FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN DENMARK IN 2003

January 2004

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[*] submitted to the Network by Morten Kjaerum with the collaboration of the Danish Institute for Human Rights.

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
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CHAPTER I : DIGNITY

Article 1. Human dignity

No relevant information.

Article 2. Right to life

National legislation, regulation and case law

The Parliament adopted on 10 June 2003 a change in Lov (2003: 435) om svangerskabsafbrydelse [Act on induced abortion 2003:435]. The changes contain concrete provisions in which cases of foster reduction by a medical standard is permissible.

Furthermore, on 28 November 2002, in effect from the 1 July 2003, Denmark ratified Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty in all circumstances.

Article 3. Right to the integrity of the person

National legislation, regulation and case law

The Governmental Committee on Bio-banks.

The Intergovernmental working group was set up in November 1999 by the Ministry of Interior and Health. In May 2002, the working group launched its report, Report No.1414/2002. The report contains an analysis of the requirement for further legislative regulation of the so-called bio-banks, defined as a structured collection of human biological material that is accessible under certain criteria, and where information contained in the biological material can be traced back to individuals.

Based on the report, the Ministry of Interior and Health presented a Bill to Parliament on 19 November 2003 concerning bio-banks, lov (2003:89) om ændring af lov om patienters retsstilling [Act (2003:89) on Patients´ Legal Rights].

The basic aim of the proposed changes is that the biological material must not be used for purposes other than those, which the patient/experiment person has been informed about and which have been explicitly or tacitly approved, or in event of register research where biological material is incorporated by using the committee system – which does not cause any liability on the experiment person – and having the system attend to the interests of the person without obtaining any consent.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

The UN Committee for the Prevention of Torture has made decisions in two cases concerning Denmark.

Both cases concerned complaints by foreigners residing in Denmark, who claimed that their forcible return to their countries of origin (Denmark denied to grant asylum in both cases)

would constitute a violation of article 3 of the Convention against Torture because of the risk of being subjected to torture upon their return. The Committee found in both cases that the complainants did not face a real and personal risk of torture upon return to their countries of origin, and therefore did not find Denmark in violation of Article 3.

National legislation, regulation and case law

On 10 June 2003, the Parliament changed lov (2003:433) om udlevering af lovovertrædere [Act (2003:433) on Extradition of Criminals], that extends the possibilities to extradite Danish nationals to criminal prosecution in other European countries, even though the alleged offence is not illegal in Denmark. However, extradition may not take place in situations where the concerned person is in danger of being exposed to torture or inhuman treatment after the extradition to another country.

Denmark signed on 26 June 2003 the additional protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 5. Prohibition of slavery and forced labor

National legislation, regulation and case law

In September 2003, Denmark ratified the UN Convention against Transnational Organized Crime and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Practice of national authorities

In December 2003, the Police in Copenhagen arrested 5 persons from the Western Balkans in suspicion of violation of section § 262 a in the Danish Penal Code on human trafficking. The evidence in the case is primarily based on wire-tapping of the suspected persons. The trial, which is the first of its kind in Denmark, is set to begin in the autumn of 2004.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observation of international organs

The European Court of Human Rights, Case of Vasileva v. Denmark (Application no. 52792/99) regarding violation of Article 5 in the European Convention on Human Rights (ECHR).

On 11 August 1995, on a public bus in the city of Århus, the applicant, born in 1928, had a dispute with a ticket inspector, who accused her of having traveled without a valid ticked. When the ticket inspector was about to issue a penalty fare, she refused to disclose her identity and the police were consequently called. The police requested that she give her name and address, and since she refused, she was arrested at 9.30 p.m. in accordance with section 755, subsection 1, cf. section 750 of the Administration of Justice Act (Retsplejeloven) and brought to a detention cell at the police station. She was held in the detention until the following day at 11 a.m. where she was released after having revealed her identity.

The Court found that the Danish authorities by extending her detention to thirteen and a half-hours failed to strike a fair balance between the need to "secure the fulfillment" of an obligation as required in Article 5 § 1 (b) and the importance of the right to liberty. Accordingly, the Court found that Denmark had violated Article 5 §1 of ECHR.

National legislation, regulation and case law

The Danish Parliament adopted on 14 May 2003 a change in lov (2003:343) om social service [Act (2003:343) on Social Services] that contains further possibilities for the authorities to exercise power towards people with considerable and permanent reduced psychological capability. The law contains e.g. provisions on how to secure psychological unstable persons against their will, and relaxations of the rules concerning movement of these persons without their consent.

Furthermore, on 6 November 2003 Direktoratet for Kriminalforsorgen, the responsible authority for the Danish prisons, issued a Ministerial regulation for persons serving custodial sentences in prisons.

Reasons for concern

The Danish Institute for Human Rights has in connection with the Vasileva case expressed concern regarding the application of section 755, subsection 1, cf. section 750 in the Administration of Justice Act, especially in cases where the use of the paragraph and the subsequent use of detention must be seen as disproportionate. The Institute has therefore recommended that each case must be evaluated carefully before using this instrument.

In relation to the changes in the Act on Social Services, the Danish Institute for Human Rights has expressed concern about the lack of clarification regarding those specific cases, where interference in the right to liberty can be exercised legitimately.

Article 7. Respect for private and family life

National legislation, regulation and case law

The Parliament adopted Lov (2003:436) om ændring af straffeloven og retsplejeloven (bekæmpelse af rockerkriminalitet og anden organiseret kriminalitet (Act (2003:436) amendment of the Penal Code and the Administration of Justice Act (fight against "biker crime" and other organized crime).

The act extends the rules concerning the use of civil agents, the possibilities for the police to use confiscation, and the rules regarding concealment of identity of certain police officers. Furthermore, the Act extends the access for the police to telephone tapping and data reading. Finally, the act limits the rights of the accused to access certain documents in criminal cases.

On 5 November 2003, the Government proposed a lovforslag (2003:55) til ændring af straffeloven, retsplejeloven og markedsføringsloven (bekæmpelse af IT-kriminalitet) [Bill (2003:55) changing the Penal Code, the Administration of Justice Act, and the Marketing Practices Act in the fight against cyber crime). According to the proposed changes, the police can impose a duty on the telecommunication suppliers to save electronic information for up to 90 days, which eventually could be used as evidence in cases of cyber crime. The Bill contains no specific procedural guarantees that must be fulfilled in each case.

Furthermore, the Government proposed on the 26 November 2003 Lovforslag (2003:97) om våben og eksplosivstoffer [Bill (2003:97) changing the Act on Weapons and Explosives] that

expands the possibilities for the police to search people for illegal knives in specific locations e.g. youth clubs.

Finally, the Government has proposed Forslag til lov (2003:96) om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligt [Bill (2003:96) on due process in cases where the Administrative authorities exercise acts of coercion]. The law contains provisions, which the administrative authorities are obliged to follow when entering private households and companies. These provisions are e.g. that the persons/companies must be given prior notice about the restraint and show due cause.

Practice of national authorities

The Ombudsman (J.nr.: 2002-2804-630):

The complainant filed a complaint to the Parliamentary Ombudsman concerning a refusal of free legal aid pursuant to section 331 in the Administration of Justice Act from the Ministry of Justice in a case concerning a stepfather's right to access cf. section 16 in Act on custody and access According to section 331 in the Administration of Justice Act, the Ministry of Justice may grant free legal aid if special grounds exist for example if the case is of general public importance. In the concrete case the Minister of Justice did not find that there existed questions of general public importance concerning the interpretation of section 16 in Act on custody and access in relation to ECHR art. 8. The Ombudsman stated that section 16 in Act on custody and access does not provide access to others than biological parents and adoptive parents and such a right can neither be inferred from the case law on ECHR art. 8 thus the application of section 16 in Act on custody and access did not contravene with the case law on ECHR art. 8. Ombudsman found accordingly no reason to criticize the decision of the Ministry of Justice.

Case law:

Supreme Court U2003/56 H:

The case concerned a citizen from Sri Lanka who was convicted to 4 months of imprisonment for an act of violence; the Supreme Court in Denmark upheld a decision from the Higher Court on deportation of the man back to Sri Lanka. The Court found that the man, who had stayed in Denmark for 7 years, did not have sufficient contact to the Danish society or any specific family relations in Denmark that could stop his deportation to Sri Lanka.

Reasons for concern

In connection with the changes regarding the fight against organized crime, the Danish Institute for Human Rights has found that the scope for the new rule concerning confiscation seems vaguely delimited, and will cause the risk of disregard of the demand of foreseeability required by international human rights law.

Furthermore, when applying the rules concerning omission or stay of notice of an interference in the confidentiality of communication, it is of significant importance for the compatibility of the measures within human rights law to make a concrete assessment. In the assessment the necessity of omitting or staying a notice and the proportionality of the interference in relation to the pursued aim must be considered. In relation to the extended access to data reading the requirements of exceptional circumstances necessity and proportionality is decisive for the compatibility of the practical application of data reading in relation to human rights law. It is recommend that the police are obliged to make sure that the surplus information, which is part of the research material collected through data reading, is destructed.

With regard to the proposed change in the Penal Code concerning the fight against cyber crime, the Danish Institute has expressed concern about the fact that the law contains no specific procedural guarantees that must be fulfilled in each case.

Article 8. Protection of personal data

National legislation, regulation and case law

On 10 June 2003, the Parliament adopted Lov (2003:429) om patientsikkerhed i sundhedsvæsenet [Act (2003:429) on Patient Safety in the Health Sector]. The purpose of the Act is to improve patient safety by collecting information without the consent of the individuals involved about mistakes and unfortunate incidents of importance for patient safety.

The Danish Data Protection Agency, an underlying authority of the Ministry of Justice, exercises surveillance over processing of data in accordance with Lov (2000:429) om beskyttelse af personoplysninger [Act (2000:429) on Processing of Personal Data] The act implements Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Agency mainly deals with specific cases on the basis of inquiries from public authorities or private individuals, or cases taken up by the Agency on its own initiative. The Agency's power has been unchanged in 2003.

Reasons for concern

In relation to the change in the law on patient safety it has been stated by The Danish Institute for Human rights that the law fails to strike a fair balance between the need to establish a database to improve patient safety and the need to secure patient confidentiality.

Article 9. Right to marry and right to found a family

National legislation, regulation and case law

Forslag til Lov (2003:6) om ændring af udlændingeloven (Ændring af reglerne om tilknytningskrav ved ægtefællesammenføring m.v.) [Bill (2003:6)[1] concerning Amendment of The Aliens Act:

(Amendment of the rules regarding the attachment requirement for spouse reunification etc.)]. The Bill contains two amendments:

1) Individuals who have had Danish citizenship for 28 years do not have to fulfill the attachment requirement as described in The Aliens Act par. 9 (7).
2) The Aliens Act par. 9 (8) is changed from "wishes of both parties" to "the own wishes of both parties".

According to the explanatory notes of the bill:

Individuals who have had their adolescence in Denmark and have had at least 28 years legal residence in Denmark are not required to fulfill the attachment requirement.

[1] Adopted on 19 December 2003.

It is presumed that a marriage is not entered into by the own wish of the parties when it is a marriage between closely related or closer related individuals, for instance cousins.

Former spouse reunification in the spouses´ close family indicates that the marriage is not entered into by the own wish of the parties.

The Government's Action plan of august 2003 against forced marriages, forced-like marriages and arranged marriages for the period 200-2003, august 2003

The initiatives of the action plan aim to prevent forced marriages, to counteract family reunification on the basis of arranged marriages, to contribute to a better integration and an increased gender equality, to contribute to increased focus on young ethnic minorities' opportunity to decide for themselves whom they will marry, and to impart knowledge on focus-areas to all those who are in contact with ethnic minorities, such as doctors, social workers, teachers, educationists health visitors etc.

Reasons for concern

According to the Danish Institute for Human Rights, the bill raises questions concerning the right of the individual to self-determination and the right to marry and to found a family.

Refugees will according to the bill continuously be deprived the right to spouse reunification with a person from their home country if the marriage is entered into after the arrival in Denmark

To prevent the protection in ECHR articles 8 and 12 from being inane, the Institute recommends that the authorities should show consideration for the refugees' concrete opportunities to establish a family-life with their spouse in another country than Denmark.

Article 10. Freedom of thought, conscience and religion

No relevant material.

Article 11. Freedom of expression and of information

National legislation, regulation and case law

Lov (2002:1052) om radio- og fjernsynsvirksomhed [Act (2002:1052) on Radio and televison broadcasting) was adopted by the Danish Parliament on 17 December 2002] The act ensures the pluralism of the media. The Act stipulates that the media through its public service duty must ensure the Danish population a wide selection of programmes and services including news, education, art, and entertainment. In the planning of programmes the media must aspire to quality, balance, and multiplicity and attach great weight to the freedom of expression.

Bekendtgørelse(2003:1024) om ændring af bekendtgørelse om lokal radio- og fjernsynsvirksomhed [Order (2003:1024) on amnendment order on local radio and broadcasting]. The order prevents automatic state grant to local radios and local television stations. The order will among others affect the local Neo-Nazi "Radio Oasen". According to the order an application for state grant shall be assessed individually by the local radio and television boards. The boards can attach importance to different issues when dealing with the applications for example whether the applicant has a broad contact to the local society and whether the applicant contributes to local media political goals such as democratic debates etc.

Case law:

High Court U.2003.1411Ø.:

20 days' imprisonment as concurrent sentence for propaganda activities according to the penal code section 266 b subsection 2 cf. subsection 1.

The accused had made severe racial remarks concerning Muslims in 4 television- and radio programs. He was found to have realized the actus rea in the Penal Code section 266 b subsection 1, as this section must be read in the light of ECHR art. 10. The statements were made in the media, which means a larger publication of a subject which the accused had made statements on continuously for a number of years. In consideration hereof The High Court found that the statements were made as a part of an activity of a certain systematic and continuous character and with a view to affect the public. The accused had therefore also realized the actus rea in section 266b subsection 2 of the Penal Code. The accused was convicted for 20 days pursuant to section 61 subsections 1-2 of the Penal Code. In consideration of the character of the statements and of the fact that the accused had formerly been convicted of a similar offence, the court found that regardless of the age of the accused there was no reason to make the sentence suspended.

The Supreme Court U.2003.2044H:

A statement saying that a politician had"racial views" was not criminal defamation

T - a representative from The People Movement against EU - stated in October 1999 in the news on the radio:"…and I would be very reluctant to be identified with Pia Kjaersgaards (A's) racial views, and I'm convinced that this will be the widespread attitude in a campaign…". The statement was made as reason for the People Movement not to work with the Danish People's Party, P, of which A was chairman, in the campaign against the EURO. A instituted a criminal case against T stating that the statement was a defamation. The Supreme Court acquitted T. According to the Danish Language board the word racism is used in three ways: 1) related to racial anthropology of Nazism and its effects for the Jews; 2) related to the superiority of a race in relation to others, especially with regards to the relation between black and white people; and 3) related to discrimination and suppression of or just rejection of groups of people, who may be of the same race as one self. T had used the term"racial views" in den third sense, aiming at a negative attitude towards immigrants. As this attitude must be regarded as common knowledge in the Danish society, and further, when it was common knowledge that there were no grounds for charging A and P for having racial views in any of the two first-mentioned senses of the word racism, the Supreme Court found that the term "racial views" could only be compared to the third definition of the concept. The statement was only a criminal defamation, if it in its form would be considered improper. T's statement had primarily its background in the views, expressed by A in a speech on P's annual meeting in October 1999. These views contained not only arguments for limiting future immigration, but also a sharp, unsubtle attack on especially Muslim immigrants residing in this country.. T's statement was stated in a relevant political context and had to be regarded as aiming not at A's person, but at A's expressed views. T's use of the term"racial views" could therefore not under these circumstances be regarded as improper, and T had accordingly not violated the penal code section 267 subsection 1. The Supreme Court noticed that a different result would contravene with ECHR's article 10 on freedom of expression, as this is interpreted by The European Court of Human Rights. Thus, the term"racial views" had character of being T's value judgment concerning A's and P's opinions. The use of the term was part of a political debate on important social issues and were sufficiently based on A's statements. On these grounds, T's use of the term"racial views" must not according to a general assessment be considered to exceed the limits of freedom of expression.

Practice of national authorities

The Supreme Court U.2003.624H:

Chief Editor sentenced to day fines and DKK 100.000 in compensation for defamation.

On 24 October 1997, the Supreme Court made an order of the imprisonment of A with reference to the fact that there was a highly probable cause that she in at least 6 instances was guilty of manslaughter and partly attempt hereto, committed in a nursing home, in which she was member of staff. On 23 December 1997, the Supreme Court ordered the release of A following that the Court did not find probable cause in any of the 6 instances. The prosecution maintained the charges. On 2 December 1998, the newspaper C carried a big article with the headline "Following the report of The Medical Legal Council: The Police: she killed 12." On 21 December 1998, the public prosecutor withdrew the charges against A and a settlement was made between A and the Ministry of Justice awarding A DKK 700.000 in compensation of wrongful detention. A instituted a defamation case against the responsible editor of C, B, claiming mortification following certain statements in the newspaper and a compensation of DKK .5 million . The High Court found that the statements in the newspaper established that A according to the assessment of the police was guilty in 10-12 cases of homicide; further, that A's identity - regardless of the prohibition of the publication of the suspect's name - at this point in time presumably had been recognized by a considerable number of people. The statements therefore resembled defamation according to section 267 subsection 1 of the penal code. Balancing the freedom of expression of the press against the protection of defamation, significant importance must be ascribed to the fundamental right to presumption of innocence protected in ECHR article 6, subsection 2. Accordingly, C's statement could not be regarded as an exemption from punishment according to section 269 subsection 1 of the penal code related to ECHR article 10; furthermore, there was no basis for an absolute discharge according to section 269 subsection 2 of the penal code. Some of the statements were found unauthorized and B was sentenced to 20 day-fines of DKK 2000 and a compensation of DKK 100.000 to A. The Supreme Court dismissed the appeal on these grounds.

Article 12. Freedom of assembly and of association

International case law and concluding observation of international organs

Case No. 2178, Report No. 330, concerning a complaint against the Government of Denmark presented by the Danish Confederation of Trade Unions (LO), the Salaried Employees' and Civil Servants' Confederation (FTF), and the Danish Federation of Professional Associations (AC).The ILO's Freedom of Association Committee established in March 2003 that the Danish government's intervention with the clauses of the collective agreements on part-time work by adopting Act on amendment of act on implementation of the part-time directive violates ILO Conventions 87 and 98 on the freedom of association and collective bargaining.

The act limits the scope for collective bargaining on an area where the parties previously enjoyed numerous possibilities for bargaining. Since individual agreements concerning part-time work in the future will take precedence over collective agreements, the new system will not promote the full development and use of the agreement system, which secures that employee- and employers associations can make voluntary collective agreements concerning working conditions.

A measure enforced by law and which unilaterally changes a system that have been accepted by the parties of the labour marked will only be justified in emergencies for example if it was strictly necessary to adopt legal measures concerning part-time employment to ensure that the present system could function. Such an emergency was not present in this case.

The ILO Committee advises the Liberal-Conservative Government to correct this matter, amongst others by resuming negotiations with the social partners with the aim of finding a solution agreeable to all parties and which does not contravene with ILO Conventions 87 and 98 on the freedom of association and collective bargaining.

National legislation, regulation and case law

Forslag til lov (2003:120) om ændring af lov om beskyttelse mod afskedigelse på grund af foreningsforhold (udvidet beskyttelse af den negative foreningsfrihed) [Bill (2003:120) concerning amendment of act on protection against dismissal on the basis of membership of an association (extended protection of the right of the individual no to become a member of an association)].

The Bill ensures an extended protection of the right of the individual no to become a member of an association. From this follows that an employer cannot as condition of appointment claim membership of an association and an employer can neither justify a dismissal claiming lack of membership of an association. The Bill also ensures that agreements in which an employer exclusively or mainly appoints employees who are members of an association no longer can be entered into (closed shop agreements)

The Danish Constitution section 78 subsections 2-4 deals with political parties which are accused of violating the principles of democracy or the rule of law, or which are aiming at the destruction of fundamental rights. The provisions state that associations who work at or seek to reach their goal by violence or similar criminal influence of people of a different opinion is to be dissolved by judgment. No association can be dissolved by Governmental measures. An association can be banned temporarily but proceedings towards dissolution of the association must be commenced immediately. Cases concerning dissolution of political parties can without special permission be brought before the Supreme Court.

Article 13. Freedom of the arts and sciences

No relevant material.

Article 14. Right to education

International case law and concluding observation of international organs

Demark has not ratified the revised European Social Charter (1996) but has signed the Charter on 3 May 1996.

Demark has ratified the European Social Charter of 1961.

The European Committee of Social Rights has made the following conclusions on Denmark (XVI-2) in primo 2003 concerning Denmark's 22nd report on the charter of 1961 concerning among others article 10 subsection 4: Right to vocational training – encouragement for the full utilisation of available facilities

The Committee observed that the Danish rules on educational grants (SU) demand that foreign students have been living in Denmark for at least two years and that during this period they have had at least part-time employment or served as a trainee.

The Committee recalled that according to the appendix to the Charter, equality of treatment shall be provided to non-nationals lawfully residing or regularly working on the territory of

the party concerned. Accordingly, the Committee concluded that the situation in Demark was not in conformity with article 10§4.

Practice of national authorities

Statistics regarding presence at the different levels of education are not released for the country as a whole. The educational institutions make the statistics individually.

Article 15. Freedom to choose an occupation and right to engage in work

National legislation, regulation and case law

Lov (2003-417) om ændring af lov om aktiv socialpolitik, lov om dagpenge ved sygdom eller fødsel, lov om fleksydelse, lov om social service, lov om individuel boligstøtte, lov om retssikkerhed og administration på det sociale område og integrationsloven
[Act (2003:417) amending Act on active social policy, unemployment benefits, integration acts etc.[2]].

The purpose of the amendment is to ensure that the total sum of money at disposal is lower when receiving cash benefits or start payments compared to low-income jobs and thereby ensure the economical motivation for applying for jobs. The level of benefits depends on whether the receiver of benefits is married, co-habiting, is single or has a maintenance obligation. Couples where one spouse is receiving cash benefits and the other is receiving start payments are not included by the limitation. The same exception for the limitation applies to couples where both parties receive start payments or where one party receives cash benefits and is co-habiting with a person receiving start payments.

Besides, the Act introduces a provision according to which a spouse who does not choose to be available to the labour market will not receive benefits. Instead the other spouse available for the labour market will receive a spouse supplementary payment, if the non-available spouse is working only at home. It is a voluntary arrangement, which is lifted once the spouse working at home declares that he/she again wishes to be available to the labour market. The amendment extends the possibilities in that the arrangement can be used even if the spouse has been attached to the labour market on a temporary basis. The possibilities for spouse supplementary payment will furthermore be extended allowing the municipality caseworker to assess whether the spouse - to a sufficient extent - is available to the labour market. If the spouse fails to document his/her availability, benefits will be withheld and the other spouse, who is available for the labour market, will receive the supplementary payment.

Practice of national authorities

According to the information from the Ministry of Refugee, Immigration and Integration Affairs the employment rate for foreigners between the age of 16 and 66 was 48 % of the total number of foreigners, compared to the employment rate for persons of Danish origin which made up 77%.[3]

[2] Now Consolidated Act No. 697 (05.08.2003).
[3] figures per 1 January 2002.

Reasons for concern

The above-mentioned Act has been labelled the "apron-rule" due to the alleged counter-productive consequences of the provision towards women. With reference to these expected consequences, it has been pointed out by the Danish Institute for Human Rights that the mentioned provision may infringe the non-discrimination clauses in Article 2 and 3 of the UN Covenant on Economic, Social and Cultural Rights.

Article 16. Freedom to conduct a business

National legislation, regulation and case law

Lov (2003:453) om finansiel virksomhed [Act (2003:453) on financial business]

Lov (2003:302) om statsautoriserede og registrerede revisorer [Act (2003:302) on chartered and registered accountants]

Bekendtgørelse af lov (2003:163) om restaurations- og hotelvirksomhed m.v. [Consolidated act (2003:163) restaurant and hotel business]

Bekendtgørelse af lov (2003:148) om tilsyn med firmapensionskasser [Consolidated act (2003:163) on inspektion of coporate pensionsfunds.]

The Government presented in October 2003 an action plan consisting of 30 news initiatives related to independent activity and entrepreneur culture with the main purpose of creating more room for the free initiatives. The main points are: better economic basis for starting a business - the open school - prevention of discrimination - form clients to heroes – the State as guarantor for the open marked.

Regarding the Code of Conduct on arms exports of June 1998

Export of arms from Denmark is according to the Act on weapon- and explosive prohibited without a license in every case. Such licenses are issued by the Ministry of Justice after they have been submitted to the Ministry of Foreign Affairs. The main principle for export of weapons from Denmark is that licenses are not issued to countries involved in military events or to areas with where the conditions are so unstable that there is a risk of armed conflicts. Export license is denied to countries which are included in a weapon embargo adopted by UN, OSCE or EU. In dealing with the applications concerning license the authorities asses whether the Code of Conduct on arms exports is observed.

Export without license is punished with a fine or imprisonment up to two years.

Article 17. Right to property

National legislation, regulation and case law

Forslag til lov (2003:78) om ændring af lov om leje, lov om leje af almene boliger, lov om midlertidig regulering af boligforholdene m.fl. love (Behandling af husordenssager ved huslejenævn og beboerklagenævn, betaling for adgang til elektroniske kommunikationstjenester, begrænsning af adgangen til at opkræve større huslejestigninger og til opsigelse ved ombygning) [Bill (2003:78) concerning amendment of the Rent Act, Act on rent of public housing, Act on temporary regulation of housing conditions and others acts (treatment of cases concerning house rules at rent tribunals and tenants' compliant boards,

payment for acces to electronic communications services, limitation of acces to collection of a higher rent.]

Case law:

High Court U.2003.2619Ø:

Payment of rent of 5 months delay included by the Rent Act section 84 subsection 1 because of the tenant's very special circumstances.

L had been living in his apartment for 27 years and never before been in arrears of the rent. As L in spite of a demand did not pay his rent for January 2003 the landlord, U, abolished the lease on 21 January 2003. L did not pay the missing rent before 30 May 2003. L had made an agreement with his bank stating that the rent should be paid through payment service. He had been mentally ill and had for extended periods suffered form depressions. This in connection with a cancer disease and his girlfriend's disease and death had lead to severe difficulties in dealing with his personal and economic conditions. In addition hereto there was no risk of U not getting his rent. L's conditions were found to be included in section 94 Subsection 1 of the Rent Act and U's motion that L was to be evicted of the lease was not allowed.

Article 18. Right to asylum

National legislation, regulation and case law

Lov (2003:60) om ændring af udlændingeloven og integrationsloven (Behandling af sager vedr. uledsagede mindreårige asylansøgere [Act (2003:60[4]) amending the Aliens Act and the Integration (treatment of cases concerning unaccompanied children seeking asylum.]

The Act codifies the practice of the Danish Immigration Service. The act means that unaccompanied children will only be permitted to go through an asylum case examination if the Danish Immigration Service finds that they are mature enough to do so. If a child is not sufficiently mature, the child will be granted a residence permit without examination of his or her asylum application. Children below the age of 12 and some between the age of 12 and 15 are normally considered not to possess maturity enough to go through an examination of his or her asylum application.

If asylum is not granted, the child may, in certain cases, still receive a residence permit. This may be the result, for example, if the child would have inordinate difficulty surviving in his or her country of origin due to the lack of an adequate support network in the form of family, other adults, public assistance, etc. The amendment also introduces appointment of a personal representative to observe and secure the unaccompanied child's interests. If an unaccompanied child receives a residence permit, a person (typically the representative) will be given temporary custody of the child in accordance with relevant legislation. If a child's asylum case is decided according to the manifestly unfounded procedure, the Danish Immigration Service will appoint an attorney to represent the child. With the consent of the child or the consent of the representative, The Danish Immigration Service will launch an investigation of the child's parents.

Lov (2003:292) om ændring af udlændingeloven (Reform af aktiverings- og undervisningsindsatsen på asylcentrene samt reform af systemet vedrørende udbetaling af kontante ydelser til asylansøgere [Act (2003:292) amending the Aliens Act (Reforming the

[4] Now Consolidated Act No. 316 (28.04.2003).

efforts of activation and education in relation to adult asylum seekers etc. and of the system concerning payment of benefits to asylum seekers.)]

The purpose of the amendment is part of the implementation of the action plan "Towards a new integration policy 2002" and concerns the part dealing with activation of adult asylum seekers.

The amendment introduces basic working responsibilities and obligations for the asylum seekers at the refugee centers and furthermore introduces means for motivation to take part in activation programs and education. The asylum seeker must sign a standard contract which includes the obligation to participate in an introductory program and ordinary practical duties at the accommodation location. Three months after the application for asylum is filed, the asylum seeker must take part in courses in the Danish language, Danish culture, and Danish society. The Act also gives the authorities access to limit and refuse asylums seekers of their cash benefits, an increased access to exchange of personal information and increased use of detention as a measure to motivate asylum seekers to participate in activation programs and education.

Practice of national authorities

According to information from the Danish Refugee Council there have been three cases in 2003 in which art 1 F of the Refugee Convention has been applied. The persons concerned could however not be expelled from the Denmark according to the Aliens Act section §31 and they therefore stay in Denmark on so-called tolerated stay.

Reasons for concern

The Danish Institute for Human Rights has made a statement on the Act on unaccompanied children seeking asylum. It has been stressed that the act provides only for a codification of current practice and as such does not introduce a better protection, but maintains a system in which the applications of unaccompanied minors are not examined according to the merits of the case. To that end, the Danish Institute for Human Rights has stated that this practice can neither be regarded as being in compliance with section 7 of the Aliens Act, nor in accordance with the right stipulated in the Geneva Convention for every asylum-seeker, including minors, to have his or her application examined according to the merits of the case. To obtain a better compatibility with the international obligations and standards, the Danish Institute for Human Rights recommended that a system is made according to which the immigration authorities may carry out asylum procedures at their own initiative to the greatest extent possible, without minors necessarily having to explicitly maintain their application.

With regard to the Act reforming the efforts of activation and education in relation to adult asylum seekers etc. and of the system concerning payment of benefits to asylum seekers, the Danish Institute for Human Rights has stated that problems which this act seeks to solve could instead be solved by strengthen the fight against long proceedings. With regards to the extended access to exchange of personal information the Institute recommends that consent is required from the person concerned. The Institute also observes that the increased access to detention is inconsistent with the recommendations from the UNHCR.

Article 19. Protection in the event of removal, expulsion or extradition

National legislation, regulation and case law

Lov (2003:292) om ændring af udlændingeloven (skærpelse af udsendelsesforanstaltningerne, effektivisering af sagsbehandlingen vedr. ansøgninger om humanitær opholdstilladelse,

gennemførelse af Eurodacforordningen [Act (2003:292) amending the Aliens Act (tightening the measures of expulsion, effectiveness of the case management concerning exceptional leave applications, implementation of the Eurodac regulation)]

The Act tightens the sanctions and the procedure to encourage the departure of a rejected applicant. A final rejection means that an applicant does not have any further avenues available to appeal the decision. Rejections delivered by the Refugee Board or by the Immigration Service in so-called 'manifestly unfounded' cases are regarded as final. If a rejected asylum seeker will not leave Denmark voluntarily, it is the responsibility of the police to ensure the applicant's departure.

When an applicant receives a final rejection of asylum in Denmark, he or she must leave the country immediately, but will be granted adequate time to prepare for the departure from the country. Special circumstances, such as acute illness will be taken into consideration.

The sanctions will intensify over a period of time – from giving information of the obligations of the rejected asylum seeker to leave the country, to motivation in form of an amount of DKK 3000 (400 €) for an adult and DKK 1.500 (200 €) for each child intended to help the re-establishment of their existence in the country of origin provided that they leave immediately. If the rejected asylum seeker still refuses to leave, subsidies will be denied and they will be put on a madkasseordningen (lunch packet scheme) under which they will receive a box every 2 weeks, containing food and other basic necessities. The rejected applicant will thereafter be transferred to Centre Sandholm – a refugee centre, enclosed with a fence and control of entrance. The police can furthermore detain a rejected asylum seeker to motivate the departure from the country. Aliens expelled by verdict will be instructed to take residence in Centre Sandholm with a systematic duty to report each day to the staff of the centre.

The Ministry of Refugee, Immigration, and Integration Affairs has the authority to grant a temporary residence permit on humanitarian grounds to an asylum seeker who has received a rejection of his or her application for asylum. The act tightens the possibility to apply for temporary residence permit on humanitarian grounds to avoid situations where some applicants use it for automatic postponement of the order leave the country immediately.

Reasons for concern

The Danish Institute for Human Rights has pointed out that the suggested preclusion of a remedy of complaint concerning decisions made by the police on denial of subsidies, would lead to incompliance with basic principles on due process of law.

Concerning the “lunch packet scheme”, it was mentioned that it is unclear from the text whether a submission of a complaint to the Ministry about the application of the said scheme would lead to a stay of execution.

Moreover, the Institute stressed that access to file complaints on decisions on transferal of rejected applicants to the camp Center Sandholm should be granted.
Finally, it was pointed out that the extended access to detain rejected asylum seekers might not comply with recommendations from the UNHCR, cf. Executive Committee’s Conclusion No. 44 (XXXVII): Detention of refugees and asylum-seekers, 1986.

CHAPTER III : EQUALITY

Article 20. Equality before the law

National legislation, regulation and case law

The Parlamentary Ombudsman dealt in a decision of 6 October 2003 with a complaint regarding the access for the press to receive the States yearly budget before publication. The ombudsman did not find the requirement of a membership of the Parliament's Press Lodge to be an objective and reasonable criteria. This conclusion was made especially with regard to the freedom of speech as described in ECHR art. 10 and the equal treatment of journalists.

Article 21. Non-discrimination

International case law and concluding observation of international organs

Committee on the Elimination of Racial Discrimination (CERD) 62nd session:

Two decisions concerning Denmark were examined and declared inadmissible on the basis of the petitioners failed to exhaust the effective remedies in National law, however the following general concerns were raised in connection with the dismissals:

In Sadic v. Denmark, the Committee invited the State party to reconsider the domestic legislation, since the restrictive condition of "broad publicity" or "wider dissemination" required by article 266 b of the Danish Criminal Code for the criminalization of racial insults did not appear to be fully in conformity with the requirements of articles 4 and 6 of the Convention.[5]

In POEM and FASM v. Denmark, the Committee called the State party's attention to the content of paragraph 115 of the Program of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban (South Africa) on 8 September 2001, which "underlines the key role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance and encourages political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, inter alia by developing voluntary codes of conduct which include internal disciplinary measures for violations thereof, so their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance".[6]

National legislation, regulation and case law

The Danish Institute for Human Rights and The Act on Equal Treatment Irrespective of Race and Ethnic origin.

In May 2002, the Danish Parliament adopted the Act (2002:411) on the Establishment of a Danish Centre for International Studies and Human Rights, consisting of the Institute for International Studies and The Danish Institute for Human Rights (DIHR). DIHR is designated

[51] Sadic v. Denmark Communication No. 25/2002: Denmark. 16.04.2003, CERD/C/62/D/25/2002 available at: http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/4ea4c8df1efebc3cc1256d1d00449b91?Opendocument (18.08.2003).

[6] POEM & FASM v. Denmark Communication No. 22/2002: Denmark. 15.04.2003, CERD/C/62/D/22/2002 available at: http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/b0d9f9415342207ac1256d60004be627?Opendocument (18.08.2003).

as a body for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, as set out in article 13 of the EU Council Directive 2000/43/EC. The competences of DIHR include the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, including assistance to victims, conducting independent surveys and publishing independent reports and making recommendations.

The Race Directive has partly been transposed by the passing of Lov (Lov 2003:374) om etnisk ligebehandling [The Act on Equal Treatment Irrespective of Race and Ethnic origin] (Act 2003:374). According to the Act, DIHR will also have the competence to make decisions on whether or not discrimination has occurred in individual cases. As a consequence of the mandate, DIHR decided to set up The Complaints Committee for Ethnic Equal Treatment. The Act prohibits harassment and instructions to differential treatment as well as reprisals in the form of unfavorable consequences as a reaction against a person filling a complaint regarding infringement of the principle of equality on the grounds of racial or ethnic origin. Furthermore the Act introduces a shared burden of proof meaning the burden of proof lies on the accused, when the complainant has established actual circumstances that give reason to assume that direct or indirect differential treatment has been practiced. An individual subjected to differential treatment or reprisals can be awarded compensation by the Courts. The act specifically mentions and allows positive discrimination measures, as long as inequality in a given area exists.

The Complaints Committee for Ethnic Equal Treatment:

The Complaints Committee for Ethnic Equal Treatment is established at DIHR on grounds of Act (2003:374). The Complaints Committee consists of a chairman and two members appointed by the board of DIHR. The Complaints Committee has the responsibility to address complaints about discrimination concerning violations of the prohibition of direct and indirect differential treatment.

The Complaints Committee can decide whether there has been a violation of the Act on Ethnic Equal Treatment's prohibition against discrimination. The Committee cannot impose any sanctions on the respondent or award the complainant any kind of damages as a result of discrimination.

In cases where the Complaints Committee finds that there has been a violation of the prohibition against discrimination, the Committee can recommend granting free legal aid at the courts.

Further, the Complaints Committee can on its own initiative conduct independent surveys concerning discrimination, publish reports, and make recommendations.

The Complaints Committee can deal with complaints of violation of the prohibition against discrimination within all public and private sectors in relation to:

- Social protection, including social security and healthcare, social advantages, education, unless vocational, access to and supply of goods and services which are available to the public, including housing, and membership of and involvement in an organization of workers or employers.

The Committee cannot deal with complaints of discrimination regarding employment and occupation, including complaints related to participation in vocational education. Further, the Complaints Committee cannot hear complaints of discrimination related to activities of a strictly private nature. The organized labor market is covered by The Act on Prohibition

against Differential Treatment on the Labor Market. The Act though gives protection only too employees who are organized in Unions.

The Committee has so far received 14 complaints. According to the Danish Act on Public Administration a complainant can choose to be represented by a party at any given point during the procedure.

Act on Prohibition against Differential Treatment on the Labour Market etc. :

On 27 May 2003, a majority in the Danish Parliament rejected Forslag til lov (L 2003:152) om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet [the Government's Bill to amend the Act on prohibition against differential treatment on the labour market etc]. The Bill (L 2003:152) was proposed as a part of the implementation of the two EU directives (Directive No. 2000/43/EC of 29 June 2000, with regard to the labour market and Directive No 2000/78/EC of 27 November 2000).

As a consequence of the rejected Bill, Denmark did not observe the time limit for the total implementation of EU Directive 2000/43/EC, which was set to 19 July 2003.

The Bill (now L 2003:40) was proposed again on 22 October 2003. The Bill introduces among other things a shared burden of proof and a prohibition against differential treatment on the basis of faith, since most grounds for discrimination are covered by the existing Act. The amendment also include: specification of the fact that direct as well as indirect differential treatment are prohibited and the awarding of compensation if exposed to unfavorable consequences as a result of unequal treatment.

The opposition has also proposed a bill to amend the Act on prohibition against differential treatment on the labour market etc for the transposition of the employment directive, the draft bill of the opposition include the creation of a board dealing with complaints on the labour market.

It remains yet to be seen how the final act will be constructed, since both draft bills still are being discussed in Parliament.

Discrimination grounds: disability and age:

The directive introduces grounds of discrimination with regard to disabled people and age. It is the opinion of the Government that the grounds of discrimination based on age and disability should be integrated in the Act on Prohibition against Differential Treatment on the Labour Market etc, on equal footing with other grounds of discrimination, however not before 2005. The collective agreements on the labour market will still have higher priority compared to the legislation, including with regard to ethnic origin etc.

Since the collective agreements only cover members of trade unions, non-members will not protected.

The Additional Protocol to the Convention on cyber crime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems has not been signed or ratified in the period under scrutiny. Denmark signed the Convention on Cyber crime the 22 April 2003.

Caselaw:

High Courts:

U.2003.1411Ø
A 75-years old person, former MP, expressed in radio a television broadcastings, his opinion that Muslims generally speaking were criminals who sought to destroy the civilization, and that the only reason they wanted to come to Denmark was to exterminate and kill Danes.

The Court found that the person had violated the Criminal Code Section 266 b § 2 cf. § 1, as this provision must be interpreted in the light of ECHR article 10 and article 17. The Court concluded that his expressions were systematic and persistent in character, with the intention to influence the public opinion. The accused was sentenced to 20 days of imprisonment.

U.2003.751/2Ø
A had established a website where degrading remarks aimed at Muslims were published.

The considerations regarding a broad interpretation of the right to freedom of expression for politicians talking about controversial subjects could not result in acquittal. The expressions made on the website were recited in an electronic media and as part of A's political profile. The Court found, therefore, that the remarks were covered by Section 266b § 2.

U.2003.1428Ø
A had disseminated a handbill containing degrading, insulting, and threatening remarks about Jews. Furthermore the remarks were published on the website of the organization Hizb-ut-Tahrir. The considerations in regard to the interpretation of the right to freedom of expression could not result in acquittal. The accused had violated Criminal Code Section 266b, § 2 cf. § 1 and Section 23 (complicity) and was sentenced to 60 days of imprisonment (suspended sentence).

U.2003.1445/1Ø
The ruling deals with whether the expenses to an interpreter for translation for a British national during a trial regarding custody of a child, should be covered by the State. The British national did not fulfill the requirements for free legal counsel and he did not understand the Danish language. The expenses could not be refunded by the State cf. the Administration of Justice Act Section 149,
§ 4, e contrario.

Practice of national authorities

As a follow up on the World Conference against Racism, Xenophobia, and Related Intolerance held in Durban 2001, the Government in November 2003 presented a National Plan of Action for the Promotion of Diversity and Equality and for the fight against Racism. The plan of action consists of several leading guidelines, new initiatives, and promises of funding.

Statistics:

For the first three quarters of 2003, 19 complaints have been filed for violation of the Criminal code section 266 b-c (racial discrimination).[7] This is a decrease by 25 percent for the first 2 quarters of 2003 in relation to the 2002.

[7] http://www.politi.dk/Statistik/kVARTALSSTATISTIK/2003/SKEMA!A210

The Documentation and Advisory Centre on Racial Discrimination (DRC) has advised in approximately 275 cases mainly concerning family reunification issues, but also cases of the housing of refugees and discrimination on the labour market have been dealt with.
Reasons for concern

The Governments plan of Action is concerns leading guidelines and mainly concerns the labour market and not racism in a broader sense.

The mandate of DIHR's Complaint Comittee, according to The Act on Equal Treatment Irrespective of Race and Ethnic origin concerns discrimination in various relations, but excludes the labour market - statistics from other countries shows this important area is where most discrimination issues take place. Furthermore, this quiet complex legislative area is further complicated by the need for the committee to interpret, whether a given case concerns the labour market and thereby is beyond the mandate of the Committee.

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

Linguistic communities in a similar position to speakers of minority languages are those who speak the official or majority language of a neighboring State, but who live in a country where another language predominates, i.e. Germans in Denmark

National legislation, regulation and case law

With regard to case law, even though Greenlanders are not as such considered a national minority by the Danish Government in relation to The Framework Convention on National Minorities (a point of view the Advisory Committee do not share), a brief comment will be given anyway on a Supreme Court judgment delivered concerning the compensation for the population of Thule, Greenland, who were displaced from their traditional hunting grounds and places of settlement.

In 1999 the High Court found that the Government had resettled Greenland Inuit people in 1953 in order to accommodate the expansion of a U.S. Air Force base in northwest Greenland. The court ordered the Government to pay compensation to the displaced Greenlanders and their descendants. The compensation was substantially less than the amount that the defendants sued for.

On 28 November 2003 Supreme Court upheld the decision by the High Court of a relatively small amount of compensation and dismissed the appeal by the population of Thule. The Supreme Court did not find the population of Thule to be a separate people along the Greenlandic people as such and therefore did not find the population of Thule to possess any independent and separate rights according to the ILO Convention No. 169 on Indigenous and Tribal Peoples. A complaint is expected to be brought before ECHR in 2004.

Practice of national authorities

The Danish Government published a white book in January 2003 concerning socially marginalized Greenlanders residing in Denmark. The white book tries to uncover the conditions for Greenlanders in Denmark and recommends that Danish authorities perceive Greenlanders as an ethnic minority.

The Government has set up a plan for the restructuring of regional administrations with the intention to streamline the public sector. The German minority in Denmark (Southern Jutland)

has expressed its concerns regarding the risk of losing political influence if the intention of the merger of municipalities and counties is carried through.

Gypsies:

The European Roma Rights Center filed in May 2003 a request to the European Court of Human Rights to stop Denmark from implementing measures to expel a Kosovo Romani family.

According to a letter dated 28 April, 2003 from the Danish Ministry of Integration to The European Roma Rights Center, the Minister explained that a residence permit will be issued to an alien if the alien falls within the provisions of the Geneva Convention. Moreover a residence permit will be issued to an alien if the alien risks death penalty or risk being subjected to torture or inhuman or degrading treatment or punishment in case of return to his or her country of origin.

The municipality of Helsingoer who deals with a relatively large concentration of the Roma residing in Denmark has established a special educational offer for children with a high absenteeism rate. At the moment all the children are of Roma origin. The association Romano (dealing with Roma rights in Denmark) has filed a complaint criticizing the classes for being discriminatory.

Article 23. Equality between man and women

International case law and concluding observation of international organs

In 2003 The European Committee on Social Rights published its concluding observations. With regard to Article 1 of the 1988 Additional Protocol to the European Social Charter of 1961 – Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex - the following information can be found in the report: the situation of women in employment is good in comparison to other EU countries. This is particularly true in respect of : wages (women's average earnings represented 82,9 % of men's earnings compared to an European average of 78,6 %), the rate of employment (69,5 % in 1999 compared to an employment rate of 78,1 % for men), rate of unemployment (4,6 % in 2000 compared to an European average 9,2 %), and trade union membership (48,8 % of women in 2000 compared to an European average of 39,2 %).

National legislation, regulation and case law

By Lov om ændring af lov om ligestilling af mænd og kvinder [Act (2003:286) amending the act on gender equality], the Gender Equality Board was made permanent and the area of practice was extended to also cover the Act on Childcare Leave.

The board deals with complaints about gender discrimination and the Board's decisions are final within the administrative system. The decisions can be brought to the court of law. The Board also offers counseling and guidance to citizens, organizations, authorities, and enterprises about the access to bring complaints concerning gender discrimination before the board or other bodies.

Practice of national authorities

The Danish Government's action plan to combat trafficking in women was launched in December 2002, consisting of initiatives to combat and preventing women trafficking.

The Minister for Gender Equality published the municipalities and counties gender equality report 2003. The report shows that a gender split labor market still exists; few women are represented in politics and governance. Furthermore, the report shows that many municipalities hesitate to initiate concrete initiatives to promote mixed gender working places and to initiate equal access to develop competences of the employees. Gender equality has not yet been mainstreamed into the public planning and service.

Statistics[8]:

1 in every 10 person with a yearly income above 1 million DKR (approx. 133.333 €) was a woman and 1/3 of the persons with a yearly income between 300.000 DKR – 1 million DKR (40.000 – 133.333 €) were women.

Men's income was in general 38 percent higher than the income of women, which can to some extend be explained by the differences of the average working hours and the longer life expectancy of women, meaning lower income in a longer period of years.

Statistics shows that the figures for unemployment rose with 18.5 percent for men and 9.3 percent for women in the first quarter of 2003 compared to the same period in 2002.[9]

Article 24. The rights of the child

National legislation, regulation and case law

The act Lov (Lov 2003:386) om ændring af straffeloven og udlændingeloven [Act amending the Aliens Act and to the Criminal Code] (Act 2003:386). The Acts were amended in order to give access to prosecution of citizens or persons with residence in Denmark who commit aid or abet to female circumcision abroad. To achieve this, the requirement for double criminality, i.e. the offence is punishable according to Danish Law and the law of the country in which the act is carried out, was removed. Moreover, the amendment introduces a specific provision in the chapter on physical violence in the Criminal Code, which explicitly prohibits female circumcision.

In order to improve the protection of girls and women subjected to circumcision, a new provision states that the limitation period for criminal liability runs from the 18 years birthday of the victim.

Lov om ændring af udlændingeloven og integrationsloven [Act (2003:60) amending the Aliens Act and other acts (examination of cases relating to unaccompanied minors seeking asylum].
One element of the Act is a guardian ad litem should be appointed to promote the interests of the child and issues pertaining to the child's right to examination of his or her application for asylum.

Act amending the Criminal code, the Act on Adoption and the Act on Administration of Justice (Child Pornography, sexual exploitation of children and children trafficking).

In relation to the ratification of CRC's Optional Protocol on Children trafficking, children prostitution, and children pornography, which Denmark ratified the 24 July 2003, the amendments make the necessary changes in Danish legislation in order to comply with the provisions in the Protocol. Furthermore, the amendments in the Criminal Code are necessary

[8] 2002 figures. News Statistic Denmark no. 526 17 December 2003.
[9] News Statistic Denmark No. 212 15 May 2003.

to implement the Framework decision on combating the sexual exploitation of children and child pornography Commission proposal COM (2000)854.

Practice of national authorities

The Government set up a Tværministeriel arbejdsgruppe om omskæring af piger (Cross-Ministerial Working Group concerning female circumcision), with a mandate to assess the need for new legislation and to examine the duties for various professional groups to inform the social authorities. The conclusion of the report submitted in January 2003[10] does not recommend changes in the legislation within the areas of social affairs and health service, as an obligation to inform the social authorities (and for the social authorities an obligation to act and try to prevent the violation) already exists within the present legislation, if it is known that a child is at risk being harmed.

The Government launched in August 2003 an Action Plan on combating sexual exploitation of children, the plan provide an overview of the current initiatives and an evaluation on where further follow-up initiatives are required.

In August 2003 the Danish Government submitted the 3rd report to the UN Committee on the Rights of the Child, dealing with topics relating to the rights of the child in the Realm of Denmark in the period 1998-2002 and to some extends 2003.

The Criminal Procedure Committee submitted its report to the Minister of Justice in November 2003, recommending direct regulation in the Act on Administration of Justice concerning the detention of minors (below the age of 15). The Committee recommends the ordinary rules for detention of suspected criminal offenders being used also for minors, if no lesser measure is applicable taken the circumstances into consideration. Some special restrictions for the detention are recommended to minimize the negative impact on the detained child.

A bill based on the report is expected in January 2004.

Statistics:

Approximately 14.000 children between 0-23 years are placed outside their home because they are at risk being ill-treated or because the parents cannot manage to take care of their children.[11]

Article 25. The rights of the elderly

National legislation, regulation and case law

See Act amending Act on Social Service (2003:343), Article 6 – Right to liberty and security.

Practice of national authorities

As a result of an agreement between the Government and Danish People's Party, the Government published in September 2003 a cross-ministerial report concerning the

[10] Tværministeriel arbejdsgruppe om omskæring af piger (2003) "Rapport fra tværministeriel arbejdsgruppe om omskæring af piger" (Danish only) available at:
http://www.sm.dk/netpublikationer/2003/p1kvinde1001/forside.htm (05.08.2003)
[11] Social Forskning 2003:2, Anbringelse af børn – hvad ved vi?, Tine Egelund.

economical conditions of elderly people.[12] According to the report the following should be underlined:

Only a minority of elderly people in Denmark can be regarded as belonging to the economical weakest part of the population. 4.7 percent of the general population in Denmark can be considered to belong to the low income group (i.e. persons with an income below 50 percent of the average income of the population), while only 1.3 percent of the elderly belong to this group.

Approximately 9000 elderly people are considered to be in the low income group.

Statistics:

As a result of the demographic development in Denmark, where fewer persons on the labor market need to support and finance more elderly people, there exists some political concern about the future financing of the Danish welfare state. However, resent figures shows that there is a tendency to postpone the retirement from the labor market from the age of 60 to the age of 65.[13]

Reasons for concern

Please refer to article 21

Article 26. Integration of persons with disabilities

International case law and concluding observation of international organs

In 2003, The European Committee on Social Rights published its conclusions regarding the evaluation of Denmark. Lacking decisive information, the committee decided to defer its concluding observations as regards the right of physically or mentally disabled persons to vocational training, rehabilitation, and social resettlement. The committee required the next report from Denmark to provide more information on this subject. The committee found non-conformity of articles 15§2 (Placement arrangements for Disabled Persons).

The Committee observed that according to the state report there were no measures protecting employees with disabilities from dismissal and employers were under no obligation to continue to employ a person who becomes disabled following an occupational injury or disease. The Committee considered that the legal situation of persons with disabilities required anti-discrimination legislation. Furthermore it noted that Council Directive 2000/78/EC of 27 November 2000 on the Establishment of a framework for equal treatment in employment and occupation requires member states to adopt measures in the field of employment and training protecting inter alia, persons with disabilities. It asked to be kept informed of all development in the transposition of the Directive. The Committee concluded that the situation in Denmark was not in conformity with the Charter due to the lack of adequate protection against discrimination on the grounds of disability and due to excessively low wage levels in sheltered employment facilities.

Concerning measures to promote employment, the Committee recalled that the policy for the employment of persons with disabilities was not based on a quota system of compulsory recruitment, but on hiring incentives.

[12] Ældres økonomiske vilkår, september 2003 – Socialministeriet, Økonomi- og Erhvervsministeriet, Indenrigs- og Sundhedsministeriet, Skatteministeriet og Finansministeriet.
[13] Social Forskning 2003 :2, Tilbagetrækning udskydes, Niels Henning Bjørn.

National legislation, regulation and case law

See Act amending Act on Social Service (2003:343), Article 6 – Right to liberty and security.

Lov (L 2003:81) om ændring om statens Uddannelsesstøtte (Tillæg til udannelsesøgende i videregående uddannelser med varig funktionsnedsættelse) [Act amending the act on State Educational Grant and Loan Scheme concerning students with permanent disabilities enrolled in higher education courses]. (Bill No. 2003:81) The amendment introduces an additional grant for students with disabilities, on grounds that they cannot handle an ordinary student job.

Practice of national authorities

The Government published in February 2003 an Action plan for Persons with Disabilities (Handlingsplan for handicapområdet). The main goal is to promote accessibility and participation in society in general for persons with disabilities. Five main areas will be in focus for improvements: Housing, employment & education, physical accessibility, public service, and leisure time and life quality

The Plan of Action will be followed up by draft bills changing existing acts and improve the accessibility for person with disabilities in existing buildings, especially in clinics and drugstores, where it is paramount that the persons in question do have access.

An agreement has also been reached regarding an increased funding for public transportation and housing projects.

Statistics:

In 2003 The European Committee on Social Rights' concluding observations regarding Denmark, The European Committee on Social Rights recalled that according to the Danish authorities there were no precise statistics on the number of persons with disabilities receiving vocational training/rehabilitation, as vocational training figures include not only persons with disabilities but also persons who are deemed socially disadvantaged. Neither are there statistics available on the number of persons with disabilities in working age. No distinction is made in Danish law between persons with disabilities and those who have reduced working capacity for other reasons. However the report provides an estimate of the number of persons who attended rehabilitation either at a centre for rehabilitation (20.522 in 2000) or outside (16.498 in 2000).

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

International case law and concluding observation of international organs

In 2003 The European Committee on Social Rights published its concluding observations regarding Denmark.[14] The Committee concluded (with a slight reservation, based on some data clarification) the situation in Denmark to be in conformity with Article 2 of the Additional Protocol. However, the committee noted the following of relevance:

[14] European Social Charter, European Committee of Social Rights Conclusions XVI-2 (Denmark), the report concerns the reference period 1997-2000.

The report confirms that the right to information and consultation is mainly implemented through a series of collective agreements based on the model of the special Co-operation Agreement concluded in 1986 between the Danish Employers' Confederation (DA) and the Confederation of Danish Trade Unions (LO). Finally, the report states that according to figures provided by LO on the basis of a 2000 survey, the total coverage of the collective agreements laying down rules on the right to information and consultation is 83 % of the total work force, including a coverage rate of 100 % in the public sector and of 71 % in the private sector. With regard to the private sector, figures provided by DA are slightly different since they show a coverage rate of 77 %.

Article 28. Right of collective bargaining and action

International case law and concluding observation of international organs

Please refer to art. 12.

National legislation, regulation and case law

Description of the definition of the balance between the right of collective action and freedom of enterprise/right to property:

By tradition the Danish legislature plays a minor role as regards governing wages, salaries, and employment conditions. Therefore, the Danish labour market contains only to a certain extent legislation, which does not emanate from EU Directives. Accordingly, rights imposed by statute in other countries have in Denmark been obtained by agreements between the labour market partners. It is thus characteristic of Danish law that the relationship between employers and employees is basically governed by a combination of agreements (collective and individuals), labour law principles and general statutes and rules laid down in pursuance of statutes. More than 80 per cent of all employees in Denmark are union members.[15]

The Community Social Charter of 1989 provides for the right to resort to collective action in the event of a conflict of interests, including the right to strike, subject to the obligation arising under national regulations and collective agreements. There are no conditions for joining or forming a trade union. The authorities do not interfere with the right of any person to join or form organizations. There are no conditions for joining or forming a trade union. The authorities do not interfere with the right of any person to join or form organizations. The Danish industrial relations system is characterized by a high degree of “juridification”. There is a far-reaching “peace obligation”, i.e. a duty on the part of the trade union which is party to a collective agreement, and often also its members (the individual workers), not to take industrial action (strike, lock-out, blockade, etc.), when a collective agreement is in force.[16]

A concluding remark would be that the balance is contained in the specific agreement made between the partners in the labour market. Because of the relative high percentage of organized employees, two relatively equal parties struggle to maintain the interests of whom they represent in the negotiations of the collective agreement.

Practice of national authorities

The Greenlandic Homerule did lockout the members of personnel in the Healthcare-sector (Sundhedskartellet) from 1 September 2003, based on dissatisfaction with a new collective agreement. The lockout only lasted 1 day and the personnel received a significant raise.

[15] p. 5 Application no. 52562/99 Morten Sørensen v. Denmark.
[16] p. 35 E/C.12/4/Add.12 28 April 2003 Denmark.

Article 29. Right of access to placement services

No relevant material

Article 30. Protection in the event of unjustified dismissal

Reasons for concern

The employee does not enjoy any protection against unjustified dismissal if he/she is not encompassed by the Lovbekendtgørelse (2002:691) om forholdet mellem arbejdsgivere og funktionærer [Consolidated Act (2002:691) on the Relationsship among Employeers and White Collar Employees] or basic agreements.

Article 31. Fair and just working conditions

National legislation, regulation and case law

Beskæftigelsesministeriets Bekendtgørelse om hvileperiode mv. (2003:61) [Order (2003:61) on rest period etc. made by the Danish Ministry of Employment] includes provisions which implement certain provisions in directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time and directive 2000/34/EC of 22 June 2000 regarding amendment of directive 93/104/EF to cover sectors and activities excluded form that directive.

Arbejdstilsynets Bekendtgørelse (2003:33) om anmeldelse af arbejdsulykker m.v. [Order (2003:33) on application of industrial accidents etc. made by the Employment Inspection Service.]
The order contains provisions which implement directive 89/391/EEC of 12 June 1989 concerning effectuation of measures to improve health and security of workers.

Beskæftigelsesministeriets (20003:247) om begrænsninger i anvendelsen af lov om arbejdsmiljø på arbejde, som udføres i den ansattes hjem [Order (2003.247) on limitations in application of the health and safety at work act at work which is performed in the employees' home.]
The order contains provisions which implement Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working and directive 2000/34/EC of 22 June 2000 regarding amendment of directive 93/104/EF to cover sectors and activities excluded form that directive.

Article 32. Prohibition of child labor and protection of young people at work

No relevant material.

Article 33. Family and professional life

National legislation, regulation and case law

Case law:

Supreme Court U.2003.603H:

F had per 8 June 1998 been employed as secretary at lawyer A. When F in September 1998 requested some day off because she was to be hospitalized in order be inseminated she was fired by A. The Supreme Court found that the Act on Equal Treatment section 9, concerning prohibition of, among other things, dismissals ”on the grounds of pregnancy” must be interpreted according to the purpose of the provision to include prohibitions against dismissal on the grounds of insemination measures. F was awarded a compensation corresponded to 6 months salary taxed with regards to the employment period and the circumstances of the case.

Article 34. Social security and social assistance

National legislation, regulation and case law

Lov om ændring af lov om aktiv socialpolitik og integrationsloven [Act amending the Act on Active Social Policy and the Integration Act] (2002:1037)

The amendment concerns a reduction of the social benefits for married couple by 500 DKK each if both receive social benefits, this done to motivate couples to actively seek employment.

Lov om ændring af lov om aktiv socialpolitik og integrationsloven [Act amending the Act on Active Social Policy and the Integration Act] (2002:1040)

The Government discovered that in so far, a person on ”start payment” cohabits with a person on social benefits, the ”start payment” will not be reduced, since this would be contradictory to the Constitutional provision section 75, § 2 concerning the right to public benefits. The amount for the person on social benefits will be reduced, leading to an amount for the couple in total, that equalizes to times start payment.

Lov om ændring af lov om aktiv socialpolitik mv. [Act amending Act on Active Social Policy etc.] (2003:417). The social benefits for persons below the age of 25, is reduced to the amount received as student grants after a period of 9 month on social benefits.

Action plan of from the Ministry of Social Affairs (2003/2005) concerning fight against poverty and social expulsion. The effort to support the most vulnerable groups is underlined, amongst other issues the fight against negative social inheritance.

Practice of national authorities

Statistics:

As of September 2003, 160.083 persons received social benefits according to Statistics Denmark, which is an increase of 0.4% compared to same period last year.

A report of November 2003 from the Council for Socially Exposed states there exist no official poverty limit in Denmark. However, if the applied poverty limit within the EU is used

as a standard, approximately 30.000 people in Denmark are poor. but according to the poverty limit in EU, 30.000 people are poor in Denmark .

The Danish National Institute of Social Research published a report in November 2003 which concludes that 200.000 children in Denmark live under poverty-like conditions. The survey covers the period 1984 - 2001.

Article 35. Health care

National legislation, regulation and case law

In October 2003, the Danish Government published an Action Plan against drug abuse: The Fight Against Drugs. According to the action plan, the Government plans to spend 300 million DKK (40 mill. €) on 36 initiatives in the fight against drugs within the following 4 years. The idea is to combine the effort of various authorities including schools, parents, police etc in the fight against drugs, especially related to experimental use of cannabis and stimulants among young people. Furthermore, regarding drug related crimes the Government will signal a "zero-tolerance" policy. The Government wants to enforce the prohibition of any non-medical use of drugs and combine it with a persistent and balanced effort that involves prevention diversified and coordinated treatment services and undiminished control efforts.

Practice of national authorities

Statistics:

250 deaths per year among drug abusers.[17]

The number of drug abusers in Denmark is estimated to be 25.500 according to recent figures from The National Board of Health.

According to The National Board of Health's estimate, there are approximately 200.000 Danes dependent of alcohol.

Article 36. Access to services of general economic interest

No relevant material.

Article 37. Environmental protection

International case law and concluding observation of international organs

The Court of Justice declared in Case C-226/01, 30 January 2003 that Denmark failed during the years 1995 to 1998, to take all necessary measures to ensure that the quality of its bathing water conformed to the limit values laid down in Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water and by failing, during the same years, to adhere to the minimum sampling frequencies required by that directive, the Kingdom of Denmark has failed to fulfill its obligations under Articles 4(1) and 6(1) of the same directive.

[17] The Fight Against Drugs p. 5.

Article 38. Consumer protection

National legislation, regulation and case law

Act (Bill L 2003:9) amending The Act on Product Safety, Lov (Bill L 2003:9) om ændring af lov om produktsikkerhed. The Parliament adopted 4 December 2003 the Bill. The purpose of the Bill is to implement Directive 2001/95/EC, on Product Safety in general. The amendment specify and strengthens the level of consumer protection.

The amendment introduces a European standard for protection and an assumption of a safe product if the product fulfills the requirements according to the European standard.

Lov (2003:456) om forbrugerklager [Act (2003:456) on Consumer Complaints] :

The Act deals with consumer complaints and implements the Commission's recommendations according to the principles in 98/257/EC.

Case law:

On 7 November 2003, the Supreme Court found in two cases the retail store FONA had issued credit agreements on electronic equipment and the consumers should be refunded for the monthly rent paid during five years. The Consumer Ombudsman was acting for and represented the two consumers.

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

No relevant material.

Article 40. Right to vote and to stand as a candidate at municipal elections

No relevant material.

Article 41. Right to good administration

No relevant material.

Article 42. Right of access to documents

No relevant material.

Article 43. Ombudsman

No relevant material.

Article 44. Right to petition

No relevant material.

Article 45. Freedom of movement and of residence

National legislation, regulation and case law

Lov (Bill L 2003:6) om ændring af udlændingeloven [Act amending the Aliens Act (Bill L 2003:6)] The Danish Government proposed a Bill in 8 October 2003 amending the Aliens Act -. The Act amends the so-called attachment requirement as regards family reunification (for the spouse to obtain a residence permit, the family's ties to Denmark must be stronger, than the family's ties to the spouse's country of origin). Furthermore, the Bill deals with forced marriage issues.

The Government has reviewed the impact of prior amendments to the Aliens Act and discovered cases of several Danes living abroad that were prevented from returning to Denmark with their families. Therefore the Government proposed a modification of the attachment requirement, meaning that persons, who have possessed Danish citizenship in 28 years, do not need to fulfill the attachment requirement as a condition for family reunification for the spouse. The Bill was adopted by Parliament the 19 December 2003.

Practice of national authorities

During the European Council Summit in Copenhagen on 12-13 December 2002, the police reintroduced temporarily additional airport and border-crossing control according to the Schengen-konventionen artikel 2, stk. 2 (Schengen Convention Art. 2 § 2) to be able to restrict and monitor the influx of EU-citizens and third country national demonstrators/troublemakers.

The Summit took place in Copenhagen convention hall Bella Centre, with politicians and delegates. Outside the Summit venue, 1000 patrol officers and 3.5 kilometres of 1.5 meter high NATO barbed wire held demonstrators, activists, and other potential undesirable persons away from the meetings.

The nearby Bella Centre Metro station was closed. Some inner city bus routes were affected due to police blockades of certain metropolitan areas in anticipation of demonstrations and police escorts.

On Friday 13 December and Saturday 14 December, a number of demonstrations were reported. These demonstrations took place mainly around Christiansborg Castle Square, Town Hall Square (Rådhuspladsen), and Enghave Square (Enghave Plads) - and adjoining streets.

The question of the rights guaranteeing freedom of movement must be balanced against police's duty to maintain security and order cf. the Administration of Justice Act. Any interference with fundamental rights must always be proportionate and reasonable. During the concrete event the demonstrators had the opportunity to demonstrate around central locations, and the interference with their freedom of movement must be assessed as relatively limited.

Reasons for concern

Danish citizens will continue experiencing limitations in their rights to stay in Denmark in so far as their spouse is a non-Danish citizen. The attachment requirement will continue to apply for all citizens below the age of 28 and for persons who do not have had at least 28 years of

continuous legal residence in Denmark. The spouse of a refugee (from the refugee's country of origin) will not be able to receive a residence permit if the couple is married after the refugee has taken up residence in Denmark. It must be stressed that the provision and the practical implementation may not be fully compatible with human right standards. At the moment it is uncertain whether Eur. Ct. H.R. will find a violation of ECHR art. 8.

Article 46. Diplomatic and consular protection

International case law and concluding observation of international organs

The Directive 95/553/EC regarding protection of citizens of the European Union by diplomatic and consular representations and the Decision 96/409/CSFP on the establishment of an emergency travel document have both been implemented in Denmark. A communication concerning the implementation of Directive 95/553 was sent to the EU Council on 23 January 1997 and a communication concerning 96/409 was sent to the EU Council 29 November 2002.

Directive 95/553/EC entered into force in the middle of 2002 and Decision 96/409/CSFP are expected to enter into force in the beginning of 2003.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

Denmark has not been found in violation of either ECHR Articles 6 (1) or 13, and has not been examined by the Human Rights Committee.

National legislation, regulation and case law

The Parliament adopted Lov (2003:436) om ændring af straffeloven og retsplejeloven (bekæmpelse af rockerkriminalitet og anden organiseret kriminalitet (Law (2003:436) amendment of the Penal Code and the Administration of Justice Act (fight against "bikercrime" and other organized crime).

The Act extends the rules concerning the use of civil agents, the possibilities for the police to use confiscation and the rules regarding concealment of identity of certain police officers. Furthermore, the law extends the access for the police to telephone tapping and data reading. Finally, the law limits the accused rights to access to certain documents in criminal cases.

The Commission on the Rule of law was assigned in 2002 to produce proposals for amendments concerning the promotion of the rule of law for citizens. The Commission finished its report in July 2003, which considers the basis for those provisions in the legislation, where public authorities acting outside the criminal justice can obtain access to private homes and companies or carry out other interventions by force covered by the Constitution par 72.

On this background the Commission has produced a draft of a total set of provisions, which defines instructions for the conduct of authorities in relation to such interventions; further, the commission has produced a draft of provisions, which defines the legal position of the citizen, and also defines the legal protection, which applies when in relation to the acts of the

authorities questions occur whether the citizen in question have committed a violation of the law, which can be punished with a fine or other.

The Commission report will must likely result in a Government proposal for a bill in the autumn of 2004.

Case law:

The High Court, U 2002.2729 V/

The High Court stated that the owner of a car, which had been used in a violation of the road traffic act, was not obliged to inform the police about which person had driven the vehicle at the time of the offence because of the risk of self-incrimination.

The Supreme Court, U 2003.1328 H:

The complainant in the case, an industrial company, claimed that representatives from the Danish Competition Authority in accordance with a decision made by the European Commission were not allowed to search the company without prior notice. Furthermore, the company stated in the case that their cooperation with the authorities in this situation, which is obliged by Danish law, was a violation of the principle of self-incrimination. The Supreme Court found that prior notice was not necessary in this case and that the demand for cooperation, which primarily consisted of access to the premises and documents, was not a violation of the principle of self-incrimination.

The Supreme Court, U 2003.2060 H:

The court stated in the judgment that a worker who had his case concerning a dispute on salary dismissed from both industrial arbitration and the Industrial Tribunal was entitled to access to the ordinary courts.

Reasons for concern

Following the concerns expressed under article 7 in regard to the initiatives on bikercrime etc. the Danish Institute for Human Rights has expressed further concern about the extension of the rules on civil agents. The Institute has pointed to the fact that a civil agent may provoke a violation of the law, which would not otherwise have been committed.

Furthermore, the Institute has expressed concern about the limitation of the accused rights to access to certain documents during the criminal proceedings. The Institute has specifically stated that the change in the wording of the law from “exceptional necessary” to just “necessary” in cases where the police can limit the accused access to documents gives reason to concern.

These changes can extend the risk of an unfair trial.

Article 48. Presumption of innocence and right of defence

National legislation, regulation and case law

The Parliament adopted Lov (2003:436) om ændring af straffeloven og retsplejeloven (bekæmpelse af rockerkriminalitet og anden organiseret kriminalitet [Act(2003:436) amending the Criminal Code and the Administration of Justice Act (fight against “bikercrime” and other organized crime)]. The Act extends the rules concerning the use of

civil agents, the possibilities for the police to use confiscation and the rules regarding concealment of identity of certain police officers. Furthermore, the Act extends the access for the police to phone tapping and data reading. Finally, the Act limits the rights of the accused to access certain documents in criminal cases.

On 5 November 2003 the Government proposed a Bill amendinding the Act on straffeloven, retsplejeloven og markedsføringsloven (bekæmpelse af IT-kriminalitet) (2003:55) [Bill (2003:55) amending the Penal Code, the Administration of Justice Act and the Marketing Practices Act in the fight against cyber crime). According to the proposed changes the police can impose a duty on the telecommunication suppliers to save electronic information for up to 90 days, which eventually could be used as evidence in cases of cyber crime. The proposed law contains no specific procedural guarantees that must be fulfilled in each case.

Case law:

The Supreme Court, U 2003.1469 H:

In the case a man, who was convicted to 9 years imprisonment for a drug violation, demanded a mistrial because the prosecutor as evidence had used statements from two other persons involved in the criminal offence, which was guaranteed not to be further prosecuted in return for their statements. The Supreme Court upheld the conviction and stated that the use of the two statements was not in violation with ECHR Article 6.

Reasons for concern

See Article 7.

Article 49. Principles of legality and proportionality of criminal offences and penalties

International case law and concluding observation of international organs

The European Court of Human Rights, Case of Vasileva v. Denmark(Application no. 52792/99) regarding violation of Article 5 in the European Convention on Human Rights (ECHR).

On 11 August 1995 on a public bus in the city of Århus the applicant, born in 1928, had a dispute with a ticket inspector, who accused her of having traveled without a valid ticked. When the ticket inspector was about to issue a penalty fare she refused to disclose her identity and the police were consequently called. The police requested that the she give her name and address, and since she refused, she was arrested at 9.30 p.m. in accordance with section 755, subsection 1, cf. section 750 of the Administration of Justice Act (Retsplejeloven) and brought to a detention cell at the police station. She was held in the detention until the next day at 11 a.m. where she was released after having revealed her identity.

The Court found that the Danish authorities by extending her detention to thirteen and a half-hour failed to strike a fair balance between the need to "secure the fulfillment" of an obligation as required in Article 5 § 1 (b) and the importance of the right to liberty. Accordingly, the Court found that Denmark had violated Article 5 §1 of ECHR.

Reasons for concern

The Danish Institute for Human Rights has in connection with the Vasileva case expressed concern regarding the application of section 755, subsection 1, cf. section 750 in the Administration of Justice Act, especially in cases where the use of the paragraph and the

subsequent use of detention must be seen as disproportionate. The Institute has therefore recommended that each case must be valuated carefully before using this instrument.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No relevant information.