue of its duration, form or conditions, as seen in relation to the nature of the suspected offence. The same applies as to the effect of the imprisonment on [the applicant's] health.

However, the court finds that the detention on remand in solitary confinement has had a mental consequential effect to [the detriment of the applicant and that it]

occurred under such circumstances as to trigger liability for the Government [for the following reason].

It must be assumed, even without the establishment of committed human errors e.g. by failing monitoring, that incidents may occur, where the detained subsequently are found to have developed psychiatric damage, which to a significant extent has been caused by the pre-trial detention [as opposed to normal predictable mental after-effects], and which may be entailed by the usual administrative rates fixed to cover non-pecuniary damage.

In the present case, having regard to the medical statements, the court finds it established that [the applicant] suffers from a paranoid psychosis (mental disorder with delusions) and a traumatic strain-reaction, and that the detention on remand to a very significant extent caused this.

The public authorities have a special duty of solicitude for detainees, which entails liability to compensation should they fail to comply with this duty. With regard to solitary confinement the court finds that a strengthened degree of culpability must be employed towards the public authorities.

It may be difficult for the surroundings to recognise in particular a paranoid psychosis. However, having regard to the information provided by [the applicant] about his claustrophobia and his contemplation of suicide, which resulted in his placement in an observation cell, the court finds that [the applicant], maybe already at the time of the arrest, behaved in such a way that could and should have caused a closer observance in the period to follow, than were actually performed of [the applicant's] mental development, in any case subsequent to [the applicant's] hunger strike in January 1995. The court finds that the authorities carry the burden of proof that the [above] circumstances have had no influence on the psychiatric damage incurred. Thus, the court finds that it cannot be excluded that the mental damage to a significant extent could have been avoided or reduced by a more thorough observation, and that the courts [had such an observation been carried out] would have had an opportunity for balancing the risk of (permanent) damage against the interest of the investigation cf. Section 770b of the Administration of Justice Act."

Both the applicant and the prosecution appealed against the City Court judgment of 1 October 1998 to the High Court of Eastern Denmark, to which a letter of 5 October 1998 was submitted containing an account of the nurses' monitoring of the applicant during his pre-trial detention in solitary confinement during the period from 13 December 1994 until 28 November 1995. Thus, as to the forty-three medical inspections which had been carried out by nurses the head of nursing stated *inter alia:*

". It does not appear at any time from the nurses' report books summarising the visits that the nurses suspected that [the applicant] was developing a paranoid psychosis. Considering the nurses' background both in the prison service and the psychiatric system, one would expect that the nurses who made these visits would have observed it, if [the applicant] had been developing a psychosis-like condition. It should be added that the nurses' visits in the south wing [where the applicant was placed] were performed by the "permanent nurses" of the south wing, who were [therefore] able to monitor any changes in [the applicant's] mental condition."

A similar account was made as to the doctors' monitoring of the applicant, i.e. twenty-seven medical examinations carried out by doctors in the relevant period. In a letter of 2 October 1998 the chief consultant of the Copenhagen Prisons (*Københavns Fængsler*), a specialist of internal medicine and medical gastroenterology concluded *inter alia*:

> "that [the applicant] was not at any time found to be mentally ill to a major extent corresponding to the otherwise obvious and probable harmful effect of the solitary confinement ordered by the courts;
>
> that at no time [the applicant] was found to be borderline psychotic, not to mention psychotic (thus not suffering from a paranoid psychosis either);
>
> that the psychiatrist's assessment of [the applicant] on 18 January 1995 was carried out for administrative reasons only in connection with [the applicant's] short-term refusal to eat, which had caused no complications (it was not a total fast as [the applicant] drank juice). The psychiatric assessment was not carried out due to an uncertainty on the prison doctor's behalf as to [the applicant's] mental state, [since] neither the ordinary prison doctor nor, in particular, the psychiatrist had found [the applicant's mental state] very remarkable or even mentally threatened. [Instead] the psychiatrist made the said administrative assessment to make doubly sure that [the applicant] was found competent [to cope with the situation] concerning his refusal to eat."

The chief consultant also provided a general account on visits and assessments of detainees. He mentioned that such may take place at counsel's request. In this respect the letter stated as follows:

> "Concerning [the applicant] it should be noted in this connection that the doctors [of the Prison and Probation Service] have received no inquiries during the said detention period from [the applicant's] prosecutor or two counsel, apart from the letter of 18 January 1995 from [the applicant's] first counsel and the letter of 21 June 1995 from [the applicant's] second counsel.
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> In the letter of 18 January 1995 [the first counsel] stated that he found the applicant very depressed, and he asked that doctors attend to [the applicant]. No letter of reply was sent to [the first counsel] since he had not requested such, and since he had stated in the letter that he had not notified [the applicant] that he had written the said letter (all other things being equal, a reply would require [the applicant's] specific consent and thus indicate to [the applicant] that his counsel had sent a letter without his consent), but the most important reason for not sending a reply was the fact that [the applicant] had not been found depressed in connection with a medical assessment, including the psychiatric assessment made on 18 January 1995. If the latter had been the case, a letter of reply would have been forwarded to counsel nevertheless, possibly even without [the applicant's] specific (informed) consent, and ... also from the prison doctor to the judicial instances via the Prison and Probation Service.
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> In the letter of 21 June 1995 [the second counsel] asked that herbal medicine ... be given to [the applicant].
>
> Otherwise, [the two counsel] have not given notice orally, by telephone or in writing about any deviant state observed as to [the applicant]. [It should be noted in this respect that notably [the second counsel] and the doctors [of the Prison and Probation

Service] are in regular good contact concerning the inmates' state of health and particular complex matters related thereto, also in relation to court measures, such as solitary confinement]. The doctors [of the Prison and Probation Service] are pleased to receive notices from everybody (including school teachers, ministers of religion etc. within and outside [the Prison and Probation Service], not to mention the applicant) regardless of the nature of the notices and the information since, all other things being equal, such notices give the doctors better possibilities of performing their work of ensuring the best possible conditions for the inmates' health subject to the terms ordered by the courts. "

Also, the Director of the Copenhagen Prisons gave an account of the monitoring of the applicant during his pre-trial detention and the period of solitary confinement. In a letter of 7 October 1998 he stated, among other things:

"For the purpose of this account the prison management has procured information on [the applicant's] stay in the prison from the chief consultant, the head of nursing, the welfare worker, supervisory staff [at the applicant's unit] and from his workplace in the prison.

Supervisory staff in the south wing [which monitored the applicant during his entire period in solitary confinement] stated that despite the solitary confinement he functioned well, knew how to structure his everyday life and occupy himself, and he did not in any way appear mentally conspicuous.

At no time did the staff find any reason to contact the health staff to obtain a psychiatric assessment, which is otherwise an initiative very frequently taken by staff.

The principal officer of the west wing [to which the applicant was transferred after the solitary confinement] and the staff in the kitchen where he worked have stated the same.

[The applicant's] welfare worker who regularly talked with him during his entire detention has also stated the same.

With reference to the comments of the court [in connection with the compensation proceedings] decisive importance must be attached, however, to the question whether these assessments are supported by the doctors' monitoring of [the applicant].

The chief consultant has provided the appended statement on the case. For details please refer to this assessment.

It appears from the chief consultant's statement that during his entire period of detention [the applicant] has been extremely carefully monitored and assessed by doctors.

Visits by doctors, including psychiatrists, may be carried out at the request of the health staff of the Copenhagen Prisons, but may also be carried out at the request of staff, counsel or the prosecutor. In [the applicant's] case, counsel only once requested a visit from a doctor [i.e. the first counsel in his letter of 18 January 1995], which had, however, already been made by a psychiatrist in connection with the hunger strike, cf. below.

During all visits, doctors and nurses of the Copenhagen Prisons have their attention directed at signs of psychoses, both obvious signs and minute signs. They are, of course, particular attentive to such signs in a case of solitary confinement, which is in itself a stressful measure.

If, in connection with a visit, a doctor finds even the slightest suspicion that the inmate is or may possibly be on his way to become mentally ill, a statement to that effect is given to counsel and the prosecutor.

This was not done in [the applicant's] case, as there was never at any time any suspicion of a mental illness.

The reason why [the applicant] was attended to by a psychiatrist on 18 January 1995 at the initiative of the Copenhagen Prisons was not that a mental illness was suspected, but solely that the internal guidelines prescribe this when inmates go on hunger strike. Anyway, no psychopathological characters were found at the examination, but a situational reaction ...Particularly referring to the chief consultant's statement, the Copenhagen Prisons repudiate that [the applicant] has been subjected to failure of health monitoring. During his entire stay, [the applicant] was regularly visited by doctors and nurses, and these visits have not given any rise to any suspicion of mental disorders..."

Moreover, the Western Prison gave their account of the monitoring of the applicant during his pre-trial detention and solitary confinement. A letter of 8 October 1998 stated *inter alia*:

"After the passing of the judgment in the compensation proceedings on 1 October 1998 I have had conversations with the following persons about [the applicant's] stay in the Copenhagen Prisons:

DW, then social worker in the east unit, states that [the applicant] was an intelligent and interesting young man. During his stay [the applicant] started painting. He read a lot. His behaviour was not conspicuous. He seemed present during conversations. He was bitter and angry with the police and felt unjustly treated. These thoughts did not seem pathological to DW.

JL, prison officer, ..., who knew [the applicant] during his entire stay in the south wing, stated that he painted, was active and seemed to function well. He was good-humoured to be with and was given a rather free rein. He was always ready with a gay remark. He was considered by all staff as a person who functioned well and was not conspicuous. He knew how to establish an everyday life. He felt unjustly treated by the system and thought that solitary confinement in general could be considered as some kind of torture.

CL, prison officer, ..., who also monitored [the applicant] in the south wing, stated that he was not pathologically conspicuous. He was quite ordinary to talk to. In the circumstances he managed the solitary confinement incredibly well.

JEL, ..., who was the foreman in the kitchen where [the applicant] worked after the solitary confinement, stated that he did not seem mentally conspicuous or affected by the long solitary confinement.

> VB, principal officer, west wing, stated that [the applicant] functioned well during his stay in the west wing after the solitary confinement and did not seem affected by the solitary confinement."

Additional statements from the Legal-Psychiatric Clinic and the Medico-Legal Council were submitted on 29 April 1999 and 9 August 1999 respectively, and the applicant and several witnesses were heard.

By judgment of 27 August 1999 the High Court granted the applicant compensation in the amount of DKK 1,334,600 covering as follows:

non-pecuniary damage	DKK	100,000
lost earnings	DKK	125,000
loss of working capacity	DKK	1,022,000
disablement	DKK	87,600

The High Court found that the applicant's mental illness was caused or mainly caused by the solitary confinement, but pointed out that on the basis of the medical statements before it, it was not possible to establish when the mental disorder broke out or how it had progressed. On the material before it, the court found it established that during his detention the applicant had been treated in a proper manner. Thus, having regard to the reason for the solitary confinement and the treatment of the applicant during this period, the court found that in spite of the duration of the solitary confinement and its serious effects on the applicant's mental health, Article 3 of the Convention could not be considered breached.

The court found that compensation for non-pecuniary damage was justified pursuant to section 1018a § 2 of the Administration of Justice Act for the deprivation of liberty exceeding the sentence laid down in the verdict of 14 May 1996. However, according to section 1018a § 3 of the said Act the applicant was found to a considerable extent to have given rise to the measures himself, due to so-called "own fault", in the period between 13 December 1994 until 26 September 1995, when the applicant made the statement to the police as to his participation in diamonds smuggling. Accordingly, a sum of DKK 100,000 was found to be reasonable.

Also, the compensation for lost earnings was reduced due to "own fault"

The amounts for disablement and loss of working capacity were calculated on the basis of the Compensation Act *(Erstatningsansvarsloven),* and the information on the applicant's previous yearly income. Since no exact moment of injury could be established the court chose 13 December 1994 as the starting point. Considering that it was common knowledge to the authorities that solitary confinement entails a risk of disturbing the mental health, and taking into account the extraordinary and severe damage, which the long lasting detention in segregation caused the applicant, the court found no reason to reduce these amounts on the "own fault" considerations.

Having been granted leave to appeal, by judgment of 5 September 2000 the Supreme Court *(Højesteret)* reduced the amount to be paid in compensation to DKK 1,109,600, covering as follows:

non-pecuniary damage	DKK	0
lost earnings	DKK	0
loss of working capacity	DKK	1,022,000
disablement	DKK	87,600

The Supreme Court agreed unanimously with the High Court that the solitary confinement was the main reason for the applicant's mental suffering. Also, noting that there was no reason to assume that the applicant had not been treated in a proper manner during his detention on remand, it confirmed the High Court's finding that the case disclosed no appearance of a violation of Article 3 of the Convention.

Moreover, the Supreme Court upheld the High Court's finding that to a significant extent the applicant himself gave rise to measures taken against him, and pointed out that the applicant's explanations during the criminal proceedings did not leave an impression of being provided by someone who lacked ability to act rationally.

As to the amounts regarding compensation for disablement and loss of working capacity the Supreme Court confirmed that it was common knowledge that solitary confinement entails a risk of disturbing the mental health. On the other hand it found that the applicant could not have foreseen, by his conduct and the measures to which he was consequently subjected, that accordingly he would be induced a permanent mental disorder causing loss of working capacity and disablement. Therefore, the Supreme Court endorsed that the amounts covering compensation for disablement and loss of working should not be reduced on "own fault" considerations.

As to the applicant's claim covered by Section 1018a, Subsection 2 cf. Subsection 1, the majority of the Supreme Court (three judges) stated:

> "We find that by participating in the papaya project and by his attitude shown during part of the detention period, notably by having actively opposed the investigation of the case, [the applicant] is thereby excluded from obtaining compensation for these claims pursuant to Section 1018a, Subsection 3 of the Administration of Justice Act."

A minority of two judges stated:

> "When assessing the 'own fault' shown by [the applicant], regard must be had to the difficult situation he was facing and to the severity of the measure [he was subjected to], thus in our view [own fault] should not influence the compensation to be awarded to cover lost earnings as to the period after 12 October 1995 or non-pecuniary damage as to the period after 26 September 1995. The case contains no such special circumstances, which can justify a deviation from the administrative rates fixed to cover non-pecuniary damage.

Otherwise agreeing with the High Court's reasoning concerning each of the claims we find that the applicant, in addition to compensation for loss of working capacity and disablement, be granted DKK 250,000 covering lost earnings and DKK 106,800 covering non-pecuniary damage."

B. Relevant domestic law

The relevant provisions of the Administration of Justice Act read as follows at the relevant time:

Section 762

1. A suspect (*en sigtet*) may be detained on remand when there is a reasonable ground for suspecting that he has committed an offence which is subject to public prosecution, provided that under the law the offence may result in imprisonment for one year and six months or more, and

(i) according to information received concerning the suspect's situation, there are specific reasons for assuming that he will evade prosecution or execution of judgment, or

(ii) according to information received concerning the suspect's situation, there is specific reason to fear that, if at large, he will commit a new offence of the nature described above, or

(iii) in the circumstances of the case, there are specific reasons for assuming that the suspect will impede the investigation, in particular by removing evidence or by warning or influencing others.

2. ...

3. Detention on remand may not be imposed if the offence can be expected to result in a fine or in light imprisonment (*hæfte)* or if the deprivation of liberty will be disproportionate to the interference with the suspect's situation, the importance of the case and the sanction expected if the suspect is found guilty.

Section 770a

1. At the request of the police the court may decide that a detained shall be totally or partially excluded from association with other inmates (solitary confinement) if

(i) the detention on remand was decided pursuant to Section 762, Subsection 1 (iii), and

(ii) the purpose of the detention on remand requires solitary confinement in order to prevent the suspect from influencing co-suspects though other inmates or from influencing others by threats or in another similar way.

2. Totally solitary confinement may not be imposed for a continuous period of more than eight weeks unless the charge relates to an offence which, under the law, may result in imprisonment for six years or more.

Section 770b

Solitary confinement may not be initiated or continued if the purpose thereof can be fulfilled by less radical measures or if the measure is disproportionate to the importance of the case and the sanction to be expected if the suspect is found guilty. Decisions on solitary confinement must also take into account the special potential strain on the suspect owing to his youth or physical or mental weakness.

Section 1018a

1. Any person who has been arrested or held in custody as part of a criminal prosecution is entitled to compensation for the damage suffered thereby if the charges are withdrawn or the accused is acquitted...

2. Even if the conditions for granting compensation under subsection 1 are not satisfied, compensation may be granted if the deprivation of liberty cannot be considered proportionate to the outcome of the prosecution, or if it is found unreasonable for other particular grounds.

3. The compensation may be reduced or refused, if the person charged has given rise to the measures himself.

C. The findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The CPT visited Denmark from 2 to 8 December 1990. With regard to solitary confinement it found *inter alia* the following (CPT/Inf (91) 12):

136. ... at the Western Prison the CPT's delegation was able to observe at first hand the practice of the solitary confinement of remand prisoners ordered by judicial decision. Numerous allegations were made as regards the adverse effects of such confinement. The CPT wishes to underline that, in certain circumstances, solitary confinement could amount to inhuman and degrading treatment, and that in any event all forms of solitary confinement should be as short as possible. The question of solitary confinement is currently being examined by the Danish authorities. The CPT, for its part, has formulated several recommendations designed to strengthen the protection of prisoners in this area. Emphasis is placed in particular on the importance of the respect of the principle of proportionality between the requirements of the investigation and placement in solitary confinement (a measure which can have very harmful consequences for the persons concerned), of an effective periodic judicial review of the solitary confinement, and of the proper medical examination of a prisoner subject to such a measure.

The CPT also visited Denmark from 29 September to 9 October 1996. Its findings with regard to solitary confinement, and the condition of the Western Prison were the following (CPT/Inf (97) 4):

3. Solitary confinement of remand prisoners by court order

54. In the course of its ongoing dialogue with the Danish authorities, the CPT has stressed that all forms of solitary confinement without appropriate mental and physical stimulation are likely in the long term to have damaging effects, resulting in deterioration of mental faculties and social abilities. It has paid particular attention to the solitary confinement of remand prisoners by court order, which can continue for extended periods.

55. The Danish authorities have long recognised the importance of this subject and, in 1990, the Minister of Justice commissioned a research project to examine "any possible harmful effects of being remanded in custody in solitary confinement". The results of that research were published, in a report entitled "Remand in Custody and Mental Health", in May 1994.

The research team found that: "...remand in custody in solitary confinement versus non-solitary confinement involves the risk of harmful effects on mental health" and that "...there is a greater probability that those in solitary confinement develop mental problems and are transferred to prison hospitals for mental reasons than those who are not placed in solitary confinement". (cf. page 164 of document CPT/Inf (96) 14) However, researchers found no proven link between the length of judicially-ordered solitary confinement and prisoners' mental health.

The report concludes that: "... the harmful effects of solitary confinement are not in general such as to result in abnormalities in the cognitive functions, e.g. concentration and memory". (cf. page 165 of document CPT/Inf (96) 14).

The Criminal Justice Review Committee is currently examining the findings of "Remand in Custody and Mental Health", with a view to re-assessing the rules governing placement in judicially ordered solitary confinement. In addition, the same research team is producing a follow-up study, which is to be published in the form of a supplementary report.

56. The CPT welcomes the fact that the mental health of prisoners in judicially ordered solitary confinement has been the subject of a study. However, it feels bound to point out that, during its 1996 visit, a considerable number of doctors, lawyers, prison staff and other persons who have frequent contact with such inmates expressed considerable surprise at the study's principal conclusion. In their experience, prisoners subjected to lengthy periods of judicially ordered solitary confinement frequently exhibited lapses in concentration, memory loss and impaired social skills. These observations were borne out by the Committee's own findings during its second periodic visit. Many prisoners subject to judicially ordered solitary confinement complained of symptoms including anxiety, depression, inability to concentrate, irregular sleeping patterns, nausea and persistent headaches. In one particular case, the delegation's psychiatric expert was of the opinion that symptoms such as impairment of concentration, depressive mood and suicidal thoughts could be attributed to the inmate's lengthy placement in solitary confinement.

In short, notwithstanding the principal conclusion of "Remand in Custody and Mental Health", the CPT considers that there remain serious grounds for concern about the effects upon remand prisoners' mental health of being placed in judicially-ordered solitary confinement for prolonged periods.

57. In addition to stressing that all forms of solitary confinement should be as short as possible, the CPT's 1991 report recommended that the Danish authorities take steps to ensure that remand prisoners were only placed in solitary confinement in exceptional circumstances which were strictly limited to the actual requirements of the case. It also recommended that there be an effective judicial review of placements in solitary confinement and that, where a placement was prolonged, the reasons for such prolongation be set out in writing (cf. paragraph 29 of document CPT/Inf (91) 12).

In their response, the Danish authorities asserted that Danish law was already in accordance with these recommendations and cited a steady fall in the number of remand prisoners being placed in judicially-ordered solitary confinement.

58. The CPT welcomes the above-mentioned fall. However, the information gathered during the second periodic visit would suggest that - at least in respect of certain types of cases (serious drugs offences, crimes of violence etc.) - the balance between the legitimate requirements of a criminal investigation and the potentially harmful effects of imposing solitary confinement is still not being struck in an appropriate way. As an example, senior police officers, prosecutors and judges with whom the delegation spoke agreed that it would be extremely unusual were solitary confinement not to be sought (and granted) in a case brought under Section 191 of the Administration of Justice Act (which deals with serious drugs offences). It is also noteworthy that a detailed examination of the court transcript of a randomly-selected Section 191 case showed that no specific reasons had been given by the judge for imposing solitary confinement; instead, he had simply cited the statute which authorised him to grant the prosecutor's request.

Furthermore, although it is true that the statistical information which has been supplied by the Danish authorities shows a downward trend in the number of placements in solitary confinement, it also indicates that the average length of solitary confinement has increased. Indeed, in the course of the 1996 visit, the CPT's delegation met a number of prisoners who had been subject to judicially ordered solitary confinement for long periods of time (one for ten months, two for six months and six for three months or more).

59. In the light of the information set out above, the CPT considers that further action is required to ensure that the safeguards in Danish law concerning the placement of remand prisoners in solitary confinement are rendered fully effective in practice. **The CPT recommends that steps be taken to ensure that: - prosecutors are reminded that they should only seek a placement in solitary confinement when this is strictly necessary in the interests of a particular criminal investigation; - on every occasion when the question of whether to impose or prolong solitary confinement is raised before a court, the reasoned grounds for the decision which results are recorded in writing; - prisoners are systematically informed in straightforward language of the reasons for their placement in judicially-ordered solitary confinement; - in the context of each periodic review of the necessity to continue remand in custody, the necessity to continue a placement in solitary confinement is fully considered as a separate issue, bearing in mind the general principle that all placements in solitary confinement should**

be as short as possible. The Committee also invites the Danish authorities to consider introducing a maximum limit on the total period for which a remand prisoner may be placed in solitary confinement.

60. The effect upon remand prisoners of being placed in judicially ordered solitary confinement can be exacerbated by the imposition of prohibitions/restrictions upon their letters and visits. The imposition of such restrictions lies within the sole discretion of the police (although a prisoner may appeal to a court against the imposition of restrictions). In the course of its second visit, the delegation found that the police rarely if ever sought to prohibit letters or visits; however, it was common for remand prisoners' letters to be monitored and their visits supervised. In its report on the first visit, the CPT recommended that the police be given clear instructions on the circumstances in which such prohibitions/restrictions might be imposed and required to state the reasons in writing for any such measures. This recommendation has not been implemented by the Danish authorities, who consider that the Administration of Justice Act already provides sufficient safeguards in this respect.

In the view of the CPT, the current system of police-imposed restrictions upon letters and visits still does not adequately ensure that the measures adopted in a given case will be strictly proportionate to the needs of the criminal investigation involved. Accordingly, **the Committee recommends that the Danish authorities take steps to implement its 1991 recommendation on this subject without further delay. The CPT also recommends that, in the context of each periodic review by a court of the necessity to continue remand in custody, the question of the necessity for the police to continue to impose particular restrictions upon a remand prisoner's visits and letters be considered as a separate issue.**

61. As regards the question of activities for remand prisoners placed in judicially-ordered solitary confinement, the Committee was pleased to note that the Ministry of Justice fully agrees with the CPT's view that persons in solitary confinement should be provided with access to purposeful activities and appropriate human contact in order to counteract the effects of being placed in solitary confinement (cf. page 165 of document CPT/Inf (96) 14). During the second periodic visit, the delegation noted that efforts were being made to achieve this objective in the establishments visited. **The CPT recommends that the Danish authorities pursue their efforts in this respect.**

4. Conditions of detention in general

... b. the Western Prison in Copenhagen

i. introduction

64. Since the CPT's first visit to the Western Prison in 1990, the establishment has become the reception facility for all of the Copenhagen Prisons (a role previously filled by the Police Headquarters Prison, cf. paragraph 62, above); the Western Prison now has a turnover of between 8,000 and 10,000 inmates per year. With an official capacity of 439, on the first day of the 1996 visit the establishment was holding 426 inmates. (As compared to some 403 (with an official capacity of 430) at the time of the first periodic visit).

ii. material conditions of detention

65. The basic characteristics of the cells at the Western Prison were described in the CPT's report on its first periodic visit (cf. paragraph 40 of document CPT/Inf (91) 12). A considerable amount of renovation work has been carried out at the establishment since 1990. All of the cells in the prison's Eastern Wing were renovated between 1990 and 1992. Renovation of the Southern Wing began in 1993 and is due to be completed (with the installation of new cell windows and re-painting of the cells) during 1997. Nevertheless, at the time of the second periodic visit, a number of the cells seen by the CPT's delegation (especially in the Southern Wing) were dilapidated and in poor decorative order. Inevitably, the very high turnover of inmates has a negative impact upon the establishment's general state of repair. This in turn means that particular attention must be paid to maintaining the cellular accommodation in a decent condition. **The CPT recommends that a very high priority be given to completing the scheduled renovation work at the Western Prison and that steps be taken to ensure that the programme of ongoing maintenance of the cells is more closely geared to the degree of wear-and-tear to which they are now subjected.**

iii. regime

66. The CPT was concerned to note that, at the time of its delegation's 1996 visit, the regime offered to inmates at the Western Prison was less developed than had been the case in 1990. In particular, following a recent spate of inter-prisoner attacks (cf. paragraphs 51 to 53 above), the Governor had suspended unsupervised association and closed the on-wing common rooms which had been set aside for that purpose. As an alternative, prisoners were being offered the opportunity to apply for association periods with one other prisoner in a cell. The number of prisoners participating in education, work and sports activities also left something to be desired..

67. The CPT accepts that it is not an easy task to organise meaningful regime activities in a remand prison with a turnover of up to 10,000 inmates per year. That task is even more difficult in an establishment - such as the Western Prison - which is also plagued by the problem of inter-prisoner intimidation/violence. However, the measures necessary to protect prisoners who are genuinely vulnerable should not be such as to erode the quality of the regime offered to all inmates. In the view of the CPT, whilst the suspension of unsupervised association at the Western Prison may serve to prevent the most obvious forms of inter-prisoner intimidation/violence, it is unlikely to prove other than a short-term palliative for that problem. Such a measure could easily lead to a more widespread degeneration of the atmosphere within the establishment. Effective action designed to tackle inter-prisoner violence requires enhanced staff supervision of regime activities such as association, rather than their wholesale withdrawal. More generally, the Committee wishes to recall that the overarching objective should be to ensure that all prisoners - including those on remand - can spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activities of a varied nature (group association activities, education, sport, work with vocational value). **It recommends that the Danish authorities take steps to enhance the regime offered to prisoners at the Western Prison in Copenhagen in the light of the above remarks.**

68. The CPT's delegation was also concerned to find that there had been no improvement in the outdoor exercise areas for prisoners subject to solitary confinement since its 1990 visit (cf. paragraph 47 of document CPT/Inf (91) 12). The facilities concerned still failed to offer prisoners sufficient space within which to exert

themselves physically. The Danish authorities have themselves recognised that there is a need to improve outdoor exercise facilities for prisoners in solitary confinement at the Western Prison. However, they have advanced that "because of the limited space available in relation to the number of prisoners in solitary confinement" it has not yet been possible to improve those facilities (cf. page 169 of document CPT/Inf (96) 14). The CPT wishes to reiterate that all prisoners in solitary confinement at the Western Prison should benefit from proper, daily, open-air exercise. **The CPT recommends that the Danish authorities take appropriate steps in order to meet this requirement**; a measure which should be possible given the relatively generous space available within the Western Prison's secure perimeter.

CPT visited Denmark again from 28 January to 4 February 2002. With regard to solitary confinement CPT found as follows (CPT/Inf (2002) 18):

"36. The issue of solitary confinement (isolation) of remand prisoners by court order in the interests of the investigation has featured prominently in the ongoing dialogue between the CPT and the Danish authorities. The Committee has stressed that all forms of solitary confinement without appropriate mental or physical stimulation are likely in the long term to have damaging effects, resulting in deterioration of mental faculties and social abilities (cf. CPT/Inf (97) 4, paragraph 54).

37. The CPT is pleased to note that the legal provisions on placement in solitary confinement by court order which entered into force in July 2000 (cf. paragraph 29) meet many of the Committee's requirements on this subject. In particular, a court ruling to the effect that a remand prisoner be segregated must be reasoned. The initial period of solitary confinement may not exceed two weeks but can be extended for successive periods of four weeks; only in exceptional cases can solitary confinement last more than three months. (Cf. Articles 770c and 770d of the Administration of Justice Act.)

Moreover, the overall use of solitary confinement by court order has consistently decreased in recent years; it has halved since the entry into force of the above-mentioned provisions (from 11.3% in 1999 to 5.1% in 2001). The average duration of such measures has apparently also diminished and very rarely exceeds three months.

The CPT welcomes these developments. Nevertheless**, it would be desirable for the Administration of Justice Act to include a maximum limit for the duration of solitary confinement of remand prisoners by court order** (cf. CPT/Inf (97) 4, paragraph 59).

38. It remains the case that prisoners subject to court-ordered solitary confinement are locked in their cells for 23 hours per day and that out of cell time (outdoor exercise) involves very little human contact. As had been the case during previous visits, the CPT's delegation received many complaints about the short and long term negative effects of isolation on the mental health of the prisoner concerned. It should be recalled, in this context, that after the 1996 visit, the CPT recommended that the Danish authorities pursue their efforts to provide the remand prisoners concerned with access to purposeful activities and appropriate human contact (cf. CPT/Inf (97) 4, paragraph 61).

The CPT recommends that, in compliance with Article 776 of the Administration of Justice Act, rules be adopted and implemented without delay to ensure that prisoners held in isolation have increased staff contact and access

to visits, individual work and teaching, and are offered regular and longer conversations with chaplains, doctors, psychologists and other persons.

39. Despite previous recommendations by the CPT, at the time of the 2002 visit, the imposition of restrictions (supervised weekly visits limited to 30 minutes, withholding or monitoring of correspondence, prohibition of telephone calls) continued to lie within the sole discretion of the police, who had received no instructions on the circumstances under which such restrictions can be applied. Further, the courts do not consider separately the need for the police to impose restrictions though, as regards some matters, the decisions taken by the police can be reviewed by the courts on appeal. (Cf. Articles 771, 772 and 773 of the Administration of Justice Act). These restrictions, which were applied to the vast majority of remand prisoners, were particularly resented by prisoners in solitary confinement.

It might be added that many prisoners perceived solitary confinement and restrictions on contacts with the outside world as a means of pressure to make them confess; some prisoners alleged that the police had plainly stated that those measures would be eased or lifted if they cooperated. It would appear that it was not uncommon for confessions to be immediately followed by the discontinuation of such measures.

To sum up, in the absence of appropriate procedural safeguards, at present there is still no guarantee that a proper balance is being struck between the legitimate requirements of the criminal investigation and the imposition of restrictions. Consequently, the CPT cannot agree with the Danish authorities' view that the existing legal provisions are adequate (cf. CPT/Inf (97 14, R.17). **The CPT calls upon the authorities to implement, without further delay, its recommendations on this subject, namely: that the police be given detailed instructions as regards recourse to prohibitions/restrictions concerning prisoners' correspondence and visits; that there be an obligation to state the reasons in writing for any such measure; and that, in the context of each periodic review by a court of the necessity to continue remand in custody, the question of the necessity for the police to continue to impose particular restrictions upon a remand prisoner's visits and letters be considered as a separate issue** (cf. CPT/Inf (91) 12, paragraph 29 and CPT/Inf (97), paragraph 60)."

COMPLAINT

The applicant complains that the Danish authorities subjected him to a treatment contrary to Article 3 of the Convention since they detained him on remand in solitary confinement from 14 December 1994 until 28 November 1995 allegedly in spite of being aware that solitary confinement damages the mental health of a person.

THE LAW

The applicant was subjected to solitary confinement. In this respect he invokes Article 3 of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Government maintain that in general there is no basis for claiming that pre-trial detention in solitary confinement as provided for by Danish law constitutes torture in contravention of Article 3 of the Convention. More specifically they submit hat the applicant's detention on remand in solitary confinement, which lasted eleven month and fourteen days was not in breach of the said provision.

There had been reasonable grounds for suspecting that the applicant had committed a very serious crime that might have resulted in prolonged imprisonment, and solitary confinement was necessary to prevent the applicant from impeding the police investigation. Moreover, the applicant himself gave rise to a considerable extent to the duration of the pre-trial detention in solitary confinement by maintaining until 26 September 1995 his false statement, as agreed with the other co-accused, PL, and by construing false diary notes in support thereof. The solitary confinement had been lifted as soon as the applicant could no longer influence the investigation, notably through communication with co-accused in order that they harmonise their statements.

Furthermore, the Government submit that the authorities did not know, nor could have known that the applicant was harmed by being detained in solitary confinement. The applicant's state of health was effectively monitored during the whole period, when he was detained in solitary confinement. In this respect they recall *inter alia* that the applicant was attended to forty-three times by a nurse and twenty-seven times by a doctor. As stated by the chief consultant of the Copenhagen Prisons on 2 October 1998, on the basis of the monitoring of the applicant, he had at no time been found to be mentally ill or psychotic. Also, both the High Court and the Supreme Court expressly found that the applicant had been adequately treated during his pre-trial detention. The fact that it turned out subsequently that the applicant in fact had incurred a mental disorder in the form of a psychosis and that the pre-trial detention in solitary confinement was the main reason therefor, does not mean, in the Government's opinion, that the solitary confinement should be deemed contrary to Article 3 of the Convention with retroactive effect.

In addition, they point out that the solitary confinement did not imply totally isolation from other people. The applicant had daily contact with the prison staff and regularly visits by e.g. nurses, doctors, a welfare worker, his counsel, and others from the outside world, although the latter took place under surveillance.

Finally, the Government note that the applicant in fact chose to remain in voluntary solitary confinement in the period from 28 November until 12 December 1995.

The applicant disagrees. He maintains that while detained in solitary confinement the medical monitoring of him had been insufficient, notably in that the examinations failed to aim at ascertaining whether a mental disorder was developing. Thus, he alleges that during his time in the Western Prison no psychiatric examinations as such had been carried out in this respect.

Moreover, as to the account given by the Western Prison in the beginning of October 1998 on the monitoring of him while in solitary confinement the applicant points out that this account was submitted after the City Court in its judgment had expressed a very critical opinion with regard to the said monitoring. Thus, it was only after the passing of the judgment by the first instance court in the compensation proceedings that these very categorical statements were made by the Western Prison.

Moreover, he notes that the Western Prison's account on the monitoring of him did not include statements by the school principal and the prison chaplain, who also had regularly contact with him.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of facts and law under the Convention, the determination of which should depend on an examination of the merits.

The Court concludes therefore that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President