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**PARALLEL REPORT JULY 2010**

**TO THE UN COMMITTEE ON  
THE ELIMINATION OF  
RACIAL DISCRIMINATION**

ON THE 18TH AND 19TH PERIODIC  
REPORTS BY THE GOVERNMENT  
OF DENMARK ON THE IMPLEMEN-  
TATION OF THE INTERNATIONAL  
CONVENTION ON THE ELIMINA-  
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THE DANISH INSTITUTE  
FOR HUMAN RIGHTS

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IMPLEMENTATION OF THE INTERNATIONAL  
CONVENTION ON ALL FORMS OF RACIAL  
DISCRIMINATION**

**The Danish Institute for Human Rights  
Copenhagen, Denmark  
July 2010**

**Contents**

**I. GENERAL OBSERVATIONS ..... 3**

**II. INFORMATION RELATING TO ARTICLES 2, 4, 5 & 6 ..... 5**

**Article 2 ..... 5**

    Incorporation of the convention into national legislation..... 5

    Stop and Search Zones ..... 8

    National minority..... 11

**Article 4 ..... 13**

**Promotion or incitement to acts of racial discrimination ..... 13**

    Hate Crimes (section 81 (6) of the Danish Penal Code)..... 13

    Hate Speech (266b of the Danish Penal Code)..... 15

**Article 5 ..... 16**

**Political, economic, social and cultural rights..... 16**

    Ethnic minority women in abusive relationships ..... 16

    Asylum seekers..... 18

    The current issue regarding individuals with Roma background ..... 21

    Access to permanent residence ..... 22

    Nationality ..... 24

    Family reunification ..... 25

    Starting allowance ..... 29

    The 300 hours rule ..... 30

    Interpretation ..... 31

**Article 6 ..... 33**

**Effective protection and remedies..... 33**

    Discrimination ..... 33

## **I. GENERAL OBSERVATIONS**

1. This parallel report on the 18<sup>th</sup> and 19th Periodic Reports of Denmark concerning the International Convention on the Elimination of all Forms of Racial Discrimination submitted by the Government of Denmark in July 2009 is compiled by the Danish Institute for Human Rights (DIHR).
2. DIHR is Denmark's national human rights institution, established and functioning in accordance with the Paris Principles. DIHR is the principal organisation in Denmark for monitoring and advising on human rights. DIHR was in 2007 re-accredited as an (A) National Human Rights Institution (NHRI) by the International Co-ordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).
3. DIHR was established in 1987 as the Danish Centre for Human Rights by Parliamentary decision and its status as national human rights institution was acknowledged and confirmed by the adoption of the Act governing the Establishment of the Danish Centre for International Studies and Human Rights, Denmark/Act No. 411 (06.06.2002).
4. The mandate of DIHR vested in the establishing Act Section 2, Subsection 2, encompasses, inter alia, "The Danish Institute for Human Rights shall in the execution of its activities take its outset in the human rights recognised at any given time by the international society, including in particular those laid down in the United Nations Universal Declaration, conventions adopted by the United Nations and the Council of Europe, and the civil rights contained in the Danish Constitution."
5. DIHR is since 2003 the designated body for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin as set out in Article 13 of the EU Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin. The mandate to deal with individual complaints on the ground on race and ethnic origin has been transferred to Ligebehandlingsnævnet [the Board of Equal Treatment], which started functioning 1 January 2009. DIHR has retained the status of specialised equality body.

6. On the website of DIHR ([www.humanrights.dk](http://www.humanrights.dk)) an overview on the human rights situation in Denmark is provided. Thus, country reports, concluding observations, individual decisions and judgements from regional and international monitoring bodies are made accessible for a broader audience. The website provides the public with news and comments on national day by day development on the human rights situation in Denmark.

## II. INFORMATION RELATING TO ARTICLES 2, 4, 5 & 6

7. DIHR has chosen to focus on the status of implementation of the following articles of ICERD, including new developments since 2009:

Article 2: General measures to eliminate racial discrimination

Article 4: Promotion or incitement to acts of racial discrimination

Article 5: Political, economic, social and cultural rights

Article 6: Effective protection and remedies

8. The Committee on the Elimination of Racial Discrimination (the Committee) adopted at its 1785<sup>th</sup> meeting held on 18 August 2006 a number of concluding observations in relation to the sixteenth and seventeenth periodic reports of Denmark. A number of these observations are included in this report where DIHR has found it relevant.
9. DIHR has chosen to follow the structure of the report of the Government of Denmark.

### Article 2

#### Incorporation of the convention into national legislation

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The Committee encourages the State party, in order to give full effect to the provisions of the Convention, to reconsider its decision not to incorporate the Convention in the domestic legal order. *Paragraph 10 of the concluding observations of the Committee.***

10. The incorporation of ICERD is a recurring issue. The DIHR therefore finds it necessary to repeat its concerns from its last parallel report from 2006.<sup>1</sup> Especially since the Government does not consider it neither legally necessary nor political desirable to incorporate the convention.<sup>2</sup>

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<sup>1</sup> The Danish Institute for Human Rights' Supplementary Report to Denmark's sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination, June 2006.

<sup>2</sup> The eighteenth and nineteenth periodic reports of Denmark on the implementation of the convention on the elimination of all forms of racial discrimination, CERD/C/DEN/18-19, 31 August 2009, paragraph 25.

According to the Government the incorporation of ICERD is not a question of complying or not with the convention but rather a question of the choice of methods to ensure its implementation. The Government underlines that the convention is a relevant source of law and is applied by the courts and other law applying public authorities.<sup>3</sup>

11. As mentioned in the DIHR's last report an Incorporation Committee (Inkorporeringsudvalget), was set up by the Ministry of Justice in 1999. The Committee completed its Report on the Incorporation of Human Rights Conventions into Danish Law in 2001 (Report No.1407/2001). In its report, the Committee recommends the incorporation of ICCPR, ICERD and ICAT into Danish legislation.
12. The report describes how international conventions are implemented into Danish legislation and what status they have in Danish law. It is emphasized that conventions can be invoked before the Danish courts and other law-applying authorities from the time of entry into force. Ratified, but non-incorporated conventions are therefore relevant sources of interpretation of Danish law. The only incorporated convention, the European Convention on Human Rights (ECHR), is invoked and applied much more than any of the non-incorporated conventions. From 1992 – 2001 only 12 published judgments and decisions related to other human rights conventions than ECHR, while 158 decisions dealt with the ECHR. The picture remains generally the same after 2005.
13. In the period from 2001 – 2005, the ECHR was invoked 139 times in all by Danish courts while in the same period the UN International Convention on the Rights of the Child (ICRC) was invoked twice; the UN International Convention on Elimination of all Forms of Discrimination against Women (ICEDAW) was invoked once; ICERD was invoked twice<sup>4</sup>; ICCPR was invoked four times; ICESCR was invoked once and ICAT was invoked once.<sup>5</sup>

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<sup>3</sup> The 18th and 19th periodic reports of Denmark on the implementation of the convention on the elimination of all forms of racial discrimination, CERD/C/DEN/18-19, 31 August 2009, paragraphs 24-25.

<sup>4</sup> Danish Weekly Law Report U 2002 1789 H (Supreme Court) and 2003 1428 Ø (Eastern High Court).

<sup>5</sup> *Oversigt over trykte afgørelser afsagt af danske domstole, hvor internationale konventioner om menneskerettigheder er blevet påberåbt eller anvendt.* (2005) Opdatering af bilag 1 til betænkning 1407, 2001. (perioden fra og med UfR hæfte 26/2001 til og med 15/8 2005) Af Kristina Ravn, Afdeling for Retslære, Aarhus Universitet. Page 120-121. See Annex 1 to this report.

14. The committee concluded, however, that the incorporation of human rights conventions into national legislation will create a statutory basis for the application of conventions and will result in increased attention and greater awareness about the incorporated conventions.
15. According to the parliamentary debates, the Government is of the opinion that Denmark is committed to following the Conventions and that incorporation is not legally required and could be politically inappropriate.<sup>6</sup>
16. The DIHR was a member of the Incorporation Committee and recommended the incorporation of ICCPR, ICERD and ICAT into Danish law. Unincorporated conventions are relevant sources of law in Danish law, but in practical terms the administration and courts often concentrate their analysis of human rights issues in relation to the European Convention on Human Rights (ECHR). Although the ECHR contains a non-discrimination clause (Article 14) it is not a general and free-standing prohibition against discrimination. Furthermore, Denmark has not ratified Protocol No. 12 to ECHR,<sup>7</sup> which introduces a general and free-standing prohibition against discrimination. Finally, it seems the reluctance is also based on concerns on whether the decisions are legally binding. One argument has been: “<a> committee of experts monitor whether the States Parties to the Covenant comply with it, and this committee of experts expresses opinions that are not legally binding. These opinions are not particularly judicial, neither in their form, nor in their content, whereas the European Court of Human Rights delivers legally binding judgments and decisions.”<sup>8</sup>
17. The incorporation of ICERD in national legislation will serve two purposes: firstly, it will ensure a more effective protection of individuals against racial and ethnic discrimination; secondly, an

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<sup>6</sup> Declarations of the Government in connection with proposal for a parliamentary decision B134 on incorporation of the UN human rights conventions.

<sup>7</sup> One of the Government’s arguments was: “The Danish Government is very concerned by the increasing transferral of legislative powers from the national parliaments to international non-legislative bodies which cannot be seen as democratically elected organs. Upon ratification, the European Court of Human Rights would be granted final jurisdiction in matters concerning whether Danish legislation is in compliance with Protocol No. 12. The Protocol grasps very delicate issues such as which criteria the states may use in the distribution of public financial means in areas concerning for instance social affairs. One could argue that such a task is better taken care of by our national parliament than by an international court. Prohibition of Discrimination in the Nordic Countries: The Complicated Fate of Protocol No. 12 to the European Convention on Human Rights, p. 107.

<sup>8</sup> Prohibition of Discrimination in the Nordic Countries: The Complicated Fate of Protocol No. 12 to the European Convention on Human Rights, p. 107.

incorporation of the convention will raise a greater awareness among attorneys and the judiciary etc. and presumably lead to an increased applicability of the ICERD in the courts etc.

18. Furthermore, a judgment from the Danish Supreme Court from 5 December 2005 concluded that non-incorporated ILO-conventions cannot be directly applied in a way as to disregard national legislation.<sup>9</sup> <sup>10</sup> This judgement confirms the necessity of general incorporation in case of direct conflict between international law and Danish legislation as well as in the absence of Danish law that can serve as a basis of interpretation (and thus implementation of international law).
19. **DIHR is concerned** that a lack of incorporation of ICERD limits the application of the convention by the courts and administrative decision making organs. As a consequence, the overall practical implementation and the effective protection of the individual against racial discrimination are weakened. Furthermore, the choice of non-incorporation has a negative impact on the general awareness raising of human rights in Denmark and a counterproductive effect on the promotion of racial and ethnic equality. Further **DIHR recommends** that the ICERD should be translated into the most common languages of immigrants and refugees residing in Denmark.

### **Stop and Search Zones**

20. In 2004, the Danish Act on the activities of the Police<sup>11</sup> introduced a provision enabling the Danish Police to establish so called "Stop and Search Zones" within which random stop and searches can be carried out for the purpose of looking for weapons. In general, the zones can be established in public places where there is considered to be a risk of criminal offences being committed jeopardizing the life, health and welfare of the public. Everyone within the zones can be subject to a search since there is no requirement of reasonable suspicion and a court order is not required. The establishment of the zones must be in written form and contain reasoning for the establishment and a time limit of the zone. Since 2007, the Copenhagen Police, in particular, has established a large number of zones some of which cover a wide geographical area.

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<sup>9</sup> Danish Weekly Law Report U.2006.770H: " Hertil kommer, at ILO-konventionerne som anført af landsretten ikke er direkte anvendelige i dansk ret i den forstand, at de kunne føre til tilsidesættelse af aktivlovens bestemmelser om aktivering."

<sup>10</sup> For more examples see paragraph 14-19 in the report by the Documentation and Advisory Centre on Racial Discrimination to the Committee on the Elimination of Racial Discrimination at its 77<sup>th</sup> session on the consideration of the 18<sup>th</sup> and 19<sup>th</sup> periodic reports of Denmark, 19 July 2010.

<sup>11</sup> Consolidated Act No. 444 on the activities of the police of 9 June 2004 section 6.

21. The Danish Traffic Act<sup>12</sup> and the Aliens Act<sup>13</sup> contain similar provisions on stop and search of cars without a reasonable suspicion standard.
22. In its General Policy Recommendation no. 11, ECRI recommends that state parties clearly define and prohibit racial profiling by law; carry out research and monitor police activities in order to identify racial profiling practices, and introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.<sup>14</sup> In Denmark, there is no clear legal provision prohibiting ethnic profiling and there are no guidelines as to which criteria shall be applied when selecting persons for random stop and searches.
23. In the Judgment *Gillian and Quinton v. UK*,<sup>15</sup> the European Court of Human Rights (ECtHR) found a violation of the right to respect for private life in a case very much similar to the Danish Stop and Search zones. The case concerned British legislation empowering police officers to conduct random stop and searches for the purpose of looking for articles, which could be used in connection with terrorism, without requiring reasonable suspicion to justify the stop. The Court found that there is a clear risk of arbitrariness in the grant of such a broad discretion to a police officer, and that there was a substantial risk of the discriminatory use of the powers against ethnic minorities.
24. It is the position of the Danish Government that there is no need to change the Danish legislation since the British legislation is not directly comparable to Danish legislation.<sup>16</sup>
25. However, several surveys confirm that lack of a reasonable suspicion standard may very well result in ethnic profiling. Two surveys from 2001 and 2003 show that persons with a foreign

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<sup>12</sup> Consolidated Act No. 984 on Traffic of 5 October 2009, section 77.

<sup>13</sup> Consolidated Act No. 785 on Aliens of 10 August 2009, section 38, subsection 6.

<sup>14</sup> European Commission against Racism and Intolerance (ECRI) General - *Policy Recommendation N° 11 on combating racism and racial discrimination in policing*, (adopted on 29 June 2007, at ECRI's 43rd plenary meeting).

<sup>15</sup> *Gillian and Quinton v. The United Kingdom* (Application no. 4158/05), Judgment of 12 January 2010.

<sup>16</sup> Press release of 22 March 2010 from the Ministry of Justice - *Visitation: Ikke nødvendig at ændre danske regler*, available at: [http://www.justitsministeriet.dk/pressemeddelelse+M562d1c31a41.html?&tx\\_ttnews\[month\]=03&tx\\_ttnews\[year\]=2010](http://www.justitsministeriet.dk/pressemeddelelse+M562d1c31a41.html?&tx_ttnews[month]=03&tx_ttnews[year]=2010)

background, when compared with persons with a Danish background, have a higher arrest rate, as well as a higher frequency of being charged without a subsequent conviction.<sup>17</sup> According to a survey from the European Union Agency for Fundamental Rights from 2008, 37 percent of the respondent in the survey was of the perception that the police stopped them because of their immigrant or ethnic origin.<sup>18</sup> Furthermore, a random test involving 53 male students carried out by the Danish newspaper Information in 2007 also confirms this trend.<sup>19</sup> As a reaction to the survey in Information, the chairman of The Police Union stated that persons with a non-Danish background are represented beyond average in the criminal statistics which also makes it natural that they to a larger extend are stopped. In a Danish television news program, the Chief prosecutor of the Police District Fyn stated (DIHR translation): “*When you are situated in Vollsmose and are looking for weapons in cars, and when someone with another ethnic background is sitting in a car; well then one explanation is that you on a basis of experience choose to search certain persons.*”<sup>20</sup> This example illustrates the possibility of ethnic profiling in the administration of stop and search zones.

26. **DIHR is concerned** that the Danish legal provisions providing a broad access to random stop and searches without a reasonable suspicion standard contain an inadequate safeguard against ethnic profiling by the Danish Police. This creates a substantial risk that persons of a minority background are arbitrarily and disproportionately subjected to stop and searches. Thus, the policy on stop and search zones should be reviewed in order to ensure that ethnic profiling does not occur. Further, the Government should provide information to the Committee on this in its next report.

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<sup>17</sup> Kyvsgaard, Britta (2001) - *Kriminalitet, retshåndhævelse og etniske minoriteter*, Juristen, s. 363 ff & Holmberg, Lars and Kyvsgaard, Britta (2003) - *Are Immigrants and Their Descendants Discriminated against in the Danish Criminal Justice System?*, Journal of Scandinavian Studies in Criminology and Crime Prevention.

<sup>18</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS) - Main Results Report*, 2009, p. 103. For more information on this survey see section 5.1 of this report.

<sup>19</sup> Dagbladet Information 25.07.2007 - *Politiet tjekker oftere mørklødede*, available at <http://www.information.dk/130174>

<sup>20</sup> Danmarks Radio (DR), 15.02 2010, TV-Avisen 6:30pm.

## National minority

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: It [the committee] would like to be informed about the reasons why the Roma do not enjoy the status of national minority under the Framework Convention for the Protection of National Minorities, with all the rights this entails. *Extract from paragraph 12 Concluding Observations of the Committee.***

27. In the State report, the Government observes that individuals with Roma background living in Denmark today have no historical or long-term and unbroken association with Denmark, but consist partly of immigrants and partly of refugees. Thus, in the opinion of the Danish Government, individuals with Roma background do not constitute a national minority in Denmark.<sup>21</sup>
28. **DIHR agrees** with the Government on this position. However, it is important to underline that individuals with Roma background constitute an ethnic minority and thus have the right not to be discriminated against due to their ethnic origin.
29. For further information on the situation of individuals with a Roma background in Denmark, see paragraphs 57-61 below.

## Greenland

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The Committee, drawing the attention of the State party to its General Recommendations 8 (1990) on identification with a particular racial or ethnic group and 23 (1997) on indigenous peoples, recommends that the State party pay particular attention to the way in which indigenous peoples identify themselves. *Paragraph 20 of the Concluding Observation of the Committee.***

30. It follows from annex 1 of the State report,<sup>22</sup> that the Supreme Court in a judgment<sup>23</sup> from 2004 addressed the status of the Thule Tribe situated in the North-Western part of Greenland (the

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<sup>21</sup> The eighteenth and nineteenth periodic reports of Denmark on the implementation of the convention on the elimination of all forms of racial discrimination, CERD/C/DEN/18-19, 31 August 2009, paragraph 35.

<sup>22</sup> The eighteenth and nineteenth periodic reports of Denmark on the implementation of the convention on the elimination of all forms of racial discrimination, CERD/C/DEN/18-19, 31 August 2009, annex 1, paragraph 3.

Uummanaq settlement). The Supreme Court stated that the Thule Tribe does not constitute a tribal people or a distinct indigenous people within or coexisting with the Greenlandic people as a whole.

31. **DIHR agrees** with the Government on this position.

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<sup>23</sup> U.2004.382H.

## Article 4

### Promotion or incitement to acts of racial discrimination

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The State party should increase its efforts to prevent racially motivated offences and hate speech, and to ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas, and recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile people on the basis of race, colour, descent, and national or ethnic origin, especially by politicians. Bearing in mind its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also requests the State party to remind public prosecutors and members of the prosecution service of the general importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole. *Paragraph 11 of the Concluding Observations of the Committee.***

#### Hate Crimes (section 81 (6) of the Danish Penal Code)

32. A victim survey from 2009 shows that approximately 10 percent of victims of violence believes that he or she may have been the victim of a hate crime.<sup>24</sup> Compared to the Danish population this would mean that 12.000 persons have been victim of a hate crime in 2008.<sup>25</sup> A survey from the European Union Agency for Fundamental Rights concerning the conditions for immigrants in EU countries shows that hate crimes are a serious issue in Denmark. 31 percent of Somalis living in Denmark, who have participated in the survey, report that they within the last 12 months have experienced a hate crime.<sup>26</sup>
33. From 1 January 2007 and one year running a temporary reporting system regarding section 81 (6) of the Penal Code was established. This meant that police and prosecutors had to report to the

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<sup>24</sup> This number is not isolated to hate crimes due to race or ethnic origin.

<sup>25</sup> Flemming Balvig & Britta Kyvsgaard - *Udsathed for vold og andre former for kriminalitet, offerundersøgelserne 2005-2008* (April 2009).

<sup>26</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS) - Main Results Report*, 2009.

office of the Director of Public Prosecutions all cases where the court when sentencing had considered it as an aggravating circumstance if an offence had been based on the ethnic origin, religion or sexual orientation, etc., of other parties. Also, cases where the court found the accused not guilty but where the prosecutor had invoked section 81 (6), and cases that involved such conditions as mentioned in section 81 (6), but where withdrawal of the charge had occurred, should be reported.<sup>27</sup> According to the State report from the Danish Government the Director of Public Prosecutions has from 2007 received ten cases applying section 81 (6) of the Penal Code concerning hate crime.<sup>28</sup> A motion to oblige the government to increase the efforts to combat hate crimes has been presented to Parliament.<sup>29</sup> The motion would oblige the Minister of Justice to ensure that the police investigate the motive behind a crime every time a victim, perpetrator or witness indicates that it might be a hate crime. Furthermore, the Minister shall initiate a national action plan enhancing the capacity of the police in handling hate crimes. The motion also suggests establishing a special police task force to deal with hate crimes and a permanent register containing hate crime cases resulting in a conviction and cases which do not result in a conviction.

34. The motion was defeated in Parliament. The Minister of Justice stated that he found no need for further initiatives to strengthen the police efforts against hate crimes since several initiatives have already been launched. In 2009, the Copenhagen Police issued internal guidelines to all staff and a new administrative police case system has been launched where a special box can be highlighted if the police suspect a possible hate crime.<sup>30</sup> Furthermore, the Danish Institute for Human Rights have been granted research funds to uncover why the Danish police in so few cases register hate crimes.

35. **DIHR is concerned**, however, that the low reporting on section 81 (6) of the Penal Code does not provide an accurate picture of the extent of hate crimes. DIHR is concerned about whether

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<sup>27</sup> Today the Danish Security and Intelligence Service (PET) administers a reporting system where the police have to report crimes with a potential racial or religious motive, cf. the annual report from PET, 2006-2007, p. 52.

<sup>28</sup> Paragraph 52 in the 18th and 19th periodical reports by the Government of Denmark on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination – CERD/C/DEN/18-19.

<sup>29</sup> Beslutningsforslag nr. B 50 Folketinget 2009-10, Forslag til folketingsbeslutning om en styrket indsats over for forbrydelser motiveret af offerets seksualitet, etnicitet m.v. (hadforbrydelser).

<sup>30</sup> § 20-spørgsmål S 488, Om hadforbrydelser af Kamal Qureshi (SF) 27-11-2009, Samling 2009-10.

sufficient, systematic and effective investigation of hate crimes takes place. Procedures to ensure a systematic and effective investigation of hate crimes as well as potential hate crimes should be put in place.

### **Hate Speech (266b of the Danish Penal Code)**

36. Section 266 b was introduced in the Danish Penal Code in 1939 and amended in 1971 to secure the effective implementation of ICERD.
  
37. The Danish Parliament decided on June 16 2010 to lift the parliamentary immunity of a member of the Danish Parliament at the request of the Director of Public Prosecutions.<sup>31</sup> The member was indicted in accordance with section 266b of the Danish Penal Code prohibiting public racist remarks.
  
38. The lifting of immunity of a member of parliament has re-vitalised a general debate on whether section 266b of the Penal Code should be abolished. Two parties supporting the Government has announced that they supported the abolition of section 266b of the Penal Code and one of the government parties has announced that they will decide on whether they support abolishing of section 266b when a thorough debate has been held hopefully in the fall of 2010.<sup>32</sup>
  
39. **DIHR would like to call the attention of the Committee** to the recurring debate of section 266b of the Penal Code.

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<sup>31</sup> B 250 Betænkning og indstilling fra Udvalget for Forretningsordenen om Folketingets samtykke i henhold til grundlovens § 57.

<sup>32</sup> <http://politiken.dk/politik/article996521.ece>.

## Article 5

### Political, economic, social and cultural rights

#### Article 5 (b) The right to security of person and protection by the State

##### Ethnic minority women in abusive relationships

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The Committee, drawing the attention of the State party to its General Recommendation 25 (2000) on Gender related dimensions of racial discrimination, recommends that the State party take into consideration the specific vulnerability of foreign women victims of domestic violence, and take all appropriate steps to remove deterrents to their seeking assistance or taking steps to seek separation or divorce. *Paragraph 14 of the Concluding Observations of the Committee.***

40. It is the opinion of DIHR that ethnic minority women constitute a vulnerable group that is subject to violence due to the intersection of discrimination on the basis of gender and race and ethnic origin. According to the National Organisation of Shelters for Battered Women's (LOKK) Annual Statistics of 2009 on Women in Shelters, 28 percent of the women in shelters do not have a Danish citizenship and out of these 28 percent a little less than half – 49 percent – have legal residence in Denmark due to family reunification.<sup>33</sup>
41. Ethnic minority women, who have been family reunified to Denmark, and who have been subject to violence by their spouse, form a particular vulnerable group because they are often in a position where they have to choose between leaving the violent partner and consequently be deported from Denmark or remain in a violent partnership.
42. New amendments to the Aliens Act have not improved this situation as the access to permanent residence permit has been tightened.<sup>34</sup> The new amendments introduce a point system. Thus according to section 11 of the Aliens Act in order to obtain a permanent residence permit the applicant must have attained the age of 18 and achieved at least 100 points according to section 11, subsection 4-6 (70 points must be achieved according to subsection 4, 15 points according to

<sup>33</sup> Lise Barlach og Kirstina Stenager, *LOKK annual statistics 2009 - Women and children in shelters*, p. 4.

<sup>34</sup> On March the 26th a Bill was presented in Parliament proposing comprehensive amendments of the Aliens Act, including a reform of the rules on access to permanent residence. The Bill was adopted two month later, on 25 May.

subsection 5 and 15 points according to subsection 6). There are eight indispensable conditions which have to be met in order to achieve 70 point – one of them being that the applicant must have resided in Denmark for at least 4 years and another on being full time employed in 2½ year of the last 3 years before applying for residence permit. In addition, in order to achieve the extra 30 points the applicant must make an extra effort with a view to integrate through ‘active citizenship’ (15 points), just as high standards in terms of employment, Danish language proficiency, or education must be met (15 points). See further paragraph 63- below.

43. Before these amendments entered into force, a permanent residence permit was issued upon application to an alien who had lived lawfully in Denmark for more than the last seven years and who, throughout this period, had been issued with a residence permit on the same basis, cf. section 11, subsection 3 of the Aliens Act.<sup>35</sup> Thus, if a person who had been family reunified to Denmark and wanted to leave the spouse before the seven years had passed, the residence permit would be revoked and the person had to leave the country. However, there was and still is an exception for persons subjected to violence by their spouse in order for them not to be trapped in a violent marriage. It thus follows from section 19, subsection 8, of the Aliens Act that in deciding on the revocation of a residence permit, special regard must be made to whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien has been exposed to outrages, abuse or other ill-treatment, etc., in Denmark.
44. The administrative practice on residence permit for battered ethnic minority woman is that if they have stayed in Denmark for two years or more before the termination of cohabitation with the violent partner, it will in principle be sufficient to extend the residence permit. Has the battered ethnic minority women stayed less than 2 years in Denmark, it is, however, possible that the residence permit may be renewed, but it would then require exceptional circumstances. The view of the Government is that a foreigner who has stayed less than two years in Denmark has not obtained an essential affiliation to Denmark.<sup>36</sup>

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<sup>35</sup> Consolidated Act No. 785 on aliens of 10 August 2009 with later amendments.

<sup>36</sup> Memorandum on the handling of cases where the ground for a family reunified spouse’ legal residence is no longer present due to violence, The Ministry for Refugees, Immigration and Integration Affairs, 9 February 2010.

45. In order for the authorities to decide on whether or not to revoke a residence permit, where violence is an issue, they look at the person's affiliation to the country as well as documentation of the violence. Earlier documentation consisted mainly of reports from emergency rooms and police reports but today statements from shelters are seen as strong documentation that is used as basis for whether the women can remain in Denmark. However it always depends on a concrete assessment of each case.
46. **DIHR is concerned** that an ethnic minority woman who has been family reunified and has been living with a violent partner will have difficulties with fulfilling the new requirements in the Aliens Act on participation, occupation, language and education. The administratively granted exception remains in force but it is very likely that more ethnic minority women will need to invoke the administrative exception.

#### **Article 5 (d) (i) The right to freedom of movement and residence within the border of the State**

#### **Asylum seekers**

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: It also recommends that the State party review its policy in relation to centres for asylum seekers so as to ensure that their rights under the Convention are fully respected. Extract from paragraph 13 of the Concluding Observations of the Committee.**

47. In recent years there has been an increasing focus on asylum seekers in Denmark, and especially on topics such as the length of their stay in asylum centres and their mental and physical health. There has also been a great deal of public debate about the situation of *rejected* asylum seekers and policies which aim to encourage them to return to their home countries.
48. DIHR thus decided to carry out a study on the situation of rejected asylum seekers which was published in 2009. The purpose of the study was to clarify the situation of rejected asylum seekers and other foreigners facing deportation from Denmark and to create a databank to alleviate some of the possible adverse consequences the law has on asylum seekers today.<sup>37</sup>

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<sup>37</sup> The Danish Institute for Human Rights, *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark*, udredning nr. 6, (2009). The study is based on 60 qualitative interviews

49. In order to accelerate the repatriation of rejected asylum seekers and other foreigners, the Government has implemented a series of measures aimed at encouraging these people to return to their country of origin. The measures included reducing social welfare payments, insisting that rejected asylum seekers stay at special departure centres,<sup>38</sup> and requiring them to report regularly to the police.
50. DIHR's study – based in this respect primarily on information from the National Commission of the Danish Police [Rigspolitiet] - shows that these measures, which have an adverse effect on the private lives and educational opportunities of asylum seekers, as well as exposing them to significant psychological pressure, had no motivational effect on those who could not be returned by force. As a result, there is a risk that these measures are disproportionate to the goal which they were designed to achieve. This is especially a concern in regard to asylum seekers who cannot be sent home because they would risk persecution, torture or other inhuman or degrading treatment or punishment.
51. It is the opinion of DIHR that the cumulated effect of the restrictions in both civil and economic and social rights as well as the extent of the period where a rejected asylum seeker is awaiting deportation from Denmark in specific cases can lead to violation of human rights.
52. According to information from the Danish Immigration Service, the duration of stay in asylum camps for an asylum seeker rose from ten months in 2001 to three years and two months at the end of 2006.<sup>39</sup> The duration is primarily caused by the fact that some rejected asylum seekers cannot be returned to their country of origin by force and they do not co-operate with their return. In August 2008, there were 1,640 asylum seekers in Denmark out of which 653 were waiting to

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with rejected asylum seekers which took place between October 2007 and February 2008 as well as interviews with staff from the Danish Red Cross, the Danish National Police, voluntary organizations and others. In addition, DIHR reviewed selected files, logbooks from asylum centres, statistics and other relevant studies. The conclusions are based therefore on a combination of data sources. The study focuses on matters relating to housing, private and family life, economic, educational and working conditions and health. The report contains moreover analysis of the applicable international standards and principles in relation to the selected areas.

<sup>38</sup> Section 42a, subsection 8 of the Aliens Act.

<sup>39</sup> Udlændingestyrelsen 2005, Opdateret analyse af udviklingen i udgifterne til asylansørgernes sundhedsbehandling i perioden 2001 til 1. halvår 2005. Udlændingetjeneste 2007, Analyse af udgifterne til asylansørgernes godkendelseskrævende sundhedsbehandlinger i perioden 2003 til 1. halvår 2006.

be deported.<sup>40</sup> Included in the 653 persons whose residence permits have been revoked and who cannot be returned either for practical reasons or due to Denmark's international obligations. Danish legislation does not specify a maximum period on how long a person can await deportation.

53. In regard to detention, the study shows that detention in particular places a great strain on the psychological health of the detainees. Detention causes a number of significant negative consequences, including mental breakdowns, suicide attempts, and reduced wellbeing among children. The Aliens Act does not specify a maximum period of deprivation of liberty. When assessing the duration of the deprivation of liberty, the courts apply ordinary considerations of proportionality and regard to Denmark's international obligations. In that connection, the courts take into account whether the return proceedings of a rejected asylum seeker are progressing and whether there are prospects of a return within a reasonable time frame.<sup>41</sup>
54. Neither asylum seekers nor rejected asylum seekers are allowed to work. The study shows that being allowed to work is of great importance for the level of activity for the individual and the experience of being able to provide for one self contributes in a positive way to the well-being of that person.
55. With regard to education, the study shows that the internal courses offered by the Red Cross are limited with regard to choice, quality and the learning facilities available. Besides the Red Cross' internal courses rejected asylum seekers have the opportunity to obtain training which offers recognized qualifications. Although there is a legal framework, which allows asylum seekers to gain vocational skills in this way, a number of barriers of an administrative, organizational and budgetary nature mean that only a small minority actually takes advantage of such training opportunities. One of the barriers is that rejected asylum seekers are not allowed to receive any pay thereby ruling out that they can graduate from an education which entails a paid traineeship which many technical and trade related educations do.<sup>42</sup>

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<sup>40</sup> The Danish Institute for Human Rights, *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark*, udredning nr. 6, (2009), p. 13.

<sup>41</sup> Denmark / Rigspolitiets Udlændingefdeling, *Det retlige grundlag for politiets udsendelsesarbejde i asylsager og politiets praktiske udsendelsesarbejde*, 2009, p. 10.

<sup>42</sup> The Danish Institute for Human Rights, *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark*, udredning nr. 6, (2009), p. 97.

56. **The DIHR is concerned** about the situation of especially rejected asylum seekers and other foreigners awaiting deportation and the limits they are faced with which potentially intervenes with their human rights such as e.g. the right to private life, to family life, to liberty, to freedom of movement, the right to work and the right to education. The policy on the conditions for rejected asylum seekers should be reviewed.

### **The current issue regarding individuals with Roma background**

57. According to a recently published mapping study of foreign homeless people in Copenhagen,<sup>43</sup> a group of foreign individuals with Roma background characterized by extreme poverty live in Copenhagen. Other groups of foreign, homeless people are persons from Africa primarily, from Ghana and Nigeria, of whom many have a visa from either Spain or Italy, but travel north due to lack of job opportunities.<sup>44</sup>

58. It follows from the mapping study that several of the individuals with Roma background consider life as homeless in Copenhagen better than the life they can make at home. It follows from the study that it is estimated that the purpose of their stay in Copenhagen is to earn as much money as possible and then return to Romania with the hope of creating a more tolerable life. According to the study, there is a specific place in Copenhagen where Roma people settle in camps, and that it is clear to see at the camps that crime is part of their survival strategy.<sup>45</sup>

59. On 6 July 2010, the police raided two places in Copenhagen where they knew that many individuals with Roma background were staying. 23 individuals with Roma background were arrested and the Danish Immigration Service has since decided to expel them with a prohibition to enter the country within the next two years.<sup>46</sup> The reason for the expulsion was apparently that they were a disturbance to the public order due mainly to their choice of place of residence.<sup>47</sup>

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<sup>43</sup> Orientering vedr. situationen omkring udenlandske hjemløse, der tager ophold i Københavns Kommune. 25 May 2010.

<sup>44</sup> Orientering vedr. situationen omkring udenlandske hjemløse, der tager ophold i Københavns Kommune. 25 May 2010, p. 3.

<sup>45</sup> Orientering vedr. situationen omkring udenlandske hjemløse, der tager ophold i Københavns Kommune. 25 May 2010, p. 4.

<sup>46</sup> Information, 7 July 2010.

<sup>47</sup> Politiken, 7 July 2010.

60. Roma people from Romania being EU citizens can as such move freely within the European Union. In the case of the 23 individuals with Roma background, who were expelled, none had apparently been expelled due to actual crime being committed (apparently other than trespassing and putting up tents and camping without permission).
61. **DIHR would like to call the attention of the Committee** to this particular issue.

### **Access to permanent residence**

62. In 2010, a new agreement regarding among other things access to permanent residence was entered into by the Government and a party supporting the Government (15 Marts 2010). One of the aims was to make it possible for ‘well-integrated immigrants’ to acquire a permanent residence permit already after 4 years (instead of 7) and at the same time make it more difficult for “poorly integrated immigrants” to acquire this status. The Aliens Act was amended accordingly.<sup>48</sup>
63. Following the reform, foreigners who apply for a permanent residence permit as of 26 March 2010 must have attained the age of 18 and obtained at least 100 points according to the Aliens Act, section 11, paragraph 4-6 (70 points must be obtained according to paragraph 4, 15 points according to paragraph 5 and 15 points according to paragraph 6).
64. First, applicants for permanent residence must fulfil eight indispensable conditions in order to obtain 70 point, cf. section 11(4). They must have resided legally in Denmark for at least 4 years, not having been sentenced to imprisonment for 18 month or more,<sup>49</sup> not have been sentenced to 60 days’ imprisonment or more for violation of Parts 12 and 13 of the Criminal Code (crimes against the Danish state), not have overdue debt to public authorities, unless a respite has been given and the debt is below 100,000 DKK (13,500 Euro), not have received public assistance (Act on Active Social Policy or Integration Act) within the last three years before submitting the application for a permanent residence permit, have signed a declaration on integration and active citizenship, have passed the Danish 2 Examination (level B1) or a Danish language test of an equivalent or higher level, have had ordinary full time employment in

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<sup>48</sup> Act no. 572 of 31 May 2010.

<sup>49</sup> Imprisonment for a shorter period will result in waiting periods up to 12 years.

Denmark during at least 2, 5 years out of the last 3 years before submitting the application for a permanent residence permit.

65. Moreover, the applicants must achieve extra 15 points by doing an extra effort with a view to integrate through “active citizenship”. The “active citizenship” requirement (that yields 15 points (cf. section 11(5)) is met if the applicants pass a special “active citizenship exam” or demonstrate active citizenship in Denmark through at least one years’ participation as active members in boards, organizations etc.
66. Finally, the “supplementary conditions relevant to integration” (that yield 15 points (cf. section 11(6)) are met if the applicants meet one of the following integration-related requirements: (i) have ordinary full time employment in Denmark for at least 4 years out of the last 4,5 years before submitting the application for permanent residence and are still employed at the time when the permanent residence permit is granted, (ii) have completed one of the following programmes at a Danish educational institution: a higher educational programme, a professional bachelor’s degree, business academy or vocational upper secondary education, or (iii) have passed Danish 3 Exam or a Danish language test of an equivalent level (level B2) or higher.
67. Foreigners who receive old-age pension are exempted from the employment requirement. The same holds for 18 year old foreigners who apply for a permanent residence permit before turning 19, but only in so far as they have been in school or working full time continuously since they completed the Danish Folkeskole (municipal primary and lower-secondary school). It should be noted that children can no longer be issued a permanent residence permit when their parents are granted such permit. They need to apply independently at or after the age of 18.
68. It follows from the legislation that Denmark will comply with its international obligations, including the Convention on the Rights of Persons with Disabilities.
69. However, many immigrants may not - regardless of their good will - be able to fulfil the requirement on e.g. full time occupation combined with the educational requirements. Especially unskilled workers may find it hard to allocate the necessary time to education, and immigrants in the process of training will have to wait for a number of years before they (hopefully) can fulfil the requirement of full time employment. Vulnerable immigrants, among others traumatised

refugees, will face even bigger problems than before. They may be exempted from fulfilling some of the requirements, but only in so far it is required by Denmark's international obligations, including the UN Convention on the Rights of Persons with Disabilities. It is for the applicants to prove that they have a disability which entitles them to exemption.

70. **DIHR is concerned** about the new, strict, and inflexible integration requirements.

### **Article 5 (d) (iii) The right to nationality**

#### **Nationality**

71. The strengthening of the requirements for permanent residence described above (paragraph 62 – 70) makes it even more difficult for foreigners to acquire Danish citizenship since a permanent residence permit is a pre-condition for applying for citizenship.

72. DIHR is especially concerned about the situation for young immigrant descendents. Denmark has not facilitated the acquisition of its citizenship for (non-Nordic) persons who are born in Denmark and reside here lawfully (with the exception of children who would otherwise be stateless) and neither has it facilitated the acquisition of its citizenship for (non-Nordic) persons who have resided lawfully in Denmark since they were children. Thus, immigrant descendents who do not acquire Danish citizenship together with their parents may apply for citizenship at the age of 18 on the same conditions as apply to immigrants. Among other things they need a permanent residence permit and must fulfil requirements as to Danish language abilities and the passing of a naturalisation test. (The passing rate has been below 50, but in December 2009 it was 54,5 percent, and the June 2010 passing rate will probably be higher).

73. DIHR would like to draw the attention to the General Recommendation no. 30: Discrimination Against Non Citizens,<sup>50</sup> paragraph 13, from which follows that State Parties should ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalisation, and to pay due attention to possible barriers to naturalisation that may exist for long-term or permanent residents.

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<sup>50</sup> General Recommendation No. 30: Discrimination Against Non Citizens: 01-10-2004.

74. According to the Circular on Naturalisation,<sup>51</sup> the Ministry of Integration is assumed to refuse applications for exemption from applicants who suffer from PTSD, also when the condition is chronic and this is documented by a certificate from a medical professional. The applicability of the Convention on the Rights of Persons with Disabilities is thus subject to dispute in the field of naturalisation, unlike in the field of permanent residency (see paragraph 68-69 above).
75. **DIHR is concerned** about the decrease in the annual numbers of naturalisations especially in respect of immigrant descendents, who are born and/or raised in Denmark, and about the limited possibilities as to be granted dispensation from the strict naturalisation criteria and especially concerned about the lack of dispensation possibilities for persons suffering from Post Traumatic Tress Disorder (PTSD).

#### **Article 5 (d) (iv) The right to marriage and choice of spouse**

#### **Family reunification**

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The Committee recommends that the State party review its legislation to ensure that the right to family life, marriage and choice of spouse is guaranteed to every person without discrimination based on national or ethnic origin. It should also assess the extent to which the condition for spousal reunification: that the spouse residing in Denmark must provide a bank guarantee and may not have received any public assistance for sustenance within the last year before the reunification, amounts to indirect discrimination on minority groups who tend to suffer from socio-economic marginalization. Extract of paragraph 15 of the Concluding Observations of the Committee.**

76. As a general rule, family reunification can only be granted if both spouses are over 24 years old.<sup>52</sup> If a Danish citizen wishes to achieve family reunification with a third country national both parties must fulfil the age requirement. The overall purpose of this provision is to combat forced marriages and arranged marriages.<sup>53</sup>

<sup>51</sup> Circular Letter no. 61 of 22 September 2008.

<sup>52</sup> There are also other requirements that have to be fulfilled in order to obtain family reunification.

<sup>53</sup> Cf. the travaux préparatoires to act no. 424 on amendments to the aliens act by several laws of 31 May 2000 [*Lov 2000-05-31 nr 424 om ændring af udlændingeloven med flere love*].

77. The Government refers in its State report<sup>54</sup> to a research report from the National Research Centre on Welfare – SFI – which focuses on the impact of the rules on family reunification, introduced from 2002 and onwards in relation to marital patterns and family reunification among ethnic minorities. In connection with this, the research report will also look at the development in the scope and risk of forced marriages, including non registered marriages conducted inside as well as outside Denmark. This report was not yet published when the Government handed in its State report.
78. In the fall of 2009, the report was published.<sup>55</sup> It follows from the report that the experts which have been interviewed were not in agreement on whether or not the introduced rules had had an effect as a measure to combat forced marriages. They experience that forced marriages are a growing cause to why ethnic minority women seek help at shelters. This increase is interpreted, however, as an expression of a change in attitude among young people towards forced marriage as well as an increase of knowledge in both young people and professionals that help and support is available.<sup>56</sup>
79. Besides the age requirement, more strict conditions for family reunification were introduced in 2002, and the scope of the so-called “attachment requirement”, according to which the couple’s aggregate ties to Denmark (“the overall attachment”) must be stronger than the couple’s attachment to any other country, was extended to comprise Danish citizens (as well as foreign residents). In 2003, however, strong criticism of the consequences for Danish expatriates led to an amendment. The attachment requirement was lifted for persons who have held Danish citizenship for at least 28 years. Furthermore, persons born or having arrived in Denmark as small children may be exempted from the requirement.
80. In 2006, a married couple instituted legal proceedings against the Ministry of Integration claiming that the 28-years citizenship requirement violated Denmark’s human rights obligations

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<sup>54</sup> Paragraph 99 in the eighteen and nineteenth periodical reports by the Government of Denmark on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination – CERD/C/DEN/18-19.

<sup>55</sup> SFI, Ændrede familiesammenføringsregler – Hvad har de nye regler betydet for pardannelsesmønstret blandt etniske minoriteter?, 2009.

<sup>56</sup> SFI, Ændrede familiesammenføringsregler – Hvad har de nye regler betydet for pardannelsesmønstret blandt etniske minoriteter?, 2009, p. 21.

according to article 8 in the European Convention on Human Rights (ECHR), 14 in the ECHR in conjunction with article 8, and article 5 (2) in the European Convention on Nationality (ECN).

81. The High Court found no violation of article 8. As to the understanding of article 5 in ECN, the Court stressed that article 5 (2) concerns the “principle of non-discrimination” and that it follows from the explanatory report to ECN that it is not “a mandatory rule to be followed in all cases”. Accordingly, the Court was of the opinion that article 5 did not have a more extensive scope of protection against discrimination than article 14 in the ECHR. The attachment requirement was introduced with the legitimate aim of securing the best possible integration of foreigners and could in the opinion of the Court justify a difference in treatment between Danish citizens with a Danish background and Danish citizens with a foreign background where a Danish citizen with a foreign background does not have a permanent and strong attachment to Denmark. Based on an assessment of the circumstances in the concrete case, the High Court did not find “sufficient basis” to establish that the refusal of family reunification based on the attachment requirement amounted to a disproportional interference in the sponsor’s rights as a Danish citizen and his right to family life.

82. In the Supreme Court the case was exceptionally heard by seven judges. All of them agreed that there had been no violation of article 8 in the ECHR and a majority of four judges held that neither had there been a violation of article 14 in conjunction with article 8. These judges recalled that according to the case law of the European Court of Human Rights (EHRC), citizens do not enjoy an unconditional right to family reunification and it is “not in itself incompatible with the ECHR if a state in its legislation differentiates between groups of citizens as to the possibilities for being granted family reunification with a foreigner”. The majority referred to the case *Abdulaziz, Cabales and Balkandali*, EHRC judgement of 28 May 1985, pr. 88, stating that “there are in general persuasive social reasons for giving special treatment to those whose link with a country stems from birth within it.” In the concrete case, the results of the 28-years requirement had not been shown to transgress the principle of proportionality, and accordingly the majority hold that there was no violation of the ECHR. The majority considered like the High Court that article 5 (2) in the ECN did not have a more extensive scope of application than article 14 in the ECHR.

83. A minority of three judges was of the opinion that the 28 years requirement implied indirect discrimination between persons who are born Danish citizens and persons who have acquired Danish citizenship later in their life and coherently indirect discrimination between ethnic Danish citizens and Danish citizens with a foreign ethnic background. As to the interpretation of article 5 (2), the minority considered it doubtful whether its scope could be restricted to matters concerning acquisition and loss of citizenship - as the Danish administration had argued – since literally the provision comprises any difference in treatment between citizens whether they are citizens by birth or have acquired their citizenship subsequently. When comparing article 5 (2) to article 14 it should in the opinion of the minority be taken into consideration that according to wording of article 5 (2) difference in treatment between different groups of citizens is as a starting point prohibited. Summing up, the minority did not find a reasonable justification for the indirect discrimination stemming from the 28-years rule and therefore, article 14 in conjunction with article 8 had been violated. The minority concluded that the 28-years rule must be interpreted restrictively as implying only an age requirement and, thus, as lifted for persons who have reached the age of 28 years. The sentence was passed in accordance with the opinion of the majority.
84. The Supreme Court judgment is 12 July 2010 brought in for the European Court of Human Rights.
85. **DIHR is concerned** that the 28 years requirement may entail that persons who have acquired citizenship later in their life are exposed to indirect discrimination when applying for family reunification.

## **Article 5 (e) (iv) The right to public health, medical care, social security and social services**

### **Starting allowance**

**In the concluding observations to Denmark's 16<sup>th</sup> and 17<sup>th</sup> reports the UN Committee on the Elimination of Racial Discrimination notes: The Committee recommends that the State party review its policy in order to ensure that foreigners newly arrived in Denmark are not pushed into poverty and social marginalization. *Paragraph 18 of the Concluding Observations of the Committee.***

86. The so-called starting allowance is a continuous concern of DIHR. DIHR therefore finds it necessary to repeat its concern from its last parallel report in 2006.<sup>57</sup>
87. Only persons who have resided lawfully in Denmark for at least seven out of the preceding eight years are entitled to the full amount of cash benefits. Persons who do not meet this residence requirement will be entitled to the starting allowance which is a significantly lower cash benefit allowance than the ordinary cash benefit allowance. It is not contested that the regulations regarding starting allowance affect persons with a non-Danish ethnic background more than persons with a Danish ethnic background although the regulations apply to all irrespective of the person's race, national or ethnic origin.
88. It follows from the State report that statistics from the Ministry of Employment show that a relatively large number of foreigners receiving introduction allowance on the level of starting allowance get into ordinary employment compared to foreigners receiving introduction allowance on the level of cash benefit. The Government further refers to a survey from April 2007 carried out by Rockwool Fonden which confirms these tendencies. The survey shows that 56 per cent more persons receiving the starting allowance get into ordinary employment than is the case for persons receiving the higher cash benefit.

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<sup>57</sup> The Danish Institute for Human Rights' Supplementary Report to Denmark's sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination, June 2006.

89. DIHR does not contest these numbers. However this progress does not come without consequences since the starting allowance leads to poverty. According to a newsletter from Rockwool Fonden from June 2009, the living conditions for persons receiving starting allowance are so poor that it makes it difficult for them to have proper accommodation and food.<sup>58</sup>
90. The survey from Rockwool Fonden from 2007 shows there since the starting allowance entered into force in 2002 there has been an increase in the number of persons who approximately 18 months after they received a residence permit were self-providing without having a job. In this context self-providing is defined as persons who do not have a detectable income. They either live of the income of their spouse, by moonlighting, or by doing something else.<sup>59</sup>
91. **DIHR is still concerned** that lawful residents in Denmark with an ethnic minority background may be subject to indirect discrimination as a consequence of the starting allowance. The starting allowance contributes to push a group, the majority of which is persons with an ethnic minority background, into poverty.

### **The 300 hours rule**

92. In the spring of 2007 the Government introduced the so called 300-hours rule in order to get as many as possible of those who are on state support into the labour market and to promote the integration of foreigners in Denmark. In summer 2009 the 300-hours rule was amended and the requirement increased to 450 hours. The rule means that married couples where either one or both spouses are recipients of cash benefit each of them must fulfil a requirement of 450 hours of regular and unsupported work within the last 24 months in order to maintain the right to cash benefit. If both spouses work less than 450 hours they will not be viewed as being available for the labour market and one of them will therefore no longer be entitled to cash benefit.
93. A study conducted by The Danish National Centre for Social Research “The rule of 300 hours: The meaning of the rule of 300 hours for married recipients of cash assistance” shows that persons of a non-Danish origin were highly overrepresented among those denied continued benefit. Such a marginalisation will constitute an additional barrier for integration also in

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<sup>58</sup> Nyt fra Rockwool Fondens Forskningsenhed, June 2009, p. 8.

<sup>59</sup> Nyt fra Rockwool Fondens Forskningsenhed, April 2007, p. 2.

relation to the children of the affected groups which presumably will have future consequences in relation to these children's educational integration into the Danish society as well as their integration into the labour market.

94. A study carried out in 2009 shows that 59,000 children in Denmark live in poverty corresponding to nearly 5 per cent of all children in Denmark. By procuring statistical information in this area it will be possible to examine to what extent The Start Help and the reduction of social services including cash benefit will mean that families with children in Denmark live in actual poverty as well as which sections of the population is affected.
95. DIHR is concerned about the effect that these regulations has on children and recommends that the Government develops a mechanism for measuring the poverty level. Further the Government should provide comparative data on the number of children living in poverty and it should take initiatives which increases focus on children in socially disadvantaged families and ensures that children suffering from poverty receive sufficient special help and protection.

## **Interpretation**

96. It follows from the State report that patients who do not speak Danish are entitled to interpreter assistance in connection with a consultation at the patient's general practitioner or a specialist or in a hospital, to ensure the correct medical care under the condition that the treatment is given free of charge in accordance with the health legislation and that the treating doctor in connection with the actual treatment considers interpretation necessary. In these cases the public health care service covers the costs.
97. However, it follows from the agreement from May 2010 on re-establishment of the Danish economy between the Government and its supporting party<sup>60</sup> that an analysis of the level of public expenses in this area will be conducted in order to consider whether user fee shall be introduced in the field of interpretation. Public tender [offentligt udbud] and distance interpretation (video conferences) will be considered. The result of the analysis will be taken into consideration in connection with the budget negotiations for 2011.

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<sup>60</sup> Aftale mellem regeringen og Dansk Folkeparti om genopretning af dansk økonomi, May 2010.

98. **DIHR is concerned** that a user fee on interpretation entails is a risk that patients with an ethnic minority background will not receive important information about their illness, the treatment of the illness as well as other information. Furthermore DIHR is concerned that the introduction of a user fee will lead to a rise in cases where children interpret for their parents and that this will put an unreasonable pressure and responsibility on children of ill parents.

## Article 6

### Effective protection and remedies

#### Discrimination

99. In 2008, the European Union Agency for Fundamental Rights carried out the largest EU-wide survey (the EU-MIDIS) of its kind that examines minorities' experiences of discrimination, racist victimisation and policing.<sup>61</sup> 23,500 people from various ethnic minority and immigrant groups were surveyed across the EU's 27 Member States. In Denmark the survey targeted persons of Turkish and Somali ethnic origin.<sup>62</sup>

100. The survey asked the respondents about discrimination they had experienced on the basis of their ethnicity/immigrant background across 9 areas of everyday life.<sup>63</sup> According to the survey Denmark belongs to the group of ten countries where the respondents experienced the highest levels of discrimination over a 12 month period.<sup>64</sup> Furthermore the survey showed that there was an overall tendency not to report discrimination.<sup>65</sup>

101. In 2009 DIHR prepared a report for the municipality of Copenhagen on the scope of discrimination and hate crimes in Copenhagen in 2008.<sup>66</sup> The report shows that there is a rather large discrepancy between the number of persons who feel they have experienced discrimination and the number of persons who seek remedies.<sup>67</sup>

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<sup>61</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS) - Main Results Report*, 2009.

<sup>62</sup> European Union Agency for Fundamental Rights, *European Union Minorities and Discrimination Survey (EU-MIDIS) - Main Results Report*, 2009, p. 23.

<sup>63</sup> (1) when looking for work; (2) at work; (3) when looking for a house or an apartment to rent or buy; (4) by healthcare personnel; (5) by social service personnel; (6) by school and other education personnel; (7) at a café, restaurant, bar or nightclub; (8) when entering or in a shop; (9) when trying to open a bank account or get a loan from a bank.

<sup>64</sup> 46 percent of the respondents of Somalian ethnic origin in Denmark.

<sup>65</sup> 76 percent of the respondents of Turkish ethnic origin in Denmark had not reported discrimination incidents which they had experienced in the past 12 months.

<sup>66</sup> Rapport om omfanget af diskrimination og hadforbrydelser i Københavns Kommune 2008.

<sup>67</sup> Rapport om omfanget af diskrimination og hadforbrydelser i Københavns Kommune 2008, pp. 17-18.

102. In regard to prohibition against racial discrimination it follows from the State report that since the last State report three cases regarding the Act on Prohibition against Differential Treatment in the Labour Market have been before the Danish courts.<sup>68</sup> The DIHR does not question the validity of this number but would like to draw attention to case law from the Board of Equal Treatment. Since its establishment 1 January 2009 the board has made a decision in 30 cases concerning race and ethnic origin out of which 10 cases was in relation to the labour market. Out of these 10 cases the board found that discrimination had occurred in 2.
103. Still DIHR is of the opinion that the number of case law does not reflect the scope of discrimination especially when considering the results of both the EU-MIDIS Survey and the survey from the municipality of Copenhagen.
104. **DIHR is concerned** about the discrepancy between experienced discrimination and reported discrimination that is seen today thus potentially leaving a large group of individuals without effective protection. The Government has recently published its new Action Plan on Ethnic Equal Treatment and Respect for the Individual from which it follows that the Government will see to that a research project on the scope and nature of discrimination is carried out.<sup>69</sup> DIHR welcomes this initiative. The Government should ensure a systematic registration of reports on discrimination is put in place.

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<sup>68</sup> Paragraph 36 in the 18th and 19th periodical reports by the Government of Denmark on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination – CERD/C/DEN/18-19.

<sup>69</sup> The Government's Action Plan on Ethnic Equal Treatment and Respect for the Individual, July 2010, pp. 11-12.



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