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WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Denmark

by

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This country report is one of many prepared for the World Factbook of Criminal Justice Systems under Grant No. 90-BJ-CX-0002 from the Bureau of Justice Statistics to the State University of New York at Albany. The project director for the World Factbook of Criminal Justice was Graeme R. Newman, but responsibility for the accuracy of the information contained in each report is that of the individual author. The contents of these reports do not necessarily reflect the views or policies of the Bureau of Justice Statistics or the U.S. Department of Justice.

GENERAL OVERVIEW

1. Political System.

Information not available.

2. Legal System.

In the 18th and 19th centuries the criminal justice system developed into an adversarial system. According to the Administration of Justice Act from 1916, both the pre-trial proceedings and the trial itself follow this system. This process also includes the questioning of witnesses and the accused by the presiding judge. It follows from the principle of material truth that the judge is obliged to elucidate all vague points of the case.

The criminal justice system is administered by the Ministry of Justice, the Minister of Justice being head of office regarding Denmark as well as Greenland. The police, the courts when seen as an administrative body, and the correctional system all stand under the immediate authority of the Minister of Justice.

3. History of the Criminal Justice System.

In the year 1660, Denmark was made an absolute monarchy and in 1683 a new set of laws, Christian den Femtes Danske Lov, was issued. These statutes were much influenced by municipal law. In the following centuries, with these laws becoming increasingly obsolete, the Supreme Court

played a prominent role in interpreting and completing statutory law.

In 1848 democracy was introduced in the kingdom of Denmark and in 1866 a modern criminal code was issued. The first clause of the general part stated the principle of legality which is *nulla poena sine lege*. The criminal code of today, *Straffeloven*, af 15. April 1930 entered into force in 1933.

In 1953 the large Arctic island of Greenland which had been colonized by Denmark was made part of the country. In the year 1954, a criminal code especially for Greenland was issued in which sanctions were based on the old traditions of the people. Thus, Greenland's criminal justice system is solely offender treatment oriented, although this criminal policy causes increasing difficulties in a modern society. Figures and information about Greenland's criminal justice are not included in the following.

CRIME

1. Classification of Crimes.

* Legal classification. Criminal offenses are defined either in the special part of the Criminal Code or in separate statutes. The general conditions for imposing criminal penalties are found in the general part of the Criminal Code which also apply to separate statutes. The sanctions described in the general part of the Criminal Code are the same whether the criminal offense consists of a violation of the Criminal Code or of separate statutes.

The substantive Danish criminal law is monistic, meaning that violations of the law never have been divided into categories like felony/misdemeanor, crime/delicts or the like. It does not mean, however, that major offenses are treated in the same manner as petty offenses in all respects.

* Age of criminal responsibility. The age of criminal responsibility is 15 years.

* Drug offenses. According to the Criminal Code the mere possession of narcotic drugs is criminalized. However, the law is not enforced regarding possession of very small amounts meant for the drug addict's own consumption. Possession and selling is penalized in a special law on drugs containing the possibility of imprisonment for a period of up to two years. Serious cases of trafficking of drugs are punished with imprisonment within a range of one month to ten

years according to the Criminal Code.

2. Crime Statistics.

The definition of homicide is intentional killing. Burglary is included in the figures on theft in general. Attempts are included unless otherwise specified. Persons convicted in 1992 and rate of conviction over 15 years.

Table 1.

Offense	Convictions in 1992	Convictions per 100,000 inhabitants > 15 years
Homicide	48	Not Available
Attempted homicide	35	Not Available
Theft	30,079	700
Robbery	832	19
Rape	191	4
Trafficking of drugs	324	8

The overall percentage of the reported crime that was cleared amounted to 21.8% in 1992. The figures on reported crime for 1992 and the rate of reporting over 15 years are in Table 2.

Table 2.

Offense	Reported offenses in 1992	Reported crime per 100,000 inhabitants > 15 years
Homicide	237	6
Theft	295,039	6,873
Robbery	2,328	54
Rape	556	13
Trafficking of drugs	662	15

* Crime regions. Being a homogeneous country Denmark has no special crime regions. The distribution of crime in rural and urban districts mirrors the relative residency distribution of the population and is shown in Table 3.

Table 3.

In % of total convictions	Rural areas	Cities and towns > 10,000 inhab.
Homicide	24%	76%
Theft	24%	76%

Robbery	20%	80%
Rape	35%	65%
Trafficking of drugs	16%	84%

Sources: "Yearbook of Nordic Statistics 1993" and "Kriminalstatistik 1992" which contains statistical information gathered from the police, judicial authorities etc. by the central statistical office of Denmark.

VICTIMS

1. Groups Most Victimized by Crime.

A survey has shown that about 25% of the population was victimized in 1986 by criminal acts such as theft, vandalism and violence. Of these, 14% had experienced theft, 12% vandalism and 6% violence. More men than women were victimized. The difference between age groups was apparent. More than one third of young people between 16- 24 years were victimized against less than one eighth of old people over 65 years of age. The greatest risk of experiencing criminality was found among young men in urban areas.

2. Victims' Assistance Agencies.

Private crisis centers for victims of violence and rape are found in all major towns. According to the Law of Compensation to Victims of Violent Acts the victim has the right to receive compensation from the state and a scale for paying damages has been established.

3. Role of Victim in Prosecution and Sentencing.

The victim has no right to be a party to the proceedings under the penal aspects of the case. They are notified of the action taken by the prosecution. In a very limited number of cases the victim is permitted to prosecute, i.e. offenses against personal honor and special cases where the public prosecutor has decided not to pursue the matter. The victim may be called as a witness under the normal rules regarding witnesses.

4. Victims' Rights Legislation.

The victim has the right to present civil claims under the criminal process. Victims of certain violent crimes such as sexual assault may receive legal assistance during the criminal proceedings. A sexual assault victim is also entitled to request that the courtroom be cleared

while he or she is giving evidence.

POLICE

1. Administration.

The state police is a department of the Ministry of Justice. There is no longer a municipal police and the military police only has authority over soldiers according to the Military Criminal Code. Denmark is divided into 54 police districts (excluding the Faeroe Islands and Greenland), each headed by a local chief of police. The National Commissioner reports to the Minister of Justice. For administrative purposes the police are subdivided into plain-clothes criminal investigators, uniformed patrolmen, traffic police officers, immigration police, and other categories.

2. Resources.

* Expenditures. In the year 1993 the expenditure grant totaled DKK 4.4 billion, of which employee costs accounted for 77%.

* Number of police. At the end of 1993 the number of police personnel was 10,247, of which 8,123 served in the uniform branch. Legal staff totaled 369 and the number of civilian clerical staff was 2,093. The ethnic origin and gender distribution of the police force has not been reported.

3. Technology.

* Availability of police automobiles. In 1993 the number of service vehicles was 2,245, each running about 28,000 km per year. The number of police turn-outs amounted to 471,076.

* Electronic equipment. The police are equipped with radio communication, and computers. Recently, data terminals have been installed in police cars in order to facilitate access to offender records on turn-outs.

* Weapons. The police force is armed with defensive weapons like tear gas. Watercannons are not used. The police use 7.65 caliber pistols. Battle uniforms consist of helmets, visors and plastic shields. Bulletproof vests are only used in case of threats of gunfire and the like.

4. Training and Qualifications.

New recruits are required to be in good

physical condition, good personal and economic condition, and should have achieved good grades in school. New recruits are usually required to be between 21 and 29 years of age, of Danish citizenship and without any convictions.

The basic training of police personnel takes 3 years. The training comprises both school education and training of a more practical nature. School education, which consists of 2 courses of 8 months each, takes place at the Police Academy in Copenhagen. The rest of the training time is spent on the job. The Police Academy also presents special courses and leadership courses. All chiefs of police hold a master's degree in law from a university.

5. Discretion.

* Use of force. A policeman on duty is armed with a pistol and a baton. According to the rules issued by the National Commissioner the pistol and baton may be used when considered necessary, mainly to avert damage to a person, or to arrest dangerous criminals. Firearms may also be used to avert dangerous attacks on state institutions and to disperse an unlawful assembly which is considered to intend a dangerous attack of such kind. The use of firearms and police batons must be reported to the National Commissioner in writing. In the year 1993, 245 reports concerning the use of and threats of using firearms were filed. There were 359 reports concerning the use of police batons.

* Stop/apprehend a suspect. Coercive measures must be based on law and they must respect the principle of proportionality, and they may not violate fundamental rights. According to the Administration of Justice Act the police may apprehend a person in order to establish his or her identity. In order to take a person suspected of criminal acts into custody, the suspicion must be strong and concern fairly serious offense.

* Decision to arrest. Arrests are made by the police on their own discretion. According to the Constitution, arrests for a period of more than 24 hours have to be decided by the court. The maximum period of a prolonged arrest is 72 hours. When the grounds for detention no longer exist the person must be released and the time of the release be reported. Detention on remand can only be decided by a court. A person who is suspected of a criminal act will in many cases be released after questioning in the police station, even if the person is formally charged with a crime.

* Search and seizure. Suspects and their homes or any other place where relevant objects or wanted persons are presumably to be found may be searched. The conditions for this measure depend on whether it is a public place or a private home, whether it is necessary to act with short notice, or whether the person consents to the search. Two independent witnesses will be summoned to the search unless the suspect waives his rights. Compensation may be awarded for the infamy caused by an improper search. Objects of proof or loot may be seized wherever they are found.

* Confessions. Suspects are not obligated to testify. According to the Administration of Justice Act the police may under no circumstances put pressure on the suspect or use any kind of force in order to make him or her speak. On the other hand, the accused must submit to an examination of his body if the police wish to look for traces of a fight or conduct blood analysis. The accused may also be ordered by the court to undergo a psychiatric examination, possibly in a mental hospital.

6. Accountability.

According to the Administration of Justice Act complaints over police behavior are dealt with by a lokalnaevn or local committee. In such cases the committee consists of the chief of police, two police staff members, members pointed out by the municipality and a representative for the defense lawyer's association. The local committee decides whether to investigate the matter. The investigation itself may be carried out by the public prosecutor or by the city court. The committee may refuse to investigate if the complaint is considered unfounded or if the case is considered to have been adequately seen into.

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the Accused.

* Rights of the accused at trial. The accused is to be regarded as an active subject with the benefit of the presumption of innocence. He has the right to be heard, to present evidence, to put questions to witnesses, and to take remedies. He is also to some extent an object of investigatory measures such as finger-printing and blood tests for alcohol. He may also have to submit to coercive measures such as arrest and search of his home.

The accused is under no obligation actively

to contribute to the prosecution and neither pressure nor cunning may be applied in view of obtaining statements. Devices such as the lie-detector or methods like narco-analysis or hypnosis are inadmissible.

* Assistance to the accused. Everyone accused has the right to legal assistance by counsel of his own choice. Defense counsel is mandatory in all criminal cases of a more serious nature, regardless of the financial situation of the accused. The defense counselor is appointed either at the request of the accused or, more often, chosen by the court from a body of qualified lawyers previously selected by the Ministry of Justice. The police must inform the accused of his right to a publicly assigned defense counsel. If the convicted is unable to pay his defense counsel the Treasury will in most cases provide the lawyer's fee and cover other costs. In case of acquittal the State will nearly always cover all costs.

It is the right of the accused to have his defense counsel present during police interrogation and court hearings, and he is entitled to consult with counsel in private at all times. The counselor is informed of the evidence gathered by the police but in some cases he may not notify the accused of the contents.

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. The first step in the criminal proceedings is the police inquiry. While investigating, the police do not act as agents of the government but exercise their functions objectively as fact-finders.

* Official who conducts prosecution. The local chief of police, who has a law degree together with his deputies, has the authority to prosecute in nearly all cases. The most serious cases are referred to the district attorney, who is also in charge of the cases for the High Court which entail jury cases and appellate cases. The Director of public prosecution conducts criminal cases for the Supreme Court.

* Alternatives to trial. Prosecution may be abandoned in cases where a conviction cannot be expected because of lack of evidence, or charges may be withdrawn in cases against young people or first-time offenders. Withdrawal of charges often will be combined with conditions similar to those imposed by a suspended sentence. Conditional withdrawal of charges only takes place in minor

cases, where the accused has made an unqualified confession which is found to be true by the court. Unconditional withdrawal of charges is used in two different situations. In rare cases charges against a suspect are dropped when there are special mitigating circumstances in accordance with the principle of opportunity. More often, the public prosecutor may reduce the charges if further prosecution will cause difficulties, costs, or a prolonged period in court out of proportion to the importance of the case or the expected sentence. This may be the case, for instance, in big tax evasion cases or fraud cases.

* Proportion of prosecuted cases going to trial. Information not available.

* Pre-trial incarceration conditions. A person against whom criminal prosecution is initiated is not automatically subject to detention on remand. Detention must be applied in accordance with the principle of proportionality. Thus, it cannot be used if the actual crime in fact only carries a fine or lenient imprisonment. Beside these conditions the general rules are: Firstly, there must exist a reasonable suspicion that an arrestable offense has been committed, i.e. an offense which carries a maximum penalty for at least one year and six months, e.g. ordinary theft and burglary. Secondly, one or more of the following special grounds for detention must be present: Serious reasons to believe that the accused will either abscond, that he might commit further offenses of the same sort if left at large, or that he will meddle with the evidence. On specifically listed serious grounds detention may also be used in order to protect the public sense of justice. The court may decide that a prisoner on remand is to be isolated inside the prison. The decision has to be renewed at least every second week. The average length of stays in remand prison is estimated to be between two and four weeks.

* Bail procedure. In cases where remand detention is applicable the court may choose to release the accused conditionally if the purpose of remand detention can be obtained in a more lenient manner. Release on bail has been used in very rare cases and is not a usual part of the criminal justice system.

* Proportion of pre-trial offenders incarcerated. In 1992, the proportion of persons with prison sentences who previously had been held in pre-trial incarceration was estimated to be 27%. There were also 23,781 convictions with

unsuspended or suspended prison sentences in comparison to 6,407 cases of remand detention.

JUDICIAL SYSTEM

1. Administration.

The court system in criminal matters consists of the Supreme Court, two high courts and 84 city courts. A major part of all criminal cases are resolved with the participation of two lay judges in addition to the city court judge. Their votes carry the same weight on all questions. In the rare cases where a jury is instituted by the Administration of Justice Act, twelve jurors participate in the case in addition to three high court judges. In jury cases the united lay votes carry the same weight as the professional judges' votes.

2. Judges.

* Number of judges. There are 15 supreme court judges, 69 high court judges, and 195 judges in the city courts.

* Appointment and qualifications. The judges all have high university law degrees prior to their engagement by the Ministry of Justice. After a decade or more of work in the courts or in the Ministry of Justice the judge will, according to the Constitution, be appointed for life or until his or her retirement at the age of 70.

3. Special Courts.

Denmark has no special courts in criminal matters besides the ordinary court system. Thus, juvenile cases, which are often settled by a conditional withdrawal of charges, are handled by the city court judges.

4. Procedure.

Confessions may influence the sentence in a mitigating direction but the Administration of Justice Act does not allow guilty pleas where the accused is allowed to confess to a lesser crime. There is no information on how the majority of criminal cases are resolved.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? The sentence is determined by the presiding judges.

* Is there a special sentencing hearing?
Information not available.

* Which persons have input into the sentencing process? In preparing the case the police are governed by the principle of objectivity which means that the police are obliged to look at circumstances that speak for as well as against the accused. A social report is developed if it is considered possible that the personal conditions of the accused may influence the determination of the penalty. The police write such a report in cases where the sentence may be suspended, or where charges may be conditionally withdrawn, as well as in cases regarding the mentally unfit where measures other than punishment are considered. In some cases the accused may be required to undergo a psychiatric examination in a mental hospital.

All kinds of evidence, including witnesses' statements, are supposed to be laid before the court during the criminal proceedings on which basis the court decides the sentence. In minor cases and cases where the accused has made a full confession the court consists of one city court judge. In all criminal cases of first instance where the permissible sentence is more severe than a fine, two lay judges will participate in the trial.

2. Types of Penalties.

* Range of penalties. The penalties are described in the general part of the Criminal Code. They are: fines, lenient prison (7 to 30 days), prison (1 month to 16 years or imprisonment for life), and community service orders. Prison sentences and fines may be conditionally suspended and there is a list of conditions such as probation, abstaining from drug abuse, and payment of damages that may be stipulated. The maximum penalty is imprisonment for a lifetime which is prescribed for homicide and a few other crimes of equal gravity. In most cases these persons will be given a conditional royal pardon after approximately 12-14 years of imprisonment. The penalty for a typical offense is supposed to be within the lower half of the penalty range for the crime, giving room for mitigating as well as aggravating circumstances. If the case comprises more than one criminal act the penalty must be contained within the ranges of the most serious offense so that penalties for different offenses are not accumulated in an absolute way.

Each statute in the special part of the Criminal Code will tell the kind of penalty applicable for the crime and the upper range of its duration. This gives the court the opportunity to choose the actual penalty freely within the ranges. The penalty ranges for theft go from fines for petty theft to up to four years imprisonment for aggravated theft. Violent attacks and assault are usually punished with prison sentences from one to four years.

* Death penalty. Information not available.

PRISON

1. Description.

* Number of prisons and type. The correctional service controls 15 prisons, one institution for inmates needing psychiatric treatment, and 40 local jails. Five of the prisons and the psychiatric institution are closed in that they are secured by an external ring wall as well as by internal precautions like secured buildings, and electronic security systems combined with relatively dense staffing. The staff does not carry arms. Being used as remand detention institutions, the local jails are also closed. The remaining nine prisons are open institutions which actually means that the inmates are physically able to leave the institution. Two of the closed prisons have both male and female inmates. In one of these prisons there is cohabitation between men and women within units. There are also two open prison departments for women.

* Number of prison beds. In 1992 the prison capacity totaled 3,797 and the jail capacity totaled 1,615.

* Average daily/number of prisoners. In 1992 there was a daily average prison population of 3,597: 3,412 men and 185 women. The local jails have a daily average population of 1,531.

* Number of annual admissions. The number of annual admissions after conviction in 1992 was 9,741 persons.

* Actual or estimated proportion of inmates incarcerated. As admissions are not distributed by types of crime a comparison must be made among unsuspended convictions to prison in 1992 which total 8,153.

Crime Type	Annual Admissions	Daily Average
Drug Crimes	Not Available	7%
Violent Crimes	Not Available	18%
Property Crimes	Not Available	58%
Sex Crimes	Not Available	2%
Other	Not Available	15%
Total	Not Available	100%

2. Administration.

* Administration. All prisons and jails are state institutions administered by the Ministry of Justice's Department of Prisons and Probation.

* Prison guards. In 1992 the prison guards, inclusive of vocational staff, totaled about 2,600 persons. The prison staff also consists of about 680 social welfare officers, teachers, health officers, vicars, and office clerks. Thus, the inmate - prison staff ratio is almost 1:1. The prison staff is a mixed group of men and women but figures on the gender distribution are not available. Women are much appreciated in prison guard functions.

* Training and qualifications. The basic qualifications are good physical condition, good personal and economic conditions, and good school attainments. New recruits are usually required to be between 21 and 29 years of age, of Danish citizenship and having never been convicted. The prison staff education takes place at the Prison Educational Center. As is the case with the police chiefs, the prison wardens possess university law degrees.

* Expenditure on the prison system. In 1993 the total expenditure on the prison system was 1,307 million Danish crowns. A revenue of 119 million Danish crowns, corresponding to 9% of the total expenditure, comes from the sale of inmate products.

* Number of prisoners awaiting trial. Information not available.

3. Prison Conditions.

* Remissions. The policies of the correctional service are governed by the following three principles:

a. Normalization. As a starting point the inmate is placed in the open prison closest to his home in order to preserve family contacts and to pave the way for a gradual release from the prison.

There must be specific reasons for instituting control of inmates' correspondence. Visits by next-of-kin take place in secluded visiting rooms with a couch. In the open prisons weekend leaves are granted every third week to prisoners with a low risk of recidivism. A prisoner in a closed institution may obtain similar rights to weekend leave when he has served one fourth of his sentence. At some time during incarceration about one third of the prisoners in closed prisons are granted occasional leaves. The total number of leaves per year is about 57,000. More than half of these are so-called work leaves where an inmate leaves the prison to go to work or to take part in educational activities in society.

b. Self-administration. The inmate is responsible for his own daily life. Important elements of this approach are that food must be bought and cooked by the inmate to which end he is paid a fixed amount of money per day. The inmate is also responsible for his personal hygiene, clothes' laundry and repair. The prison encourages the inmates to make meaningful use of leisure hours by providing opportunity for sports and other structuralized activities.

c. Release on parole and after-care. According to a provision of the Criminal Code more than 90% of the inmates are released on parole after having served two thirds of their sentences. Almost 10% of these will be released after serving between one half and two thirds of the time, due to special grounds. Royal pardon is possible according to the Constitution, but rare. Outside of imprisonment for life which necessitates the use of pardoning, royal pardon is more commonly used in connection with short-term sentences where the convicted cannot endure the prison stay because of severe illness or the like. In such cases the pardon is normally conditioned on the payment of a fine.

The probation and after-care system has local offices in about 30 towns all over the country. These offices attend to persons with suspended sentences on probation, parolees under supervision, and handles the supervision of certain mentally aberrant persons who have been sentenced to ambulant treatment. The serving of community service orders also rests with the probation and after-care system.

* Work/education. While serving his sentence the inmate is obliged to work for which he is paid a small hourly salary. The prison administration tries to ensure that the working places equate those found in modern society. In order to encourage inmates to educate themselves the same amount is paid to inmates who choose to go to the

prison school instead of going to work.

* Amenities/privileges. The prison provides health care and necessary dental care. Sick inmates will be hospitalized in ordinary hospitals.

EXTRADITION AND TREATIES

* Extradition. The criminal justice system of Denmark respects human rights pronounced in the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 1950, and the Standard Minimum Rules for the Treatment of Prisoners as recommended by the Committee of Ministers of the Council of Europe in 1987.

Denmark has entered into bilateral extradition treaties with the USA, Canada, Great Britain and Belgium. On a multilateral basis, Denmark has ratified the European Convention on extradition from 1957. Extradition to and from Finland, Iceland, Norway and Sweden takes place according to similar laws passed in each country.

* Exchange of prisoners. Denmark has also ratified European conventions on transfer of criminals and criminal proceedings. As a consequence of special regulations the transfer of criminals as well as the transfer of criminal proceedings takes place on a regular basis inside Scandinavia.

* Specified conditions. In contrast with extradition to other countries, the legislation on extradition inside Scandinavia does not exempt its own nationals from prosecution.

SOURCES

Balvig, F. "Hvor mange uds'ttes for kriminalitet?" in "Kriminalitetens ofre", Kriminalistisk Instituts Stencilserie nr. 50, Copenhagen 1988.

Danmarks Statistik "Kriminalstatistik 1992", Copenhagen 1994.

Greve, V. "Criminal procedure in Denmark", Kriminalistisk Instituts Stencilserie nr. 59, Copenhagen 1992.

Greve, V. "Denmark" in "Criminal procedure systems in the European Community", ed. Wyngaert et al., London 1993.

Greve, V. and Dr. Claus Gulmann "Denmark, The system of administrative and penal sanctions", submitted to the EC Commission in accordance with a study contract of 19

September 1990.

Greve, V. et al "The Danish system of criminal justice", Department of prison and probation, Copenhagen 1984.

Joutsen, M. "Changing victim policy: International dimensions" in "Victims and Criminal Justice", ed. Kaiser et al., Freiburg 1991.

Joutsen, M. "The role of the victim of crime in European criminal justice systems", Helsinki 1987.

Ministry of Justice, Department of Prisons and Probation "Prisons in Denmark", Copenhagen 1990.

Ministry of Justice, Department of Prisons and Probation "Kriminalforsorgens årsberetning 1992" (Yearbook of the Department of Prisons and Probation 1992), Copenhagen 1993.

Ministry of Justice, Department of Prisons and Probation "Kriminalforsorgens årsberetning 1993" (Yearbook of the Department of Prisons and Probation 1993), Copenhagen 1994.

Nordic Statistical Secretariat (ed.) "Yearbook of Nordic Statistics 1993" (Nord 1993:1), Vol. 31, Nordic Council of Ministers, Aarhus 1993

Smith, E. "Straffeproses, Grundl'ggende regler og principper", Copenhagen 1991.

Wilhjelm, P. "Tvangsindgreb i strafferetsplejen 1976-85", Copenhagen 1988.

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