

PERMANENT MISSION OF DENMARK  
TO THE  
UNITED NATIONS OFFICE AT GENEVA

Enclosures: 2

Ref. 119.K.5.b

The Permanent Mission of Denmark to the United Nations Office at Geneva presents its compliments to the Secretariat of the Subcommittee on Prevention of Torture (United Nations Office of the High Commissioner for Human Rights) and has the honour to refer to its Note Verbale dated 24 September 2008 ref. PG/jr sent on behalf of the Subcommittee on Prevention of Torture (SPT).

The Government of Denmark apologizes for the delay in responding to the above-mentioned note verbale and has the honour to transmit the following information:

In addition to the information provided with the note of 16 October 2007 concerning the appointment of the Parliamentary Ombudsman as Danish National Preventive Mechanism (appended together with the Ombudsman ACT) it is noted that his NPM functions should be seen in continuation of his previous and current comprehensive inspection of places of detention etc. During the period 21 August 2007 - 25 September 2008 the Ombudsman undertook 30 such inspections. The inspection unit of the Ombudsman's office comprises 11 persons in all, but appropriations for additional staff, particular with reference to the NPM functions, have been approved by the Presidium of the Parliament (Folketinget).

The Ombudsman is in the process of drafting an amendment to the Ombudsman's Act, which will enable him also to inspect private institutions as foreseen in OPCAT. The amendment will eventually be submitted to normal legislative procedure.

Further information may be found on the Ombudsman's website [www.ombudsmanden.dk](http://www.ombudsmanden.dk) with summaries in English.

**OHCHR REGISTRY**

**22 DEC. 2008**

Recipients :...*O.P.C.A.T.*...  
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The Permanent Mission of Denmark avails itself of this opportunity to reiterate to the Secretariat of the Subcommittee on Prevention of Torture (United Nations Office of the High Commissioner for Human Rights) the assurances of its highest consideration.

Geneva, 17 December 2008



Secretariat of the Subcommittee on Prevention of Torture  
Office of the High Commissioner for Human Rights  
GENEVA

## **The National Preventive Mechanism of**

### **Denmark**

#### **under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment**

#### **The Parliamentary Ombudsman**

The Ombudsman Institution is anchored in the Constitution of 1953:

“Statutory provision shall be made for the appointment by the Folketing (*the Danish Parliament*) of one or two persons, who shall not be members of the Folketing, to supervise the civil and military administration of the state” [art. 55].

Only one Ombudsman has been appointed at a time.

According to the Ombudsman Act of 1997, the Folketing elects the Ombudsman after each general election [section 1], which is at least every 4 years. In practical terms all ombudsmen have remained in office for as long as they wished. The present Ombudsman, Professor Hans Gammeltoft-Hansen, has been in office since 1987.

The Ombudsman’s jurisdiction covers all parts of the public administration, but not the courts of justice [section. 7].

The Ombudsman is primarily a complaint mechanism, but may take up a matter or general issues for investigation on his own initiative [section. 17].

Section 18 of the Ombudsman Act requires the Ombudsman to inspect any institution or company and any place of employment falling under his competence. The Ombudsman has always undertaken such inspections, but at the adoption of the present Ombudsman Act in 1996 it was presumed by the legislators that he would intensify these inspections on a more systematic basis. The inspections are carried out by a special inspection unit in the Ombudsman’s office.

The inspections cover places such as

- State prisons (including at asylum centres)
- Country gaols and remand centres
- Prison and probation service hostels
- Secure institutions for juvenile offenders/substitutions of custody
- Psychiatric hospitals
- Detentions

- Police waiting rooms, and
- Social care homes

The Ombudsman also has access to military institutions, but deprivation of liberty does not take place at such institutions in Denmark.

In 2006 the Ombudsman undertook 42 initial inspections.

Each initial inspection is followed up. For practical reasons most visits are announced at short notice, but unannounced visits are a possibility, which is used occasionally. The inspectors interview inmates' representatives, staff and inmates, who wish to see them, in private.

Authorities under investigation are obliged *ex officio* to furnish the Ombudsman with any documentation and produce any document etc. that he may demand [section 19].

Although the Ombudsman basically takes a legal approach, he deals not only with legal issues in exercising his inspection function. He covers the entire factual situation often in great detail.

The Ombudsman may express criticism, make recommendations and otherwise state his view of a case [section 22]. If he reveals errors of major importance, he shall report the matter to Folketinget (Legal Affairs Committee) and to the relevant minister or local authority [section 24]. The Ombudsman is required to notify the Folketing and the relevant Minister of any deficiency in legislation [section 12] and he participates in drafting relevant legislation. Only if the Folketing itself has initiated an investigation into an issue does the Ombudsman consider himself precluded from investigating the issue.

The Ombudsman is responsible to the Folketing only and it is the Folketing, which is responsible for financing his activities through its own budget. In the discharge of his functions the Ombudsman is however independent of the Folketing [section 10]. His independence of the executive branch is ensured in common law and never challenged.

The Ombudsman regularly publishes some of his decisions and all his inspection reports on his web site and he submits a public annual report to the Folketing [section 11].

# **The Ombudsman Act**

## **Act No. 473 of 12 June 1996**

### **Chapter 1**

#### *Election, dismissal, etc.*

1. (1) After every general election and when a vacancy occurs, the Folketing shall elect an Ombudsman.  
(2) In the event of the death of the Ombudsman, the Legal Affairs Committee of the Folketing shall determine who shall carry out the functions of the Ombudsman until the Folketing has elected a new Ombudsman.
2. (1) The Ombudsman shall not be a member of the Folketing or a local council.  
(2) The Ombudsman shall be a law graduate.
3. If the Ombudsman ceases to enjoy the confidence of the Folketing, it may dismiss him.
4. (1) Giving six months' notice, the Ombudsman may tender his resignation, effective from the end of a month.  
(2) The Ombudsman shall retire at the end of the month in which he attains the age of 70.
5. The Folketing shall determine the salary of the Ombudsman. The Ombudsman shall be entitled to severance pay and pension under provisions corresponding to those of Sections 3–7 of the Remuneration and Pension of Ministers Act.
6. (1) If the Ombudsman is discharged without notice, he shall retain his salary for three months from the end of the month in which he retires. If the Ombudsman dies before the expiry of that period, any salary outstanding at the time of his death shall be payable to his spouse or, if he leaves no spouse, to any children of his being entitled to children's pension.  
(2) For the duration of the period of entitlement to salary, severance pay or pension, shall not be paid.  
(3) Section 3 (2) of the Remuneration and Pension of Ministers Act shall apply by analogy to the salary payable under Subsection (1) of this Section.

### **Chapter 2**

#### *The jurisdiction of the Ombudsman*

7. (1) The jurisdiction of the Ombudsman shall extend to all parts of the public administration.  
(2) The jurisdiction of the Ombudsman shall not extend to the courts of justice.  
(3) The Ombudsman shall not consider complaints against boards which in a satisfactory way make decisions on disputes between private parties, even if the board concerned in other contexts is regarded as part of the public administration.

(4) If companies, institutions, associations, etc., administratively fall under the Public Administration Act, the Access to Public Administration Files Act or the Public Administration Data Protection Act, the Ombudsman may determine that his jurisdiction shall extend to those bodies to the same extent.

8. When assessing the local government part of the public administration, the Ombudsman shall take account of the special conditions under which local government functions.

9. The jurisdiction of the Ombudsman shall extend to the Established Church, except in matters which directly or indirectly involve the tenets or doctrines of the Church.

### **Chapter 3**

#### *The relationship with the Folketing*

10. The Ombudsman shall be independent of the Folketing in the discharge of his functions. The Folketing shall lay down general rules governing the activities of the Ombudsman.

11. (1) The Ombudsman shall submit an annual report on his work to the Folketing. This report shall be printed and published.

(2) If the Ombudsman reports a matter to the Folketing, a minister or local authority, cf. Section 24, or if he mentions a case in his annual report, he shall state what the person or authority concerned pleaded in defence.

12. If any deficiencies in existing laws or administrative regulations come to the attention of the Ombudsman, he shall notify the Folketing and the responsible Minister thereof. In the case of deficiencies in local authority bylaws the Ombudsman shall notify the local authority concerned.

### **Chapter 4**

#### *Lodging a complaint*

13. (1) Any person may lodge a complaint with the Ombudsman against the authorities referred to in Section 7–9. Any person deprived of his personal liberty shall be entitled to address written communication to the Ombudsman in a sealed envelope.

(2) A complainant shall state his name.

(3) A complaint shall be lodged within twelve months of the commission of the act complained of.

14. A complaint against a decision which may be appealed to another administrative authority cannot be lodged with the Ombudsman until that authority has made a decision on the matter.

15. Complaints about the treatment of persons deprived of their personal liberty through any procedure other than the administration of criminal justice shall be referred to the Supervisory Board appointed by the Folketing in pursuance of Section 71 (7) of the

Constitution. The Supervisory Board may invoke the assistance of the Ombudsman in the consideration of such complaints if the latter are made against any person falling within his jurisdiction.

**16. (1)** The Ombudsman shall determine whether a complaint offers sufficient grounds for investigation.

**(2)** If a complaint gives the Ombudsman no occasion for criticism, recommendations, etc., the case may be closed without submission to the authority concerned for a statement, cf. Section 20 (1).

## **Chapter 5**

### *Initiating own-initiative investigations and inspection*

**17. (1)** The Ombudsman may take up a matter for investigation on his own initiative.

**(2)** The Ombudsman may undertake general investigations of the case processing of an authority.

**18.** The Ombudsman may inspect any institution or firm and any place of employment which fall within the jurisdiction of the Ombudsman.

## **Chapter 6**

### *The case investigation*

**19. (1)** Authorities which fall within the jurisdiction of the Ombudsman shall be under obligation to furnish the Ombudsman with such information and to produce such documents, etc., as he may demand *ex officio*.

**(2)** The Ombudsman may demand written statements from authorities which fall within his jurisdiction.

**(3)** The Ombudsman may subpoena persons to give evidence in court on any matter of importance to his investigations. This procedure is subject to the rules laid down in Chapter 68 of the Administration of Justice Act.

**(4)** The Ombudsman may inspect any place of employment and shall have access to all premises.

**20. (1)** The Ombudsman shall not express criticism, make recommendations, etc., until the authority or person concerned has had an opportunity to make a statement.

**(2)** The Ombudsman may determine that a submission letter, a preliminary statement, a preliminary explanation or a preliminary report on a project which the Ombudsman has taken up on his own initiative, cf. Section 17 (2), shall not be subject to disclosure under the Access to Public Administration Files Act and the Public Administration Act until the authority concerned has had an opportunity to make a statement on it.

## **Chapter 7**

### *Assessment and reaction*

- 21.** The Ombudsman shall assess whether any authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties.
- 22.** The Ombudsman may express criticism, make recommendations and otherwise state his views of a case.
- 23.** The Ombudsman may recommend that a complainant be granted free legal aid in connection with any matter falling under his jurisdiction.
- 24.** If the Ombudsman's investigation of a case reveals that the public administration must be presumed to have committed errors or derelictions of major importance, he shall report the matter to the Legal Affairs Committee of the Folketing and to the responsible minister or the local authority concerned.
- 25.** Actions brought against the Ombudsman in civil procedure form in consequence of his decisions, statements, etc., may be dismissed at the demand of the Ombudsman.

## **Chapter 8**

### *Staff, organisation, competence to act., etc.*

- 26.** The Ombudsman shall engage and dismiss his own staff. The number, salaries and pensions of his staff shall be fixed in accordance with the Rules of Procedure of the Folketing. The expenditure incident to the office of the Ombudsman shall be charged to the budget of the Folketing.
- 27.** The Ombudsman may order that one of his staff members shall carry out his functions temporarily.
- 28.** The Ombudsman shall observe secrecy in any matter coming to his knowledge in the performance of his functions, provided that secrecy is necessary *ipso facto*. The staff of the Ombudsman shall be bound by the same obligation.
- 29.** (1) If a case involves circumstances which may give rise to doubt about the impartiality of the Ombudsman, he shall advise the Legal Affairs Committee of the Folketing. The Committee shall determine who shall carry out the Ombudsman's functions.  
(2) The Ombudsman shall not, except with the consent of the Legal Affairs Committee of the Folketing, hold any office in public or private firms, undertakings or institutions.
- 30.** The designation ombudsman or any other designation which may be confused therewith shall not be used except when authorised by an Act passed by the Folketing.

**Chapter 9**  
*Coming into force, etc.*

**31. (1)** This Act shall enter into force on 1<sup>st</sup> January 1997.

**(2)** Concurrently, the Ombudsman Act shall be repealed, cf. consolidated Act No. 642 of 17 September 1986, Directive No. 48 of 9 February 1962 of Directives for the Ombudsman and Section 779 of the Administration of Justice Act, cf. consolidated Act No. 905 of 10 November 1992, as most recently amended by Section 4 of Act No. 291 of 24 April 1996.

**32. (1)** The following amendments shall be made to the Aliens Act, cf. consolidated Act No. 562 of 30 June 1995, as amended by Section 1 of Act No. 290 of 24 April 1996:

1. Section 33 (5.1) shall be repealed.

2. In Chapter 8 the following paragraph shall be inserted after Section 58:

“Section 58 a. The jurisdiction of the Ombudsman shall not extend to the Refugee Board, except as provided in Section 17 of the Ombudsman Act.”

**(2)** Complaints against decisions by the Refugee Board which have been lodged with the Ombudsman before this Act comes into force shall be considered under the rules previously in force.