



**Børnerådet**

# **Report to the UN Committee on the Rights of the Child**

*Supplementary report to  
Denmark's 3rd periodic report*

**National Council for Children**

**January 2005**

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## I. Introduction

1. Children in Denmark generally have good conditions as compared with children in most other countries in the world. As regards material goods, the majority of Danish children are well provided for, just as schooling and primary healthcare are available to all children in Denmark. However, a relatively large number of children grow up in an environment characterised by social problems, which has an impact on their childhood. As a result, there are great inequalities in various areas despite generally high standards, for example in the field of health. At the age of 17, children of unemployed parents will typically have been hospitalised more often than other children of that age<sup>1</sup> and they are more likely to be abusers of alcohol and drugs. Moreover, a growing number of children are negatively affected by lifestyle changes in Denmark. More children than earlier are hospitalised because of stress symptoms. Obesity among children and young people is a growing problem, and at the same time no less than 25% of young women are considered to be at risk of developing an eating disorder. In this supplementary report, the National Council for Children will look at the problems faced by vulnerable groups of children and will go into greater detail than the official Danish report on the subject.

2. It should be noted that the National Council for Children has suggested to the Danish government to involve children and young people in Denmark directly into the reporting process through seminars or the like. The government has not wanted to do so and consequently the Council has engaged in extensive dialogue with children and young people with a view to the formulation of important statements by children and young people as to what it is like to grow up in Denmark.

3. The National Council for Children has conducted a questionnaire survey about children's rights. The respondents were members of the Council's Child and Youth Panel, which consists of about 1,500 schoolchildren aged 14-15. This survey was combined with a number of qualitative group interviews. About 75 % of the children filled in the questionnaire, which concerned children's knowledge about the Convention on the Rights of the Child, children's rights, children's perception of how individual rights work in their everyday lives, children's attitudes to and opinions about various specific issues, and children's perception of what it is like to grow up in Denmark. The results of the child panel survey will be mentioned under the relevant subjects.

4. Reference is also made to a special report on children and young people entitled *Børnesyn. Supplerende rapport til Danmarks 3. periodiske rapport til FN's Komité om Barnets Rettigheder* (Children's Vision. Supplementary report to Denmark's third periodic report to the UN Committee on the Rights of the Child). This report focuses on four main themes: (1) *Health in Denmark*; (2) *Who decides here?*; (3) *Angry adults*; and (4) *School*. It has been written on the basis of two conferences on children held by the National Council for Children in the autumn of 2004, and it describes children's and young people's own reflections on their childhood conditions and various issues relating to general education and upbringing.

5. This report cannot present a complete picture of childhood in Denmark as seen in the light of the convention, one reason being the framework applying to supplementary reports. Some areas have been selected; others have been left out or are not treated in detail.

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<sup>1</sup> *Børns levevilkår* (Children's Life Conditions), Statistics Denmark 2002

6. Section V.D. about disabled children in Denmark is partly based on input provided by the Equal Opportunities Centre for Disabled People.

## **II. Implementation of the Convention on the Rights of the Child in Denmark**

7. Article 4 of the Convention on the Rights of the Child places an obligation on States Parties to implement the principles and the spirit of the convention in their own legislation. According to Article 42, States Parties shall make the principles and provisions of the convention widely known and, according to Article 44(6), make their reports to the UN Committee on the Rights of the Child widely available to the public in their own countries.

### **A. Implementation of the Convention on the Rights of the Child (Article 4)**

8. The rights formulated in the Convention on the Rights of the Child must be implemented in the form of appropriate legislative, administrative and other measures. Civil and political rights must be implemented immediately, while economic, social and cultural rights must be implemented by States Parties to the maximum extent of their available resources.

9. In the Committee's concluding remarks of 8 June 2001 it is said that the framework for the work of the Interministerial Child Committee in Denmark at the time was not the Convention on the Rights of the Child, and another point of criticism was that the Convention was only to a limited extent used as a basis for new legislative initiatives. When a new government took office in December 2001, it decided to dissolve the Interministerial Child Committee, the reason being that it wanted to coordinate initiatives differently. The National Council for Children warned against taking this step, and we can see that the Danish government is currently having difficulty coordinating legislative initiatives relating to children. One example of this is that an important action plan for the prevention of child abuse<sup>2</sup> was issued more than twelve months later than planned. Furthermore Denmark still has no general, cross-sectoral child policy strategy, which means that potentially contradictory laws are being adopted. One example of this is the new governmental rules concerning educational objectives and content in day-care facilities adopted in the spring of 2004 in order to facilitate learning and counter the effects of negative social inheritance. At the same time the rules on screening for day-care facilities were changed, the result being that the most vulnerable children of unemployed parents and parents receiving some kind of social pension may not obtain a place in a day-care facility, which is detrimental to the prevention of negative social inheritance. Consequently the National Council for Children recommends:

- *that the government prepare a general child policy strategy across sectors and take the initiative to ensure systematic interministerial coordination of legislative initiatives.*

10. The Committee also recommended that Denmark should incorporate the Convention on the Rights of the Child into Danish law. The Incorporation Committee set up by the former government (in 1999 under the Ministry of Justice) issued its report on 1 November 2001. In this report, it

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<sup>2</sup> *Handleplan om bekæmpelse af seksuelt misbrug af børn* (Action Plan on the Prevention of Sexual Abuse of Children), Danish Ministry of Justice and Danish Ministry of Social Affairs, 6 August 2003.



recommended that the Convention on the Rights of the Child should not be incorporated into Danish law at the time. The Council for Children has followed the committee's work and has advocated the convention's incorporation into Danish law, both during the preparation of the report and after its publication. However, the current government has chosen not to discuss the issue. Consequently the Council for Children recommends:

- *that the Convention on the Rights of the Child be incorporated into Danish law;*
- *that the government take the initiative to ensure that all ministries, committees, commissions, etc that influence children's conditions will be placed under an obligation to systematically review current rules, practices and proposals for new legislation on the basis of the letter and spirit of the convention so as to ensure that the Convention on the Rights of the Child will consciously and systematically be used as a guide for the protection of children's rights and interests; and*
- *that the Danish opt-out of Article 40(2)b (v) be withdrawn.*

11. At the UN's World Summit for Children in New York in 2002, the Danish government signed the final document entitled "A Better World for Children", which places an obligation on all the State Parties to prepare a national action plan on children in consultation with children – as well as with other players. Together with the "Samarbejdsgruppen om Børnekonventionen" (the Danish Cooperation Group on the Convention on the Rights of the Child - which is the Danish network of relevant players in the field of the rights of children in Denmark), the National Council for Children has on several occasions called for the preparation of such an action plan, but in vain. Consequently the National Council for Children recommends that:

- *the Danish government prepare a comprehensive national action plan on the rights of children, so as to live up to its commitment at the Summit for Children in 2002 in New York.*

12. In its concluding remarks, the Committee appreciated the fact that the National Council for Children became a permanent body through an act adopted in 1998, particularly the Council's obligation to assess children's conditions in the light of the Convention of the Rights of the Child. However, the Council has had difficulty complying with this obligation since the Danish parliament decided that, as from the financial year 2002, the budget of the National Council for Children was to be reduced by 23%. The reason for this cut in the budget was the government's general dislike of what it referred to as 'arbiters of taste' and its wish to use the scarce resources available for other purposes. It has never been the job of the National Council for Children to act as an 'arbiter of taste' but rather to monitor and assess children's conditions in the light of the Convention on the Rights of the Child and on the basis of available information. The cut in its budget has affected the Council's ability to meet its statutory obligations. Consequently the National Council for Children recommends:

- *that the terms of reference and financial position of the National Council for Children be strengthened so as to ensure that the Council will once again be able fully to monitor and assess children's conditions and situation in Denmark in the light of the Convention on the Rights of the Child.*

13. The National Council for Children also regrets that the general debate on children's conditions is often characterised by a shortfall of valid information and statistics about children and young

people. It is very positive that permanent funding of the central Child Database has now been ensured, but

- *data from the Child Database should be easily accessible and free of charge.*

## **B. The rights of children and young people to complain**

14. Even in the National Council for Children's supplementary report to the second Danish report of May 2000, the Council pointed out that children do not have any formal rights to complain in several areas in Denmark. Given this, the Committee recommended in its concluding remarks to the Danish government report that Denmark should establish an easily accessible, independent complaints body for children, so that children would be able to file complaints if their rights had been violated. The Committee suggested that the terms of reference of the National Council for Children should be extended to include individual cases and that the Parliamentary Ombudsman should set up a special office to deal with complaints filed by children.

15. The National Council for Children continually endeavours to ensure that children are given formal rights to complain in all respects. Consequently it issued a Memorandum on Children's Rights to Complain in the autumn of 2003. The memorandum lists children's formal and informal rights to complain about decisions and other matters encountered in the social sector, in family matters, at school and in the fields of healthcare, adoption and religion – and the areas where they have no access to complain are identified as well.

16. Many **decisions** affecting children and young people are made in the various sectors of society, for example about voluntary or compulsory placement, grades given at examinations, expulsion from school, custody and contact, etc. The social area and upper secondary education are the clearest and best developed areas in terms of the access to complain, whereas the possibilities for children and young people of complaining about decisions made in primary and lower secondary schools are very opaque – or perhaps even non-existent. In matters relating to custody and contact, children and young people have no direct access to complain either. Thus there is no consistency in children's rights to complain, and the assessment of the correlation between age and maturity is inconsistent as well. Different age limits apply in different areas as to when a child is entitled to be consulted and has a right of co-decision: in some areas the age limit is 12 years, in others it is 15 years, but no single age limit applies consistently across all areas.

17. There is legislation governing parent's **use of force** against their children. Physical punishment is a matter to be dealt with by the police, and children can file a complaint with the police. Professional adults are only entitled to use force in accordance with applicable rules in the social area and to some extent rules applying to schools. The use of force is a very serious matter, and children and young people should be able immediately to complain about unjustified use of force and to raise the question of whether the use of force was justified or not.

18. The most opaque, implicit or non-existent rights are those concerning children's and young people's right to complain about **the way they are treated by adults or the way in which adults behave towards them**. Such cases could concern bullying by teachers or consistent differential treatment at school, at a residential care facility, in a foster family, etc. It may also be a question of the general interpersonal conduct at a residential care facility, bedtime rules, the use of pocket money, etc, or an educational approach that is offensive or inconsistent. Other reasons for complaint

could be lack of quality in the work performance of professional adults, a teacher who seems always to be unprepared, physical exercise classes that are constantly cancelled, etc. It could also be matters relating to the possibility of changing impossible contact arrangements that the child's parents have agreed upon.

19. Children are often dissatisfied with the **physical framework** at schools. For example, children really dislike the filthy toilets seen in many schools. At all places of education, students and others are entitled to elect teaching environment representatives to protect their interests as regards compliance with the rule that everybody participating in education programmes is entitled to a good physical (aesthetically pleasing) and psychological working environment, but they do not have any right to complain about, for example, filthy toilets at schools.

20. When children and young people do have a right to complain, there may be many different bodies to which the complaint should be filed: the head teacher or principal, the city or town council, the county council, the child and youth committee of the local authority, a social board, the Social Appeals Board, a judge or the police. Borderline cases, ie cases ranging between a formal complaint and a minor complaint should ideally be taken up with a caseworker, counsellor, teacher, childworker or parent. However, there are many obstacles preventing children and young people from using their formal or informal rights to complain. They may have **no knowledge** about their rights or how to exercise them, or a child's dependence on the adult about whom he or she wishes to complain makes it impossible to exercise the right to complain. The National Council for Children is of the opinion:

- *that the right of children and young people to complain should be strengthened and should be made very clear in legislation; and*
- *that children and young people need advice and support as well as easily understandable and accessible complaint procedures, and they need to know that such procedures exist.*

### **C. Information about the Convention on the Rights of the Child (Article 42 & Article 44 (6))**

21. According to Article 42, States Parties undertake to make the principles and provisions of the Convention widely known among children, parents, professionals, local and national politicians, etc. In this connection the Committee recommended systematic inclusion of the provisions of the Convention on the Rights of the Child in school curricula as well as in the training and education of people who work for and with children either as professionals or as administrative workers. As appears from the third report to the Committee, the Danish government has not initiated any specific actions to comply with this recommendation. The government refers to the activities of the National Council for Children, including the study conducted in collaboration with a training college for childworkers with a view to incorporating the Convention on the Rights of the Child in the education of childworkers. However, it has not been possible to obtain funding to start the project, which has consequently been temporarily shelved. In addition, the funding provided to the work of the National Council for Children has been reduced significantly, as mentioned above.

22. Since the government has not otherwise ensured increased awareness of the Convention on the Rights of the Child, the National Council for Children thinks that Denmark's ability to meet the provisions of Article 42 of the Convention has deteriorated considerably. Consequently the National Council for Children has suggested to the Danish government that an Information Service on the

Rights of Children be established under the auspices of the Council. This Information Service would provide assistance to public authorities, institutions of education as well as children and young people, and it would contribute to increasing awareness of the Convention on the Rights of the Child.

23. In the spring of 2004, the National Council for Children conducted a questionnaire survey called Children's Rights among the members of our panel of about 1,500 children (seventh form students aged 14-15), asking them about their opinions on and knowledge about children's rights and the Convention on the Rights of the Child. One result of this survey was that only a minor proportion of children have knowledge of the Convention. Only one third of the students had heard of the Convention, while 66.3% had never heard of it before. A large proportion of the students were more familiar with specific rights of children in Denmark than with the Convention itself. A little less than half of the respondents (46.7 %) knew that they had to be consulted in cases affecting them, and 84.4% knew that all children must be treated equally. A little more than half of the students (56%) knew that all children have a right to know and be cared for by their parents, and 81.7% knew that all children have a right to go to school.

24. Based on the child panel survey, the National Council for Children is of the opinion that the duty of information has only been met to a very limited extent, and the Council consequently suggests that efforts to disseminate information about and increase awareness of the Convention on the Rights of the Child in the Danish population be continued in a systematic way through:

- *mandatory inclusion of the Convention on the Rights of the Child in basic study curricula in all relevant professional study programmes;*
- *relevant dissemination of the main content of the Convention to children through the school system by inclusion of the Convention in school curricula at all levels;*
- *dissemination of information about the Convention in relevant common languages to refugees and immigrants in Denmark;*
- *information to Danish local authorities about the Convention and about their own duties in connection with the practical implementation of it; and*
- *strengthening of the conditions governing the information activities of the National Council for Children.*

### **III. General principles**

25. Four articles of the Convention are emphasised as those containing the general principles concerning the protection of the rights of the child. All other articles in the Convention must be construed on the basis of these four articles, which are Article 2 about protection against discrimination, Article 3 about States Parties' duty to protect the child and the best interests of the child as well as ensuring that institutions and facilities for children conform with the general principles, Article 6 about the right to life, survival and development, and Article 12 about the respect of the views of the child.

#### **A. Protection against discrimination (Article 2)**

26. Protection against discrimination is a fundamental requirement in a democratic society such as the Danish society. For many people this requirement is so evident that it may be difficult to prove

actual discrimination. In May 2003, the Danish parliament adopted an act on ethnic equality, which includes a ban on direct and indirect differential treatment and vests a power in the Institute of Human Rights to consider complaints concerning discrimination. However, there is a huge gap between rhetoric and real life, not only as regards direct and indirect differential treatment or negative attitudes to people with different cultural standards in the street, in buses, in shops, in workplaces, etc, but also as regards direct discrimination of children as a result of national policy and legislation. Examples of such discrimination concern children and young people from refugee or immigrant families and children who live in the poorest families in Denmark.

27. In 2002 the Danish government took a major initiative to break the deadlock of social inheritance. The initiative included a research programme coordinated by the National Institute of Social Research and a number of other legislative initiatives in the fields of care of young children, education, etc. The National Council for Children is very pleased that this particular area is in focus, since we pay particular attention to monitoring the conditions of children in vulnerable groups. However, the Council is not impressed by the political results achieved.

28. According to a report prepared by the National Institute of Social Research (SFI) in 2004 and published by Save the Children<sup>3</sup>, around 90,000 children in Denmark live under the EU subsistence level of 60% of median or mean income. If the Danish government's definition of poverty as 50% of mean income is used, the figure is 40,000 children. We can thus see that a large number of children in Denmark are now living in substandard social and material conditions and that they can in fact be called poor. This is particularly true of the 40,000 children referred to above. They are mainly children of lone parents who are claimants of cash benefits, children of refugees receiving 'start help' or children of asylum seekers whose application has been turned down. Children whose parents only receive support under the so-called food box scheme are particularly vulnerable. One purpose of the food box scheme<sup>4</sup> is to encourage rejected asylum seekers to cooperate as regards their return to their home country. The start help is allegedly intended to incite those who have been granted asylum to find employment and provide for themselves, but in practice the scheme contributes to maintaining this particular group in poverty, which is detrimental to the integration of children and parents.

29. As regards discrimination, the highly decentralised public sector in Denmark has many negative impacts on children's everyday life. The National Council for Children has noted that the Danish government has pursued a very strict policy vis-à-vis local authorities, which has entailed extensive economic reprioritisation in the field of day-care facilities as well as an increased number of children per childworker in kindergartens, from 6.4 in 1990 to 7.2 in 2003.<sup>5</sup> At the same time the number of children in each individual kindergarten group has been increased from 20 to 23 or even 25 children in many kindergartens. We can see that this makes it much more difficult for the day-care facilities to perform their job, which goes against the objective of breaking the deadlock of

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<sup>3</sup> *Børnefattigdom i Danmark 2002. Tema: Fattigdommens dynamik* (Child Poverty in Denmark 2002. Theme: The Dynamics of Poverty), Muhammad Azhar Hussain, National Institute of Social Research and Save the Children, November 2004.

<sup>4</sup> A bill proposing the abolishment of the food box scheme is currently being debated in the Danish parliament, but the purpose of the bill is still to use financial pressure to ensure the collaboration of asylum seekers whose applications have been rejected. In future, they will just receive a small sum of money instead of the food box to enable them to survive!

<sup>5</sup> *Økonomi og statistik på dagtilbudsområdet* (Finances and Statistics in the Field of Day Care), KL, BUPL and PMF, 2003.

social inheritance. A report issued by the National Institute of Social Research in 2002<sup>6</sup> stresses that good day-care facilities can contribute positively to breaking the deadlock of social inheritance, while bad day-care facilities – at worst – worsen the conditions of the most vulnerable children.

30. Consequently the National Council for Children recommends:

- *an increase of the start help provided to refugee families to a level equivalent to that of cash benefits;*
- *an increase of the subsistence allowance (food box scheme) given to rejected refugee families with children who do not collaborate on, for example, their return to their own country;*
- *initiatives to improve the situation of children of lone parents who claim cash benefits; and*
- *key demands from central government in relation to local authority initiatives aimed at children so as to ensure uniformity and quality of the services provided by crèches, kindergartens and after-school centres across municipal borders.*

### **B. The best interests of the child (Article 3)**

31. The phrase *the best interests of the child* is used to an increasing extent instead of the narrower concept of the welfare of the child in political statements as well as in the media and by professionals who work with children. This change of terminology reflects a new perception and increased focus on the interests of the child. However, the National Council for Children is of the opinion that it will take long before the principle contained in Article 3 can be said to have been fully implemented in practice. Political quarters hesitate to announce that all decisions relating to children must be based on the best interests of the child. This hesitation trickles down through the system, for example in state counties who decide on matters of contact between a child and his or her parents in complicated divorce cases. This means that decisions are sometimes made on the basis of the assumption that it is always best for a child to see both his or her parents, even if the child has witnessed or been the victim of violence or sexual abuse, and even if the child clearly refuses to see one of the parents – or even if experts have stated that contact would be contrary to the best interests of the child.

32. Several amendments of criminal law have been adopted in recent years. One purpose being to create clarity and authorisation in areas which have hitherto been unregulated insofar as the provisions on compulsory intervention based on criminal procedure in relation to children under the age of 15 are concerned. The National Council for Children has supported the legislative amendments whenever they have enhanced the legal protection of children and whenever the objective of the amendments has been to secure the best interests of the child and ensure his or her resocialisation. However, the Council is generally concerned about the uncompromising tone void of humanism that characterises public debate on young offenders. This is also true of legislation on non-Danish nationals in relation to whom various forms of tightening of rules have been introduced, especially as regards practice, including practice in cases about family reunification in which children are involved, and the treatment of rejected asylum seeking families with children. In these

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<sup>6</sup> *Effekter af dagpasning* (Effects of Day Care), Bente Jensen, Danish University of Education, SFI 2002:18. The report explains the importance of specific qualitative objectives, educational methods and a good physical framework in day-care facilities.

areas as well, the government's policy seems to be imbued with the same uncompromising tone void of any humanism and without any prioritisation as to what is the best interests of the child.

33. In one area the conditions of children have improved considerably since 2001. That is the social area, where the Social Services Act since 2001 has made it clear that support provided under the act must be based on the best interests of the child. The reform of legislation on the placement of children recently passed in the Danish parliament will strengthen the requirement of basing any initiative relating to children on the best interests of the child even further.

34. However, both as regards family law and criminal justice a more aggressive effort is needed in Denmark to implement Article 3 in Danish legislation as well as in practice. It is the clear opinion of the National Council for Children:

- *that there is still a great need for a review of the articles of the Convention on the Rights of the Child – in particular Article 3 – in relation to the European Convention on Human Rights' protection of the family. In family law in particular, the interests of the family and the legal rights of parents are generally given higher priority than the best interests of the child;*
- *that it is important to consider the best interests of the child in family reunification cases so as to ensure that no child is separated from his or her parents because one parent is refused reunification with his or her spouse in Denmark; and*
- *that the best interests of the child should be taken into consideration in cases where refusal of asylum is considered.*

### **C. The child's right to life and development (Article 6)**

35. The child's right to life, survival and development is relevant in the Danish context as far as children growing up in the poorest families in Denmark are concerned. It is estimated that 90,000 children in Denmark live under the EU subsistence level<sup>7</sup>.

36. Two recent research reports<sup>8</sup> focusing on social matters show that in 2003 twenty per cent of all seven-year olds grew up in families that were fully or partly deprived. These children clearly have more problems than other children in relation to their start in school, friends, health, development, behaviour, etc.<sup>9</sup> Research shows that the public authorities do not carry out any particularly outreaching activities in relation to children with many problems/children from socially vulnerable families, which increases the risk of a negative social inheritance. Likewise, direct help to the children in question is very limited. The children face problems that cannot be alleviated solely through the provision of help to their parents.<sup>10</sup> This too has a negative impact on the children's development and consequently contributes to cementing the negative social inheritance.

37. It has also been shown that social services administrations tend to overlook young children with problems. Perhaps the administrations think that the children will grow out of their problems.

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<sup>7</sup> See note 3 about the SFI and Save the Children report.

<sup>8</sup> See notes 9 and 10.

<sup>9</sup> *7 års børneliv. Velfærd, sundhed og trivsel hos børn født i 1995* (Seven Years of Child Life. The Welfare, Health and Well-being of Children born in 1995), Else Christensen, Copenhagen 2004.

<sup>10</sup> *Børnesager: Evaluering af den forebyggende indsats* (Cases Involving Children. Evaluation of Preventive Measures), Else Christensen & Tine Egelund, Copenhagen 2002

However, studies show that although many of those children have had problems from the early age of three, the social authorities have not intervened. Consequently the National Council for Children recommends:

- *that greater focus be placed on the conditions of young children and on how to identify and help them in the best possible way.*

38. Each year a number of Danish children are exposed to violence. It appears from a report published in 2003<sup>11</sup> on child abuse in the OECD countries that, on average, eight Danish children under the age of 15 die each year as a result of active or passive violence on the part of their parents. This figure represents only the tip of the iceberg as regards violence against children since it is difficult to establish the precise number, one reason being that the authorities are not informed about all cases and another being that specific data about neglected children is kept by the local authorities and consequently not available for inclusion in statistical surveys. In a working paper prepared by the National Institute of Social Research (SFI)<sup>12</sup> on the basis of literature on the subject and interviews with caseworkers it is assumed that the total number of children exposed to physical violence is between 0.7 and 10 out of 1000 children, depending on the definitions and calculation methods used. According to the working paper, nothing suggests that the number is growing. Consequently the National Council for Children recommends:

- *that campaigns concerning violence against children be initiated, supplemented by parallel population surveys of changes in attitudes to violence against children;*
- *that a fact-finding expert committee be established to investigate all cases of child deaths in relation to which there is doubt about the cause of death;*
- *that violence against children be registered both by local authorities and hospital emergency rooms and that the data be made available to the public in a central register;*  
*and*
- *that action be taken to reduce people's general fear of reporting suspicions of neglect and perhaps even violence against children to local authorities.*

(More recommendations relating to this issue in IV. C. item 89).

#### **D. The child's right to participation (Article 12)**

39. In its concluding remarks of 8 June 2001 the Committee recommends the implementation in Denmark of Article 12 in relation to court decisions and administrative decisions, including cases about the protection of children or about children in conflict with law as well as in child placement cases. It is also stressed that children under the age of 12 should be provided the opportunity to be heard and that their views should be given due weight. The National Council for Children is of the opinion that Denmark is still far from having implemented Article 12 fully for children in general, particularly for children under the age of 12 and in relation to placement cases, custody and contact cases and cases about sexual abuse of children.

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<sup>11</sup> "A League Table of Child Maltreatment Deaths in Rich Nations", UNICEF's Child Research Centre in Florence, see [www.unicef.dk](http://www.unicef.dk), Innocenti Report Cards 5, 2003, ISBN 88 85401 94 5.

<sup>12</sup> *Vold mod børn* (Violence Against Children), Arbejdsrapport 2:2004, Else Christensen and Dorthe Agerlund Pedersen, SFI.



40. We know from the panel survey Children's Rights conducted by the National Council for Children that nearly all children (91.8%) think it is a good idea to hear children in matters that affect them. However, when asked about their perception of whether children are in fact heard in matters that affect them, less than a third state that they think this is very much the case. Another 46.9% say that this is their experience to some extent. However, almost a quarter of the respondents (22.7%) state that they are not heard at all or only to a very limited extent. The National Council for Children can thus establish that the adults who are close to the children in their everyday lives are not very good at involving the children in matters that affect them.

41. For information about the involvement of children in matters relating to family law, social law and criminal law, please see the relevant sections below.

## IV. Family matters

### A. Children in divorce situations (Article 9 (3))

42. Article 9(3) states that a child who is separated from one or both parents shall be entitled to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. It is thus the child who has a right to maintain contact with his or her parents, and not the parents who have a right to maintain contact with the child.

43. In Denmark about one out of three children have parents who are divorced. Recent research from 2004<sup>13</sup> shows that the vast majority of children adapt to the new family framework. The parents' ability to maintain cooperative relations is crucial in terms of ensuring that a child emerges unscathed from the divorce. When parents are able to maintain good or even moderately good cooperative relations, and when they show respect for each other as well as solidarity and a will to communicate, and when the child is given opportunity to influence contact arrangements, the child (and the parents) will be able to cope with the new situation. This is what happens in most cases as most parents – sometimes with the help of the state county – reach agreement about custody and contact in connection with their divorce. This was true of two-thirds of the post-divorce families included in the above-mentioned survey by Mai Heide Ottesen of 5000 children aged 7.5 years.

44. However, a small proportion of children caught up in family breakdown will suffer long-term adverse effects on their psychological well-being, thus facing more problems than their peers. The study mentioned above revealed problems relating to contact with non-residential parents in one third of the post-divorce families, the general pattern being slightly or somewhat more frequent conflicts about contact between child and parent in relationships characterised by some degree of social vulnerability and relationships in which the former partners had some other problems such as alcohol abuse, substance abuse, psychological violence or physical violence.

45. A study entitled Contact in the Best Interest of the Child (*Samvær til barnets bedste*)<sup>14</sup> shows that there is a social imbalance in cases where contact is a matter of conflict. The study analysed 75 complex contact cases, and one of the clearest conclusions of the study is that the family law system is hesitant in deciding what importance to attach to the points of view of young children. In one

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<sup>13</sup> *Samvær og børns trivsel* (Contact and the Welfare of Children), Mai Heide Ottesen, SFI 04/05.

<sup>14</sup> *Samvær til barnets bedste? Om regler og praksis på samværsområdet* (Contact in the Best Interest of the Child? Rules and Practice on Contact), Mai Heide Ottesen, SFI 04/04.

third of all cases, the children that the conflicts concerned were ‘invisible’. In other cases the children were presented indirectly through information provided by parents or social work professionals. Only in a quarter of the cases did the children play a direct role, ie they were heard in meetings with the chief administrative authority, the state county.

46. It was also shown that the state counties have an understanding of ‘the generalised child’s’ need for contact. It was thus a general assumption that a child needs to be in contact with his or her non-residential parent irrespective of this parent’s parenting skills, possible substance abuse or incidences of violence against the ex-partner. This means that decisions concerning contact are not based on an assessment of the individual child or on the child’s own opinion.

47. According to statistics published by the Department of Private Law under the Danish Ministry of Justice in 2003, children are heard in about one fifth of all cases concerning contact. In cases involving children aged 8 or more about half of the children were heard (46 %). Importance was attached to the child’s opinion in 68% of the cases as regards overall contact arrangements (the figure was 74% in 2002). Though the situation is improving, it is not satisfactory that only about half of children aged 8 or more are given opportunity to express their views in such cases.

48. It appears from the National Council for Children’s child panel survey concerning children’s rights from August 2004 that 15.7% of children think that children aged 5 or less could be involved in decisions in relation to divorce. We asked the children how old they thought a child should be to be involved in decision-making processes in relation to the divorce of their parents, the reply options ranging from 0-5 years, 6, 7, 8 years, etc up to 15 years. Half of the children thought that children under the age of 12 could be involved, while the other half thought that a child should be 12, 13, 14 or 15 years old to be involved.

49. A large majority of children in the seventh form (about 75%) think it should be up to them to decide where they want to live if their parents divorce, and that they should also have a right to decide how much time they should spend with either their mother or father. In addition 56.4% think it would be a good idea to involve children in deciding whether their parents should divorce or not. These replies show that children would very much like to share the responsibility for their own life and how it should unfold in relation to their parents. The children are very much aware of the limits of their influence in relation to divorce: only about one third of the children believe they should take part in the decision as to how far away from each other their parents should live. They clearly realise that they cannot decide where their parents should live, though this does of course not mean that they cannot have an opinion about it.

50. Generally it can thus be said that children would very much like to be involved in decisions concerning their parents’ possible divorce. On the other hand they seem to have a clear understanding of the limits to their influence.

51. In the autumn of 2004 the National Council for Children suggested to the Minister for Family Affairs that Danish legislation on divorce and contact be updated so as to ensure greater focus on the interests of the child as well as speedier decisions in relation to disputes between parents:

- *In order to ensure compliance of Danish legislation with Article 9(3) of the Convention on the Rights of the Child, the governing principle of Danish legislation should be the child’s right to contact with his or her parents, not the parents’ right to contact with the child. Such*

*an imitative should be followed up by special training of lawyers working in state counties so as to make them familiar with the new rules as well as aware of the need to protect the best interests of the child in cases concerning contact between a child and his or her parents.*

- *In future it must be possible to make all-encompassing decisions on issues relating to custody and contact.*
- *The wording of section 29 of the Danish Parental Responsibility Act should be changed so as to ensure that all children, without any lower age limit, will be heard in all custody and contact cases unless it would be contrary to the best interests of the child. The views of the child must be given due weight in accordance with the age and maturity of the child. This would bring the rules concerning the child's right to be heard in family law matters in line with the rules on the child's right to be heard in matters pertaining to social law, cf section 58 of the Danish Social Services Act, and would thus ensure full implementation of Article 12 of the Convention on the Rights of the Child in family law matters.*
- *In about half of the state counties, the specific interview to be held with children prior to the final decision is conducted by the legal caseworker, while the rest of the state counties use child experts (eg psychologists). The National Council for Children doubts the advisability of letting such an important interview be conducted by members of the legal profession without any training in the psychological development of children or in how to engage in dialogue with children. The interviews should be conducted by – or in close collaboration with – a child expert.*
- *The National Council for Children suggests that in very conflict-ridden cases where both parents and children are socially vulnerable it should be possible to allocate a person of trust to a child who wants it or who the parents, the social authorities or others close to the child think needs it to support him or her during and after the settlement of his or her parents' disputes.*

52. In conflict-ridden cases decided by or with the assistance of the state county, children are offered a Section 28 interview. However, this offer is generally made through the parents, who decide whether the child needs advice. When parents turn down the offer on behalf of the child, they may do so in the best interests of the child, but the best interests of the child are inevitably confused with the personal interests of each individual parent.

53. Although parents agree on custody and contact during separation or divorce, such agreements are not necessarily in the best interests of the child. The child may not agree with or be pleased with the decisions made by the parents. Many children feel they are pawns in their parents' game and have no influence on the decisions made by their parents. In 2002 the National Council for Children asked children to write about their experiences in relation to their parents' divorce, and we received more than one hundred letters. Many children wrote that they felt pushed into a tight corner, even when their parents were in agreement. Parents are often preoccupied with ensuring that contact with the child will fit into their own calendars and do not take into account that the child also has leisure activities and friends that must be fitted in. Consequently the National Council for Children is of the opinion that:

- *all children whose parents have decided to separate or divorce should be offered a confidential talk with an impartial adult (a Section 28 interview). The offer of such an interview should be made direct to the child. Depending on the child's age, the nature of the matter and the premises available, the talk should take place in a setting with which the*

*child is familiar, for example a day-care facility, school, after-school centre or in a general counselling setting.*

54. Under the current system a court of law must decide who is to have custody, while the state county decides on contact arrangements. This system has entailed far too many and far too long disputes – which the National Council for Children has already pointed out to the minister in charge. In December 2004 the Danish government tabled a bill to amend this structure so that it will, in principle, be the new state administrations, which in 2007 take over many of the areas currently covered by the state counties, that will decide on petitions for separation, divorce, custody and contact. The National Council for Children thinks this is a positive change in line with the changes the Council has suggested to the Danish government in this area.

55. The proposed new legislation also implies that the state administrations must seek to achieve an amicable settlement between parents by calling in the parties for guidance meetings in the administrations. This is a major step forward in line with the National Council for Children's suggestions for changes in the area, given that the counselling and mediation effort is strengthened as well.

56. It is currently possible to enforce a state county's contact order with the assistance of a bailiff and the police. The rules on compulsory removal of a child are laid down in Sections 478(1)3, 483 and 536 of the Danish Administration of Justice Act, but it is very clear that these rules are included in the part of the act which deals with the removal of tangible goods. According to the current rules, a bailiff can only refuse to enforce an order if "the mental or physical health of the child is seriously jeopardised". Consequently some children are forced to contact with a parent against their will, and in about 20-40 cases a year the contact takes place with the assistance of the police. Such enforcement proceedings are very harmful to a child and should only take place if a child specifically requests it or wants it. Consequently the National Council for Children suggests that:

- *the rules be changed, including the provisions of section 536(1)3 of the Danish Administration of Justice Act, so that a bailiff will be entitled to refuse compulsory removal of a child for contact with a parent by referring to the best interests of the child or on the ground that the child opposes contact. The National Council for Children is of the opinion that no child should be forced to contact he or she does not want. If enforcement is nevertheless considered, contact should only be enforced with the child's consent and only following an assessment by a child expert, just as a child expert should be present in the actual removal situation to protect the interests of the child.*

57. The current rules do not give children and young people opportunity to complain about their parents' custody and contact agreements, let alone about court decisions on custody, state county decisions on contact or a bailiff's decision on compulsory removal of a child for contact with a parent. The National Council for Children is of the opinion:

- *that children and young people should be given opportunity to complain about agreements or decisions to which they are vehemently opposed; and*
- *that children and young people need clarity as well as support and information about places and people to contact if they are dissatisfied with a decision in this respect.*

## **B. Alternative care of children (Articles 9, 20 and 25)**

### **Case processing and use of authority (Article 9 (1) and (2))**

58. The National Council for Children recognises that it may be necessary to separate a child from his or her parents for a short or longer period of time in order to ensure the child's protection or development. In very special cases it may be necessary for a child to be separated from its parents for the rest of his or her childhood, for example because the parents have difficulty carrying out their parental duties or because the child has some developmental, behavioural or functional problems.

59. In cases which consider whether a child should be separated from his or her parents, possibly by use of force, there are often conflicts of interest. These are between, on one hand, the parents' wish to provide the daily care of the child and the child's own expressed wish to live with his or her parents and, on the other hand, the need to consider the best interests of the child either because the child has expressed a wish not to live with his or her parents or because relevant public authorities have assessed that the child and his or her parents should be separated. Whenever steps are taken to separate a child from his or her parents it is crucial that the separation is in the best interests of the child. In this connection the National Council for Children attaches importance to taking the child's own experience and wishes into account in the processing of the matter and to ensuring that stability and continuity in the child's life are overall objectives for the measures taken by the public authorities.

60. Stability and continuity in the placed child's life are also objectives formulated by governmental authorities as regards public-sector measures, but recent research in this area shows that the local authorities do not meet these objectives. This appears from the SFI report entitled *Små børn anbragt uden for hjemmet*<sup>15</sup> (Young Children Placed With Carers), which focuses on children aged 0-7. Of the placed children in this age group, 14 % had already been placed with three or more carers prior to their placement with the carer with whom they were placed at the time of the survey. There may be good reasons why a child is first placed at a residential institution for observation and then at a permanent place, since this may ensure that the right solution is chosen. However, several placements at such an early age are likely to result in a turbulent childhood.

61. Only in about half the cases of placement of children aged 0-7 has the child's situation been thoroughly examined prior to the placement, despite the fact that such an examination is a statutory requirement.<sup>16</sup> And only in about half the cases do the local authority administrations prepare action plans defining the objectives and methods to be applied prior to the placement of the child. In 35 % of all cases an action plan is not prepared until after the placement. These shortcomings are a problem from a legal protection perspective, since they do not provide a good basis for the choice of placement or for further work with the child at the place chosen. In at least 27% of all cases the parents were not involved in the preparation of the action plan.

62. The views of many children are still not heard (see below). And in 65% of cases concerning placement of children aged 0-7, the contact between parents and child is reduced. It is necessary to strike the right balance between maintaining contact between the child and his or her parents and

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<sup>15</sup> *Små børn anbragt uden for hjemmet. En forløbsundersøgelse af anbragte børn født i 1995* (Young Children Placed With a Carer. A progress study of placed children born in 1995), Tine Egelund, Anne Dorte Hestbæk and Dines Andersen, SFI, Copenhagen 2004.

<sup>16</sup> A so-called section 38 examination.

supporting/protecting the child. However, professionalised institutions where children are placed, such as residential institutions and socioeducational facilities support contact between a child and his or her parents more actively than foster families do. Studies also show that a large proportion of those children placed away from their home experience clear ruptures in their relations with siblings.

63. Consequently the National Council for Children recommends:

- *that the necessary examination of the child's situation and the preparation of an action plan defining necessary measures and initiatives, the right placement and the objective of the placement take place prior to the placement and that its focus be the best interests of the child rather than financial considerations;*
- *that a study of the background for and mechanisms behind the fact that many seven-year old children have experienced more than one placement be conducted;*
- *that the involvement of children in placement cases be continually increased; and*
- *that methods be developed to ensure contact between the child, his or her parents and his or her siblings whenever such contact is not contrary to the best interests of the child.*

### **Hearing of the child's views and the child's rights to complain (Article 9 (2) and Article 12)**

64. The rules about special measures in relation to children laid down in the Danish Social Services Act stipulate that the views of children and young people, without any lower age limit, be heard and that the children and young people should be involved in decisions that affect them. Children's right to be heard and involved in their own social case has generally been strengthened over the past ten years, but research shows that there is still a long way to go before all children in this group will benefit from the rights laid down in the act. The act, including the amendments recently adopted by the Danish parliament, does not give children the rights in social cases to which the National Council for Children thinks they should be entitled.

65. Practice shows that far from all children are offered an interview with a caseworker in connection with the processing of their placement case. In 1994 only 54% of all children aged 7-11 who were to be placed were offered an interview as part of the case processing (see the SFI report entitled *Når børn og unge anbringes*<sup>17</sup> (When children and young people are placed). In 2002 it was reported that only 44% of all placed children aged 7 had been offered an interview with their caseworker to explain why they were being placed<sup>18</sup>. In the first study the children were of the same age as or older than the children in the second study.

66. The reasons for this relate both to the work pressure experienced by local authority caseworkers in social matters involving children and to the uncertainty of individual caseworkers in terms of

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<sup>17</sup> *Når børn og unge anbringes. En undersøgelse af kommunernes praksis i anbringelsessager.* (When Children and Young People are Placed. A study of local authority practice in placement cases), Anne-Dorthe Hestbæk, SFI, Copenhagen 1997.

<sup>18</sup> See the SFI report entitled *Små børn anbragt uden for hjemmet. En forløbsundersøgelse af anbragte børn født i 1995.* (Young Children Placed With a Carer. A progress study of placed children born in 1995), Tine Egelund, Anne Dorte Hestbæk and Dines Andersen, SFI, Copenhagen 2004.

conducting interviews with children. The Danish government has set aside funds for further training of caseworkers in order to enable them to conduct interviews with children who need social support.

67. The National Council for Children is not sure that the legal right of children to have an interview in social cases affecting them is sufficient in terms of meeting the requirement of the Convention on the Rights of the Child concerning the right of children to be heard in any judicial and administrative proceedings affecting them. In cases concerning the placement of a child, the child has the status of a party in the case and is entitled to free legal assistance as from the age of 15. It is the opinion of the National Council for Children that this age limit is too high. Many children under the age of 15 who live in disadvantaged conditions are sufficiently mature to be a party in their own case with the assistance of a counsel of their own, no matter whether the case concerns placement away from the parents against their will or a decision relating to their own wish to be placed against the wish of their parents.

68. With the adoption of the placement reform, local authorities will have a duty to hear the views of all children prior to making a decision affecting them. As from the age of 12, children will have a right to complain about the placement and about being moved from one place to another. And children aged 15 or more will have an extended right to free legal assistance. However, the age limit for a child's right to be a party in its own placement case will not be changed, and children will not be entitled to complain about removal from a placement facility or carer. Consequently the National Council for Children recommends:

- *that the age limit for a child being a party in his or her own case be reduced to 12 years and that children be given the relevant rights, for example free legal assistance;*
- *that children – even very young children – be heard in connection with a placement separating them from their parents. Even very young children need an explanation as to why they can no longer stay with their mother and father, just as they need to know whether they can visit their parents and what will happen in relation to their siblings – and they need to be able to express sadness and other feelings. According to the 2004 study, the number of children invited to participate in such an interview is much too low; and*
- *that the Danish government attach priority to the evaluation of developments in caseworkers' involvement of children in proceedings – and to the evaluation of the further training of local authority caseworkers in conducting interviews with children after the abolishment in 2003 of the 12-year age limit for interviews with children in social cases.*

69. Another dimension of children's opportunity to be heard in social cases is the question of children's rights to complain. In October 2003 the National Council for Children prepared a major memorandum on children's rights to complain, which made it clear that children under the age of 15 by and large have no rights to complain if they are a party in a social case. With the social reform the rights to complain will be improved slightly, since children aged 12 or more will be entitled to complain about a placement or about a change in placement. But this is not enough. There are still a number of areas where all children should be entitled to complain, ie without any lower age limit. Children under the age of 15 are still not entitled to complain about:

- *A decision made by a local authority not to examine their conditions.*
- *A decision to conduct an examination against the child's or the parents' will.*
- *A decision concerning a voluntary measure.*
- *A decision not to implement a voluntary measure.*

- *A decision about a compulsory measure.*
- *A decision not to implement a voluntary measure.*
- *A decision about return from placement.*

70. Consequently the National Council for Children recommends:

- *that focus be maintained on children's limited opportunity to complain in social cases, the National Council for Children wishing broad debate on the possibilities of enhancing the opportunity of children to complain so as to strengthen children's legal rights and remedies when they are a party in a social case dealt with by a local authority.*

### **Children of parents in prison (Article 9(4))**

71. Children whose parents are imprisoned are very vulnerable. It appears from Else Christensen's study of the experiences of children of imprisoned parents<sup>19</sup> that the children suffer because of their separation from the parent and because they are ashamed of having a parent in prison. This contributes to isolating and stigmatising the children in question.

72. In Denmark, children are allowed to visit imprisoned parents, and an imprisoned parent may bring along a child under the age of three when serving a sentence. The National Council for Children is aware that conditions for these children have improved over the past seven years in that the Danish Red Cross sets up groups in which children of imprisoned parents can talk about their experiences. In addition, there are plans to establish a 'family house' under the auspices of the Danish Prison and Probation Service. In this house, parents can be reunited with their children after a long period of imprisonment, and professionals can provide support to help them practice their parenting skills again. People with short prison sentences will be able to serve their sentences in this house together with their children.

73. The National Council for Children welcomes these initiatives but still thinks there is reason for concern as regards the conditions offered by society to these children who need to maintain very important relations with an imprisoned parent. Children should not be punished when their parents commit a crime. The National Council for Children has the following concerns:

- *Generally it means great strains on a child if his or her contact with an important parent is interrupted for a long period of time. The National Council for Children is of the opinion that the conditions under which children grow up should be an important factor in the choice of the way in which a sentence is served. It would be relevant to prioritise ways of serving sentences that reduce the separation of a child from his or her parent, for example a way that allows the parent to spend nights at home.*
- *We do not have sufficient quantitative and qualitative knowledge about the implications for children under the age of 3 of staying in prison with a parent. The National Council for Children thinks that the age limit for children staying in prison with a parent is too high. The Council also finds it crucial that the children be seen by staff with expertise in children and that the children go to an external day-care facility.*

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<sup>19</sup> *Forældre i fængsel – en undersøgelse af børns og forældres erfaringer* (Parents in Prison – a Study of Experience Gained by Children and Parents), Else Christensen, Copenhagen 1999.



- *When a child is placed outside the home while a parent is in prison, the public authorities' prioritisation of maintaining contact between the child and the parent often gives rise to problems.*
- *The conditions applying to children's stay in remand centres and prisons – either as visitors or as permanent residents – are not compatible with the needs of children and should be assessed by external child experts with a view to improving conditions.*
- *The National Council for Children thinks the Danish Prison and Probation Service, in consultation with child experts, should formulate a comprehensive child policy for the area as a whole and that the implementation of such a policy should be given high priority.*

## **Placement of children (Article 20)**

74. Public sector expenditure on the placement of children has increased dramatically in Denmark in recent years. This has put spotlight on the question of whether society gets sufficient value for its spending in this area. A new reform on the funding of the costs of placing children has been adopted, and a number of research activities have been initiated or implemented to determine the quality of case processing, the choice of measures and their implications for the child and his or her parents.

75. The intense focus on the spending on special measures relating to children and young people gives rise to concern as some local authorities 'bring home' some of the placed children as part of an overall strategy, just as residential institutions report that there is less demand for their services. There is good reason to follow developments in this area closely to ensure that the choice of measures will be based on the best interests of the child rather than on short-term financial considerations.

76. The research initiatives have provided knowledge about case processing procedures, the choice of placement, the involvement of children and parents, the number of placements, etc. In addition, placed children and young people have spoken publicly about their experiences. In the light of this, a number of worrying issues should be mentioned, in relation to which a new or changed practice should be considered:

- *Too many children experience too many shifts in placements and consequently a lack of continuity in their life. In the group of children aged 0-7 who have been or are placed, as many as 10% are so-called 'swingdoor children', ie children exposed to multiple placements. In their case, the public authorities have already made more than three placement decisions. The situation is in no way better for older children.*
- *The placement facilities or carers do very little to ensure continuity in life for children from ethnic minorities. This is true of language, religion and culture. For example, only six out of ten placement facilities or carers make an effort to ensure that children from ethnic minorities aged 0-7 will maintain the ability to speak their mother tongue.*
- *Children from ethnic minorities are placed in institutions or educational facilities to a greater extent than other children.*
- *Denmark has introduced stricter sanctions on young offenders. In 2004 the process of deciding whether a young person aged 12-15 should be placed in a secure social institution has been simplified and can now take place without exemption being granted by the county.*

77. In Denmark both public and professional debate on the placement of children focus on striking a balance between, on one hand, public spending and, on the other hand, measures or placement types that can support a child who needs a better life both in the short and the long term. New methods such as family advice and placement with kinship carers are being used. It is a positive development that the range of measures used in relation to vulnerable children is increased, but ongoing evaluation of whether the choice of measures is based on the needs of the individual child – or on financial considerations – is necessary.

78. When a child from an ethnic minority is placed away from his or her home, a language barrier will arise between the child and his or her parents. The SFI study from 2004<sup>20</sup> shows that one third of placed children aged 0-7 do not have Danish as their mother tongue. In all placement facilities or homes Danish is spoken to the children, and there is only limited support in terms of the child's opportunity to learn or maintain his or her mother tongue. This creates a language barrier, which goes against the maintenance of contact between the child and his or her parents in the period of placement. There are examples of children who have lost their mother tongue during a period of placement and thus have become completely cut off from communication with parents who do not speak Danish.<sup>21</sup>

79. Likewise, less frequent social intervention has been registered in relation to children whose parents are from ethnic minorities as compared with children whose parents are from an ethnic majority. This gives rise to concern, since nothing suggests that these children have been exposed to parental neglect or abuse to any lesser extent. One explanation may be the uncertainty of social workers.<sup>22</sup> Consequently the National Council for Children recommends:

- *that an effort be made to ensure that children do not experience so many changes in placement;*
- *that Article 20 of the Convention on the Rights of the Child be incorporated into the Danish Social Services Act so as to make it clear that children from ethnic minorities must be given equal treatment in social matters. Whenever social measures are taken in relation to such children, consistency in the upbringing of the child and the child's ethnic, religious and cultural background as well as his or her language must be ensured;*
- *that a very active effort be made to recruit foster families and institution staff of non-Danish ethnic origin; and*
- *that social caseworkers be given basic and further training that provides them with basic knowledge about ethnic minorities.*

### **Supervision of a child placed by a competent authority (Article 25)**

80. Through interviews of children who have been placed and young people formerly placed it has been documented that many children have experienced a lack of contact with the authorities behind their placement. In addition, young people who were placed as children have said that they felt very lonely in their childhood when they were placed away from their own home. The SFI study from

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<sup>20</sup> *Små børn anbragt uden for hjemmet. En forløbsundersøgelse af anbragte børn født i 1995*, (Young Children Placed With a Carer. A progress study of placed children born in 1995), Tine Egelund, Anne Dorte Hestbæk and Dines Andersen, SFI, Copenhagen 2004.

<sup>21</sup> Further information in *Mit barn er anbragt. – Etniske minoritetsforældres fortællinger* (My child is placed – the stories of parents from ethnic minorities) by Sanne Nissen Møller and Marianne Skytte, Copenhagen 2004.

<sup>22</sup> *Anbringelse af etniske minoritetsbørn. – Om socialarbejderens vurderinger og handlinger* (Placement of children from ethnic minorities – About the assessments and actions of social workers), Marianne Skytte, Lund 2002.

2004<sup>23</sup> shows that at least 13% of placed children aged 0-7 are visited by a supervisor less than once every six months. During 19% of the visits, the supervisor speaks little or not at all with the child. The previously mentioned reform of the placement area includes initiatives for the strengthening of local authority supervision of and contact with a placed child, which is very positive. The National Council for Children intends to follow developments very closely.

81. In the past ten years there has been increased focus in Denmark on revealing and preventing sexual abuse of children, for example by childminders. No similar initiatives have been taken in relation to residential facilities for children or children in foster care. Section IV.D contains further information about this subject.

82. Consequently the National Council for Children recommends:

- *that a person of trust be allocated to all placed children, ie a person who, independent of the authorities behind the placement, can speak on behalf of the child, listen to the child and contribute to creating continuity despite a change of placement;*
- *that the extent of sexual abuse in residential facilities and foster care be identified and that initiatives be taken to prevent such abuse. This should also apply to abuse committed by children against other children.*

### **C. Children's right to protection against violence (Article 19)**

83. Article 19 of the Convention on the Rights of the Child stipulates that the States Parties must take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

84. Since a change of legislation in 1997<sup>24</sup> parents have not been allowed to expose their children to physical or mental punishment. No specific information is available about the number of children who are nevertheless exposed to such punishment or about the effect the new legislation has had on the attitude to corporal punishment in the adult population. However, several studies suggest that a decreasing number of adults think children should be punished physically<sup>25</sup>. In a progress study of 6,000 children born in 1995<sup>26</sup> conducted in 2003, the SFI establishes that mothers in general use scolding and punishment to a lesser extent than they did in 1999<sup>27</sup>. Consequently the National Council for Children recommends:

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<sup>23</sup> *Små børn anbragt uden for hjemmet. En forløbsundersøgelse af anbragte børn født i 1995* (Young children placed away from their home. A progress study of placed children born in 1995), Tine Egelund, Anne Dorte Hestbæk and Dines Andersen, SFI, Copenhagen 2004.

<sup>24</sup>Section 2(2) of Act No 416 of 10 June 1997 concerning custody and contact.

<sup>25</sup> An opinion poll made by the Epinion analysis institute shows that 70 % are completely against corporal punishment of children, against 57% in 1996, Kristeligt Dagblad 27 July 2004.

<sup>26</sup> *7 års børneliv* (Seven years' life as a child), Else Christensen, SFI 04:13, Copenhagen 2004

<sup>27</sup> In 1999, twelve per cent of mothers said that they 'occasionally' spanked their child. In 2003 this figure had fallen to 4%. The authors suggest that, in addition to the prohibition introduced in 1997, a reason could be that the children are easier to talk to at the age of seven than they were at the age of three in 1999, and that beating a 7-year old may be seen more clearly as abuse because it is necessary to hit him or her harder. Furthermore, the study includes only a few men, and their attitudes to and use of corporal punishment are consequently not illustrated.

- *that the Danish government initiate a survey to determine the extent to which people comply with this legislation and also take the initiative to follow up in the form of campaigns and the like.*

85. Attention should also be paid to children being violent against other children in the form of sexual abuse or bullying at school. These subjects are treated in IV.D. and VI.B.

86. Another aspect is violence between parents – generally violence against the mother. Such violence also has a major impact on the health of children and young people<sup>28</sup>. It appears from the interview study *Unge trivsel år 2002*<sup>29</sup> (The well-being of young people in 2002) that 9% of the girls and 6% of the boys had experienced physical violence against their mother. Each year about 2,000 children move into a shelter for women or a similar facility together with their mother<sup>30</sup>. Many of these children have seen their mother being beaten. Out of 5,230 children who moved into a shelter for women together with their mother in the period from July 1997 to December 1999, more than two thirds had witnessed violence against the mother. A quarter of them had been exposed to physical violence themselves, either as punishment or as part of their upbringing.<sup>31</sup>

87. A total of 34.2 % of children at shelters for women come from ethnic minorities, which is a pretty big overrepresentation as compared with the population in general.<sup>32</sup> Of the children from ethnic minorities, children whose mothers are married to *Danish* men constitute a particularly vulnerable and isolated group. Among women of non-Danish ethnic origin, the violence had been committed by a man of Danish ethnic origin in about 15% of the cases.<sup>33</sup> A study<sup>34</sup> of 80 specific cases of non-Danish women married to Danish men reveals horrific conditions where the women are humiliated, controlled and isolated.<sup>35</sup> The man's systematic isolation of the mother also affects the children, and it is very difficult for these children to form new friendships in Denmark.

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<sup>28</sup> One example of this is that young people who have experienced violence against their mother perceive their own health as being less good than the health of young people who have not experienced such violence. See *Unge trivsel 2002, i Ung og Køn. Kønsforskelle i unges udøvelse af vold og udsathed for vold* (The Well-being of Young People, 2002, Young People and Gender. Gender Differences in Violence by and against Young People), Sissel Lea Nielsen, Danish Centre for Research on Social Vulnerability for the Minister for Gender Equality, 2004.

<sup>29</sup> Karin Helweg-Larsen, Helmer Bøving Larsen, National Institute of Public Health, 2002. This study comprises about 6,000 young people in the ninth form (about 15 years old). It shows that 9% of the girls and 12% of the boys had been exposed to violence against themselves over the preceding twelve months. In their own homes about 5% of all the young people had experienced threats of violence, 7% had been beaten and nearly 2% had been exposed to some other violent act.

<sup>30</sup> *Mænds vold mod kvinder. Omfang, karakter og indsats mod vold* (Men's violence against women. The extent and nature of violence and efforts to combat it), Karin Helweg-Larsen and Marie Kruse, National Institute of Public Health, November 2004.

<sup>31</sup> *5230 børn på krisecenter – en deskriptiv undersøgelse* (5,230 children at shelters – a descriptive study), Hanne Lilholt Behrens, Research Centre for Social Work, Esbjerg 2002.

<sup>32</sup> One reason is that these women do not have a very big social network and consequently do not have much opportunity to stay with friends and relatives.

<sup>33</sup> *Mænds vold mod kvinder. Omfang, karakter og indsats mod vold* (Men's violence against women. The extent and nature of violence and efforts to combat it), Karin Helweg-Larsen and Marie Kruse, National Institute of Public Health, November 2004.

<sup>34</sup> *Når drømme og håb forvandles til mareridt. En rapport om danske mænds vold mod udenlandske kvinder og børn* (When dreams and hopes become nightmares. A report on violence committed by Danish men against non-Danish women and children), The National Organisation of Shelters for Women in Denmark, November 2003.

<sup>35</sup> One example is that the man sometimes uses basic needs such as the need for food as a means of power and control. The 80 cases include about 35 children of another marriage and 28 children of the current marriage. Many of the children of another marriage first lost their native country and consequently most of their original network. To this

- *Generally there is no data available in Denmark that makes it possible to identify children as victims of violence and other forms of abuse. At the shelters there are a number of children about whom it is known with certainty that they have been directly or indirectly exposed to violence. The National Council for Children is of the opinion that it should be considered how the public authorities can best help these children.*

88. The youngest women in Denmark live in a world full of risks. Each year more than 5,000 women<sup>36</sup> are treated at emergency rooms for injuries resulting from violence. The highest incidence rate is found among women aged 15-19: each year 0.6 % of all women in this age group contact hospital emergency rooms because of injuries resulting from violence. The number of visits to emergency rooms as a result of violence went up dramatically in this group – by no less than 77 % - in the period from 1995 to 2003.<sup>37</sup>

- *The National Council for Children is particularly concerned about the new data in this area and recommends that the Danish government follow developments closely and consider initiatives to prevent and reduce these problems.*

89. In March 2004 the Danish Minister for Social Affairs published an action plan against the abuse of children<sup>38</sup>. The plan is based on the most recent data on violence against children and emphasises the responsibility of citizens and professionals in relation to 0-7 year-old victims of severe violence. In June 2004 the Council for Children held a conference called ‘Stop violence against children – action needed’ together with UNICEF Denmark. At the conference, the Minister for Social Affairs explained the action plan. On this background, the National Council for Children<sup>39</sup> recommends the following initiatives as supplements to the action plan:

- *Campaigns followed up by parallel population surveys of changes in attitudes to violence against children.*
- *Central registration of reports of violence against children.*
- *A flying squad to assist social administrations that are to act on the basis of reports of child abuse.*
- *Thorough dissemination of knowledge both in basic and further training in the social and healthcare sectors and the preparation of guidelines based on updated information. This measure is mentioned in the action plan, but there is no specification of the time horizon for the implementation of the initiatives.*

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should be added that, apart from witnessing violence against their mother, many of these children are exposed to pretty sophisticated forms of psychological violence because of their race, residence status, etc.

<sup>36</sup> Equivalent to 0.2% of all adult women in Denmark.

<sup>37</sup> *Mænds vold mod kvinder. Omfang, karakter og indsats mod vold* (Men’s Violence Against Women. The Extent and Nature of Violence and Efforts to Combat it), Karin Helweg-Larsen and Marie Kruse, National Institute of Public Health, November 2004. The general increase has been 25%, and the increase of 77% in the group of women aged 15-19 represents the greatest increase. One reason for the increase may be improved registration of violence as a cause of hospital treatment and more severe acts of violence, and consequently an increase in physical injuries. Each year about 400 cases of rape or attempted rape are reported by women aged 15 or more. In one out of three cases, the victim is between 15 and 19 years old. Each year the eight hospital centres in Denmark who treat victims of rape register about 500 calls concerning rape or attempted rape. Two out of three victims are under the age of 25.

<sup>38</sup> See [www.social.dk](http://www.social.dk).

<sup>39</sup> The National Council for Children and UNICEF Denmark have jointly identified these activities as supplements to the government’s action plan.

- *The establishment of an expert fact-finding committee to investigate all cases of child death in relation to which there is doubt about the cause of death.*
- *Monitoring to ensure that the objectives formulated are met, and the determination of time horizons and follow-up mechanisms for the development of these initiatives for the benefit of young children.*

## **D. Protection of children against sexual abuse (Article 19)**

90. A number of cases in recent years have attracted increased attention to sexual abuse of children and young people. Several practical, legislative and research-related initiatives have been taken and have resulted in general improvement in the area. For example, increased information has been obtained about the number of sexually abused children as a result of the in-depth study made by the National Institute of Health in 2001<sup>40</sup>. The National Council for Children recommends:

- *that this information be updated on an ongoing basis and that it be specified, one reason being the need to design and devise effective methods and approaches.*

91. The initiatives mentioned have also resulted in increased awareness of the lack of information in certain areas. Studies of young offenders<sup>41</sup> and of young people in prostitution<sup>42</sup> have shown that there is a need for new insights and greater knowledge in order to initiate preventive measures for the benefit of children and young people who grow up in an insecure environment, particularly children placed in residential facilities.

92. Based on the first Danish study of young people with a sexually offensive behaviour<sup>43</sup>, the Danish Ministry of Social Affairs has initiated a three-year project – Project JANUS<sup>44</sup> – whose purpose is to prevent sexual abuse of children by intervening at an early stage in relation to children whose sexual behaviour towards other children and young people crosses an acceptable line.

93. Studies made in other countries suggest that disabled children are at a greater risk of sexual abuse than children who are not disabled.<sup>45</sup> In May 2004 the Danish Minister for Social Affairs said that she would initiate a study of this issue. A sum of DKK 2 million annually has been set aside in

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<sup>40</sup> *Unge trivsel år 2002. En undersøgelse med fokus på seksuelle overgreb i barndommen* (The Well-being of Young People. A study focusing on sexual abuse in childhood), Karin Helweg-Larsen and Helmer Bøving Larsen, Danish National Institute of Public Health 2002.

<sup>41</sup> *Unge krænkerere* (Young offenders), Mimi Strange, Danish National Institute of Social Research 02:07, Copenhagen 2002.

<sup>42</sup> *Unge og prostitution - et overset problem* (Young people and prostitution – a neglected problem), Dan E. Christensen, PRO Centre 2003.

<sup>43</sup> *Unge krænkerere* (Young offenders), Mimi Strange, Danish National Institute of Social Research 02:07, Copenhagen 2002.

<sup>44</sup> In the period from September 2003 to August 2005 the treatment project offers outpatient treatment of young men and women aged 12-18 who have displayed sexually offensive behaviour. The project is based in the centre of Copenhagen and is mainly accepting young people from Zealand, though young people from the entire country apply for treatment.

<sup>45</sup> *Blinde barn er mer utsatt for seksuelle overgreb* (Blind children are at greater risk of being sexually abused), Marit Hoem Kvam, [www.sintef.no](http://www.sintef.no), May 2003, and *Overgrep mot døve* (Abuse of the deaf), March 2003

a special budget<sup>46</sup> for the period 2005-2008 for the prevention and treatment of sexual abuse against disabled people.

94. In this connection the National Council for Children finds it positive that a sum of DKK 2 million annually has also been set aside in the special budget for the period 2005-2008 for the Knowledge Centre for Sexually Abused Children at the National University Hospital, and that sums of DKK 14 million, DKK 17 million and DKK 22 million respectively have been set aside for the years from 2005 to 2008 for the prevention of prostitution among young people.

95. The National Council for Children is of the opinion that Danish children and young people are not adequately protected against sexual abuse in a number of areas.<sup>47</sup> The Council thinks that some – but not all – areas have been improved in Denmark. The highly anticipated action plan<sup>48</sup> on the combat of sexual abuse published by the Minister of Justice and the Minister of Social Affairs has many shortcomings, although it is positive that the plan takes the strengthening of the preparedness of the individual child seriously, just like young offenders and the conditions of placed children are now on the agenda as well. Apart from this, the plan is non-committing and mainly characterised by declarations of intent.<sup>49</sup> The National Council for Children will follow the practical implementation of the plan with great interest.

96. In the National Council for Children's opinion, an important element in the fight of sexual abuse of children is that Denmark increases its efforts to strengthen current policies and measures, for example relating to the care and rehabilitation of children who have been sexually abused. Efforts must also be increased through the initiation of interdisciplinary programmes that make it possible for all relevant parties, including children, to act in an appropriate, preventive fashion. In addition sexual abuse of children in other countries must be a criminal offence in Denmark.

97. Consequently the National Council for Children recommends:

- *that the Danish government conduct the promised survey of the extent and nature of sexual abuse of disabled children as soon as possible;*
- *that the Danish government take the initiative to investigate the extent and nature of sexual abuse of children placed in residential facilities;*
- *that the Danish government strengthen training and education initiatives aimed at protecting children in this area; and*
- *that the dual punishment for Danish sex tourism aimed at minors abroad be abolished.*

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<sup>46</sup> The special budget is the result of an annual broad political compromise at the national level concerning the distribution of funds for social initiatives and projects in Denmark.

<sup>47</sup> In 2001, both the UN Child Committee and the Yokohama conference against commercial sexual exploitation of children recommended to Denmark to strengthen the measures taken in relation to this issue.

<sup>48</sup> *Regeringens handlingsplan om bekæmpelse af seksuelt misbrug mod børn* (Government Action Plan on the Combat of Sexual Abuse of Children), Danish Ministry of Justice and Danish Ministry of Social Affairs, August 2003.

<sup>49</sup> In most cases, sexual abuse of children takes place in a family context or is committed by a close acquaintance, but the plan does not specify any initiatives which take this into account. Only about half of all local authorities in Denmark had devised preparatory measures and formulated local action plans in 2003 – and the government's action plan does not require local authorities to do so. It only contains a suggestion to this effect.

## V. Health and welfare of the child

98. According to the Convention on the Rights of the Child, the States Parties must support working parents (Article 18(3)), protect the rights of disabled children (Article 23) and ensure that children have a right to enjoy a high standard of health, to benefit from health-promoting measures (Article 24), have a right to benefit from social security and social insurance (Article 26) and to an adequate standard of living (Article 17(1) and (3)).

### A. Care of children and support for working parents (Article 18)

99. In the beginning of 2002 all parents were granted a right to nearly twelve months' maternity/paternity leave. The rules are such that the mother is entitled to 4 weeks' leave before childbirth and to 14 weeks' leave after childbirth. The parents may split a total of 32 weeks between them and, in addition, the father is entitled to two weeks' leave in connection with childbirth. The parents are entitled to benefits equivalent to unemployment benefits in the entire leave period, but many working parents are covered by collective agreements according to which they are entitled to full pay in part of the leave period. The new act is a major step forward, though it should be mentioned that the right parents previously had to apply for parental leave for up to twelve months during which they could claim an allowance equivalent to 60% of unemployment benefits no longer exists, which means that the total period in which parents can stay at home with a child is now shorter than it was before the change of the rules on maternity and paternity leave. However, it is positive that the new rules seem to have increased parents' use of the possibility of taking maternity or paternity leave.

100. When the new legislation was debated in the Danish parliament, the National Council for Children suggested that parents be granted a right to take leave to look after a sick child. A number of care days per year would be a good beginning. In the Council's report entitled *Når min mor er hjemme* (When my mum is at home) from 2001<sup>50</sup>, 25% of the children say that they are often home on their own when they are sick, and 22% state that they think it is very unpleasant to have to be alone when they are sick. The children also stated that they see their sickness as a big problem for their parents because it gives rise to problems between the parents, who have to decide who can best be absent from work. In some cases the parents even negotiate to determine who is to stay home on which days. Consequently the National Council for Children suggests:

- *that all parents be given a right to take leave to look after a sick child, possibly after allocation of a considerable number of care days to be used to look after a sick child or to be with the child on occasions that are important to the child. These care days should not be linked to the maternity/paternity leave, ie they should not be deducted from this leave. The right to care days should be laid down by law so as to ensure that rights relating to a child's sickness will no longer have to be part of collective agreements.*

101. Article 18(3) says that States Parties must support working parents so that children of working parents have the right to benefit from child-care services and facilities while the parents are at work. There are very many day-care facilities in Denmark, and 67% of children aged 0-3 are looked after in a crèche or by a registered childminder, 92% of children aged 3-6 go to kindergarten, and 79% of the youngest schoolchildren attend an after-school centre or an after-school facility at their own

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<sup>50</sup> The study is based in questionnaires completed by members of our child panel. The child panel comprised 1,100 children in the fifth form, ie children aged 12-13, at 59 schools.



school<sup>51</sup>. Denmark has a relatively high standard in this area as well as many professionally trained childworkers. The assignments of day-care facilities are currently being expanded, in that the requirements applying to the work carried out in relation to the children as well as requirements concerning documentation and evaluation are growing. One important requirement is that, as from August 2004, educational learning plans must be prepared, which means that children's playing and the importance of playing for the quality of life and development of the children are emphasised and that work relating to the development of children's social and personal skills govern the way in which specific themes such as nature, language, etc are treated.

102. The National Council for Children welcomes the interest in greater focus on various skills at day-care facilities, but is worried about the way in which this focus will be translated into practice, given that the number of children per childworker has gone up and the budgets of each individual facility have gone down for several successive years. This increases the noise level, the level of stress and the number of infectious diseases of children in day-care facilities and has an impact on educational approaches, which may become more authoritarian, less reflective and less flexible in terms of listening to the children's contributions and wishes. The National Council for Children regrets this development, which is particularly detrimental to the most vulnerable children as their access to adults as well as their opportunity to exert influence on their own activities is reduced. Moreover, their possibilities of breaking the deadlock of social inheritance are equally reduced.

103. Recent alarming development in this respect is that scarcely populated areas are now granted exemptions allowing them to place kindergartens under the administration of schools. This means that children as young as 2 years and 10 months may be offered day care in an after-school centre without any specific requirements applying to quality, educational content or the maximum number of children per childworker.

104. It is the clear opinion of the National Council for Children:

- *that local quality development of day-care facilities should not stand alone. Centrally formulated rules and requirements are necessary concerning the physical environment in day-care facilities, including minimum space requirements per child, indoor climate control, noise level control, etc as well as the minimum number of professionally trained and assisting childworkers required;*
- *that it is necessary to change the perception of day-care facilities as a labour market service to a high-quality educational offer to children; and*
- *that more funding must be provided for this area so as to improve the staff allocation, the physical framework and educational practice considerably.*

## **B. Children's right to protection against harmful environmental impacts**

105. The EU initiative SCALE<sup>52</sup> and the WHO's fourth conference for European environment and health ministers in Budapest in June 2004 contribute to ensuring that a Danish action plan for children's environment and health will be prepared. At the ministerial conference, the theme of

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<sup>51</sup> *Økonomi og statistik på dagtilbudsområdet* (Finances and Statistics in Day Care), KL, BUPL and PMF, 2003.

<sup>52</sup> SCALE stands for Science, Children, Awareness, Legislation, Evaluation and is the European strategy for environment and health adopted by the European Commission in the summer of 2003: EU strategy for environment and health – COM(2003) 0338 – Council conclusions.

which was 'The Future for our Children', a European framework action plan<sup>53</sup> for children's environment and health was adopted. It appears from the action plan that national action plans for children's environment and health must be prepared, and that the implementation of these plans must be initiated by 2007<sup>54</sup>. One long-term objective is to develop a 'cause/effect model' for environment and health. There is no doubt that exposure to harmful environmental factors worsens several diseases considerably. In this perspective, the benefit from reducing exposure to harmful environmental factors in childhood would be significant. The National Council for Children believes it is important:

- *that a Danish action plan be prepared;*
- *that children's exposure to environmental substances that are harmful to health be limited to a minimum; and*
- *that consumer products, food products and drinking water be kept free of substances that are harmful to health. The Danish government should ensure that, prior to their use, new consumer products and food products are tested and monitored as regards children's sensitivity to them, just at restrictive threshold values must be laid down concerning the use of substances that are harmful to health.*

### **C. Older children's right to health**

106. Most older children have a good life with close family relations, schooling, good recreational activities, friends and, in the case of many of the oldest children, an after-school job. Most of these children, who thrive and are considered to be resourceful, are able to handle the increasing requirements with which they are faced, but the use of alcohol, ecstasy and other substances is still considerable among young people in Denmark, just as eating disorders are on the increase among young women. A small proportion of children in Denmark is characterised by lack of well-being and unfortunate behaviour that gives rise to concern.

#### **Alcohol**

107. The consumption of alcohol by young people in Denmark is alarmingly high. A comparison of young people in Denmark with young people in other European countries shows that most 15-year olds in Denmark<sup>55</sup> have been drunk, just as young people in Denmark account for the highest intake of pure alcohol in connection with the last drinking episode.<sup>56</sup> Consumption in the group aged 11-13 is believed to have fallen in the period 1997-2002<sup>57</sup>. Consumption in the group aged 14-15 remains high.<sup>58</sup> A study conducted by ESPAD in 2003 estimates that the age at which children and young people in Denmark begin to consume alcohol is low, albeit on the increase, and that consumption is falling as compared with levels in 1999.<sup>59</sup>

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<sup>53</sup> Children's Environment and Health Action Plan for Europe (CEHAPE).

<sup>54</sup> Briefing by the Minister of Environment to the Danish Parliamentary Environment and Planning Committee, General part – annex 1081, July 2004.

<sup>55</sup> 63% girls and 71% boys respectively.

<sup>56</sup> *Skolebørnsundersøgelsen 2002* (The Schoolchildren Study), Pernille Due and Bjørn Holstein, Copenhagen University, Department of National Health 2003, which is the Danish contribution to the WHO's HBSC survey.

<sup>57</sup> The proportion of young people who have been drunk, who have drunk alcohol within the past month or have drunk more than five alcoholic drinks on one occasion within the past month.

<sup>58</sup> *Børn, unge og alkohol 1997 – 2002* (Children, Young People and Alcohol), National Board of Health, www.sst.dk.

<sup>59</sup> *Unge erfaringer med rusmidler i 2003 og udviklingen siden 1995* (Young People's Experience with Alcohol and other Substances in 2003 and Developments since 1995), Svend Sabroe and Kirsten Fonager, Department of

108. The consequences of early alcohol consumption and excessive use of alcohol are far-reaching and well illustrated. Consequently it is important both for the young people and for society at large to prevent excessive consumption of alcohol.

109. Through several initiatives, the Danish government has tried to reduce consumption. Most recently a ban on the sale of alcohol (and tobacco) to young people under the age of 16 was introduced in 2004. However, other government initiatives must be assumed to lead to increased consumption of alcohol. In June 2002 a political compromise on media policy for the period 2002-2006 was made, which implies that advertisements for alcohol products are allowed on national radio and television. Likewise the reduction of tax on alcohol introduced in October 2003 is clearly incompatible with any policy aiming at reducing the alcohol consumption of the population in general. All things being equal, the price reduction must be expected to entail increased alcohol consumption, also among young people whose access to alcohol at home will be much easier irrespective on the ban on sales.

110. In 2003 and 2004 the National Council for Children worked with various initiatives to illustrate the issue, thus contributing to raising the age at which children and young people begin to consume alcohol and to reducing their consumption. For example, the Council has conducted a survey about alcohol among the members of the Child and Youth Panel.<sup>60</sup> In addition the 2003 annual meeting of the National Council for Children was in the form of a dialogue meeting between young people and adults with alcohol on the agenda. One result of the Council's initiatives is collaboration with the Health Information Committee and the National Board of Health on the preparation of information material for parents and children.

111. Another problem in relation to young people's consumption of alcohol in Denmark is 'alcopops', ie alcohol disguised as soft drinks. As long as there is no ban on the production and sale of alcopops, it is necessary to impose a duty on the retailer to place these products together with other alcohol-containing products (and not, as they do now, together with sweets immediately before the check-out point), thus sending clear messages to buyers that they are alcohol products, not soft drinks. Furthermore, clear restrictions concerning advertisements for alcopops should be introduced. Given this background, the National Council for Children suggests:

- *that the Danish government ensure better correlation between health considerations and tax policy initiatives in relation to alcohol in order to contribute to the resolution of the serious problems mentioned above.*

## Smoking

112. Children must be entitled to a completely smoke-free environment. They generally do not choose where to stay during the day and are generally not able to leave the premises if the indoor climate is unacceptable. In 2000 and 2001 legislations was adopted to promote smoke-free areas in public places. After 1 August 2001, students at primary and lower secondary schools, municipal

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Epidemiology and Social Medicine, University of Aarhus, [www.sst.dk](http://www.sst.dk). ESPAD stands for European School Survey Project on Alcohol and other Drugs. It is a questionnaire survey among 3,000 ninth form students (aged 15-16). See also [www.monitoringthefuture.org/](http://www.monitoringthefuture.org/).

<sup>60</sup> *Teenagere og alkohol* (Teenagers and Alcohol), November 2003; see <http://www.brd.dk/sw204.asp>. The Child and Youth Panel comprises about 1,500 students in the seventh form (aged 14-15), who are a representative sample of all young people in Denmark.

youth schools and youth boarding schools and children at after-school centres are no longer allowed to smoke inside the facilities. Adults at school and after-school centres may only smoke in rooms where others will not be exposed to passive smoking and where children are not allowed to come. Act No 492 of 7 June 2001 on the prohibition of tobacco advertisements, etc imposed a ban on all tobacco advertisements. The act contains a number of exemptions relating to the industry as such, for example advertisements at points of sale. Since 2004 there has been a ban on the sale of tobacco to young people under the age of 16.

113. The National Council for Children has supported these initiatives, but has also highlighted a number of points that have been forgotten or omitted in the legislation. For example, private day-care is not included. A ban on smoking during the day should be introduced in private day-care facilities in line with the ban applying to public day-care facilities. Continuation schools (forms 8-10) are not covered by the legislation. About 15% of young people in the ninth form (aged 15-16) smoke on a daily basis<sup>61</sup>, and this is the age group where the smokers of the future are recruited.

114. The National Council for Children is against smoking rooms for adults in environments for children and young people. Children will be very much aware of the existence of such smoking rooms from a very early age, and the rooms will soon be seen as attractive places. The smoking rooms will have a hidden agenda and will consequently not have the desired effect. If the legislators wish to create good role models, a total ban on smoking in all institutions and facilities will be the only possible solution. Consequently the National Council for Children recommends:

- *that the Danish government change legislation in this area so as to ensure maximum protection of children and young people against the effects and side effects of smoking.*

## **Weight regulation and eating disorders**

115. The latest figures from the Schoolchildren Study<sup>62</sup> shows that one out of four eleven-year olds in Denmark is on a diet and is preoccupied with their body tone and appearance. Most of them are girls – and they risk developing low self-esteem, self-uncertainty, self-consciousness and perhaps even an eating disorder. The World Health Organisation has compared the Danish figures with figures from 35 other countries. The comparison shows that weight regulation takes place without any clear evidence of Danish children being more overweight than children in other countries. Far more Danish girls than girls of the same age in other countries think they are so overweight that they have to lose weight. This is an alarming development, which can also be seen as a sign of stress, lack of well-being and low self-esteem. Since 1997 the Danish Board of Health has prepared information material intended to curb this development, but so far no positive results can be seen. Consequently the National Council for Children recommends:

- *that further efforts be made to increase particularly young girls' joy and satisfaction with their own body and appearance;*
- *that an effort be made to reduce the performance pressure many young girls feel exposed to in connection with sports activities;*
- *that strategies be prepared as to how parents (particularly mothers) and adult women can become good role models for young girls; and*

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<sup>61</sup> Studies by the National Board of Health and the Danish Cancer Society, [www.sst.dk](http://www.sst.dk)

<sup>62</sup> *Skolebørnsundersøgelsen 2002* (Schoolchildren Survey 2002), Pernille Due and Bjørn Holstein, Copenhagen University, Institute of Public Health 2003, which is the Danish contribution to the WHO's HBSC survey.

- *that it be considered how the advertising industry can influence young women in a positive way and how children and young people can be protected against negative impact from the advertising industry.*

## **Mentally ill children and young people**

116. An increasing number of mentally ill children and young people are admitted to psychiatric wards for adults, and many children still have to wait too long to be examined and treated<sup>63</sup>. The National Board of Health progress report from March 2004<sup>64</sup> shows that about 21% of admissions of mentally ill children and young people are admissions to psychiatric wards for adults. The report concludes that efforts made since 1998 to avoid such admissions have failed. One reason why children and young people risk being admitted to wards together with psychotic adults is the lack of capacity for acute treatment and the lack of bed capacity as well as lack of possibilities of accommodating particularly agitated and self-destructive young people at existing child and youth psychiatry wards. Another contributory factor is a lack of child psychiatrists.

117. The National Board of Health recommends that examination should be offered within a few weeks – and no more than two months - in connection with ordinary referrals.<sup>65</sup> About 33% of mentally ill children and young people wait more than three months for examination and treatment. This figure has not changed since 1997, but should be seen in the light of an increase of about 46% in the number of referrals in the same period. Furthermore, the number of children and young people waiting for more than a year has been reduced, from 7% to 3% in 2003.

118. In connection with the special pool of funds available in the social area in 2004, an annual sum of DKK 35 million has been set aside for the period 2005-2008 for initiatives relating to child psychiatry. The National Council for Children recommends:

- *that the Danish government devise permanent solutions to the above-mentioned problems.*

## **D. The rights of disabled children (Article 23)**

119. According to Article 23 (see also Articles 2, 3 and 6), a mentally or physically disabled child should be able to enjoy a full and decent life, special care and full access to education, training, healthcare services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development.

120. Disabled children risk being excluded from ordinary schools, partly because of problems of physical accessibility and problems relating to the education and training programme's ability to accommodate disabled children. In 2002 the Equal Opportunities Centre for Disabled People examined physical accessibility in ordinary schools<sup>66</sup>. The study shows that much has to be done to

<sup>63</sup> Ugeskrift for læger 166/37, 6 September 2004

<sup>64</sup> *Udviklingen i den børne- og ungdomspsykiatriske virksomhed* (Development of Child and Youth Psychiatry Activities), National Board of Health, March 2004.

<sup>65</sup> *Målsætninger for kvalitet i børne- og ungdomspsykiatri* (Quality Objectives in Child and Youth Psychiatry), National Board of Health 1998

<sup>66</sup> *Tilgængelighed til folkeskoler. Fire bestemmelser fra bygningsreglementet om tilgængelighed* (The Accessibility of Schools. Four building regulations on accessibility), Equal Opportunities Centre for Disabled People. The two reports are available at [www.clh.dk](http://www.clh.dk).

make primary and lower secondary schools fully accessible to disabled children. Also the educational inclusiveness sets limits to the extent to which disabled children can participate in educational activities in ordinary primary and lower secondary schools. Resources are insufficient and the teachers have insufficient knowledge about disabled children. Consequently the National Council for Children suggests:

- *that more funds be provided to make schools physically accessible for disabled children;*
- *that more funds be provided for work relating to the inclusiveness of schools; and*
- *that students at teacher's colleges are taught to work with schoolchildren who need a special educational approach and to work with people from other professions as well as experts to identify children who need special support.*

121. Many disabled children participate in parallel activities specially designed for disabled children, which means that disabled children and non-disabled children do not spend time together and that the opportunity of disabled children to engage in leisure activities are few and limited, especially in rural areas. The Equal Opportunities Centre for Disabled People has published two studies<sup>67</sup> which document that the main problems relate to the accessibility of libraries and cinema theatres. Another problem is individual transport arrangements for disabled children. Consequently there is a need to

- *improve the accessibility of cultural institutions, leisure activity associations and after-school facilities for disabled children; and*
- *improve individual transport arrangements for disabled children.*

122. Many parents of disabled children feel inadequately informed of their rights. Some parents of disabled children who live at residential facilities have problems obtaining disability compensation benefits and allowances allowing them to have their children at home. Consequently there is a need to:

- *improve advisory services to parents of disabled children;*
- *make the rules of social legislation more flexible as regards disabled children so as to ensure that the rules insofar as possible support parents' wish to maintain close contact with their child – even if the child lives at a residential facility; and*
- *incorporate to a greater extent into guidelines concerning special support for children and young people that disability compensation benefits and allowances may be important in terms of maintaining close and frequent contact between a child and its family. The possibility for a child of maintaining close, frequent contact with his or her parents should be taken into account in decisions in matters relating to disability compensation to children who do not live with their parents.*

123. Many disabled young people have difficulty deciding what they want to do in their life because they lack opportunity and scope for personal development. Generally, there is a lack of services that can help young disabled people in the transition from lower secondary education to youth education and training – and help them to become self-reliant adults. In some cases it is only a matter of

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<sup>67</sup> *Tilgængelighed til Folkebiblioteker* (The Accessibility of Public Libraries) and *Tilgængelighed til biografteatre* (The Accessibility of Cinema Theatres), Equal Opportunities Centre for Disabled People, Copenhagen 1999 and 2000 respectively. The reports are available at [www.clh.dk](http://www.clh.dk).

making it possible for a young person to move about freely in society in line with non-disabled young people, eg in the form of escort, transport, conversion of a housing facility and payment of extra expenses. Consequently the National Council for Children suggests:

- *that better advice and guidance to young people and their parents be provided in relation to the young people's transition from childhood to adolescence and from adolescence to adulthood, for example in relation to school programmes and programmes of youth education and training;*
- *that the offer of action plans be extended in relation to disabled children so that the special problems relating to the transition from childhood to adolescence to adulthood are taken into account;*
- *that courses on special assistance schemes and courses on how to live in a home of one's own be offered to disabled young people; and*
- *that young disabled people be allocated a personal contact person or a person of trust.*

124. Caseworkers in local authorities and state counties are not trained in communication with disabled children. The views of disabled children are therefore heard to an even lesser extent than the views of other children in matters affecting them. Consequently the National Council for Children suggests:

- *that local authority caseworkers be trained to communicate with disabled children; and*
- *that it be made clear that disabled children have the same right to be heard as other children.*

125. In January 2003, two teachers at a special school for deaf children restrained an agitated, screaming student and put tape on his mouth. The incident was reported to the police, and in January 2003 the High Court of Western Denmark (as the court of second instance) upheld the ruling that this specific episode was not a violation of the provisions of Section 244 of the Danish Criminal Code. The Equal Opportunities Centre for Disabled People and the National Council for Children subsequently examined the rules applying to primary and lower secondary schools concerning staff behaviour towards schoolchildren in general and the extent of the use of force in connection with extensive special education of children in particular. On this basis, the National Council for Children recommends:

- *that a duty be imposed on all schools to report the use of force to school managers, that rules be laid down concerning written procedures to be followed in relation to the reporting, that local and regional authorities be informed of the reports; and*
- *that funds be set aside for the training and supervision of teachers.*

126. When a local authority makes decisions concerning personal assistance or care, aids, etc, a disabled child has no explicit right to complain about the decisions. Consequently the National Council for Children recommends:

- *that increased attention be paid to the limited opportunity of disabled children to complain, the reason being that the National Council for Children wants broad debate on how we can improve disabled children's right to complain so as to strengthen their legal protection and remedies whenever a decision is made by a local authority concerning personal assistance or care, aids, etc.*

## VI. Educational, recreational and cultural activities

127. It appears from Articles 28, 29 and 31 of the Convention on the Rights of the Child that all children are entitled to education, leisure and participation in cultural life, which will, among other things, develop the child's ability to be part of a democratic society, thus contributing to providing information about and implementing the other rights laid down in the Convention on the Rights of the Child.

### A. The child's right to education (Article 28)

128. The Danish educational system is in the midst of a period of change in which apparently contradictory attitudes make their mark on developments. On one hand, emphasis is being placed on the inclusiveness of schools and their ability to offer all students, particularly those students who are socially and academically disadvantaged, a good school experience. Social skills are key in this respect. On the other hand, there is great focus on increased academic skills and discipline to increase the level of learning, also among weaker students, the argument presented being that the comprehensive schools of the past decades have not been able to break the deadlock of social inheritance. The OECD PISA studies<sup>68</sup>, of which the most recent study is from December 2004, are given as evidence that Danish children do not learn enough at school. The characteristic feature of Danish primary and lower secondary schools – as compared with similar schools in comparable countries – is that there is a very large middle group with acceptable academic competencies, while the most talented and least talented students are performing below the standard of the most talented and least talented students in the other countries.

129. The most recent amendments of the Danish Primary and Lower Secondary Education Act, which were introduced in 2003, focus very narrow-mindedly on strengthening the academic level through an increase of the number of classroom hours offered in some disciplines. However, there is no proof of any clear correlation between these parameters. If the planning of school education does not include new learning and collaboration methods ensuring a different use of school resources, the two objectives mentioned above may work against each other. Academically weak students will have even greater difficulty keeping up in a school that exclusively focuses on conventional teaching, which they have already difficulty benefiting from – and consequently they will not be able to break the deadlock of social inheritance.

130. The latest figures from 2003 concerning the academic competencies of Danish students show that 17% must be considered functional illiterates when they leave school at the age of 14 or 15. Particularly noteworthy is that 49% of bilingual students are functional illiterates when they leave school.<sup>69</sup> Consequently the National Council for Children recommends:

- *that the Danish government work to achieve agreement between the political parties in the Danish parliament on long-lasting models for development of Danish primary and lower secondary schools and that these models be based on a wish to ensure balance between the various considerations listed in Articles 28, 29 and 31 of the Convention on the Rights of the Child.*

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<sup>68</sup> See SFI Survey, <http://www.sfi.dk/sw198.asp>.

<sup>69</sup> See PISA report 2000.



## **B. Bullying at schools (Article 29)**

131. WHO studies from 1994 and 1998 of schoolchildren's health and well-being, as well as the National Council for Children's own study from 1999<sup>70</sup> show that about 25% of Danish children aged 11-15 have been bullied frequently or very frequently in the course of a school year. Since 1998 there has been great public and political focus on this issue.

132. The Danish Centre for Educational Environment (DCUM) was established in April 2002 in pursuance of the Educational Environment Act which came into force on 1 August 2001. The act applies to students at all levels of education and other participants in public and private education. The Centre disseminates information and provides inspiration relating to the improvement of the educational environment at schools and other institutions of education in Denmark. The Centre is now an important, positive key player in efforts to combat bullying. For example, together with the National Association School & Society and the National Council for Children, the Centre has taken the initiative to a scheme called National Collaboration to Promote Social Well-being and Combat Bullying, which all 24 key players in the field of primary and lower secondary education have declared they will support.

133. In 2004 the National Council for Children and the Centre for Educational Environment made a survey of the situation of about 1,400 students in the Council's Child and Youth Panel.<sup>71</sup> The survey shows that fewer children (about 11%) are being bullied at school now than was the case five years ago. However, the proportion of children (about 5%) who are bullied frequently has unfortunately not gone down. These figures confirm the latest WHO study.<sup>72</sup> In addition the panel survey shows that one out of five students has felt he or she was being bullied by a teacher at some point during their years in school. It also appears very clearly that parent attitudes to other people and the way they talk about them are very important in terms of the extent to which their children bully other children. This places the focus on the shared responsibility of adults and parents for efforts aimed at preventing bullying.

134. The National Council for Children is of the opinion that the Danish Education Environment Act is a necessary, albeit insufficient instrument against bullying. The act fails to place a clear responsibility with school managements and school boards, and it contains no sanctions or remedies to be used in the event of non-compliance with its provisions. One result of this is that, three years after its adoption, the act's requirements concerning mandatory health and safety studies have only been met at about 41% of all schools in Denmark.

135. Consequently the National Council for Children recommends:

- *that the Education Environment Act be amended so as to become a true health and safety act with clear specifications of responsibilities; and*
- *that research funding be made available to enable the illustration and evaluation of the applicability of various teaching methods and socioeducational methods as well as the study of the influence of adults, including parents, on the extent of bullying.*

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<sup>70</sup> *Om venskab, drilleri og mobning* (About Friendship, Teasing and Bullying), Danish National Council for Children, May 1999.

<sup>71</sup> *Mobning 2004. En undersøgelse i 7. klasse* (Bullying 2004. A Study of the Seventh Form), National Council for Children and DCUM, March 2004.

<sup>72</sup> The Schoolchildren Study 2002 is the Danish contribution to the international WHO-led research project called Health Behaviour in School-aged Children (HBSC); see [www.hbsc.dk](http://www.hbsc.dk).

### **C. The child's right to participation and right to complain about matters relating to schools**

136. No improvement of schoolchildren's influence on their own schooling has been achieved since the National Council for Children's supplementary report to the UN Committee was published in May 2002. Students still want more influence and want to be heard to a greater extent at schools.

137. It appears from the survey of the members of the National Council for Children's Child and Youth Panel concerning children's rights conducted in August 2004 that only 27.5% of the respondents feel they are being heard to a great extent in matters affecting them at school. A little more than half of the respondents (51.2%) state that they feel they are being heard to some extent, while 21.2% state that they feel they are not being heard to any great extent or not at all. The same survey shows that the majority of children in the seventh form (80.3%) think school is very important, while 62.7% find it boring and 51.6% say it is tough. The students thus have contradictory attitudes to the school – it is both tough and boring. Only 31.1% say that it is often interesting to go to school, and only 36.7% think teachers are good at teaching.

138. As far as the rights of children to complain are concerned, no changes have been introduced since the National Council for Children's supplementary report of May 2000 to the UN Child Committee, which means that children are still dependent on their parents' interests and abilities. School-aged children have no formal rights to complain about the behaviour of adults, the quality of their work or the physical or psychological framework at schools.<sup>73</sup>

139. Contrary to students in upper secondary education or in youth education programmes, students in primary and lower secondary education have no opportunity to complain about their grades or examinations if, for example, they feel they have not been treated fairly in connection with their school-leaving examinations or that the grades they have been given are unfair. Nor can they complain about a teacher's behaviour or about the physical or psychological environment or indoor climate at their school.

140. Consequently the National Council for Children recommends:

- *that the debate on how to strengthen children's legal status in general be intensified with a view to amending current legislation. The Council therefore recommends that the Danish government begin to prepare legislative amendments which unambiguously make it clear that schoolchildren at all age levels are entitled to complain about a teacher's treatment of them, about environment and indoor climate, and about tests and examinations, and which specify methods and procedures to promote the access to exercise this right and consequently the use of it.*

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<sup>73</sup> *Notat om børns klagemuligheder* (Memorandum on Children's Rights to Complain), Danish National Council for Children, October 2003.

## VII. Special measures of protection

### A. Imprisonment of children and young people (Article 37)

141. Article 37 states that the imprisonment of children shall be used only as a measure of last resort and for the shortest appropriate period of time. Article 37 also states that a child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. It is thus emphasised that the imprisonment of children and young people should be an exception and that, in cases where such imprisonment takes place, the needs of the child and its best interests must be taken into account.

142. In its concluding remarks of June 2001, the UN Committee on the Rights of the Child recommended that Denmark should ensure that legislation and policies relating to young offenders would be brought in line with the Convention on the Rights of the Child and other relevant international standards. Likewise Denmark should ensure that children would be effectively separated from adults in the event of confinement and that they would not be placed in solitary confinement unless such confinement was in the best interest of the child.

143. A response to an inquiry to the Danish Prison and Probation Service shows that on 13 August 2002 a total of 16 young people aged 15 to 17 years of age were imprisoned in the institutions of the Service, of which five were in local prisons, four in Copenhagen prisons, one in the penal institution at Herstedvester, five in the state prison in Ringe (closed prison) and one in the Kærshovedgård state prison (open prison)<sup>74</sup>. The National Council for Children believes that there is a lack of suitable places for remanding young people in custody during investigations, which is why they are imprisoned instead.

144. In 1999, the Danish Supreme Court gave a ruling<sup>75</sup> establishing that children in certain cases may be confined in a prison for adults and be submitted to solitary confinement without this conflicting with Denmark's ratification of the Convention on the Rights of the Child – which is clearly contrary to the wording of the Convention and the Committee's opinion. The National Council for Children is of the opinion that:

- *Danish practice in this area is unacceptable and new thinking and the development of relevant measures for young offenders are needed.*

### **Compulsory criminal procedural intervention in respect of children below the age of criminal responsibility**

145. By Act No 443 of 9 June 2004 amending the Danish Administration of Justice Act, a new part 75 b including provisions on compulsory criminal procedural intervention in respect of children

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<sup>74</sup> *Skal børn i fængsel med voksne* (Should children be in prison with adults), Beth Grothe Nielsen in *Børnekonventionen i Danmark* (The Child Convention in Denmark), a book published by the National Council for Children in November 2002.

<sup>75</sup> Ugeskrift for Retsvæsen 1999,1415, ruling passed on 28 May 1999 concerning the remand in custody of two young people aged 15 and 16 respectively. The Supreme Court established that the Convention on the Rights of the Child did not prevent to solitary confinement of children and young people deprived of liberty, irrespective of whether such confinement was in a prison for adults. However, in the specific case, the Supreme Court reached the conclusion that the extraordinary circumstances required to justify the solitary confinement of young people under the age of 18 did not exist.

below the age of 15 has been inserted in the Administration of Justice Act. The amendment of the Act authorises the detention of suspects below 15 years of age. Such detention may only *extend to six hours* and may only be used when necessary for security reasons or when it is exceptionally required *in the interest of the investigation* and another type of custody is not possible, and may *never extend beyond 24 hours*. In no case may *solitary confinement* extend beyond six hours.<sup>76</sup>

146. The National Council for Children has indicated to the Danish government that the Council approves of any statutory amendment resulting in clarification and authority in areas hitherto unregulated, provided that it increases the legal protection of children and young people. However, it is the opinion of the National Council for Children that detention of a child always involves a risk of traumatisation and should therefore solely be used to ensure the security of the child – and not in the interest of the investigation. The Council is of the opinion that in cases concerning violence, rape and robbery, compelling needs to facilitate investigations must be accommodated by the provision of police resources that make it possible to transfer the child to representatives of the social services or to child experts. The National Council for Children has objected strongly to solitary confinement of children.

147. Reporting procedures have been established whereby the police must inform the Director of Public Prosecutions of cases involving solitary confinement of children below 15 years of age and of cases where detention exceeded 6 hours. Against this background, the Director of Public Prosecutions must assess whether the use of such methods in practice should give rise to changes of the procedures. Consequently the National Council for Children recommends that:

- *the Act be amended so that children below the age of 15 years can be detained for a maximum of four hours and cannot be placed in solitary confinement, and that police resources be provided to make it possible to transfer the child to representatives of the social services or to child experts whenever necessary.*

### **Order on the use of force**

148. In 2004 new rules were introduced for the placement of children and young people in residential institutions by amending an order on the use of force.<sup>77</sup> Local authorities now have the possibility of placing children as young as 12 years of age in secured wards of residential institutions without having to obtain an exemption from the county, which has previously ensured that a case would be thoroughly investigated by several independent authorities. The National Council for Children has reminded the Minister for Social Affairs that placement in secured wards is very similar to confinement in a prison, which may have dire consequences, particularly for the group of very vulnerable children for whom the rules are intended. The placement of children in a secured ward should therefore be a measure of last resort. Furthermore, the counties will still have the possibility of granting exemption from the 12-year age limit so that even younger children may be placed in a secured ward. The National Council for Children considers this unjustifiable and incompatible with all available knowledge about children's needs. Consequently the National Council for Children recommends that:

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<sup>76</sup> Please see e.g. *Rigsadvokaten Informerer* (Information from the Director of Public Prosecution), No 32/2004, 1 July 2004.

<sup>77</sup> Order No 620 of 21 June 2001, as amended at 1 July 2004.

- *a lower age limit of 12 years be introduced for placement in a secured ward and that guidelines to be appended to the order be prepared for local authorities and institutions, specifying that a local authority needs not apply the new rule in the order, but may continue to consult the county in such cases before proceeding to confinement in a secured ward.*

149. The National Council for Children is generally concerned about the implacable tone dominating the debate on the youngest offenders. The government's initiatives reflect an unprecedented harshness towards young offenders, completely void of the basic humanistic views which historically have been a feature of the Danish system of justice. If the government's views are expanded further in practice, the Council believes a de facto age of criminal responsibility of 12 years of age will be introduced even though the wording of the Danish Criminal Code on this subject is not changed. This means children in the sixth form who should enjoy maximum protection and care, not just from their parents but also from society irrespective of the fact that some of them are on the wrong side of the law in a given situation. Criminal children are often children who are vulnerable and were neglected at an early age, and who have been given very little care and love. Imprisonment and force will not prevent them from committing crime. Instead, a group of mentally impaired children with a long criminal career ahead of them will be created. The National Council for Children is of the opinion that:

- *such a development is unacceptable, represents a step in the wrong direction and is very detrimental to society. The Council calls for initiatives which will strengthen crime prevention efforts in local authorities as well as the planning of socioeducational treatment to help children who have got into trouble.*

### **The Youth Sanction programme**

150. The Youth Sanction programme is a two-year socioeducational treatment programme for young people between 15 and 18 years of age who have committed serious violent crimes against persons or serious offences against property. The sanction programme has three stages: A preliminary stay in a secured residential institution for 2 to 12 months followed by placement on easier conditions for up to 12 months and finally ambulatory socioeducational treatment for the remainder of the time. The courts of law will lay down the framework for the programme on recommendation from the social services. The actual content will subsequently be determined by the social authorities. The Youth Sanction programme came into force in the summer of 2001, and the final evaluation of the programme will consequently not take place until the programme has run for a certain period of time so as to make it possible to assess whether relapses occur. The programme departs from previous practice within the area, as treatment and punishment are not kept distinctly apart. Practice throughout many years of alternative placement of young offenders has thereby been set aside.

151. The National Council for Children is of the opinion that it is generally in the best interest of the young people and also best from an education point of view that young people committing serious crimes can be retained in a treatment programme for a long period of time, provided that the nature and quality of the treatment offered are acceptable and that the treatment is completed within the framework of the social services system. However, it could be argued that a sentence for treatment – that is treatment as punishment – may not be the best way to help such young people get a better life. However, the National Council for Children considers it crucial that a socioeducational programme of a long duration is soon established for all young people who have committed serious

offences, and that the framework for the youth sanction programme is provided by the social authorities.

152. Both socioeducational and legal parties have criticised the programme. For instance, a review of the practice up till now has revealed that the programme has resulted in prolongation of sentences, and that great uncertainty exists as to the scope of application.<sup>78</sup> It has also been claimed that two offenders may be sentenced to the same kind of sanction, although the sentences in the individual cases were of very different severity. The local authorities are accused of exclusively considering their financial means when they nominate young people to participation in the programme as the costs for each local authority are lower as long as the young people stay in a secured ward<sup>79</sup>. The young people in the programme are to a large extent quoted for having experienced the sanction as an actual punishment – not as treatment.

153. In October 2004, the Research Unit of the Danish Ministry of Justice published an interim report on the first year of the programme, in which certain difficulties related to the programme are described.<sup>80</sup> Among the points mentioned are the lack of places in suitable facilities, the fact that the young people's attitudes and cooperativeness were problematic, and that it created confusion and was detrimental to the motivation of the young people whenever a new sentence was passed while they were serving a sentence under the Youth Sanction programme, just as it was a problem that an appeal against the Youth Sanction sentence did not entail postponement of the serving of the sentence. However, it was emphasised that this report was not the final evaluation and that, in the long term, an actual evaluation of effects would be completed assess whether the youth sanction programme had have a better effect in terms of providing special prevention or whether the effect was lower than that of other sanctions. However, it will take some years before such an evaluation can be completed as a sufficient number of young people must have completed a youth sanction programme before the effects of the programme can be evaluated. Consequently the National Council for Children recommends:

- *that financial considerations must not be allowed to determine how long a convicted person will be confined in a secured ward, the only acceptable consideration being the consideration for the convicted person; and*
- *that the evaluation of effects of the youth sanction programme be followed closely and the necessary steps be taken on the basis of the conclusions of the evaluation.*

154. At a very short notice and without prior discussion with the relevant parties, the government published a new draft order in December 2004 on the use of force towards children and young people placed outside the home. The proposal will increase the access of authorities to use force towards young people in the form of longer periods of solitary confinement in special secured wards. The authority to impose such sanctions applies in particular to violent young people and young people with mental illnesses, the reason being that there must be room for such persons in

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<sup>78</sup> *Den særlige ungdomssanktion* (The Special Youth Sanction Programme) Jørn Vestergaard in *Lov & Ret*, August 2003.

<sup>79</sup> *Det er jo ikke pølsefabrikker, det her! Straf og behandling af unge – resultater fra speciale om Ungdomssanktionen* (These are no sausage factories! Punishment and treatment of young people - findings from analysis of the Youth Sanction programme), Mette Arnsfelt Andersen et al., Department of Sociology, University of Copenhagen, December 2003.

<sup>80</sup> *Forløbet af ungdomssanktionens første år. Delreddegørelse* (The First Year of the Youth Sanction Programme. Interim report), the Research Unit of the Ministry of Justice, Copenhagen 2004. See the report at [www.jm.dk](http://www.jm.dk).

any substitute for custody, youth sanction, etc. The National Council for Children has objected to the Ministry of Social Affairs about the deadline applying to the public inquiry, which has made any serious consideration of the matter impossible. The Council emphasises that this issue should be discussed thoroughly on a cross-sectoral basis, since it concerns fundamental rights of children and young people in the care of the public authorities.

- *The National Council for Children is very concerned about these developments. They represent a further step away from the fundamental humanistic views which used to be key in the Danish system of justice. Consequently the National Council for Children calls for the government to summon the relevant parties, including organisations with in-depth experience on placement, for a broad discussion of the issue.*

## **VIII. Conclusion**

155. Seen in an international perspective, Danish children are among the most privileged children in the world – especially as regards material goods, social welfare, education and cultural rights. However, as documented in this report, there are areas where the protection of the rights of the child has deteriorated over the past five years, and there are several areas in which the rights of the child have not been improved – despite the Committee’s recommendations from June 2001.

156. The National Council for Children has prepared this supplementary report as well as the report entitled *Børnesyn* (Children’s Vision) about children and young people to contribute to improved implementation of the Convention on the Rights of the Child in Denmark and to the spreading of the letter and spirit of the Convention to children and adults in Denmark as well as internationally. The National Council for Children wants every child in Denmark to be able to feel respected as an individual in all contexts. The Danish government has the main responsibility for ensuring that the knowledge and insight needed to achieve this objective are generated throughout Danish society. The National Council for Children is of course at its disposal and more than willing to contribute to the achievement of the objective.

