

United Nations Study on Violence against Children

Response to questionnaire received from the
Government of the Kingdom of DENMARK

**United Nations Secretary-General's Study on
Violence against children**

RESPONSE TO QUESTIONNAIRE

August 2004

The Government of Denmark is pleased to provide below its response to the questionnaire on violence against children.

A general reference is made to Denmark's third report to the UN Committee on the Rights of the Child on measures taken to implement the rights recognized in the UN Convention of 20 November 1989 on the Rights of the Child. The report contains a very detailed description of the Danish measures taken to improve children's living conditions in Denmark.

The information provided below should be seen as additional to the information contained on the third report.

I. Legal framework

International human rights instruments

Question 1

In august 2003, Denmark submitted the third report to the UN Committee on the Rights of the Child on the measures taken to implement the rights recognized in the UN Convention of 20 November 1989 on the Rights of the Child.

The report presents an overview of the measures taken in the reporting period to improve children's living conditions in Denmark. In addition, the report includes relevant statistical material and other objective information of importance for the practical implementation of the Convention in Denmark.

Basically, the report covers the period 1998 to 2002. However, the description of current legislation has been updated to the end of March 2003. Where possible, the report also includes information about legislation adopted later as well as future measures whose final outcome may depend on the passing of a bill or the completion of an examination, but which are nevertheless estimated to serve as illustration of current political trends in a given area.

The Convention on the Rights of the Child has further more had the effect, that the measures in the chapters on Social Service directed at children and young persons with special needs in the Consolidation Act on Social Services can be applied to any child resident in Denmark, (http://www.sm.dk/lovgivning/retskilder/Dokumenter/ENG_SocialServices.htm) instead of only children who are lawfully resident in Denmark. The measures can be applied in order to secure and respect the rights given to children in the Convention on the Rights of the Child.

This means that children who have been or are at risk of being subjected to violence can be offered help according to the chapters on Social Service to children and young persons with special needs in the Consolidation Act on Social Services regardless of whether they are lawfully resident in Denmark or not.

The nature of the help will depend on the need in each specific case. The possibilities according to the chapters on Social Service to children and young persons with special needs in the Consolidation Act on Social Service are rather wide; see the response to question 2-4.

On 27 August 2002, Denmark ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

On 24 July 2003, Denmark ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Denmark has provided the legislative basis for ratifying the optional protocol by adopting Act No. 228 of 2 April 2003 to amend the Criminal Code, the Adoption Act and the Administration of Justice Act (on child pornography, sexual abuse of children and legal prosecution of sexual abuse of children, etc.).

No information is available on cases concerning violence against children in which Danish courts or tribunals have referred to international or regional human rights standards. This does not imply, however, that there are no such cases, but an answer will demand a complete study of all criminal cases concerning violence.

Legal provisions on violence against children

Question 2

The Danish Criminal Code, order no. 814 of September 30, 2003 (Straffeloven) applies irrespective of the environment in which the punishable act is committed.

For further information to the following answers, see Denmark's third report, paragraph IX.D and IX.E.

Sexual offences

Pursuant to the Criminal Code section 210, any person who has sexual intercourse with a relative below him in lineal descent shall be liable to imprisonment for a term not exceeding six years. Section 210(2) prescribes, that any person who has sexual intercourse with a brother or a sister shall be liable to imprisonment for a term not exceeding two years. The penalty may be remitted if a person has not reached the age of 18. These provisions shall similarly apply in the case of sexual relations between two persons of the same sex, and in case of sexual relations other than intercourse.

Any person, who enforces sexual intercourse by violence or under the threat of violence, shall be guilty of rape and liable to imprisonment for a term not exceeding eight years. To place a person in a position where that person is unable to resist the act shall be equivalent to violence. If the rape has been of a particularly dangerous nature, or in particularly aggravating circumstances, the penalty may be increased to imprisonment for a term not exceeding twelve years, cf. section 216.

Any person who is employed in or in charge of a prison, rehabilitation centre, children's or young person's home, hospital for treatment of mental disorders, institution for the mentally deficient or any other similar institution, and who has sexual intercourse with any person who is an inmate of the same institution shall be liable to imprisonment for a term not exceeding four years, cf. section 219.

Any person who, by grave abuse of the subordinate position or economic dependence of another person, has extra-marital intercourse with that person shall be liable to imprisonment for a term not exceeding one year or, if the person is under 21 years of age, to imprisonment for a term not exceeding three years, cf. section 220.

Section 222 prescribes, that any person who has sexual intercourse with a child under the age of 15 shall be liable to imprisonment for a term not exceeding eight years. If the child is under the age of 12, or if the perpetrator has enforced the sexual intercourse by coercion or by intimidation, the penalty may be increased to imprisonment for a term not exceeding twelve years.

Section 223 prescribes, that any person who has sexual intercourse with a person under the age of 18 who is his adopted child, step-child or foster child, or who has been entrusted to him for instruction or education, shall be liable to imprisonment for a term not exceeding four years. The same penalty shall apply to any person who, by gravely abusing superior age or experience, induces any person under the age of 18 to sexual intercourse.

Any person, who, as a client by payment or with promise of payment, has sexual intercourse with a person under the age of 18, shall be liable to a fine or to imprisonment for a term not exceeding two years, cf. section 223a.

The abovementioned provisions shall also apply in connection with sexual relations other than sexual intercourse and with sexual relations with a person of the same sex, cf. sections 224 and 225.

Section 232 prescribes, that any person who by obscene behaviour violates public decency or gives public offence shall be liable to a fine or imprisonment for a term not exceeding four years.

According to section 94(4) of the Criminal Code, limitation in respect of criminal liability in cases of sexual abuse of children will not apply until the victim has turned 18 years, at the earliest. This special extension of the term of limitation, introduced with effect from 1 July 2000, applies to all cases of sexual abuse where a child victim, due to a close or otherwise special relationship with the abuser, may feel pressed to keep silent about the abuse.

Child pornography

According to section 230, any person, who records obscene photographs, films or similar objects of a person under the age of 18 with the intention to sell or otherwise disseminate the material, shall be liable to a fine or to imprisonment for a term not exceeding two years. Under particularly aggravating circumstances the penalty may be increased to imprisonment for any term not exceeding six years. Aggravating circumstances are defined as referring in particular to cases where the life of the child has been put in danger, where use of gross violence has been made, or where the child has suffered grave injury or where the recording is of a systematic or organised character.

Pursuant to section 235, any person, who disseminates obscene photographs, films or similar objects of a person under the age of 18, shall be liable to a fine or to imprisonment for a term not exceeding two years. Under aggravating circumstances the penalty may be increased to imprisonment for a term not exceeding six years. Aggravating circumstances are defined as referring in particular to cases where the life of the child has been put in danger, where use of gross violence has been made, or where the child has suffered grave injury or where the recording is of a systematic or organised character. Section 235(2) prescribes, that any person, who possesses or for a payment becomes acquainted with obscene photographs, films or other similar objects of a person under the age of 18 years, is liable to a fine or to imprisonment for a

term not exceeding one year. Section 235(2) does not apply for the possession of obscene photographs of a person of 15 years or older who has given his or her consent to the possession.

Infanticide

The legislation concerning homicide applies, apart from section 238, whether the victim is an adult or a child.

Section 237 prescribes that any person who kills another person shall be guilty of homicide and liable to imprisonment for a term ranging from five years to life imprisonment.

According to section 238 a mother shall be liable to imprisonment for any term not exceeding four years if she kills her child in the course of or immediately after childbirth, and if she is shown to have acted while in distress, from fear of disgrace or while suffering from consequent weakness, confusion or panic caused by the childbirth. If the crime has only been attempted without injury to the child, the penalty may be remitted.

Section 241 prescribes that any person who through negligence causes the death of another person shall be liable to a fine or imprisonment not exceeding four months or, in aggravating circumstances, to imprisonment for a term not exceeding eight years.

Violence against children

The legislation concerning violence applies, apart from section 251, whether the victim is an adult or a child.

According to section 244 any person who commits an act of violence against, or otherwise attacks the person of others, shall be liable to a fine or to imprisonment for a term not exceeding three years.

According to section 245 any person who commits an assault of a particularly heinous or brutal or dangerous character or who is guilty of cruelty shall be liable to imprisonment for a term not exceeding six years. If such an assault has caused significant damage to another person or to the health of another person, it shall be considered a particularly aggravating circumstance. Any person who, in circumstances other than the above mentioned, cause damage to another person or the health of another person shall be liable to imprisonment for a term not exceeding six years.

According to section 245a any person, who by an assault, with or without consent, cuts away or in any other way removes female external sexual organs fully or partially, shall be liable to imprisonment for a term not exceeding six years.

Provided that an assault is covered by the scope of section 245 or section 245a, and that the assault has been of such a gross character or has caused such serious consequences, that the circumstances are particularly aggravating, the penalty may be increased to imprisonment for a term not exceeding ten years, cf. section 246.

Any person who through negligence inflicts serious harm on the person or health of others shall be liable to a fine or to imprisonment for a term not exceeding four months or under aggravating circumstances with imprisonment for a term not exceeding eight years, cf. section 249.

Pursuant to section 250, any person who reduces another person to a helpless condition or abandons, in such a condition, any person entrusted to his care, shall be liable to imprisonment for a term not exceeding eight years.

According to section 251 any woman who, at the time of her childbirth, exposes her child to serious danger in an unwarrantable manner shall be liable to a fine or to imprisonment for a term not exceeding one year. The penalty may be reduced or remitted if the child survives without having suffered any injury.

Neglect/negligent treatment

According to section 213, any person who, by neglect or degrading treatment, insults his spouse, his child or any of his dependents under the age of 18 or any person to whom he is related by blood or marriage in lineal descent, or who by deliberately evading his duties to maintain or contribute to the maintenance of any such persons, exposes them to distress, shall be liable to imprisonment for a term not exceeding two years.

Pursuant to section 215, any person who removes another person under the age of 18 from the authority or care of his parents or other authorized person, or assists him to evade such authority or care, shall be punishable under the provisions contained in section 261 of the Criminal Code (mentioned below). Any person, who illegally brings the child out of the country, shall be punishable in the same manner.

Any person who, intentionally or through negligence, leaves dangerous weapons or explosives in the hands of a child under 15 or of an insane, mentally deficient or intoxicated person, shall be liable to a fine or to imprisonment not exceeding three months, cf. section 254.

Section 261 prescribes that any person who deprives another person of liberty shall be liable to imprisonment for a term not exceeding four years. If the deprivation of liberty has been effected for the purpose of gain or if it has been of long duration or if it consisted of any person being unlawfully kept in custody as insane or mentally deficient or being enlisted for foreign military service or being taken into captivity or any other state of dependence in any foreign country, the penalty shall be imprisonment in a term not exceeding twelve years. Any person, who through negligence causes a deprivation of liberty of the abovementioned sort, shall be liable to imprisonment in any term not exceeding six months.

Threats

Any person who, in a manner likely to induce in some other person serious fear concerning the life, health or welfare of himself or others, threatens to commit a punishable act, shall be liable to a fine or to imprisonment for a term not exceeding two years, cf. section 266.

The Social Area

In the social area violence against children is prevented and victims can be treated according to the Consolidation Act on Social Service. The measures in the Consolidation Act on Social Service have to be applied according to the need in the concrete case. It makes no difference where the violence takes place.

Supervision: The municipal authority shall supervise the living conditions of children and young persons under 18. The municipal authority shall discharge its supervisory duties in such a manner that it will become aware of any cases requiring special support in respect of a child or young person under 18, at the earliest possible stage.

Individuals' duty of notification etc.: Any person who learns or becomes aware that a child or young person under 18 is being neglected or abused by his/her parents or other persons involved in his/her upbringing or is living under conditions endangering his/her health or development, shall notify the municipal authority.

Persons holding public office or providing public services have an increased duty of notification. They are obliged to notify the municipal authority, when they in the exercise of their duties, learn or become aware of factors giving rise to the presumption that a child or young person under 18 is in need of special support.

Question 3

Act No. 427 of 9 June 2004 amending the Aliens Act (Bill No. L 171 of 20 February 2004), which entered into force on 1 July 2004, introduces a deferred period in connection with reunification with a spouse, if the person living in Denmark within a period of 10 years from

the time of application for family reunification has been convicted of a violent crime against a former spouse or cohabiter.

The act also implies a deferred period in connection with reunification with a child, if the person living in Denmark or this persons spouse or cohabitant within a period of 10 years from the time of application for family reunification has been convicted of a sexual offence or another violent crime against a child.

It should, however, be noted that residence permit will be given in the cases where Denmark is under a treaty obligation to do so or when other special reasons make it appropriate. Thus residence permit may for instance be given if both the child's parents are residing in Denmark and the parent who is not convicted of a sexual offence or another violent crime against a child is unable to take up residence together with the child in another country.

Furthermore, act No. 427 of 9 June 2004 amending the Aliens Act clarifies the obligation for the immigration authorities to always look out for the best interest of the child. Thus a new provision in the Aliens Act specifically states that a child cannot be given permission to be reunited with its parents in Denmark, if reunification is obviously against the best interest of the child. Rejection of family reunification will in such circumstances especially be relevant when the concrete situation for the family member residing in Denmark implies that grave social problems are to be foreseen for the child in Denmark, if the child is given a residence permit.

Lack of care among children of asylum seekers

Families of asylum seekers whose children suffer from lack of care, including neglect and violence, are offered assistance/support or are reported to the local authority responsible for supervision of all children in the municipality. The Danish Red Cross, which operates and administers most accommodation centres in Denmark, carries out supporting measures for these families, sometimes in cooperation with the local authorities.

Report on violence against foreign women and children

In November 2003, the Danish National Organisation of Shelters for Battered Women and their Children published a report “When dreams and hopes turn into nightmares” on violence committed by Danish men against foreign women and children. The report shows that foreign women married to violent Danish men and the children of these women are a particular exposed group in the Danish society. The report is available at the web page for the Danish National Organisation of Shelters for Battered Women and their Children at the following address: http://www.lokk.dk/Daphne/Nar_dromme_LOKK_ENG.pdf.

Prevention: The municipal authority shall ensure that the parents of children or young persons or any other persons having the actual care of a child or a young person are offered free family-related counselling designed to resolve any difficulty and trouble in the family. The municipal authority shall offer such counselling through fieldwork specifically targeted at persons deemed to be in need of counselling due to particular circumstances.

If it is considered to be of material importance, having regard to a child's or young person's special need for support, the municipal authority offers the child or the family different supportive measures. These measures can be to offer practical, professional or other support in the home, offer family treatment e.g. targeted to give the family a better way of communication, placing the child outside the home, to appoint a support person for the child or young person etc. Furthermore, please refer to the response to question 2.

Protection and treatment: If a child has been subjected to violence the relevant measures in the Consolidation Act on Social Services can be used to help that child. E.g. the child can be placed outside the home to protect the child from further violence and/or the family can be offered family treatment. Furthermore, please refer to the response to question 2.

Redress and compensation for child victims of violence: The Compensation from the State to Victims of Crime Act prescribes, that the Danish state will pay damages and compensation for personal injury, caused by an offence committed under the Criminal Code. If the personal injury occurs in connection with helping the police during an arrest or in

connection with acts that are intended to perform a legal private arrest or the prevention of punishable acts, such an injury will also be compensated by the Danish state, cf. section 1.

Question 4

The Criminal Code applies to all the places mentioned in question 4. Furthermore, please refer to the response to question 2

Investigations and examinations: Furthermore, for the benefit of children and young persons in need of special support, the municipal authority shall set up an inter-professional group charged with establishing contact, at an early stage and on a continuous basis, with medical, social, educational, psychological or other professionals. A member of the group shall be designated as the person in charge of coordinating the actions taken in respect of the individual child or young person.

Where it must be assumed that a child or young person is in need of special support, partly due to impaired physical or mental function, the municipal authority shall ensure that the conditions of the child or young person are investigated. In the course of the investigation the municipal authority shall involve professionals who have already knowledge of the conditions of the child or young person and the family. Any such examination shall lead to a reasoned decision as to whether there are grounds for implementing measures and if so the nature of such measures. Furthermore please refer to the response to question 2.

Question 5

According to section 2(2) in the Danish Act on Custody and Access (Lov om forældremyndighed og samvær), a child has a right to solicitude and security. The child should be treated with respect, and may not be exposed to corporal punishment or other violations. If a child is exposed to such violations, the offence is punishable by the Criminal Code (see above under the answers to question 2).

Question 6

There are no provisions in the Criminal Code, which permits the use of corporal or capital punishment as a sentence for crime committed by persons under the age of 18.

Question 7

There is no specific legislation concerning bullying/hazing and sexual harassment of children. In these cases, the Criminal Code will apply.

However, such general provisions are found in the Act on Working Environment (Lov om arbejdsmiljø), the Gender Discrimination Act (Ligestillingsloven) and the Employers and Salaried Employees Act (Funktionærloven).

Question 8

Female genital mutilation

According to section 245a in the Criminal Code any person, who by an assault, with or without consent, cuts away or in any other way removes female external sexual organs fully or partially, is liable to imprisonment for any term not exceeding six years.

Honour Crimes

These offences will be charged according to the provisions in the Criminal Code.

Child Marriage

The Act on the Contraction and Dissolution of Marriage (Lovbekendtgørelse om ægteskabs indgåelse og opløsning), section 1 prescribes, that a person who is under the age of 18 may not contract marriage without the permission of the County Governor's Office (statsamtet).

When giving a young person under 18 permission to marry the County Governor's Office may lay down conditions to the effect that despite the marriage the young person is still a minor and consequently legally incompetent until he or she attains the age of 18.

Pursuant to section 2 of this Act, a person who is under the age of 18 and has not previously been married shall not marry without the consent of the parents. If either of the parents is dead, of unsound mind, mentally deficient or does not share custody or if his statement cannot be obtained without special difficulty or delay, the other parent's consent shall be sufficient.

Provided a marriage is contracted in contravention of the Act on the Contraction and Dissolution of Marriage, the marriage can be annulled, cf. sections 23 and 24. If a contracted marriage generally would fall under the scope of exemption practice, it will not be annulled. Exemptions are usually given to a woman of the age of 15, provided she is pregnant, and also if she has attained the age of 16, and the parties who wish to marry share a residence. Persons at the age of 17 are generally granted exemption. Marriage between anyone younger than 15, will normally be annulled. It has been considered in the literature, that a marriage contracted with a very young person in fact is a nullity.

Harmful or violent traditional practices as e.g. female genital mutilation is addressed in the Consolidation Act on Social Services as all other forms of maltreatment of children. See the answers to questions 2-4 where the rules regarding supervision, notification and prevention etc. are mentioned. To give clear information to all relevant professionals the Danish government published a booklet on female genital mutilation in 2003.

Question 9

According to the principle of territorial jurisdiction settled in the Criminal Code, section 6, acts committed

- 1) within the territory of the Danish state, or
- 2) on board a Danish ship or aircraft, being outside the territory recognized by international law as belonging to any state, or
- 3) on board a Danish ship or aircraft, being within the territory recognized by international law as belonging to a foreign state, if committed by persons employed on the ship or aircraft or by passengers travelling on board the ship or aircraft, shall be subject to Danish jurisdiction. In these cases, the Criminal Code applies whether the punishable act is committed by a Danish

citizen or not, and will protect the children exposed to such acts irrespective of their nationality and citizenship.

Section 7 prescribes, that acts committed outside the territory of the Danish state by Danish national or by a person resident in the Danish state shall also be subject to Danish criminal jurisdiction if the act is committed outside the territory recognized by international law as belonging to any state, provided acts of the kind in question are punishable with a sentence more severe than imprisonment for 4 months, or where acts are committed within the territory of a foreign state, provided that it is also punishable under the law in force in that territory. However, according to section 7, paragraph 3, it is also possible to punish Danish nationals as well as persons resident in Denmark, who perform or who assist in performing female genital mutilation aboard, even when female mutilation is not a crime in the country in which it is performed.

Pursuant to section 8, acts committed outside the territory of the Danish state, shall also fall under Danish criminal jurisdiction, irrespective of the nationality of the perpetrator, if the act violates an obligation which the perpetrator is required by law to observe abroad or prejudices the performance of an official duty incumbent on him with regard to a Danish ship or aircraft.

Question 10

Please refer to the response to question 2

Question 11

The Danish Parliament adopted on 2 April 2003 Act No. 228 to amend the Criminal Code, the Adoption Act and the Administration of Justice Act (on child pornography, sexual abuse of children and legal prosecution of sexual abuse of children, etc.) to provide the legislative basis for ratifying the optional protocol. On 24 July 2003 Denmark ratified the second Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The Ministry of Social Affairs in March 2004 published an action plan on violence against children. Preparing the action plan the Ministry has reviewed the legal framework in the social area.

Question 12

The Danish Ministry of Justice has no immediate information on studies or surveys which have been undertaken to assess the impact of legal measures to address violence against children.

Courts tasked with addressing violence against children

Question 13

There are no specific family or juvenile courts. Cases concerning violence against children are tried as criminal cases by the Danish courts.

The prosecution authority is hierarchic, with the Director of Public Prosecutions (Rigsadvokaten) at the top, the District Attorneys (Statsadvokaterne) and finally the Chief Constables (Politimestrene). The Chief Constable is in charge of the local police force, and attends to the investigation of criminal cases. When a case is considered solved the Chief Constable estimates if the burden of proof can be lifted. If so, an indictment is drafted and sent to the court.

According to the Danish Act of Administration of Justice, order no. 815 of 30 September 2003 (Retsplejeloven) section 719 public indictment is attended by the Chief Constable, unless other provisions in the Danish Act of Administration of Justice prescribes differently.

Pursuant to section 719(2), the District Attorney prosecutes cases that shall be tried by the High Courts (Landsretterne) and cases concerning some of the provisions in the Criminal Code, including sections 237-240.

Minimum age for sexual activity

Question 14

The minimum age for valid consent to sexual activity is 15 years, cf. section 222 as mentioned above under the answers to question 2. This limit applies whether the person concerned is male or female, and whether the sexual activities concerns heterosexual or homosexual activities.

Question 15

The minimum age of marriage is 18 years, cf. section 1 in the Act on Contraction and Dissolution of Marriage. It is possible for the County Governor's Office to grant an exception from the age limit (see above under the answer to question 8).

Sexual exploitation of children

Question 16

See above under the response to question 2.

In addition, section 228 states in the Criminal Code that any person who

- 1) induces another to seek a profit by sexual immorality with others, or
- 2) for the purpose of gain, induces another to indulge in sexual immorality with others or prevents another who engages in sexual immorality as a profession from giving it up, or
- 3) keeps a brothel

shall be guilty of procuring and liable to imprisonment for any term not exceeding four years.

The same penalty shall apply to any person who incites or helps a person under the age of 21 to engage in sexual immorality as a profession, or to any person who abets some other person to leave the country in order that the latter shall engage in sexual immorality as a profession abroad or shall be used for such immorality, where that person is under the age of 21 or is at the time ignorant of the purpose.

Any person who, for the purpose of gain or frequently repeated cases, promotes sexual immorality by acting as an intermediary, or who derives profit from the activities of any person engaging in sexual immorality as a profession, shall be liable to imprisonment for term not

exceeding three years or, in mitigating circumstances, to a fine, cf. section 229. Any person who lets a room in a hotel or inn for the performance of prostitution as a profession shall be liable to imprisonment for term not exceeding one year or, in mitigating circumstances, to a fine.

Pursuant to section 262a in the Criminal Code any person who recruits, transports, transfers, houses or subsequently receives a person, using or following the use of

- 1) unlawful coercion pursuant to section 260 of the Criminal Code, or
- 2) deprivation of liberty pursuant to section 261 of the Criminal Code, or
- 3) threats pursuant to section 266 of the Criminal Code, or
- 4) unlawful induction, corroboration or exploitation, or
- 5) other unseemly conduct

for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs, shall be guilty of trading in human beings and liable to imprisonment for a term not exceeding eight years.

The same penalty shall apply to any person, who, for the purpose of exploitation of the individual through sexual immorality, forced labour, slavery or slavery-like conditions, or removal of organs,

- 1) recruits, transports, transfers, houses or subsequently receives a person under the age of 18 years, or
- 2) renders a payment or other favour to obtain consent to the exploitation from an individual who has guardianship over the victim, and any person who receives such payment or other favour.

Furthermore in the Consolidation Act on Social Services social measures are specified in order to support children, who are victims of sexual exploitation. See the answers to questions 2-4.

For further information, see Denmark's third report, paragraph IX.D and paragraph IX.E.

Pornography and harmful information

Question 17

According to section 230 in the Criminal Code, any person, who records obscene photographs, films or similar objects of a person under the age of 18 with the intention to sell or otherwise disseminate the material, shall be liable to a fine or to imprisonment for a term not exceeding two years. Under particularly aggravating circumstances the penalty may be increased to imprisonment for a term not exceeding six years. Aggravating circumstances are defined as especially cases where the life of the child has been put in danger, where there has been made use of gross violence, or where the child has suffered grave injury or where the recording is of a systematic or organised character.

Pursuant to section 235, any person, who disseminates obscene photographs, films or similar objects of a person under the age of 18, shall be liable to a fine or to imprisonment for a term not exceeding two years. Under particularly aggravating circumstances the penalty may be increased to imprisonment for a term not exceeding six years. Aggravating circumstances are defined as especially cases where the life of the child has been put in danger, where there has been made use of gross violence, or where the child has suffered grave injury or where the recording are of a systematic or organised character. Section 235(2) prescribes, that any person, who possesses or for a payment becomes acquainted with obscene photographs, films or other similar objects of a person under the age of 18 years, is liable to a fine or to imprisonment for any term not exceeding one year. Section 235(2) does not apply for the possession of obscene photographs of a person of 15 years or older who has given his or her consent to the possession.

The children concerned are not criminalized, whether they have given consent or not.

The Danish Police are constantly investigating cases concerning child pornography. By Act no. 441 of 31 May 2000, that changed the Criminal Code and the Administration of Justice Act, the police IT-investigation possibilities were strengthened. The police use the technical measures available and often co-operate with other countries in these cases. In the latest case mentioned

in the press the police found the perpetrators (after tip from a foreign police authority) by tracking their credit cards used to pay for the child pornographic material.

There is no specific legislation that makes it possible for the Danish authorities to create filters, which prevents items containing child pornography from entering Danish sites, servers or private computers. However the private suppliers offer filters to some extent, and private persons can use these if wanted.

Question 18

Pursuant to section 234 in the Criminal Code, any person who sells obscene pictures or objects to a person under the age of 16 shall be liable to a fine.

Children – and others – are furthermore protected by order no. 194 of March 20, 2003 concerning Radio and Television Advertising and Programme Sponsorship. This order protects especially children from injurious information disseminated through radio and TV.

Reporting obligations relating to violence against children

Question 19

According to the Danish Act of Administration of Justice, order no. 815 of 30 September 2003 (Retsplejeloven) section 742, information about crime is to be given to the police, who also attend to the investigation.

Furthermore the reporting obligation is mentioned in the answer to questions 2-4. All citizens have a notification duty. Persons holding public office or providing public services have an increased duty of notification. However, there is no punishable obligation to report crime, which addresses common citizens.

Complaints procedures

Question 20

Regarding children placed outside their own home, in residential care, in institutions with foster parents or in another approved place, complaints about violence taking place at the institution,

foster family e.g., can be directed to the local authority. There are no special procedural demands the complainants most follow. Both the child and its parents have the right to complain to the local authority.

Question 21

According to the Act on Custody and Access, section 2, the person with custody shall take care of the child and may make decisions about its personal circumstances in light of the child's interest and needs.

In general only the holders of custody can complain on behalf of the child. However there can be specific situations, where a child can complain without the consent of the holders of custody. It will depend on an estimate of the character of the individual case and importance for the child, including the age of the child.

Depending on the individual case there can be legal aid available to facilitate submission of complaints, e.g. by a lawyer (paid by applicant).

Question 22

No comments.

Question 23

In cases of sexual exploitation and abuse of children it is not a ground for exemption from punishment that the perpetrator did not know the age of the victim.

Section 226 prescribes, that if the punishable nature of the sexual offences depends on any abnormal mental or physical condition of the violated person or on the age of that person, the perpetrator has acted without knowledge of such condition or age of the person concerned and if, for that reason, the act is not imputable to him as intentional, the penalty to be imposed, if he has acted negligently, shall be proportionally reduced.

There is an express authority in the Administration of Justice Act (sections 731a, 745a and 877a) to admit the submission of video interviews in evidence during a trial and also a provision to the effect that the person suspected or charged will not be permitted to attend a video interview of a child, whereas that person will be given permission to acquire knowledge of the content of the interview subsequently and a possibility to request a renewed interview of the child. By this procedure it is avoided that the child's awareness of the presence of the person suspected or charged will make the child nervous and thus unable or afraid to explain what has happened. The child will also avoid the psychological strain of knowing that the person suspected or charged attends the interview concerning the offence.

Question 24

There is no usual outcome of complaints of violence against children, because it depends on the character of the individual case. It can be punishment of the perpetrators, compensation to the victim, perpetrator rehabilitation etc.

Question 25

Pursuant to the Criminal Code, section 15, acts committed by children under the age of 15 are not punishable.

In general, it shall be a mitigating circumstance that the perpetrator is under the age of 18 when committing the punishable act.

During the last couple of years a number of changes have been made in respect of pre-trial detention, the serving of prison sentences and solitary confinement, and a special juvenile sanction has been introduced

By the amendment act, which entered into force on 1 July 2001, the new juvenile sanction was added to the Criminal Code in the form of a structured, controlled socio-educational treatment programme of two years for young offenders aged 15 – 17 years. This youth sanction makes it

possible to retain a young person for a longer period of time and, at the same time, start a therapy programme, which may put the young person back on track in the longer term.

For further information please refer to Denmark's third report, paragraph IX.G.

II. Institutional framework and resources to address violence against children

Question 26-33

No comments.

Question 34

The recent parliamentary initiatives to address violence against children have been two Acts.

Firstly, Act no. 228 of 2 April 2003 to amend the Criminal Code, the Adoption Act and the Administration of Justice Act concerning child pornography, sexual exploitation of children and criminal prosecution of sexual abuse of children, etc.

Secondly, Act no. 386 of 28 May 2003 to amend the Criminal Code included the insertion of section 245a after which any person, who by an assault, with or without consent, cuts away or in any other way removes female external sexual organs fully or partially, shall be liable to imprisonment for any term not exceeding six years.

Furthermore the Parliament has taken a rather strong interest in the issue of violence against children and has recently both addressed written questions to the Minister of Social Affairs and asked the minister to appear before one of the committees in Parliament to answer questions.

III. Role of civil society in addressing violence against children

Question 35-37

No comments.

IV. Children as actors in addressing violence

Question 38

The Ministry of Social Affairs has established a “Youth Forum”. The purpose of this initiative is to create a platform for children’s participation and to hear what the children have to say about subjects and initiatives from the Ministry of Social Affairs. The forum is organised with 24 youth delegates from 12 – 18 years old, selected through teachers and other contacts all over the land. Its task is to discuss and participate in initiatives concerning children and youths, e.g. action plans on violence against children.

Question 39

No comments.

Question 40

The amount of money given to establish the forum is about ½ million DKK.

V. Policies and programmes to address violence against children

Question 41-44

In August 2003 the Danish government published an action plan on combating sexual abuse of children. The action plan contains a description of existing rules and regulations, initiatives and measures aimed at preventing and combating sexual abuse of children, rehabilitation of sexually abused children and treatment of sexual offenders. The action plan also contains a number of new initiatives, which aim at further strengthening the efforts in the area of protection of children against sexual exploitation.

Chapter 1 of the action plan contains a brief summary of the content of the action plan and lists the initiatives, which the Danish government will take in the different areas covered by the action plan.

Chapter 2 of the action plan contains summaries of recent studies, which have been conducted in the field of sexual abuse of children and chapter 3 gives an account of the preventive rules and regulations, measures and initiatives in the area of sexual abuse of children.

Chapter 4 of the action plan contains guidelines that aim at ensuring that people who work with children professionally, e.g. teachers, and others responsible for child related activities are able to detect signs of sexual abuse and handle a suspicion of sexual abuse correctly.

Chapter 5 of the action plan contains a description of relevant provisions in the Danish criminal code and provisions concerning criminal procedure, which are aimed at protecting sexually abused children during the investigation and prosecution phase, e.g. rules related to the taking of a child's testimony.

Chapter 6 of the action plan lists measures aimed at rehabilitating children who have been sexually abused and chapter 7 of the action plan lists measures aimed at providing offenders with medical or other forms of treatment.

Finally chapter 8 of the action plan contains a brief summary of the most recent international initiatives in this area.

As mentioned the Ministry of Social Affairs in March 2004 published an action plan on violence against children. The action plan addresses the most serious forms of violence and has children between 0-6 as a special target group. The action plan consists of a broad range of initiatives covering the social sector, the health sector and the police. There are no gender-specific provisions in the plan.

In connection with the action plan the Minister of Justice and the Minister of Social Affairs have written to the police, the prosecution services and the municipalities in order to stress the importance of combating child abuse and the necessity of cooperation between authorities in this field.

VI. Data collection, analysis and research

Question 45

No comments.

Question 46

The Danish National Institute of Social Research is conducting a continuing interview study with over 5000 mothers to children born in 1995. The mothers are interviewed every 2-3 years about the child's evaluation and problems and e.g. the use of violence in the upbringing. The study is supported financially by the Ministry of Social Affairs.

Question 47

The Danish National Institute of Social Research has in 2004 published a study on violence against children. The study contained a review of existing statistically information on violence against children and a small-scale interview study with social workers on how the social workers dealt with violence against children. The study was financed by the Ministry of Social Affairs.

Question 48-49

No comments.

Question 50

The proportion of all homicide deaths under the age of 18 is 20-25 %.

Question 51

No comments.

Question 52

The total number of reported cases of violence (sections 244-245) against children is in

2001: 1.662

2002: 1.773

2003: 1.957

There is no information from the year 2000.

Question 53

The Danish Ministry of Justice has no immediate information on the total number of convictions.

VII. Awareness, advocacy and training

Question 54

As part of the earlier mentioned action plan (see question 41) the Ministry of Social Affairs has planned three awareness campaigns. The first has the general public as the target, the second professionals who deal with children, and the third parents.

Question 55

No comments.

Question 56

As part of the earlier mentioned action plan (see question 41) the Ministry of Social Affairs has sponsored material for training teachers and social workers. The material will contain information on how to identify and deal with violence against children.