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**DIGNITY's consultation response to the draft proposal to amend the Danish Sentence Enforcement Act (Limitation of the rights of prisoners serving life and indeterminate custodial sentences)**

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

The draft act, which contains new far-reaching limitations in respect of prisoners serving indeterminate sentences (i.e., Prisoners facing a life sentence in prison or a custodial sentence for the violation of a provision which potentially entails life imprisonment), adversely affects their rights (for example, contact with the outside world) and conditions of detention (closed vs. open prison regime). The government's basic idea is to clamp down hard on this group and tighten the rules for their detention. As stated in the legislative commentaries, it should "also be apparent in the enforcement of the sentence" that they have been given the hardest possible punishment.<sup>1</sup>

The number of prisoners serving life sentences is increasing. The total number of prisoners serving life sentences has been stable with around one or two prisoners sentenced every year. However, in the last year, ten people have been handed life sentences, eight of whom have been sentenced for gang-related killings based on the paragraph relating to gangs in Section 81 a. of the Danish Criminal Code.<sup>2</sup>

In principle, DIGNITY finds it extremely worrying that, in response to cases concerning a *very small number* of prisoners serving life and indeterminate sentences, the government is considering limiting the rights of *all* prisoners serving life and indeterminate sentences during the first ten years of their sentences, including their fundamental right to contact with the outside world and to enter into new relationships. This right is enshrined in international norms and recommendations (see below) and reflects fundamental principles in the Danish

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<sup>1</sup> Legislative commentaries, Introduction, Section 6.

<sup>2</sup> See, for example, U2021.443U.

prison system. Firstly, the normalisation principle,<sup>3</sup> which means that prisoners in Danish prisons should retain all rights (except the right to freedom), and that prisons, as far as possible, should reflect the conditions in society at large cf. Section 4 of the Danish Sentence Enforcement Act. Secondly, the prohibition against discrimination, and here, you can rightly ask why prisoners serving life sentences etc., solely on the grounds of their criminality can be treated less favourably than other prisoners. Thirdly, the rehabilitation principle, according to which it is one of the Danish Prison and Probation Service's main duties to help and support the prisoners to live a criminality-free existence after their release, see Section 3 of the Danish Sentence Enforcement Act.<sup>4</sup> The maintenance and enhancement of close relationships can often, in interaction with the Danish Prison and Probation Service's expertise, can make a positive difference.

DIGNITY believes that the draft act is not in keeping with these principles and that it constitutes a slippery slope. Prisoners' private and family lives should be retained as a basic right, and their contact with the outside world should not be perceived as a privilege coupled with an authorisation requirement and the possibility of disciplinary exemption.

Therefore, DIGNITY urges the government to reconsider the draft act and recommends that any limitation of a prisoner's right to contact with the outside world is based on an individual assessment of the individual's specific circumstances. It could be, for example, that these limitations are imposed for safety reasons.

Furthermore, DIGNITY wishes to bring to the attention of the Ministry the following specific human rights-related problems in relation to the right of prisoners serving life to have contact with the outside world:

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<sup>3</sup> The Council of Europe's recommendation for prisoners serving life sentences (2003), point 4: Prison life should be arranged so as to approximate as closely as possible to the realities of life in the community (normalisation principle), jf. Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners (Adopted by the Committee of Ministers on 9 October 2003 at the 855th meeting of the Ministers' Deputies).

<sup>4</sup> The Danish Prison and Probation Service's Principle Programme (2008). Also, it is stated in Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners: "The aims of the management of life sentence and other long-term prisoners should be... to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release", cf. para 2.

## **1. There has been no judicial assessment of the human rights-related problems**

As the draft act raises a long list of difficult human rights problems, DIGNITY finds it objectionable that the legislative commentaries do not include the Danish Ministry of Justice's position on international human rights norms, including the European Convention on Human Rights (ECHR) and other relevant legal sources which set legal boundaries for regulatory powers and may be significant to the formulation of new legal rules.<sup>5</sup> In accordance with the Guide on Law Quality<sup>6</sup> an account, in outline, should be given of these considerations, therefore DIGNITY urges the Danish Ministry of Justice to add and publish the human rights analysis before the draft act is presented to Folketinget.

## **2. Prisoners have a right to a family life and a social life**

The ECHR establishes that everyone has a right to respect for their private and family lives, cf. Article 8, Section 1. This right also applies to prisoners, however, with the limitations resulting from the detention itself. Thus, a prisoner must have the opportunity to retain a certain degree of contact with the outside world, as emphasised by the European Court of Human Rights.<sup>7</sup> This is also stated in the UN's Standard Minimum Rules for Prisons (the Mandela Rules), cf. rule 58<sup>8</sup>, and the European Prison Rules (Rule 24.5), which states that prisoners must have the opportunity to retain and develop sufficient family relationships in the normal way, and that the prison authorities must assist the prisoners and provide the necessary support to this end.<sup>9</sup> According to the international norms, limitations to contact

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<sup>5</sup> EU law is referred to only briefly, cf. the general comments on the draft act, point 7, page 35.

<sup>6</sup> Vejledning om Lovkvalitet (Guideline on Legislative Quality) No. 9801 of 3 June 2005.

<sup>7</sup> ECHR, *Khoroshenko vs. Russia*, 2015, Section 110.

<sup>8</sup> The provision states that "Prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals: (a) By corresponding in writing and using, where available, telecommunication, electronic, digital and other means; and (b) By receiving visits." See also rules 58(2), 60, 88(2), 106 and 107 which state: From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family. See also the UN's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN's General Meeting, resolution 43/173 of 9 December 1988. See principle 15: Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

<sup>9</sup> Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, *Adopted by the Committee of Ministers on 11 January 2006 and revised and amended by the Committee of Ministers on 1 July 2020*. See also Rule 24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from

with the outside world can only happen following an individual assessment in only in respect of legal considerations, for example, security risks.

The above is reflected in the Danish Sentence Enforcement Act, including in the rules relating to prisoners' right to receive visits, cf. Sections 51-54, to exchange letters cf. Sections 55-56, and to conduct telephone conversations, cf. Section 57.

The draft act changes these standard rights and introduces a new permit scheme applicable, *generally speaking*, to prisoners serving life sentences, the exchange of letters and telephony, cf. new Section 51 a, sub-section 1, 55 a, sub-section 1, and 57 a, sub-section 1.<sup>10</sup> Thus, this group of prisoners, during a 10-year period of detention, must be allowed to have visits, exchange letters and telephone calls, cf. new Section 51 a, sub-section 3, and 57 a, sub-section 3. Violation of the permit rules results in disciplinary sanctions, including, in repeated instances, the removal of the right to visits, letter exchanges and telephony, for a specific period, generally speaking. The draft act mentions that if it involves a relative or persons with whom the prisoner had contact before they were detained, permission will normally be granted, however, it is up to the prisoner serving a life sentence that it involves a "permitted" contact, cf. Section new 51 a, sub-section 6, 55 a, sub-section 6 and 57 a, sub-section 6. If the burden of proof is not discharged, permission will not be granted.

Furthermore, for the same 10-year period, the draft act forbids prisoners serving life sentences from having contact with persons they have gotten to know following their detention. They must not exchange letters, telephone one another or receive visits from such new relationships unless special circumstances favour this, cf. new Section 51 a, sub-section 1-2, Section 55 a, sub-sections 1 and 2 and Section 57, sub-sections 1-2. The legislative commentaries refer to the consideration for the victims' and their relatives' sense of justice and the consideration for those persons with whom the convicted person may enter into a relationship in the future.<sup>11</sup> In the government's view, consideration of such factors implies that such convicted

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these persons. See also the UN's Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN's General Meeting, resolution 43/173 of 9 December 1988. See principle 15: Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

<sup>10</sup> Draft act, page 21 et seq.

<sup>11</sup> Draft act, point 2.3.2.

persons, for a period of 10 years during their sentence may not enter into new relationships.<sup>12</sup>

The crucial judicial question is whether these limitations to all prisoners' serving life sentences right to contact with the outside world is in accordance with the right to a family life etc.

DIGNITY does not believe that these far-reaching limitations to all prisoners serving life sentences, *en masse*, are grounded in any legal consideration that would justify a collective limitation of this right. Therefore, there is a risk that the draft act, in specific cases, can result in the violation of the right to a private and family life. Therefore, DIGNITY urges the Danish Ministry of Justice to further explain its considerations in respect of this right.

### **3. Consequences of discrimination**

The draft act constitutes discrimination between prisoners serving life and indeterminate sentences and other prisoners who are not subject to a permit scheme and can enter into new relationships freely. Furthermore, prisoners serving life sentences, who typically serve between 15-17 years, are compared to other prisoners with a fixed-term sentence of the same length imposed for very serious crimes and who do not have limitations imposed on their contact with the outside world.

DIGNITY questions whether this discrimination is rational and reasonable and we urge the Danish Ministry of Justice to further explain its considerations on the prohibition against discrimination, cf. ECHR, Article 14.

### **4. The use of disciplinary sanctions and the introduction of new punishments is objectionable**

The draft act introduces a new legal basis for imposing disciplinary sanctions for violation of the rules on obtaining permission for visits, exchanging letters and telephone calls, cf. new Section 67, number 10, and goes a step further by introducing a new additional disciplinary sanction in the form of removing all contact with the outside world (via letters, visits or telephone calls) for a specified period cf. new Section 59a,<sup>13</sup> which has been set at four weeks for the first violation

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<sup>12</sup> However, the draft act, in specific cases (for example, if the prisoner has no relatives), refers to the prison authorities' ability to allow visits etc. from persons other than relatives, for example, a visit buddy, cf. point 2.3.3.3.

<sup>13</sup> The provision states that "as a supplement to disciplinary sanctions, cf. Sections 68-70, the Danish Prison and Probation Service authorities can decide that a prisoner who is serving a life sentence in

of the provision and thereafter, as a rule, twice as long for subsequent violations.<sup>14</sup> The punishment is imposed for repeated violations in addition to the existing disciplinary sanction (warning, penalty and punishment cell).

DIGNITY believes that the sanctioning with punishment cells and the introduction of new, additional disciplinary sanctions which, for a period, suspend the right to a private and family life, generally speaking, including with closest family is highly objectionable and in violation of the right to a family life (see above). The right to a family life is a fundamental human right and should not be perceived as a privilege that can be removed through a disciplinary sanction.

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In light of the draft act's undermining of the basic principles for sentence conditions for prisoners serving a life sentence and certain prisoners serving custodial sentences in Danish prisons, the risk of violation of legal norms in specific cases, including the prohibition against discrimination and the right to a private and family life, and the serious consequences for the target group's chances of being rehabilitated, DIGNITY urges the government to reconsider the draft act, and we recommend that any limitation of a prisoner's right to contact with the outside world is based on an individual assessment of the individual's specific circumstances.

We are, of course, available for further comments.

Kind regards

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prison or serving a custodial sentence for the violation of a provision that results in the imposition of a life sentence, and has repeatedly violated Section 51 a, sub-section 1, Section 55 a, sub-section 1, or Section 57a, sub-section 1 must be debarred from having the right to visits, the exchange of letter and telephone calls for a specified period". See the general comments on the draft act, point 2.5.3, page 31.

<sup>14</sup> Legislative commentaries, page 32: (...) in the event of repeated violations, the duration, as a rule, should be set at a period twice as long as the previous period, so that the prisoner is denied contact for 8 weeks for a second violation.

Copy sent to Ina Eliassen, CEO of the Danish Prison and Probation Service.