

## XXIX. DENMARK<sup>78</sup>

### 1. SUMMARY OF LEGISLATION OF DENMARK RELATED TO TERRORISM

#### (a) Criminal Code and other relevant legislation

The Criminal Code contains no separate provision on terrorism today, but a number of the provisions of the Code cover acts characterised as terrorism in general usage and in international conventions. The most serious offences as for example murder and hijacking carry a penalty of up to life imprisonment.

Section 23 of the Criminal Code extends the penalty provided in respect of any offence to apply to everyone who has contributed to the act by instigation, advice or action. Thus, if a person consents with one or more other persons to commit a criminal offence, such conduct is punishable under section 23. The penalty for offences punishable under section 23 is the same as the penalty for the relevant provisions in the Criminal Code.

Under the present legislation recruitment to terrorist groups can be punished as contribution to the terrorist acts committed or contemplated. According to recent legislation, recruitment can be punished as contribution to violation of the new provision on terrorism.

In addition, the supply of weapons to terrorists can be punished as contribution to the terrorist acts committed or contemplated or as violation of the Act on Weapons and Explosives. Under the new legislation grave violations of the Act on Weapons and Explosives and transport of weapons for terrorist purposes will be covered by the new provision on terrorism.

#### (b) Anti-Terrorism Act

The Anti-Terrorism Act adopted by the Parliament on May 31 2002, includes the following main elements:

- Insertion of a special section on terrorism in the Danish Criminal Code (straffeloven). A large number of the offences typically designated terrorist acts are today punishable under specific provisions of the Criminal Code. Thus, for example, homicide is punishable under section 237 of the Criminal Code regardless of the offender's motive for the act. The Government wanted to signal more clearly that terrorism in all its forms is unacceptable in a democratic society. Therefore a terrorism section defining the concept of terrorism has been inserted into the

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<sup>78</sup> Transmitted to the Secretariat by that Government on 27 December 2001 (S/2001/1303, enclosure) and 8 July 2002 (S/2002/789, enclosure), as well as on 27 May 2003.

Criminal Code. The provision comprises very serious offences committed to disturb the established order and intimidate the population, and the maximum penalty is fixed at life imprisonment.

– Insertion of a special section of financing of terrorism, according to which it is an offence, to a wider extent than today, to provide or arrange for financial support to a terrorist organisation or otherwise to contribute to the promotion of its criminal activities. The maximum penalty is fixed at 10 years imprisonment.

– An amendment to section 77 (a) of the Criminal Code to make it possible to carry out confiscation of money and other property (and not just “objects”), which it is feared will be applied to commit crimes. At the same time, an amendment to sections 802 and 803 of the Danish Administration of Justice Act (retsplejeloven) on seizure to make it possible to seize money and other property (and not just objects) for the purpose of confiscation under section 77 (a) of the Criminal Code. This amendment is necessary as a consequence of the proposed extension of section 77 (a) of the Criminal Code.

– Amendments to the rules on criminal responsibility for legal persons (companies, etc.), repealing the requirement that a violation of the Criminal Code must have been committed to obtain a gain for the legal person. It is further specified that legal persons can be punished for attempted offences to the same extent as natural persons. Finally, it is specified that the period of limitation for the criminal responsibility of legal persons must follow the period of limitation for natural persons. The period of limitation for legal persons is always two years.

– An extension to the provision on the seizing of aircraft and ships in section 183 (a) to include other means of public or goods transport as well.

– Aggravated violations of the Arms Act (våbenloven) are serious offences that may be connected with terrorism. To make it possible to impose heavier sentences for particularly aggravated violations, the maximum penalty in section 192 a of the Criminal Code in respect of aggravated violations of the Arms Act is increased from four years’ to six years’ imprisonment.

– A clarification of section 192a of the Criminal Code to make it appear expressly that the development of chemical and biological weapons or research to that effect falls within the provision. A similar clarification has been made of section 5 of the Arms Act.

– A new provision on non-proliferation of weapons of mass destruction, etc. has been inserted in Part 13 of the Criminal Code with a maximum penalty of imprisonment for up to six years.

– In order to improve the investigative possibilities of the police, insertion of a provision into section 786 of the Administration of Justice Act, according to which telecommunications companies and Internet service providers have to record and store (“log”) for one year the information on tele- and Internet communications of relevance to police invasion of the secrecy of communications, etc.

– Moreover, the Act contains improvements of the investigative possibilities of the police on several points where, in practice, difficulties arise in connection with the actual implementation of invasion of the secrecy of communications.

– The Act further includes rules on the access for the police to the nation-wide directory inquiry service, which contains name and address data concerning all telephone subscribers listed by name in Denmark, including unlisted telephone numbers, regardless of the subscriber’s telecommunications provider.

– A new provision (section 791 b) has been inserted into the Administration of Justice Act, according to which, in cases of very serious offences, the police can obtain a court warrant allowing them to capture data in an information system not available to the public by means of software or other equipment (data capture) without being present at the location where an information system (*i.e.*, a computer or another data system) is used. This will make it possible to permit measures whereby, by means of a so-called “sniffer program”, the police will receive a copy of all data input by the data system user.

– The Act also includes an amendment of section 799 of the Administration of Justice Act to provide a right to secret searches in cases of aggravated arson, explosion of bombs, hijacking and addition of toxic substances to the water supply or foodstuffs, etc. The right to keep information on searches in such cases secret may, for example, be of crucial importance where the offence were presumably committed by several unknown co-offenders, and where it is therefore necessary to keep the investigation secret to be able to identify and arrest these individuals.

– At the same time the Act contains an amendment of section 799 of the Administration of Justice Act to authorise the court to allow the police, with only one warrant, to carry out several individual searches without immediate notification (repeated secret searches) within a period not exceeding four weeks. This may be necessary where, for example, no drugs or weapons were found at the first search, but where it is still suspected that delivery on the location in question will take place within a short time, or where a search has had to be interrupted owing to the risk of discovery of the investigation. The court has to fix the number of

searches in connection with the search warrant. In special cases the court may decide, however, that the police may carry out an indeterminate number of searches within the specified period (not exceeding four weeks).

– In addition, the Act includes an amendment of section 806 of the Administration of Justice Act, according to which it becomes possible to order a third party to surrender documents, etc. (discovery) without prior warrant in cases where the purpose will be forfeited if a warrant has to be awaited. This might, for example, be thought relevant in a situation where the police need prompt surrender of the passenger list of an airline company.

– Furthermore, the Act includes an amendment of the prohibition of the Extradition Act (udleveringsloven) against extradition of Danish nationals. The purpose of this amendment is to provide authority for the extradition of Danish nationals for prosecution abroad when certain conditions are satisfied. Either the offence must be serious (a maximum penalty of more than four years' imprisonment) or the offender must have lived in the country requesting extradition for at least two years before the offence.

## 2. CRIMINAL CODE

### *Section 114*

(1) Any person is liable to imprisonment for any term up to life imprisonment if he commits one or more of the following offences with the intent seriously to intimidate a population or unlawfully to compel Danish or foreign public authorities or an international organisation to do or to abstain from doing any act or to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, provided that the offence may inflict serious harm on a country or an international organisation by virtue of its nature or the context in which it is committed: -

(i) Homicide under section 237.

(ii) Assault under section 245 or 246.

(iii) Deprivation of liberty under section 261.

(iv) Impairment of the safe operation of means of transport under section 184(1), unlawful disturbances in the operation of public means of communication, etc., under section 193(1) or very serious damage to property under section 291(2), where such offences are committed in a manner likely to endanger human lives or cause considerable economic loss.

(v) Unlawful seizure of public means of transport under section 183 a.

(vi) Serious violations of the arms legislation under section 192 a or under section 10(2) of the Act on Weapons and Explosives.

(vii) Arson under section 180, explosion, spreading of noxious gases, floods, shipwreck or any railway or other traffic accident under section 183(1) and (2), injurious pollution of the water supply under section 186(1), injurious poisoning or pollution of products intended for general use, etc., under section 187(1).

(2) The same penalty shall apply to any person who transports weapons or explosives with the intent as referred to in subsection (1) hereof.

(3) The same penalty shall also apply to any person who threatens to commit one of the offences listed in subsections (1) and (2) hereof with the intent as referred to in subsection (1) hereof.

#### *Section 114 a.*

Any person is liable to imprisonment for any term not exceeding 10 years if he: –

(i) directly or indirectly grants financial support to;

(ii) directly or indirectly provides or collects funds for; or

(iii) directly or indirectly makes money, other financial assets or financial or other similar services available to a person, a group of persons or an association that commits or intends to commit terrorist acts comprised by section 114.

#### *Section 114 b.*

Any person is liable to imprisonment for any term not exceeding six years if he otherwise contributes by instigation, advice or action to furthering the criminal activity or the common purpose of a group of persons or an association which commits one or more of the offences comprised by section 114 or section 114 a (i) or (ii), where such activity or purpose involves the commission of one or more offences of such nature.

#### *Section 114 c.*

Any person is liable to imprisonment for any term not exceeding six years if he participates in or provides substantial financial or other essential support, although such act is not comprised by sections 114 to 114 b, to a corps, a group of persons or an association which intends to use force to exercise influence on public affairs or to disturb the established order.

*Section 114 d.*

Any person is liable to a fine or imprisonment for any term not exceeding four months or, in aggravated circumstances, to imprisonment for any term not exceeding two years if he participates in an unlawful military organisation or group, although such act is not comprised by sections 114 to 114 c.

*Section 114 e.*

Any person is liable to imprisonment for any term not exceeding six years if, in aggravated circumstances contrary to the legislation on non-proliferation of weapons of mass destruction, etc., he: –

- (i) exports dual-use products without permission;
- (ii) for the purpose of decisions by public authorities on dual-use products, gives incorrect or misleading information or suppresses information of importance to the decision in the case; or
- (iii) acts in contravention of conditions stipulated in decisions by public authorities on dual-use products.

### 3. ADMINISTRATION OF JUSTICE ACT

*Section 786.*

(1) Mail enterprises and providers of telecommunications networks or services shall assist the police in implementing invasions in the secrecy of communication, including by establishing interception of telephone conversations, etc., by giving the information referred to in section 780(1)(iii) and (iv) and by withholding and surrendering consignments and mail, etc.

(2) In cases other than those referred to in section 780(1)(iii), the court may, at the request of the police and with the consent of the owner of a telephone or other communication device, order the companies, etc., referred to in subsection (1) hereof to state what other devices are connected with the device in question.

(3) The provision of section 178 applies correspondingly to any person who fails to provide the assistance referred to in subsection (1) hereof or to comply with an order made under subsection (2) hereof without any lawful cause.

(4) Providers of telecommunications networks or services shall record and store traffic data for one year for the purpose of investigation and prosecution of criminal offences. Upon negotiation with the Minister for Science, Technology and Innovation, the Minister of Justice will lay down detailed rules on such recording and storing.

(5) Upon negotiation with the Minister for Science, Technology and Innovation, the Minister of Justice may lay down rules on the practical assistance to the police by providers of telecommunications networks and services in connection with invasions in the secrecy of communication.

(6) Any person is liable to a fine if he violates subsection (4), first sentence, hereof. Criminal liability may be imposed on companies, etc. (legal persons) under the rules of Part 5 of the Criminal Code.

(7) Provisions on fines may be laid down for violation of provisions in regulations laid down pursuant to subsection 4, second sentence, and subsection (5) hereof. Provisions may also be laid down on the imposition of criminal liability on companies, etc., (legal persons) under the rules of Part 5 of the Criminal Code.

(8) The Minister of Justice may lay down rules on financial compensation to the enterprises referred to in subsection (1) hereof for expenses in connection with assistance to the police for implementation of invasions in the secrecy of communication.

*Section 791 b.*

(1) Data in an information system not available to the public may be captured by means of software or other equipment (data capture), if: –

(i) there are specific reasons for assuming that a suspect is using the information system in connection with an offence, either planned or committed, as referred to in paragraph (iii) hereof;

(ii) the measure must be assumed to be decisive to the investigation;  
and

(iii) the investigation relates to an intentional violation of Parts 12 or 13 of the Criminal Code or a violation of section 180, 183(1) and (2), 183 a, 186(1), 187(1), 191, 192 a or 237 of the Criminal Code.

(2) Measures as referred to in subsection (1) hereof may not be carried out if the measure would be disproportionate in view of the purpose of the measure, the importance of the case, and the infringement and inconvenience presumably inflicted on the person or persons subject to the measure.

(3) Any decision on data capture is made by the court by order. Such order must state the information system subject to the measure. In other respects, the rules of section 783(1), third and fourth sentences, and subsections (2) and (3) apply correspondingly.

(4) Subsequent notice of a measure carried out will be given under the rules of section 788(1), (3) and (4). The notice will be given to the person who disposes of the information system subject to the data capture under subsection (1) hereof. In other respects, the rules of sections 782(2), 784, 785, 789 and 791 apply correspondingly.