

Third Study Commission □ Criminal Law and Procedure

Answers to QUESTIONNAIRE re. Denmark

THE WAY CRIMINAL SYSTEMS DEAL WITH THOSE WHO ARE MENTALLY ILL OR MENTALLY HANDICAPPED

Ad 1.

Once the prosecution has decided to charge somebody for a crime the case will be dealt with by the ordinary criminal court process. In practice the prosecution will often withdraw a charge concerning minor crimes if the person in question is already enrolled in psychiatric treatment. This will be the case, for example if the person commits minor crime such as theft or assault while he is held in a hospital for the mentally ill due to a conviction for murder.

Ad 2.

In order to determine whether an accused is mentally ill or was mentally ill at the time of the crime, the prosecution will obtain a statement from psychiatrists and often even an opinion from the Medico-Legal Council. Such medical professional opinions will serve as a non-binding guidance to the court.

No punishment will be given to a citizen, who at the time of crime was not accountable due to mental illness or due to a comparable state of mind. If the citizen is found guilty, the court may decide, whether other provisions shall be taken in order to prevent further breach of the law.

Such provision may be either supervision, restriction in whereabouts or work, rehabilitation or psychiatric treatment. If such provisions are deemed to be insufficient, the court may decide, that the citizen shall be hospitalized at an institution for the mentally ill or other suitable institution.

If the verdict points to confinement in an institution or if the provision allows such confinement, a maximum duration of the provision shall be set at five years. For serious crime such as manslaughter, rape or arson, a maximum duration is not set.

The prosecution must ascertain that the provision not be imposed for a longer time and in a scope exceeding the necessary measures. When change is needed for a provision, the convicted person or his legal guardian shall apply, and a new ruling by the court is required. A legal guardian shall always be appointed for such a person. Alternatively the application may be handed to the court by the management of the institution or by the Prison and Probation Service.

If the court declines to change the provision, at least six months must pass, before a new application to the same effect may be handed in.

In those cases, where a maximum duration was not set, the question of duration shall be raised by the prosecution within five years after the sentence and then at least every second year.

Ad 3.

Please see 1 and 2 of above.

Ad 4.

If a prisoner begins to suffer from a mental illness during his imprisonment, the Prison and Probation Service must determine, whether the prisoner can be treated in the prison or he must be transferred to a special department for the mentally ill prisoners in order to receive the needed treatment there. In cases of severe mental illness, the prisoner may be transferred to a hospital for the mentally ill. The time he spends there will be deducted from his term.

Linda Lauritsen, Judge, Court of Roskilde, Denmark
September 2006