E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN DENMARK IN 2004

submitted to the Network by **Morten KJÆRUM**

on 3 January 2005

Reference: CFR-CDF/DK/2004

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Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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 (Lithuanie), 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), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), 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), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. 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, Freedom and Security), 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), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), 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), Pavel Sturma (Czeck Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.
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http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

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No significant developments to be reported

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Statistics for 2004

Information regarding the use of firearms and gas (police) in the period from December 1st 2003 to November 30th 2004:

Use of firearms and CS gas:
Total: 255
Use of 9mm pistol: 237
Use of machinegun: 31

Gunshots fired:
Sidearm (9mm and 7.65mm): 45
Shots hitting persons: 2
Warning shots: 9

Use of CS gas:
Number of episodes when gas-rifle has been used: 11
Number of shots fired with 12. and 40. cal gas rifle: 35
Use of gas spray: 4

Fight against the trafficking in human beings (including the use of technical means to prohibit the illegal crossing of borders)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concerns have been raised in the *Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights on his visit to Denmark 13th -16th April 2004*. The Commissioner recommended to:

"Increase the access of victims of human trafficking to residence permits, particularly for witnesses testifying in criminal cases." (Recommendations No. 11, Report CommDH(2004)12).

No other relevant information concerning international case law and observations, national regulation, case law or administrative practice.

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.

The Committee encouraged Denmark to continue and strengthen its efforts to address the problem of trafficking in persons, especially women and children, as well as commercial sexual exploitation Denmark, and requests that Denmark provide detailed information on any results achieved and difficulties encountered in their implementation, including the results of the Action Plan on combating sexual abuse of children.

Positive aspects

Positive measures have been initiated by the Government in 2002 and 2003 (e.g. the ratification of the Parlermo Protocol, the introduction of a provision Section 262a on human trafficking in the Danish Criminal Code, the adoption of an action plan against trafficking in women and awareness raising within the police and border officials of the crime of trafficking).

Reasons for concern

Even though positive measures have been initiated in the recent years, the victims of human trafficking still have difficulties obtaining a permission to stay in Denmark for at least the duration of the criminal proceedings against the perpetrators (i.e. beyond the 15-day legal stay). Furthermore, benefits could also be derived form extending the stay beyond the criminal proceedings, since this would encourage victims to come forward and testify against the perpetrators of human trafficking without the fear of immediate deportation. Finally, there is still inadequate statistics and research available in this field.

Domestic violence (especially as exercised against women)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concerns have been raised in the Report by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights on his visit to Denmark 13th -16th April 2004. The Commissioner recommended to:

"Adopt a more flexible approach to the granting of residence permit to foreign women ceasing to co-habit with violent partners." (Recommendations No. 10, Report CommDH(2004)12).

No other relevant information concerning international case law and observations, national regulation, case law or administrative practice.

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee requested that Denmark to include in its fifth periodic report detailed information on the extent of the problem of domestic violence, in particular violence against women in Denmark, and on the measures taken to combat this phenomenon. In this connection, the Committee encouraged Denmark to consider enacting specific legislation to criminalise domestic violence, and to provide training for law enforcement personnel and judges regarding the criminal nature of domestic violence.
The Committee recommended that effective measures are taken to ensure that victims of domestic violence receive appropriate rehabilitational care and support and that appropriate mechanisms are enforced so that victims are not prevented from seeking assistance through fear of deportation or expulsion from Denmark.

Legislative initiatives, national case law and practices of national authorities

Inspiered by Austrian legislation the Danish Parliament adopted Lov (2004:449) om bortvisning og beføjelse til at meddele tilhold m.v. [Law (2004:449) on the expulsion of violent persons from the home and the administration of exclusion orders].
The Act authorizes the police to issue an exclusion order to a person of the household if there is a probable cause to believe that an act of violence has been committed.

Statistics regarding violence against women

Physical violence

- The frequency of police reported violence is 3 times as high among women aged 20-24 than among the entire adult female population.
- Women not in the labour market experience violence more frequently according to police reports.
- 0.2 percent of all adult women are treated each year in a hospital emergency department for injuries resulting from violence. This corresponds to about 5000 different women.
- Almost 4 percent of adult women report that they have been exposed to physical violence during the past year. The figure corresponds to 64.000 Danish adult women per year. The occurrence is highest among women aged 16-20 (13 percent) and women aged 21-30 (7 percent.)
- 66 percent of reported violence is committed by a present or former partner, or by another person closely related to the victim. From these figures, it can be deduced that 2.5 percent of Danish women experience intimate partner violence each year.
- Severe violence is more common among older women than among younger women.
- Every year 65.000 women are exposed to violence of threats of violence, in most cases by their current or former partners.

Positive aspects

Several governmental initiatives concerning the fight against domestic violence have been started since the 8th of March 2002 where a governmental plan of action was launched to combat violence against women. The plan of action consists of initiatives on 4 main areas, i.e. support to the victims, activities towards the practitioners of violence and towards the professionals and enlightening campaigns.

In order to finance these initiatives it has been decided to set aside 10 million DKK each year starting from year 2002 to 2005. In addition to this 20 million DKK has been earmarked for the plan of action and in October 2002 40 million DKK was earmarked for enlargements and improvements at the refugees and crisis centers.

Good practices

In November 2004 a report ”Men’s violence against women – extent, character and efforts against vionence”[1] was compiled by Statens Institut for Folkesundhed (the Institute for Public Health).

Reasons for concern

Contradictory to the Austrian Act the Danish Act on the expulsion of violent persons from the home and the administration of exclusion orders, does not include a compulsory offer of

[1] “Mænds vold mod kvinder – omfang, karakter og indsats mod vold”

professional assistance to the victims of violence or the expulsed spouse/person to deal with the issue of violence

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Amnesty International has launched several initiatives to prevent violence against women:

- The campaign"It' s in our hands. STOP violence against women"
- Letters urging all governments to ratify and sign CEDAW

Article 3. Right to the integrity of the person

Rights of the patients

Reasons for concern

The use of forced fixation of patients in psychiatric hospitals has been criticised in general by the Council of Europe Committee on Prevention of Torture (CPT) in 2002 and by Danish media in situations with excessive use of fixation. However, the amendment made to the Act on deprivation of liberty and use for force in psychiatric treatment in 2004 does not contain any safety measures or procedures against fixation over a longer period of time. As such, psychiatric patients may not enjoy effective protection against inhuman or degrading treatment.

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

Conditions of detention and external supervision of the places of detention

Penal institutions

Legislative initiatives, national case law and practices of national authorities

In Copenhagen the Police have established a special local prison unit, 25 "super cells" in the Police Headquarters, where so-called negative strong inmates are placed (inmates intimidating/assaulting fellow inmates and/or prison staff). The special unit will also be used for convicted offenders sentenced to less than four month's imprisonment and for remand prisoners. The prison cells and the detention conditions are high security cells, very similar to detention in isolation. However, due to lack of prison cells, the cells are used as remand prisons for ordinary prisoners. The cells are 6 square meters; two hours daily socialisation with another inmate, chosen by the prison authorities is allowed, three times weekly is there a possibility for exercise.

Reasons for concern

The parliamentary Ombudsman decided to investigate the special local prison unit (the so-called super cells), due to a number of complaints by relatives on the severe psychological consequences of the detention.

It is in particular concerning that remand prisoners are subject to detention in an isolation-like environment.

On 15 February 2004 the Nyborg State Prison experienced violent unrest. About 100 inmates barricaded themselves inside the prison and committed extensive damage. Also, attacks have also been targeted against personnel outside the prison premises.

Institutions for the detention of persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

The Consolidation Act on involuntary treatment, immobilisation, restraint protocols etc. at psychiatric wards (Consolidated Act no. 194 of 23 March 2004) has been amended. The departments are to report to the national Board of Health on the extent of coercive measures applied. The Board of Health prepares annual statistics in this field. Information may now be reported electronically, and from 1 January 2005 electronic reporting will be mandatory. Electronic reporting will enable much faster compiling of statistics on the use of coercive measures, and this will improve one of the tools being used as a basis for the ongoing process of developing psychiatrics generally.

Positive aspects

The Danish Psychiatric act is scheduled for reform in the 2005-2006 parliamentary year. Preparations for the reform are organised in a two-track procedure. The amendments to the Psychiatric Act, which entered into force on 1 January 1999 are to be scrutinised by an independent research institution. Furthermore the Ministry of the Interior and Health last year submitted the Act to stakeholders in the psychiatric field, in particular organisations of users and their relatives, for consideration. Based on the responses themes will be selected for further reviewing. These analyses, together with the findings of the scrutiny of the Psychiatric Act, are to form a solid basis for reforming the Act.

Reasons for concern

The CPT visited Denmark from 28 January to 4 February 2002, which was the Committee's third visit to Denmark. The CPT inspected some police establishments and prisons, including the Sandholm Centre north of Copenhagen, and psychiatric units all over Denmark. In its report of 25 September 2002, the CPT made the following observations and recommendations to Denmark, cf. CPT/Inf(2002) 18.

Psychiatric establishments
The CPT was concerned about the frequent recourse to physical immobilisation (fixation). The CPT found, although it may sometimes be necessary to restrain a patient physically, that applying instruments of physical restraint for days cannot have any medical justification, and that this practice amounts to ill-treatment. Consequently, the CPT recommended that the practice of immobilising patients be reviewed as a matter of urgency. The CPT also recommended that all patients who were subject to immobilisation benefit from the appointment of a patient adviser as from the outset of that measure and that immobilisation of patients never take place in sight of other patients.

Unfortunately the use physical immobilisation (fixation) is still widely used for excessive periods of time.

Centres for the detention of juvenile offenders

Reasons for concern

It is concerning that Danish legislation opens up for the possibility of young people between 15 and 17 years being placed together with adults in remanded prison.

According to existing legislation, young people, who have been sentenced to prison, must be placed in secure/closed institutions, functioning as surrogate prisons. However, as these institutions can refuse to accept young criminals, 15 to 17 years olds risk being placed in prisons.

Centres for the detention of foreigners

Good practices

Concerning the conditions in asylum centres, it has been pointed out by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights on his visit to Denmark 13th - 16th April 2004 that the conditions observed in Sandholm Refugee Centre were commendable (para. 25).

Reasons for concern

Concerning the external surrounding, two asylum centers in the Copenhagen area, Center Sandholm and Center Kongelunden, are placed in isolated areas with limited access to public transportation to city- and shopping areas. Moreover, the centres are placed next to military bases, one of which serves as shooting and training range.

Behaviour of security forces (including during demonstrations)

Legislative initiatives, national case law and practices of national authorities

On the 9th of June 2004, The Parliament adopted [Act on police activities 2004:444], which entered into force on the 1st of August 2004. The main provisions concern the objective of the police force and its assignments. The Act holds provisions on the use of force and on measures towards public gatherings, crowds and vulnerable groups. In particular, the Act holds provisions on the use of firearms, truncheons, police dogs and gas.

Also in relation to the Criminal Code, in a 2004 amendment [2004:218][2], it has now been explicitly spelt out that, in determining the penalty, it must generally be considered an aggravating circumstance *inter alia* if the offence has been committed while executing a public office or function or while abusing a position or another relationship of trust cf. The Danish Criminal Code section 80(7).[3]

The abovementioned case from the High Court of Eastern Denmark, cf. Danish Law Reports 2004, p. 715, also illustrates that torture is included in the provisions in the Criminal Code even though the act does not have a specific provision about torture.

Positive aspects

It is a positive development that an increased and detailed regulation of the use of force is introduced by the adoption of the Act on Police Activities.

Reasons for concern

The judge advocates in the armed forces are investigating four interrogations of Iraqi prisoners from March to June 2004. According to the judge advocates the Iraqis concerned have been forced to assume a stressing and gradually painful position under, during and after

[2] 2004:218 lov om ændring af straffeloven og retsplejeloven. (Ændring af strafferammer og bestemmelser om straffastsættelse m.v.).

[3] Straffelovens § 80, stk. 1 nr. 7: at gerningen er begået i udførelsen af offentlig tjeneste eller hverv eller under misbrug af stilling eller særligt tillidsforhold i øvrigt,

the four interrogations and have been kept in these positions with psychical power. Meanwhile the Iraqi prisoners have been verbally humiliated by being addressed in an especially to Muslims insulting way. According to the judge advocates, they have also, to a certain extent, been denied access to food, water and toilet facilities during the interrogations.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Denmark has not been found in violation of ECHR Article 3 by the European Court of Human Rights or the Committee against Torture and has not been examined by The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee against Torture or the Human Rights Committee.

Manifestly ill-founded applications:
Eur.Ct. H.R., *Sadeta MURATOVIC v. Denmark* (Appl. no. 14513/03),
Eur.Ct. H.R, *Muhamet HIDA v.Denmark*, (Appl. no. 38025/02), and Eur.Ct. H.R, *Murat HALITI and Others v. Denmark*, (Appl. no. 14712/03).
All three cases are Decisions of 19. February 2004.

On the 4th of February 2002 the Aliens Authorities refused to grant the applicant's asylum, a decision which was upheld on appeal by the Refugee Board on 19 August 2002. The applicants complained that being returned to Kosovo would amount to a breach of Article 3 of the Convention (Prohibition against torture). The Court found that no substantial grounds had been shown for believing that the applicants, being ethnic Bosnians, would face a real risk of being subjected to torture or to inhuman or degrading treatment or punishment upon return to Kosovo. The applications were declared inadmissible.

The Committee on the Elimination of Racial Discrimination (CERD) has not in the period under scrutiny taken a final decision in regard to Denmark. Two cases are at the moment pending.

Legislative initiatives, national case law and practices of national authorities

In May 2004 [Resolution on incorporation of the International Convention against Torture][4] was propounded. In October 2004 an almost identical resolution[5] was propounded. None of the resolutions were adopted.

In addition to this [Resolution on incorporation of four International Conventions][6] was propounded in February 2004. Among the proposed conventions was the International Convention against Torture. This resolution was not adopted either.

Danish Law Report U.2004.715 Eastern High Court
The subject of the case was whether the Public Prosecutor during the investigation of a case concerning alleged torture committed abroad, could divulge confidential information to a foreign authority with details from the charged person's application for asylum, including his photographs and fingerprints. The High Court stated that according to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Denmark was obliged to carry out an eventual legal proceeding concerning acts of torture committed by persons, who are not extradited for legal proceedings in another country. Since the

[4] Beslutningsforslag B 214 (2004) om inkorporering af FN's Torturkonvention
[5] Beslutningsforslag B 13
[6] Beslutningsforslag B 134 (2004) om inkorporering af fire FN-menneskerettighedskonventioner

confidential information was passed on during an investigation of alleged violence and torture, cf. section 246, cf. section 245 in the Criminal Code, the High Court stated that this was a legal divulgement.

Positive aspects

In February 2004 the Optional Protocol to the International Convention against Torture was ratified. The obligation to establish set up and keep in place one or more national visiting bodies with the power to make visits to places of detention to prevent torture and other ill-treatment is considered to be fulfilled by the inspections carried out by the Parliamentary Ombudsman.

Good practices

As part of the inspections by the Ombudsman examines whether the International Convention against Torture is respected, when it comes to imprisonment.

Article 5. Prohibition of slavery and forced labour

Fight against the prostitution of others (general)

Reasons for concern

A prohibition against purchasing sexual services and against sexual exploitation has not yet been put forward in Parliament. The questions has been discussed in the media but without strong support for such prohibition.

Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)

Positive aspects

The government has prepared a plan of action, but there is none the less still not adequate knowledge among professionals, as to how damaging effects in connection with sexual abuse, directed at children, is most efficiently handled.
The plan of action is a positive step, but it is not extensive enough. Many cases concerning sexual abuse are still handled very unprofessionally. Treatment offers and counseling for young people and adults with a sexual interest in children is still very much called for.

Reasons for concern

The government has not lived up to those obligations which were agreed upon at world congresses in Stockholm in 1996 and Yokohama in 2001, concerning the drafting of a national plan of action, in connection with commercial, sexual exploitation of children.

Exploitation of undocumented workers

Reasons for concern

During the autumn of 2004 several cases concerning organised illegal use of cheap Polish labour have been raised.

The police in Copenhagen are investigating cases against a person for the use of 5 Polish workmen for a renovation.

It is estimated that the owners have gained 345.600 DKK by using Polish labour instead of Danish labour appointed on a group contract basis.

Generally the number of workers from Eastern Europe has increased, assumingly as a result of an EU directive on emission[7]. Union labour in Denmark is subject to the Danish Act on Emission (Udstationeringslov) and is obliged to observe Danish regulation on working time, holiday, work environment, equal pay and equal treatment. However, there are no provisions concerning the pay. The Ministry of Employment is watching the development but is of the over all opinion that the directive is not a problem in relation to the Danish labour market.
In Parliament it has been discussed whether the unions ought to be notified directly of residence permits issued in relation to their subject areas.
The Act on Emission is to be amended in 2006.

Other relevant developments

Reasons for concern

Denmark has neither signed nor ratified the Convention on Migrant workers and their families.

[7] EU's udstationeringsdirektiv

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Deprivation of liberty for persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

A Bill was passed in October introducing surveillance measures in psychiatric hospitals of patients who are endangering themselves or other patients. The surveillance measures encompass restricted door opening mechanisms and personal alarm- and tracking devices. The decision on using such measures must be taken by a doctor in full respect for the principles of proportionality and necessity.

The Act amending Lov om frihedsberøvelse og anvendelse af anden tvang i psykiatrien [the Act on deprivation of liberty and use for force in psychiatric treatment] was adopted 20 December 2004 (Act No. 1371 of 20.12.2004)

Positive aspects

In order to protect patients with severe mental disabilities, the Ministry of Social Affairs has launched a pamphlet concerning the use of force and other infringements of the patient's right to self-autonomy. It is stressed that force or coercion must never be applied as part of the care taking of mentally ill patients, or as substituting careful nursing and social pedagogic measures in the treatment of such patients. When applied, it presupposes fulfilments of the principles of proportionality, legality and leniency.

Reasons for concern

The protection of the psychiatric patients' human rights could be strengthened by mentioning directly in the act that a considerable risk of damage is required in order to use the measures mentioned above and that is clearly pointed out, which groups of patients these measures concern. Clear guidelines should be laid down for the use of alarms and electronic tracking devices.

Deprivation of liberty for foreigners (in order to prevent their unauthorised entry on the territory with a view to their removal, including their extradition)

Legislative initiatives, national case law and practices of national authorities

In decision No. S-3361-04 of 30. September 2004, the High Court found for the first time that a foreigner who had refused cooperating concerning his expulsion (tvangsmæssig udsendelse) and therefore had been detained with the approval of the City Court every fourth week, should be released. The Court considered the application of ECHR article 5 and the jurisprudence of the ECtHR. In total, the individual had been detained for 1 year and 8 months.

Reasons for concern

The detention of asylum seekers for prolonged periods of time as a measure of "motivation" to encourage the participation of the asylum seeker in their own expulsion case is a concerning development.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

On the 9th of June 2004, The Parliament adopted [Act on police activities 2004:444] , which entered into force on the 1st of August 2004. The main provisions concern the objective of the police force and its assignments.
The Act also contains a new provision on body search according to which the police can search a person's body and examine clothing and other items, for example vehicles at places where it is illegal to possess a knife etc. according to Våbenlovens [Act (2004:217) on arms section 4, § 1] section 4, § 1 in order to check whether a person is holding a weapon or not.

On the 7th of October 2004 the Government proposed [Bill (2004:24) amending the Act on Foundation of a Central File of DNA Profiles and the Administration of Justice Act][8].
The amendment modifies the provisions concerning the recording and the filing of the DNA profiles in order to extend the use of the profiles in relation to investigation e.g. a DNA profile may be recorded if the crime committed can result in at least 18 months' imprisonment. The amendment also alters the provisions concerning erasure of the filed information so that information concerning an individual must be erased when the person concerned reaches the age of 80.

Positive aspects

A general legal basis for the search of a person's body and clothing by the police has until the amendment not been expressly regulated by law. With reference to the requirements for prescription by law of the actions of the police the new provision on body search is a positive measure.

Reasons for concern

The adoption of said Act on Police Activities and especially the creation of a legal basis for search of persons do give rise to certain problems of a principle character.
Thus, it is not a specific requirement for initiating body search that concrete suspicion of criminal activities or of identified persons exists. Such requirements are expressly set up in the Administration of Justice Act and constitutes together with a requirement for indication and minimum penalty the protection of the citizens against arbitrary use of force by the police when investigating criminal acts. According to the new Act on police operations, everyone may be subjected to body search in places where an increased risk for serious criminal acts exist, but do not under the circumstances enjoy the same protection as that of a suspect. Hereby, at parallel system has been created, leading to a situation where a non-suspect in a high risk area enjoys less protection that that of a person being searched during investigation of a specific criminal activity either as a suspect or a non-suspect.

Concerning the Act on DNA registration, the DNA profile at the current stage is only used in order to identify a person, however it should be taken into account that a profile in the future might be used in extended ways. This fact is especially of concern when it comes to persons who are not convicted of having committed a crime.

[8] Lovforslag (2004:24) til ændring af lov om oprettelse af et centralt DNA-profilregister og retsplejeloven

Statistics regarding DNA registration in Denmark
Cases involving DNA registration:
2001: 1900
2002: 3000
2003: 4000
December 1st 2004: 3626

DNA cases with a match:
2003: 724
December 1st 2004: 928

Current status of the DNA register:
Persons in the register: 2996
Traces in the register: 5593
Total: 8589 registrations

Personal identity (including the right to gain access to the knowledge of one's origins)

Positive aspects

In June 2004 [Governmental report nr. 1446/2004 on personal names][9] was submitted. It holds a bill amending the [Act on Personal Names][10] from 1981, which is at force.
In the report it is proposed that the legislation is modernized and it is considered which names, middle names and surnames people resident in Denmark can obtain.
The draft bill amending the Act on Personal Names might result in positive integrating consequences and is generally more up to date with modern society as the change in population is taken into account. It is likewise a positive step that the rules concerning change of name in case of sex change are proposed modernized.

Family life

Protection of family life (in general, developments in family law)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Struck out of the list:
Eur.Ct. H.R., *Abigail and Michael POULSEN v. Denmark*. (Appl. no. 14469/03). Decision of 6 May 2004.
The first applicant, a Ghanaian national, married the second applicant, a Danish national, in December 2000 and was shortly thereafter granted a temporary residence permit in Denmark pursuant to the Aliens Act (Udlændingeloven). On 3 May 2002 the Aliens Authorities (Udlændingestyrelsen) refused to extend the first applicant's residence permit because the second applicant had been imprisoned and the spouses therefore could no longer be said to live together. The Aliens Authorities stated inter alia that the fact that the second applicant perhaps could be released on parole on 28 February 2003 could not alter the decision. The first applicant was ordered to leave the country on 6 April 2003 at the latest. Also, she was advised that she could re-apply for a residence permit when the second applicant had been released from prison. The applicants complained that an implementation of the decision to deport the first applicant to Ghana would be a violation of Article 8 of the Convention (the right to family life). However, in a letter the Danish Government submitted a decision by the Aliens Authorities, whereby the first applicant nevertheless had been granted a temporary

[9] Betænkning nr. 1446/2004 om personnavne
[10] Lov om personnavne

residence permit. The applicants therefore withdrew their application before the Court. The Court decided to strike the application out of its list of cases.

Legislative initiatives, national case law and practices of national authorities

[Act (2004:427) amending the Aliens Act and the Integration Act (amendment of the rules on family reunification with children, tightening of the conditions for residence permits for religious preachers and others, restriction in the right to family reunification for persons sentenced for violence against a former spouse, cohabitant or similar persons)][11] was adopted on the 9th of June 2004.
The Act introduces a deferred period in connection with reunification with a spouse, where the person within a period of 10 years from the time of the application for family reunification has been convicted of a violent crime against a former spouse or cohabiter.
Furthermore, the Act reduces the age limit allowing for family reunification of children, from below the age of 18 to below 15. According to the Government, the purpose is to prevent "re-education journeys" to the parents' countries of origin and thus being separated from their parents, and furthermore to prevent parents from applying for family reunification for their children just before the child turns 18. Children between 15 and 18 years of age are not barred from applying for family reunification. The immigration authorities thus examine all applications for family reunification with children. The lowering of the age limit from 18 to 15 years means that children between 15 and 18 do not have a statutory right to family reunification.
Finally, the Act tightens the conditions for residence permits of religious preachers requiring e.g. documentation for relevant background or education, and ties to a religious community and documentation for being self-supportive. The residence permit can be withdrawn if the preacher is convicted of a criminal expression.

On the 19th of December 2003 the parliament adopted [Act (2004:1166) amending the Act on Child Benefits][12], which entered into force on January 1st 2004. The act implies that the child's presence in Denmark is now a condition for obtaining child benefits. This is also a measure to prevent "re-education journeys" to the parents' country of origin.

[Act (2004:1024) amending the Alien act][13] was adopted by Parliament on the 27th of December 2003 and entered into force on the 1st of January 2004. The amendments regard the rules on attachment requirement for family reunification and an increased effort against forced and arranged marriages.
The amendments imply, among other things that persons who have been Danish nationals for 28 years and persons who were born and raised in Denmark or arrived in Denmark as small children and furthermore had at least 28 years of lawful – substantially continuous – residence in Denmark need not satisfy the conditions of ties as a condition for reunification with a spouse. Furthermore, according to the explanatory notes, the amendments introduce a rule of assumption for marriages between those closely related. Such a marriage is assumed to be a marriage entered into against the wishes of one or both spouses and an application for family reunification will, as a ground rule, be rejected.

Positive aspects

In relation to Act (2004:427), amending the Aliens Act and the Integration Act the increased focus on the obligation to give the interest of the child primary importance, whenever a measure taken by the authorities involves a child, is a positive step. However, it is suggested

[11] Lov om ændring af udlændingeloven og integrationsloven (2004:427)
[12] Lov (2004:1166) om ændring af lov om børnebidrag
[13] Lov (2004:1024) om ændring af udlændingeloven

that a provision regarding the duty to hear the child's opinion, in case of parents applying for family reunification with their children, is added to the amendment.
A positive development is also the introduction of a deferred period in connection with reunification with a spouse, where the person within a period of 10 years from the time of the application for family reunification has been convicted of a violent crime against a former spouse or cohabiter in order to protect foreign women against domestic violence in Denmark.

Reasons for concern

In relation to Act (2004:427) amending the Aliens Act and the Integration Act, as concerns the reduction of the age limit for minor children's right to family reunification from 18 years to 15 years, that, within the meaning of the Convention on the Rights of the Child (CRC), persons between 15 and 18 years are also children, cf. Article 1 of the CRC. Against this background and considering the fact that the proposed reduction of the general age limit authorizes a serious interference with family life, section 9(1) (ii) of the Aliens Act should specify expressly that also children between 15 and 18 years of age have a right to a residence permit when it is in the best interest of the child, cf. Article 3 of the CRC. According to the explanatory notes of the Bill, a residence permit will have to be issued to children between 15 and 18 years in exceptional cases where refusal would be contrary to Article 3 of the CRC or Article 8 of the European Convention on Human Rights (ECHR). The explanatory notes give the example of a situation where a refugee who has left his children in the country of origin is granted asylum and applies for reunification with a child older than 15 years.
Article 8 of the ECHR and Article 3 of the CRC imply a duty for the country, in several other situations, to issue a residence permit to a child of more than 15 years, e.g. if four children in the same family will be split up because one of the children is more than 15 years old and three children are under 15 years, and the child of more than 15 years is rather immature or cannot manage without its parents' care for other reasons.

Removal of a child from the family

Positive aspects

Forced removal of children from the family
Children at risk of social neglect and mental and physical abuse in the home can according to Danish legislation be removed from the home without consent of the parent(s). In a survey on the procedure in the municipalities of forced removal of children from the family[14], it is concluded in the report that case workers treat children with ethnic minority background differently from ethnic Danish children. Case workers are more reluctant to forcibly remove children with ethnic minority background from home since the arrangements available do not satisfy the special needs of children with another ethnic background than Danish. The case workers need to find an institution or foster-family that fulfills certain criteria in relation to e.g. language, religion, proscriptions for meals etc.

Some case workers fear an alienation of the child from the biological parents afterwards if the mother tongue of the child is not stimulated. Furthermore, some case workers state that they do not assess some incidents as severely as they would if a Danish family was concerned due to acceptance of special cultural patterns in the ethnic minority family environment. This causes the case workers to intervene only when an abuse is extreme, the end result being differential treatment of ethnic minority children and Danish children.

[14] Tine Egelund & Signe Andrén Thomsen: Tærskler for anbringelser. En vignetundersøgelse om socialforvaltningernes vurderinger i børnesager. SFI 02:13. 204 sider. Available (in Danish only) at http://www.sfi.dk/sw1254.asp

The report shows that the case workers are uncertain of how to deal with ethnic minority children and that they lack knowledge on working methods and special measures aimed at ethnic minority families with social problems. Furthermore the report mentions concerns in the municipalities on whether the solutions violate the Convention on the Rights of the Child, since very few ethnic minority foster-families are available, which are able to take proper care of language, religion etc.

Statistics
In 2002, 14.363 children and youngsters where placed outside their home. 6522 were placed in foster-families and 3365 children and youngsters were placed in residential homes for children and young persons.[15]

Good practices

A survey has been made on placement of ethnic minority children outside the home.[16] The survey differs between immigrants, descendants and other children. An immigrant is defined as a person born abroad whose parents are both foreign citizens or born abroad. Descendants are defined as persons born in Denmark, neither parent being a Danish citizen born in Denmark. Other children are defined as all children excluded from the two first categories, persons born in mixed marriages and adopted children included. In 2000, 13.533 were placed outside the home, 618 were immigrants, 337 were descendants and 12.578 were other children. According to a survey immigrants and descendants 0-9 years of age are placed outside the home much more rarely than other children. At the age between 10-19 years descendants are still placed outside the home at a lower frequency. Immigrants though, between 15-19 years, are placed outside the home at a slightly higher, but not significantly higher, frequency. Descendants in all age-groups are placed outside the home to a far lesser extent than other children.

According to figures from 2000 foster-families was the most used option of placement for other children (47 per cent) followed by residential homes (24 per cent), while descendants were placed mainly in residential homes for children and young persons (43 per cent) followed by foster-families (38 per cent). Also, immigrant children were placed mainly in residential homes (34 per cent), followed by foster-families (26 per cent).

According to the Social Ministry every fourth child placed outside the home does not receive proper treatment, especially ethnic minority children and children from families with abuse problems are at risk.[17]

Reasons for concern

While it is important to treat children equally irrespective of their ethnic origin, when it comes to an assessment of whether forced removal of a child should take place, it is still important to take into consideration respect for the child's cultural norms.

The right to family reunification

Legislative initiatives, national case law and practices of national authorities

Statistics

[15] Figures collected 31th December 2002 http://www.statistikbanken.dk/BIS2
[16] Skytte, Marianne. 2002. *Anbringelse af etniske minoritetsbørn.* Lund: Lund Dissertations in Social Work Series. See also http://www.tekno.dk/pdf/projekter/p02_anbragte-born-rapport.pdf
[17] Red Barnets policy om anbragte børn at: http://www.redbarnet.dk/Default.asp?ID=445

The number of applications for family reunification in Denmark was in 2004: 5, 259, hereoff were 3, 582 positive decisions on family reunification.

The number of applications for family reunification in Denmark was in 2003: 6, 520, hereoff were 4, 791 positive decisions on family reunification.

Good practices

Even though the Danish Government rejected most of the criticism, expressed by both Mr. Alvaro Gil-Robles Commissioner for Human Rights, Council of Europe and The Danish Institute for Human Rights, the Government acknowledged that "The Government will […] comply with the Commissioner's recommendation to reflect the protection of human rights more directly in the wording of the Act, e.g. by inserting a reference to the regard for family unity in relevant provisions." (p. 2). Memorandum on the report of 8 July 2004 by Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, as regards the part of the report concerning foreigners.

Reasons for concern

During the period under scrutiny, both Mr. Alvaro Gil-Robles Commissioner for Human Rights, Council of Europe and The Danish Institute for Human Rights have in reports expressed concerns especially in regard to reunification of spouses in Denmark.

During his visit to Denmark 13th to 16th April 2004, Mr. Alvaro Gil-Robles drafted a report on the general human rights' situation in Denmark. Generally the Commissioner commented on the recent debate in Denmark, on the place and integration of ethnic minorities and expressed his concerns about the frequent expressions of strong anti-immigrant statements by certain politicians.

The Commissioner was in his report and statements especially concerned about and focused on issues of family reunification and the administration of the Alien Act. These concerns gave rise afterwards to a very intense public debate on whether the Commissioner had interpreted Danish legislation correctly and whether the Danish legislation was in accordance with international human rights obligations. In a memorandum, the Government rejected the Commissioner's concerns, except acknowledging the need for some slight adjustments. The Danish Institute for Human Rights published an extensive report (160 pages) in October 2004 on the Reunification of Spouses in Denmark. The main conclusions of the report are summarized below and support the interpretations and conclusions of the Commissioner. The report elaborates on specific issues and provides a legal human rights analysis of the Danish legislation on spouse reunification.

• The administration of the 24 year age requirement combined with the aggregate ties requirement results in violations of the right to family life according to ECHR Art. 8.

• The administrative practice of not considering the relation to children, other than separate children, with whom the resident practices a normal right of access, violates the right to family life. Thus the ECHR Art. 8 and the UN Convention on the Rights of the Child Art. 3, require that the resident's and the applicant's residing mutual children, as well as all separate children, are taken into consideration, when examining whether exceptions from the normal preconditions for spouse reunification should be made.

• A refugee who has married a person from their mutual country of origin while still risking persecution in that country will have a right to enjoy family life in Denmark. The administrative practice requiring that the couple must either already be married at the time of

the refugee's entry into Denmark or that the couple has cohabitated at a shared residence in Denmark thus leads to violations of the right to family life.

• The aggregate ties requirement and the 28 years of citizenship rule violate ECHR Art. 14 in conjunction with Art. 8. The aggregate ties requirement and the 28 years of citizenship rule result in differential treatment 1) between Danish citizens of Danish ethnicity and Danish citizens of non-Danish ethnicity, 2) between individuals born as Danish citizens and persons born and grown up in Denmark as non-Danish citizens, and 3) between immigrants and refugees, which does not meet the objective and reasonable justification requirement in ECHR Art. 14.

• The differential treatment of Danish citizens, resulting from the Aliens Act's 28 years of citizenship rule, is incompatible with the non-discrimination principle in the European Convention on Citizenship Art. 5, sec. 2, since the rule implies that Danish citizens at the age of 28 – in relation to lifting the Aliens Act's aggregate ties requirement – will be treated differently on the grounds of the length of Danish citizenship.

• The administration of the requirement of financial security in connection with spouse reunification results in violations of the right to family life. These violations will mainly, but not solely, occur when the resident was born in Denmark and the applicants' home country is geographically and culturally far from Denmark, and when the couple meets all requirements regarding support, but due to a poor income generating ability is unable to obtain a bank guarantee of 53.096 DKK

• The rule that the resident must not have received assistance under the Active Social Policy Act or the Integration Act constitutes discrimination in violation of ECHR Art. 14 in conjunction with Art. 8 on the right to family life.

• The differential treatment of persons subletting a rented apartment and persons renting an apartment with regard to the requirement that the resident must have a suitable home constitutes discrimination in violation of ECHR Art. 14 in conjunction with Art. 8.

• The rules on spouse reunification comply with the human rights requirement of foreseeability as regards the application of the rules. However, the legislative as well as the administrative authorities should seek to improve the foreseeability of the rules, for instance by publishing an annual report with descriptions of decisions in concrete cases.

<u>Private and family life in the context of the expulsion of foreigners</u>

Legislative initiatives, national case law and practices of national authorities

Supreme Court U.2004.1765H
F, who was a Turkish citizen, entered Denmark in November 1997, where he immediately married a Danish citizen M and as a result hereof was granted a residence permit. In October 1999 they had a child D and in June 2000, M terminated cohabitation with F. Hereafter F had access to his daughter twice a week and in October 2000 a court decision on separation gave M the custody of D. In January 2001, F was granted right of access to his daughter for 2 hours a week. In March 2001 the government denied a prolongation of F's residence and work permit. This decision was upheld by The Ministry of Refugees, I, in February 2002. In its decision, I emphasized that F's right of access to his daughter was so limited that a denial of renewing his residence permit, would not appear to be a burden on F and D. F appealed I's decision to the High Court, where he argued that I had committed serious case work errors and that an expulsion of him would be contrary to § 26 of the Alien Act (Udlændingeloven) and article 8 of the European Convention on Human Rights. The High Court agreed with F and deemed I's decision unlawful. The Supreme Court did not find that I's decision was

defective and the decision could therefore not be deemed unlawful. Furthermore, as there were no grounds for disregarding the estimate performed by I in connection with the decision in February 2002, I was acquitted. (Dissenting opinion of two judges.)

Supreme Court U.2004.1110H
In 1995 a 30 year old Tanzanian citizen A, was reunited with his wife, who was a Danish citizen and who had met A, when she was in Tanzania as a volunteer in 1989-90. In 2001 A was convicted to 4 years in prison for drug offences committed in 1998-2000 and expelled from Denmark for good. At that time he lived in Denmark with his wife and their two children, who were both underage. His parents and siblings lived in Tanzania. In 2002, when his sentence was almost over, the question of revoking the expulsion was brought before a court and in 2003 the city court revoked the decision to expel A. The High Court upheld the decision of the city court. The majority of the Supreme Court found that, under the circumstances, it would not be possible for the family to continue its family life in Tanzania and upheld the decision of the High Court.

Supreme Court U.2004.1050H
6 years imprisonment for attempted murder and assault. Expulsion.
T, who at the time was 36 years old, was convicted of attempting to murder his wife and for assault.
On the basis of the violent nature of the crime, the Supreme Court decided to expel T for good, notwithstanding the fact that T had two children, who were underage and residing in Denmark.

High Court of Eastern Denmark U.2003.2456Ø
3 years imprisonment for gang rape. Expulsion.
T1 and T2 were convicted of rape and sentenced to 3 years in prison. T1, who was a Turkish citizen, had arrived in Denmark in 1999. He was married to a Danish woman of Turkish heritage, whom he had a 4 year old child with. T1 was expelled on a permanent basis as nothing was found in hinder hereof. The expulsion was not deemed to be in breach of The European Convention on Human Rights.

The Ombudsman (J.nr.2004-1473-644)
The complainant's application for a renewal of his visa had been denied. Complainant's attorney argued that the rejection was in breach of ECHR article 8. The Ombudsman did not find reason to criticize the rejection. At the same time he remarked that it could not be criticized that the government did not find the rejection to be in breach of the ECHR article 8.

Positive aspects

There seems to be a tendency of thorough consideration of ECtHR case law in cases before Danish Courts.

Article 8. Protection of personal data

Independent control authority (evolution of its powers, competences)

Legislative initiatives, national case law and practices of national authorities

The Act on Processing of Personal Data entered into force on July 1, 2000.[2] The act implements the European Union Data Protection Directive (Directive 95/46/EC) into Danish law. It replaces the Private Registers Act of 1978, which governed the private sector,[3] and the Public Authorities' Registers Act of 1978, which governed the public sector. The law divides personal information into three categories: ordinary, sensitive and semi-sensitive and provides different conditions for the processing of each. A broad exemption from the Act is provided for law enforcement activities.

An agency, the Danish Data Protection Agency (*Datatilsynet*), enforces the act.
The agency is a public body consisting of a council and a secretariat. Members of the council are appointed by the Minister of Justice. Neither the Ministry of Justice nor any other public body has instructive authority over the agency, but the agency is attached to the Ministry of Justice regarding recruitment of staff and budgetary issues. The Agency supervises registries established by public authorities and private enterprises in Denmark. It ensures that the conditions for registration, disclosure and storage of data on individuals are complied with. It 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. Staff of the DPA is allowed to enter any premise where a file is operated without a court order. Decisions made by the DPA are final and may not be appealed by any other administrative body. They may, however, be brought before the courts. According to the Act, the DPA is required to give an opinion before any new laws or regulations that have an impact on privacy are issued.

Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)

Legislative initiatives, national case law and practices of national authorities

[Draft on Governmental regulation regarding telecommunication networks registration and storage of information on telephonic traffic and practical assistance to the police in connection with measures intervening in the secrecy of communication].[18]
The scope of the governmental regulation is to define the content of the telephone traffic which telecommunication networks are obliged to record after the adoption of act no. 378 in 2002 and keep for one year. The Administration of Justice Act, section 786 secures, that telephonic traffic information is available in case of investigation or prosecution in severe criminal cases.
According to the draft, the networks are also obliged to establish a 24-hour attendant. Data such as telephone numbers, dates, time and duration of telephone calls, data concerning SMS and MMS and information on the transmitter are to be registered. Also time of connection and disconnection to the internet and IP-addresses are included. The obliged are in principle every one who provides electronic transmission of communication. However, several providers are excepted from the obligation.

[18] Udkast (2004) til bekendtgørelse om telenet- og teletjenesteudbydernes registrering og opbevaring af oplysninger om teletrafik samt praktisk bistand til politiet i forbindelse med indgreb i meddelelseshemmeligheden

Reasons for concern

The registration duty potentially results in a systematic intervention in the protection of every citizen's private life. However, a number of institutions e.g. schools and housing co-operatives with less than 100 residents are exempted from the duty. This is neither proportional nor effective, as a suspect easily is able to avoid being registered, while a great number of accidental citizens will find themselves registered.

A systematic registration of every citizen is disproportionate and cannot be regarded as a necessary measure.

Protection of the private life of the worker and the prospective worker

Legislative initiatives, national case law and practices of national authorities

In October 2004 [Bill (2004:72) on gathering of children certificates in cases of employment etc.][19] was introduced.
The objective of the bill is to intensify the measures to combat sexual assaults on children. The bill introduces an obligation for public authorities and private institutions to gather so called children certificates before a person, who as part of the job will have direct contact with children below the age of 15, is eventually employed.

Protection of the private life in the processing of medical data

Legislative initiatives, national case law and practices of national authorities

In October 2004 [Bill (2004:41) on transmission of information where a mentally ill person has committed serious crime][20] was introduced in Parliament. The bill introduces the possibility of transmitting personal information on previous treatment without the consent of the person concerned.

Reasons for concern

According to the bill an examination of can be initiated on the sole foundation where there is a probable cause to believe that the person has committed criminality relating to bodily injury. This requirement should be amended according to principle of proportionality. The examination should therefore only be initiated when it has been determined that the person in question is mentally ill.

Video surveillance in public fora

Legislative initiatives, national case law and practices of national authorities

City Court Frederikshavn Decision 11 November 2004
A webcam was set up by a private person monitoring movements of persons and the weather conditions in a habour area. Since the updating frequency/frame rate was very slow it was very difficult to identify persons. The camera was not able to zoom or move. The individual was found to have violated The Act on prohibition of Private Persons Television Surveillance

[19] Forslag (2004:72) til lov om indhentelse af børneattester i forbindelse med ansættelse af personale m.v.
[20] Lovforslag (2004:41) om videregivelse af oplysninger om behandlingsforløb, hvor psykisk syge begår alvorlig kriminalitet

in Public Places[21], fined 3000 DDK and the camera was seized. The Act on Processing of Personal Data was not mentioned in the decision.

Positive aspects

In a statement to The Ministry of Justice, The Danish Data Protection Agency has pointed out several problem areas concerning the Act on Processing of Personal Data in relation to the Act on Prohibition against Television Surveillance. An evaluation of the regulation is therefore called for.Good practices
The trade organisation for security companies producing surveillance equipment and offering security (SikkerhedsBranchen) services has in their own capacity as well as in collaboration with the Danish Institute for Human Rights hosted seminars and initiated discussions among politicians and in the media on the societal impact of increased video surveillance in the public sphere and of the consequences of privatizing police tasks such as transportation of prisoners, traffic regulation and patrolling. Besides, Sikkerhedsbranchen has developed a code of conduct for its members on the setting up of surveillance equipment in order to avoid unnecessary and excessive use of such equipment.

Reasons for concern

An increase in video surveillance in the public sphere has emerged during 2004. Thus, video surveillance is installed in all trains, subways, along high ways, in post offices, in public libraries, in city halls, in malls, on the façade of banks and next to ATMs or bancomats etc. The widespread use of video surveillance has emerged without substantial discussions on the need and effect of such surveillance and the consequences for society, including the impact on basic fundamental freedoms such as the right to privacy and the right to freedom of movement. Moreover, the technological possibilities for restricting surveillance to specific situations or specific time periods have not been fully explored, whereby the principles of necessity and proportionality in the surveillance of citizens have been neglected.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Danish Maritime and Commercial court in January 2004 convicted the Danish mobile phone company Aircom for spamming. The company had to pay a fine of EUR 54.000 (400.000 DKK) for sending out unsolicited commercial faxes. In Denmark, this is the largest fine issued up till now for spamming. In court, Aircom admitted to have sent between 7.650 and 15.300 unsolicited faxes to smaller companies. The Danish Consumer Ombudsman had already asked the company a year before to stop these illegal marketing practices, but they didn't. This was seen by the Court as an aggravating circumstance in the case.

Reasons for concern

Denmark has the 22 April 2003 signed the Convention on Cybercrime CETS No.: 185, but not yet ratified it.

[21] Lov om Forbud mod Privates TV-overvågning.

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

Marriage

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.

The Committee considered the report submitted by Denmark (The fourth periodic report of Denmark (E/C.12/4/Add.12)) and called in is concluding observations upon Denmark to take appropriate measures to either repeal or amend the so-called 24-year rule of the 2002 Aliens Act, in line with its obligation to guarantee the enjoyment of the right to family life to all persons in Denmark without distinction.

Positive aspects

The Government is dedicated to prevent arranged and forced marriages, and has e.g. published an Action Plan against Forced Marriages, Semi-forced Marriages and Arranged Marriages in 2003.

Action Plan for Government Initiatives from 2003 to 2005 against Forced Marriages, Semi-forced Marriages and Arranged Marriages, August 2003

The Action Plan is intended to prevent forced marriages and counter family reunification based on arranged marriages, to contribute to improved integration and equality of the sexes, to contribute to greater focus on the right of ethnic minority youths to decide themselves on their future spouse, and to communicate knowledge on focus areas to doctors, social workers, visiting nurses, teachers, educationalists and other professionals who get into contact with ethnic minorities.

Also the introduction of the so called 24 year rule is aimed at combating the above mentioned kind of marriages.

Reasons for concern

Irrespective of the positive aspects mentioned above, the measures adopted in the fight against forced marriages are counter productive in the sense that they have a negative impact on persons who are not in risk of being forced into marriage. Hence, the 24 years requirement for family reunification has as a consequence that many persons, including both persons with ethnic Danish background and other ethnic backgrounds, are excluded from entering marriage based on their free will and consent.

Article 10. Freedom of thought, conscience and religion

Fight against sects

Legislative initiatives, national case law and practices of national authorities

In April 2004 [Proposal (2004:201) for parliamentary resolution prohibiting public employees wearing culturally conditioned headgear][22] was introduced. According to the proposal, public

[22] Forslag (2004:201) til folketingsbeslutning om forbud mod at bære kulturbestemt hovedbeklædning

workers, who are in contact with citizens, are prohibited to wear culturally conditioned headgear when performing the function. According to the explanatory notes any kind of headgear and scarves, which has no connection to the Christen-Jewish culture, is affected by the prohibition.

Reasons for concern

The proposal for parliamentary resolution prohibiting public employees wearing culture related headgear was put forward by Danish People's Party (Dansk Folkeparti). The proposal was found to be an interference with the freedom of religion protected in the Constitution, ECHR and ICCPR and could constitute a violation of the prohibition against discrimination, since, according to the explanatory notes, it is strictly aimed at non-Christians and non-Jews. Furthermore, the prohibition would establish a barrier to a significant part of the labour market, since many, especially Muslim women, would be denied access to employment at a workplace, where culture related or religious related headgear was prohibited. This would amount to indirect discrimination. While assessing whether such discrimination would be reasonable and whether the means are adequate, one must look at the purpose of the proposal. The purpose of the proposal cannot be regarded as either reasonable or proportionate, considering the variety of opinions on the issue of headscarves.

The proposal for the parliamentary resolution was examined by the standing committee of education, but was not put to vote during the parliamentary year. Thereby the proposal was repealed.

Protection against harassment especially of religious minorities

Reasons for concern

In the aftermath of the murder of the Dutch film maker Theo van Gogh there was extensive public debate on freedom of speech and democratic core values vis-à-vis ethnic minorities (Muslims) rights' not to be insulted on their religious feelings. The prime minister stated that the freedom of speech should have the highest priority. The Danish National Broadcasting company was sued for blasphemy because they chose to show the movie Submission. The section in the criminal code on blasphemy has not been used in more than 30 years and the lawsuit was followed by a debate on the abolishment of the section. At the moment the parliament discuss whether the section on blasphemy should be abolished and the lawsuit has not been decided in court yet.

An abolishment would be problematic in relation to the protection of religious minorities in national legislation, since the prohibition against discrimination and defamation in the criminal code and other legislation does not give a complete protection against every possibility for degrading remarks indirectly aimed at minorities. Furthermore, an abolishment of the prohibition on blasphemy should not be done while there is a lawsuit underway and during a heated public debate of freedom of speech vís-a-vís the right of minorities.

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

Legislative initiatives, national case law and practices of national authorities

Supreme Court U.2004.2194H
A applied for permission to erect an 18 meter mast in order for him to enjoy his hobby as a radio amateur. The High Court found that the right to communicate with other radio amateurs was protected by the ECHR article 10. The rejection was therefore an interference with this

right. However the rejection was justified by article 10, second paragraph. Without commenting on whether or not the case fell within the sphere of article 10, the Supreme Court upheld the decision of the High Court.

Supreme Court U.2004.1773H
Editor in chief acquitted of defamation.

B, who was acquitted of charges regarding sexual harassment against children, took legal action against A, who was the editor in chief of newspaper C; because A brought a story about B, insinuating that he may be guilty. The Supreme Court proclaimed that not every criticism of an acquittal can be viewed as an illegal indictment against the acquitted. If such a criticism is to be deemed unlawful, it must be assessed when, by whom and at who the criticism is directed as well as the background, substance and form of the criticism.
Following a joint assessment the Supreme Court found that A had not committed a penal defamation and was therefore acquitted.

Supreme Court U.2004.976/1H
Journalist and photographer were not permitted to visit and interview prisoner on remand, who was guilty of homicide.

The Supreme Court remarked that, as a starting point, it would be contrary to the purpose of remanded custody – and therefore also the sense of justice – if a remanded prisoner, before final conviction, has the opportunity to address the public, through the press, and speak of those deeds covered by the case. There were no grounds for deviating from this starting point and as the rejection was not deemed to be contrary to article 10 of the ECHR, the Supreme Court upheld the decision to reject the application.

Supreme Court U.2004.734H
Candidate for the Folketing convicted to imprisonment for 20 days, because of putting forth insulting and degrading remarks against Muslims.

The Supreme Court proclaimed that the remarks were degrading and insulting to the ethnic group they were directed at, and that the extensive freedom of speech for politicians on matters of society, could not result in the remarks not being punishable. Article 10 of the ECHR would not be breached as a result of a conviction.

Supreme Court U.2003.2044H
A remark suggesting that a politician had racist views was not a punishable defamation.

In October 1999 T participated in a radio program and remarked that he, "would hate to be identified with A's racist views and I am sure that this will be the general attitude in a campaign." The Supreme Court reached the conclusion that T's use of the expression *racist views* could not, under the circumstances, be considered unlawful and T should accordingly be acquitted. The Supreme Court noted that a contrary result would not correspond with the ECHR article 10. The use of the expression had taken place in a political debate on important social views. In the light of this, T's use of the expression could not be seen to go beyond the borders of the freedom of speech.

High Court of Eastern Denmark U.2004.698Ø
Editor in chief and two journalists acquitted of defamation.

A, who had earlier been an agent for the East German intelligence service, Stasi, was employed at newspaper, EB. In March 1999 EB brought an article where A was mentioned in not too flattering terms.
The High Court remarked that there is a very considerable public interest in the coverage of Danish citizen's activities in the intelligence services of foreign countries. Also, consideration to the freedom of speech must turn the scale when opposed to the desire to protect people's good name, reputation or rights.
Finally, the press must have an extensive freedom of speech, considering its role as public watchdog. In the light of this, the journalists and the editor in chief were acquitted.

High Court of Western Denmark U.2003.2438V
The refusal of a pizzeria owner to sell pizzas to Germans and French nationals was in breach of the Race Discrimination Act (Racediskriminationsloven).

Pizzeria owner, T, declared by signposting that he refused to sell pizzas to German and French nationals. For this and for refusing to sell a pizza to a married couple, because the woman was German, T was fined for breaching the Race Discrimination Act, as this law is not limited to protecting minorities. The acts of T could not be deemed to be exempt from punishment with regard to article 10 of the ECHR.

The Ombudsman (J.nr.2003-0322-401):
Selective service of the press.
The Ministry of State had given a specific newspaper right of access to a speech, which the Prime Minister was to give. Other newspapers sought right of access as well. However, this was refused – as the first newspaper had already been given right of access.
The Ombudsman stated that, by giving the first newspaper right of access, the document had lost its internal status and therefore the Ministry could no longer refuse to distribute the speech to other newspapers.
A uniform treatment of all journalists must be assessed to be coherent with the views behind article 10 of the ECHR. Differential treatment of journalists can therefore only be allowed if weighty objective and impartial grounds support this.

The Danish Data Protection Agency:
There are two cases concerning freedom of speech.
In both cases A complained to the Data Protection Agency that B had processed information about A on his homepage.
A had not consented to B using his personal information.
The Agency remarked that the regard to A did not exceed the regard to B's interest in publishing the information on his homepage. The Agency chose not to intervene as the freedom of speech in both cases surpassed A's personal interest.

Article 12. Freedom of assembly and of association

Freedom of civil association

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has in 2004 commented on ILO Convention no. 98 concerning the right to organise and collective bargaining. The Committee has

commented on sailor's right to organise on Danish ships. It is indicated that Denmark at the present does not fulfil its obligations according to article 4 in the convention and recommends that the Danish legislation is harmonized in order with article 4.

Legislative initiatives, national case law and practices of national authorities

In May 2004 a resolution (2004:212)[23] was proposed in parliament concerning dissolution of the association Hizb-ut-Tahrir because of its dissemination of its ideas to pupils and its distribution of a handbill encouraging killing Jews in Copenhagen. The representative of the association was convicted of having violated the criminal code section 266 b (2), for distributing a handbill via the internet which threatened insulted and humiliated persons with a Jewish background. The sentence was confirmed by the High Court of Eastern Denmark in March 2003. The attorney general concluded in a report from March 2003 that the association could not be dissoluted by judgement, as it could not be proved that the association had an illegal object or that it aimed to reach this object by the use of violence or instigation of violence as it is required by section 78 in the Constitution.

Article 13. Freedom of the arts and sciences

No significant developments to be reported

Article 14. Right to education

Access to education

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

OECD's Education Committee reviewed the Danish Public School (Folkeskole) and published a report in June 2004.[24] According to the report, in the school year 2002/03, there were 55,812 (or 9.5 per cent) bilingual students in primary and lower secondary schools. The largest groups of bilingual students' descent from Turkey (over 11,000), Iraq (over 4,000) and Pakistan, Bosnia and other former Yugoslavian countries (all in all over 3,000).

The Committee emphasized positive aspects but also had concerns and recommendations some of which are cited below:

"The Danish pattern illustrates the continuing need for language support for bilingual students who have spent all their life in the country as well as for new arrivals.

…possible cultural bias in test materials; the existence in some peoples' minds of a deficit model which sees non-Danish speaking children as 'problems'; insufficient supplementary provision for Danish as a second language; the accumulation of language problems into learning difficulties; the existence of a group of families with insufficient resources to cope; and shortcomings in the in-service training available for teachers. Unfortunately no national data exists to clarify these issues.
(…)

[23] Forslag (2004:212) til folketingsbeslutning om opløsning af foreningen Hizb-ut-Tahrir
[24] EDU/EC(2004)4, Organisation for Economic Co-operation and Development, Special Session of the Education Committee: Pilot review of the Quality and Equity of Schooling Outcomes in Denmark, Examiner's report, 9 June 2004 in Copenhagen, Denmark. Available at: http://eng.uvm.dk/news/approval.htm?menuid=05

Many of the reasons cited above require major interventions. It seems to us, however, that the point discussed earlier - that bilingual students have to miss lessons in other subjects in order to take advantage of extra help with Danish - has particular relevance. If this is as widespread a practice as was reported to us, it is surely a very unintelligent solution which could relatively easily be modified so that the bilingual children could be better supported and some of the other problems possibly be avoided.
(…)"

Legislative initiatives, national case law and practices of national authorities

In 2004 the parliament adopted [Bill (2004:194) amending the act on public schools][25].
The legislative amendment concerns the introduction of compulsory pre-school language stimulation courses in Danish for bilingual children from the age of 3, who are considered to lack adequate language skills in Danish. The amendment is a supplement to the existing voluntary language training. According to the explanatory notes to the Bill, the reasoning behind the amendment is that some ethnic minority families do not allow their children to participate in language training, because the families do not understand the importance of education.
The Bill defines bilingual children as, "children who have another mother tongue than Danish and only during contact with the surrounding society and the school encounter the Danish language." The idea is to give bilingual children adequate language skills in Danish so that, they will avoid additional language difficulties in the educational system when they begin in *Folkeskole* (primary and lower secondary public school). According to an evaluation by the Ministry of Education in the fall of 2003, 15 per cent of the municipalities have not established the obligatory pre-school language stimulation courses.
In the preparation of the Bill it was considered whether compulsory language training for bilingual children was in accordance with the prohibition against discrimination as stipulated in article 14 of the ECHR combined with additional protocol No. 1 article 2 concerning the right to education. According to the government, the assessment of the compliance with ECHR is based on the objective criterion of securing that bilingual children obtain the best possible Danish language skills before starting school. Furthermore, it is the position of the Government that the means do not go beyond what is a precondition for a satisfactory educational progress, especially since the language skills of the child are evaluated by an expert, and the parents are free to choose alternative ways of fulfilling the requirement for compulsory language training. Therefore it is the opinion of the Government that the legislative amendments are in accordance with ECHR.

Reasons for concern

In relation to the introduction of compulsory pre-school language stimulation courses one should stress the importance of the notion of and respect for the diversity of the children. There exists a need for bilingual children to learn the Danish language this should be encouraged by enlightenment and dialogue with the parents, stressing the need for the children to improve their Danish language skills.

The legislative comments only mention ECHR and no other international human rights conventions. This is particularly problematic since the Government has refrained from carrying out the recommendations stated in The Incorporation Report No. 1407 from 2001[26] on the incorporation of the major UN human rights conventions, reasoning that incorporation would not change Denmark's judicial obligations anyway. Unincorporated conventions are relevant sources of law and should be applied by the administration when drafting new

[25] Forslag (2004:194) til lov om ændring af lov om folkeskolen (Obligatorisk sprogstimulering af tosprogede børn, der endnu ikke har påbegyndt skolegangen)
[26] Betænkning nr. 1407

legislation. The comments on the legislation reveals, however, that the administration only assesses whether the legislation is in accordance with the ECHR, while other international human rights conventions are not mentioned. This creates a *de facto* hierarchy in the application of international human rights conventions which is concerning.

Other relevant developments

Reasons for concern

One should acknowledge the good intensions of some of the government initiatives, regarding the integration of minorities, but the initiatives should still be drafted with respect for the dignity of other cultures and room for diversity in society. This is important not only in order to adhere to international standards, but also especially to protect the right of self determination on a broader level and refrain from making restrictive and bureaucratic legislation, which affects the total Danish population, while in reality only a fraction constitutes a problem in relation to the present legislation. In the long run this can be counterproductive to the integration process for a whole group of people, who will find themselves treated without dignity, alienated and under suspicion from the rest of the society.

- School drop-out rate of children and students with an ethnic minority background
This causes concern not only in relation to the notion of failure and loss of confidence experienced by the individual student, but the development will most likely have a negative impact on the process of integrating ethnic minorities on a broader scale as well.

- Removal of free mother tongue training for individuals from third world countries
It is concerning that the abolishment of free mother tongue training generally risks affecting the children's linguistic consciousness and social skills

- Compulsory pre-school language stimulation courses in Danish for bilingual children

Examples of educational initiatives in the municipalities regarding bilingual pupils:

- Introduction of the concept of magnet schools (Magnetskoler)
A third of all school pupils in Copenhagen are bilingual, however they are concentrated in relatively few schools. This makes ethnic Danish parents living in an area with a relatively large community of minorities prefer alternative schools instead of the local public schools. For example in the Municipality of Copenhagen 5 schools have between 82 and 94 percent bilingual pupils.
To avoid a further split up in public schools based on ethnicity a majority of the Youth and Educational Council of the Citizens Council of Copenhagen Municipality (Københavns Borgerrepræsentations Uddannelses- og Ungdomsudvalg) has voted for the establishment of Magnet Schools, transferring extra funds to schools with a majority of ethnic minority pupils making them more attractive for socially advantaged parents. The extra funding (5 million DKK) will be used on information and communication technology or sports facilities. In schools with a majority of ethnically Danish pupils, funds will be given to hire more teachers with ethnic minority background, along with funds for more classes in the Danish language aimed at bilingual pupils. Furthermore bilingual pupils from outside the school district should be favoured if vacancies occur.

- Compulsory distribution of bilingual pupils (Albertslund-modellen)
The compulsory distribution of bilingual pupils in primary schools in some municipalities is based on a language test of all bilingual children before school start. Depending on the result the pupils are allocated (if an adequate result is shown) in the local school or, if a below adequate result is reached, in another public school. The purpose of the model is to allocate pupils who do not have a satisfactory level of Danish to a school where bilingual teachers can

provide the necessary education. Furthermore the idea is to mix ethnic Danes and ethnic minorities, since it is presumed that ethnic minority pupils will improve their Danish language skills significantly in a class with a majority of ethnic Danes. In certain areas, typically areas with a lot of social housing, the local school may have a majority of ethnic minority pupils. Therefore some municipalities argue that they have to distribute pupils to other schools, where the necessary expertise and the right mix of ethnic minorities and Danes exists. As a result of the procedure every school in the Municipality of Albertslund now have no more than approximately 30 per cent bilingual pupils. The compulsory distribution of bilingual pupils, known as the Albertslund model, was introduced by the Municipality of Albertslund and in the municipality of Farum in 1982. Other municipalities have adopted or plan to apply similar measures.

Concerns should be raised about the discriminatory effect of this procedure since ethnic Danish pupils are not tested. Therefore ethnic Danish pupils may choose the local district school, while a bilingual pupil may be put in a situation of having to travel a longer distance to reach the appointed school; this might influence the pupil's performance in the educational system.

- As regards separate schools in Hoje Taastrup, separate classes in Vejle and separate Roma-classes in Elsinore
The municipality of Hoje Taastrup recently decided to establish separate schools for bilingual children only.

This is problematic in relation to the inclusive approach stipulated in the Act on Public Schools and in relation to the prohibition against discrimination based on ethnic origin. Concerns have also been raised in the Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights. It should be recommended that the memorandums by the Ministry of Education on the issue of segregation should be followed and agree on the conclusion on the issue of legality of the initiatives and expects the municipal initiatives to be abolished.

Finally, concerns could be raised in relation to the teaching in some religious private schools where teaching in some instances does not prepare the pupils sufficiently for life in a modern democratic secular society.

In a memorandum from the Ministry of Education from May 2004 on the issue of segregation[27] the initiative of separate classes have been legally assessed and the conclusion is that the establishment of classes based solely on e.g. ethnicity, gender or religion is a violation of the basic principles of equal treatment. In the assessment of whether an initiative on separate classes is in accordance with the prohibition against discrimination in article 14 in ECHR, it is stated that it depends on whether there is an objective and reasonable explanation for the special classes, and whether the aims justify the means (i.e. principle of proportionality). Other human rights covenants and conventions are not mentioned.

In another memorandum regarding the legality of the establishment of separate schools for bilingual children[28] the Ministry of Education assesses the initiative to be a violation of the Act on Public Schools.

[27] Notat om de juridiske aspekter ved klassedannelse baseret på etnisk oprindelse af 14. maj 2004
[28] Notat om de juridiske aspekter ved oprettelse af særlige skoler for tosprogede børn af 14. maj 2004

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

The right for nationals from other member States to seek an employment, to establish himself or to provide services

Legislative initiatives, national case law and practices of national authorities

In June 2004 [Act on access to certain trades in Denmark][29] was adopted. The focal point of the act is to secure qualified labour access to the labour market in Denmark. It secures that foreign educational qualifications are more easily acknowledged in Denmark.

The prohibition of any form of discrimination in the access to employment

Legislative initiatives, national case law and practices of national authorities

The 7 April 2004 the Danish Parliament adopted the Government's Bill L 40 affirmed as Act No. 253 of 7 April 2004, which transposes directive 2000/43/EC and 2000/78/EC (See above). This amendment expands the scope of The Danish Institute for Human Rights mandate as stipulated in the Act on Ethnic Equal Treatment. . Due to Bill L 40 affirmed as Act No. 253 of 7 April 2004, DIHR's Complaints Committee can now, according to the amendments, review complaints of violation of the prohibition against discrimination on grounds of race or ethnic origin in the labour market.

Access to employment for asylum seekers

Reasons for concern

The average case handling time in the Board for Refugees has been doubled in the last four years from 104 days in 2000 to 194 days in 2003. This is problematic in relation the mentally conditions of the refugees and to the integration process. Those refugees who receive a rejection also find it difficult to return to the country of origin. A solution could be a temporary working permit while the application is being dealt with.

Article 16. Freedom to conduct a business

No significant developments to be reported

Article 17. Right to property

The right to property and the restrictions to this right

Legislative initiatives, national case law and practices of national authorities

Check UfR

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

Statistics

[29] Lov (2004:476) om adgang til udøvelse af visse erhverv i Danmark

In 2004 about 3,000 people applied for asylum. In 2003 about 4,600 people applied for asylum. The recognition rate in the first instance on asylum applications registered and processed in Denmark were 9 per cent. In 2003 it was 22 per cent. The total number of persons granted refugee status or other status in Denmark (all types of cases, all authorities) was 1, 318. In 2003 the number was 2, 447. In 2003, the predominant groups of asylum seekers came from Serbia and Montenegro, Afghanistan, Iraq and Somalia.

Good practices

Even though concerns are raised below regarding the composition of the Refugee Board, it is still positive that the Government will consider clarifying the amendment of the Aliens Act further emphasizing the Board's independence of the Government, as stated in the Memorandum on the report of 8 July 2004 by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, as regards the part of the report concerning foreigners, drafted by the Ministry of Refugee, Immigration and Integration affairs, The ministry of Justice and the Ministry of Foreign Affairs.

Reasons for concern

Even though the number of asylum seekers has been significantly reduced, partly due to the Governments' stricter asylum policy, the health cost for the remaining has increased by 40 per cent. The average period of time spent in the asylum centres has increased from 313 days to 804 days. The increase in health cost can partly be explained by the psycological pressure the asylum seeker is experiencing over the increased prolonged period of time. The estimated number of asylum seekers to be housed in accommodation centres in 2004 is 4, 718.

The composition of the Refugee Board
Asylum applications rejected by the Immigration Service are automatically appealed to the Refugee Board, a quasi-judicial body. The members are appointed by the Minister for Refugees, Integration and Immigration. In the reform in 2002 of the Aliens Act, the composition of the Board was changed and reduced. The representatives of the Danish Refugee Council and the Ministry for Foreign Affairs were removed. The Danish Refugee Council representative was remove due to the perceived inappropriateness of its multiple functions in the processing of cases and in relation to this issue, the impartiality of representative was questioned. The removal of the representative is a concerning development, in particular since the inclusion of a representative from the Danish Refugee Council has been promoted as a model for best practice by UNHCR. This concern has also been raised by Mr. Alvaro Gil-Robles, Commissioner for Human Rights in the report on his visit to Denmark 13th – 16th April 2004.

<u>Unaccompanied minors seeking asylum</u>

Legislative initiatives, national case law and practices of national authorities

Statistics
The number of unaccompanied minor asylum-seekers applying for asylum in Denmark in 2004 was 117. In 2003 the number of unaccompanied minor asylum-seekers, which applied for asylum was 159.

<u>Other relevant developments</u>

Legislative initiatives, national case law and practices of national authorities

In June 2004 [Act (2004:429) amending the Aliens Act (amendment of the rules for obtaining visa, expulsion for the use of illegal force in relation to forced marriages, child abduction or

human trafficking, cutting off cash benefits for asylum seekers during the expedited version of the manifestly unfounded procedures etc.)][30] was adopted by Parliament.
The amendments introduce the possibility for individuals residing in Denmark to provide a financial security guarantee for a foreigner who plans to visit the person residing in Denmark. The amount (50.000 DDK) is forfeited if the foreigner does not leave the Schengen region before the visa expires or if the individual in question violates the visa conditions. The amendments should improve the possibility for visits. Furthermore the amendments also introduce removal of cash benefits if the asylum applicant is being treated according to the expedited version of the manifestly un-founded procedures. This arrangement is conditioned by the applicant receiving free accommodation and food.

Reasons for concern

As regards the requirement to provide a financial security guarantee, this measure might violate the Geneva Convention article 53, as the right to asylum is a fundamental right. This amendment may in reality also be socially discriminating as many foreigners are unable to raise 50.000 DDK.

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

Collective expulsions

Positive aspects

In March 2004 a governmental plan of action concerning emission of asylum seekers was issued. It focuses especially on emissions to Afghanistan, Iraq and the province of Kosovo in Serbia and Montenegro.

The government issued in June 2004 a guidance on benefits according to act on integration. It describes the rules concerning benefits and the help foreigners, who are covered by the act, can receive in certain cases.

Prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments.

Legislative initiatives, national case law and practices of national authorities

Please see the prohibition against torture article 4

[30] Lov (2004:429) om ændring af udlændingeloven (ændrede visumbetingelser, udvisning ved dom for ulovlig tvang i forbindelse med indgåelse m.v.)

CHAPTER III : EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

In November 2004 the Danish newspaper, Politiken, referred to several incidents where the Ministry of Integration has resumed cases, where a residence permit has not been granted, if the case has been mentioned in the media.

Cases where a residence permit has not been granted and which have not had any publicity will be looked through by the Parliamentary Ombudsman, if they are forwarded by lawyers, in order to establish whether or not there is reason to criticize the practices of the authorities. The Ombudsman will not examine the case on his own initiative due to lack of resources.

Article 21. Non-discrimination

Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark

The Committee considered the report submitted by Denmark (The fourth periodic report of Denmark (E/C.12/4/Add.12)) and stated in is concluding observations among other issues that it was concerned of the rise in the number of immigrants and refugees arriving in Denmark over the last years had been met with increased negative and hostile attitudes towards foreigners. The Committee also expressed concern about the occurrence of xenophobic incidents in the State party. The Committee was concerned about the level of long-term unemployment, in particular the high rate of unemployment among immigrants, refugees, which were well above the national average. Furthermore, the Committee was concerned that the amendment to the Aliens Act in 2002 which raised the age of the right to reunification of migrant spouses to the age of 25 years constituted an impediment to the State party's obligation to guarantee the enjoyment of the right to family life in Denmark. In addition the Committee was concerned by the reports of cases of ill-treatment, particularly of migrant women, at the hands of their spouses or partners, which often remain unreported for reasons of economic dependency and fear of deportation. The Committee noted that the situation had been exacerbated by the 2002 amendment to the Aliens Act which increased the required number of years of residence to seven before a permanent residence permit may be obtained by migrant women married to Danish citizens. The Committee was also concerned about the difficulties faced by disadvantaged and marginalised groups, in particular immigrants, in renting or obtaining public housing owing to discriminatory practices. The Committee recommended the State party to take measures ensuring the effective implementation of the National Action Plan to promote equal treatment and diversity and to combat discrimination as a follow-up to the Durban Declaration and Programme of Action.

E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.

Legislative initiatives, national case law and practices of national authorities

On the 7th of April 2004 the Danish Parliament adopted [Act (2004:253) amending the Act on prohibition against differential treatment in the labour market][31], which transposes EU directive 2000/43/EC and 2000/78/EC.
The Bill (no. 40) was identical to the bill, which a majority in the Danish Parliament rejected on the 27th of May 2003, amending the Act on prohibition against differential treatment in the labour market etc.

The newly introduced amendments imply a shared burden of proof and a prohibition against differential treatment on the basis of faith, 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 Complaints Committee for Ethnic Equal Treatment can review complaints of employment, dismissal, transfer, promotion, pay-and working conditions, and vocational out-of school education.
However, the Complaints Committee cannot review complaints within the labour tribunals. Accordingly, the Committee can only review complaints of discrimination in the labour market from a member of a trade union, if the trade union chooses not to represent the member in a specific case. Non-members of a trade union can submit a complaint directly to the Complaints Committee.

A bill is to be put forward in Parliament in November 2004, amending the Act on prohibition against differential treatment in the labour market.

High Court of Western Denmark U.2004.641V
Doormen refused admission to a nightclub to several persons on the sole basis of their ethnic origin. The manager had instructed the doormen on the basis of guidelines issued by the company. The company had issued guidelines to discourage any group of individuals of ethnic origin other than Danish, and the manager and the doormen carried out the instructions. One of the doormen had refused admission with the argument that there were too many foreigners inside the nightclub.
The doormen were each fined 1000 DKK (133 €), the manager was fined 5000 DKK (666 €) and the private company was fined 10.000 DKK (1330 €) for violation of Act against Differential Treatment on the Basis of Race etc. The criminal conduct was not considered of such seriousness as to grant compensation for injury to feelings.

High Court of Western Denmark U.2003.2559V
The accused was found guilty of violation of The Criminal Code Section 266 b subsection 1, by publishing a derogating song text on his homepage aimed at Jews and Turks and based on their ethnicity, religion or race. Due to cooperation with the prosecution and other mitigating factors the accused was sentenced to 5 day fines of 200 DKK (140 €).

The Ombudsman (J.nr.2004-1157-643):
The applicant's application for reunion with his spouse had been rejected. The Ombudsman did not find reason to criticize the rejection. In this connection the Ombudsman remarked that the applicants argument that the Aliens Consolidation Act (Udlændingeloven) was in breach of the ECHR article 8 and CERD article 1 (2), could not be considered by the Ombudsman, as the Folketing was not part of the Ombudsmans functions. Therefore the Ombudsman could not criticize laws enacted by the Parliament.

Complaints Committee for Ethnic Equal Treatment, journal No. 770.4/Decision of 1st of September 2004.

[31] Lov (2004:253) om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet mv.

As part of the education at a technical school the trainees may work in a private enterprise for a short period of time. During a meeting at the school the complainant noticed a piece of paper stating that an employer did not want "P". When he asked the teacher, about the meaning of this, the teacher confirmed that the private employer had instructed the school, not to send a "Perker" (Danish slang for "Pakistani/Turkish") for training in that firm.

The complainant was then assisted by the Documentation and Advisory Centre on Racial Discrimination (DACoRD) free legal aid service. During a telephone conversation between DACoRD and the headmaster of the Technical School, it was confirmed, that some employers demand Danish manpower etc. and in order to assist as many trainees as possible this demand was sometimes approved. When the school refused to give the name of the employer, who made the discriminatory instruction, a petition against the Technical School was filed in November 2003 to the Complaints Committee established as part of the specialised body in Denmark (according to Article 13 of the Race equality Directive). The petition also included a complaint about victimisation, because of the treatment he got after filing the complaint.

On September 1, 2004 the Committee made a statement that this episode was covered by the Act on Equal Treatment due to Ethnic Origin (education) and not by the Act on the Prohibition of Differential Treatment on the Labour Market.
Secondly, it was stated that the employee who had followed the discriminatory instruction made a violation of the Act on Equal treatment due to ethnic origin section 3. It was, however, decided that section 3 was not violated by the school as such. Finally, the Committee also decided that section 8 of the Act was not violated. It was not disputed that the employee made a note about unwanted "Perkere" and this employee was, according to the opinion of the Complaints Committee, thus directly discriminating against the complainant.
Whether this was also a general practice of the School, was disputed by the headmaster. The Complaints Committee consequently decided that this was up to the Danish Court to decide as this was a matter of proof. Similar reason was stated in relation to the complaint about victimisation. The Committee thus recommended free legal aid for a court case.

Positive aspects

In November 2003 an Action Plan to Promote Equal Treatment and Diversity and Combat Racism was launched. In this action plan, which is the follow-up on the World Conference against Racism in South Africa in 2001, the government sets out initiatives intended to help secure equality of treatment for everyone, regardless of race, ethnic origin and similar grounds of discrimination.
To implement the initiatives in the Action Plan to Promote Equal Treatment and Diversity, 2.6 million DKK from the special allocation funds was dedicated in 2003, and DKK 2.5 million was allocated in 2004. Moreover, the government allocates 500.000 DKK from the special allocation funds to break down the barriers and ease the access for immigrants and refugees to the labour market.

Good practices

Within the field of youth and adult education the government has initiated a wide range of initiatives in 2004 in order to improve the education and the Danish language proficiency of immigrants and refugees, thereby promoting integration. An important initiative to mention is the New Act on Danish for Adult Immigrants that came into force 1st of January 2004 and which has been followed by information materials and guidelines. Another initiative is the "identification of structural barriers excluding ethnic minorities and practical oriented persons from starting a vocational education or social and health education" A cross ministerial working group recommends that admission criteria be lowered for immigrants with regard to academic skills, as well as to the demand for Danish language proficiency.

In the report no. 1435[32] from 2003 by the Commission on Structure, it is stated that section 17 (4) in the Municipal Statute[33] secures the German minority, in the south of Jutland, a political platform in cases, where the minority no longer has a representative, after the change in the division of the municipalities.

Reasons for concern

In general, two themes should be stressed in relation to racism and discrimination in education.
Firstly, significant differences in the educational attainment and distribution between the Danish majority population and the ethnic minority population have been documented (Ministry of Refugee, Immigration and Integration Affairs, October 2003, Yearbook on Aliens in Denmark. The area of education is represented by numerous statistics pp. 74-99)
Two tendencies are particular strong: the low continuation rates of youngsters from the ethnic minority in upper secondary education compared with the ethnic majority population (87 per cent vs. 95 per cent), and the low completion rates in higher education among ethnic minority youths compared with ethnic majority youths (62 per cent vs. 78 per cent). So far, little research has been conducted with the aim of explaining the causes behind this market discrepancy, but a research group associated with the Institute of Local Government Studies (AKF) has been dedicated to this topic throughout 2003. The report which was published in June 2004 is presented under B.

Secondly, the increased focus on the segregation of students into "white" and "black" schools is another theme to consider. Both majority parents and immigrant parents who can afford it choose private schools as an alternative to the local school when there seem to be more immigrant children in the school than the average represented in the school area. The debate on quota on ethnic minority children has been ongoing in 2004 both in relation to primary-lower secondary- and higher secondary schools. This has lead to local initiatives where classes with mainly white students have been established in order to keep the Danish students (parents) in the local school or to initiatives where immigrant parents are told to choose another school than the local school because of ethnicity (for instance in Ishøj, Farum, Slagelse, Frederiksberg). What needs to be stressed is the fact that minority parents are told to choose a specific school in the name of integration solely because of their ethnicity and not for reasons of any pedagogical advantages for their child. It is also said – (but not possible to document) that the best teachers at some schools are designated to the white classes in order to keep the white students.

It should be noticed The Complaint Committee for Ethnic Equal Treatment's lack of authority to enforce a disclosure. This hinders the committee to be effective in redressing complaints of discrimination.

On September 5th, a Danish television programme (Dags dato) showed that out of 24 regional Public Employment Service Centres (AF) only one staff member rejected the demand for Danish workers from the tester (a journalist pretending he was a private employer who needed manpower for his construction site). Employees from the other 23 regional AF centres, stated that they could assist in the discriminatory selection, or they would send applicants, and then the employer could do the selection him self. Guidelines[34] for the handling of discriminatory demands from employers impose the demand on the staff members of the AF centres not to cooperate with these employers. The AF staff member may start a dialogue in order to convince the employer NOT to discriminate, however, if the employer continues to demand

[32] Strukturkommissionens betænkning nr.1434 fra 2003
[33] Den kommunale styrelseslov § 17, stk. 4
[34] Cirkulære om retningslinier for formidling mv. af ledige der tilhører en etnisk minoritetsgruppe No. 6 29.10.1998

Danish workers, the staff member must inform the employer, that he/she can not be assisted by the AF.

Fight against incitement to racial, ethnic, national or religious discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee recommended that Denmark closely monitor the incidence of, and combat racism and xenophobia, and continue to promote intercultural understanding and tolerance among all groups in society. The Committee further recommended Denmark to take measures ensuring the effective implementation of the National Action Plan to promote equal treatment and diversity and to combat discrimination as a follow-up to the Durban Declaration and Programme of Action, and to provide information on the progress made in its next periodic report.

Legislative initiatives, national case law and practices of national authorities

The High Court of Western Denmark U.2004.1360V
The accused had disseminated an email to 44 members of Parliament in which the accused expressed his opinion concerning refugees and immigrants. Among other statements the accused urged the politicians to do something about the genocide of Danes, the destruction of Danish culture and the ethnic cleansing of Danes and furthermore referred to immigrants and asylum seekers as semi-criminals and subversive individuals.
The Court found that the accused had disseminated the statements to a wider circle, but the statement was put forward as part of the political debate concerning immigrants, which was an important issue in the Danish society. The court also took into consideration the right to freedom of speech. However the court found the statements to be an insult (but not a threat) regarding a group of people on the basis of their race, colour, national or ethnic origin. Part of the statement was found to be in violation of the Danish Criminal Code Section 266b.
The accused was sentenced to 10 day fines of 400 DKR (530 €) (mentioned in Raxen 4, the case was appealed to and upheld by the High Court)

In May 2004 the Parliament adopted [Act (2004:311) amending the Nationality Act][35].
According to the amendment a Danish nationality can only be obtained by statement by Nordic citizens. Non-Nordics must then apply for Danish nationality by way of naturalization as follows from section 44 in the Constitution. In addition to this individuals can according to the amendment forfeit their citizenship if they are convicted of serious crimes against the public order. This is not an option though, if the individual become stateless by losing his/her Danish citizenship. This amendment is therefore aimed at individuals possessing double citizenship.

Good practices

In June 2004 the council on prevention of crime (Det kriminalpræventive råd) published a report concerning the connection between crime, ethnicity and social conditions. The report examines the extent of the problem, the reasons and the previous experience with prevention of crime committed by ethnic minorities. It concludes that the overrepresentation of ethnic minorities compared with ethnic Danes who commit crime is due to poor social and economical conditions rather than the ethnicity.

[35] Lov (2004:311) om ændring af Indfødsretsloven

Reasons for concern

Concerning Act (2004:311) amending act on nationality, the amendment is not in harmony with the general opinion on the fundamental right to citizenship and is a change of a 200 year old practice according to which every one who is born and raised in Denmark has a right to citizenship when reaching the age of majority.

It is concerning that the rules in the Aliens Act, on starting allowance, indirectly discriminate legal resident ethnic minorities in Denmark and that the new provisions concerning economic contributions to spouses also may indirectly discriminate women of other ethnic background that Danish, compared with ethnic Danish women, who generally have a greater connection to the labour market.

Recently the Police Director of Copenhagen stated her concern of the increase of youngsters with ethnic minority background below the age of 18 committing crimes. In 82 per cent of all cases before the court of preliminary hearing in Copenhagen (Dommervagten), relating to young people below the age of 18, concerned individuals with an ethnic minority background.

Remedies available to the victims of discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee welcomed the newly established mechanism within the Danish Institute for Human Rights to receive complaints from individuals on cases of discrimination based on race, and encourages the State party to continue to take effective measures to strengthen the work of this Institute, inter alia, through allocation of adequate resources, and to consider expanding its competence so as to enable receipt of complaints on violations of wider range of human rights, including economic, social and cultural rights.

Legislative initiatives, national case law and practices of national authorities

Udviddelse af mandate klagekomite

Complaints Committee for Ethnic Equal Treatment/ Journal no. 711.2/Decision of October 20th 2004
The Complaints Committee could not consider a complaint about a person having been registered as having left the country, as a statement in the case would mean production of evidence. This cannot take place at the Committee.

Complaints Committee for Ethnic Equal Treatment/ Journal No. 770.5 /Decision of June 2nd 2004
The Complaints Committee for Ethnic Equal Treatment rejected a complaint concerning some articles in a newspaper, since this was found to be outside the scope of the Act on Ethnic Equal Treatment.

Complaints Committee for Ethnic Equal Treatment/ Journal No. 770.2/ Decision of May 12th 2004
The Complaints Committee for Ethnic Equal Treatment did not find it substantiated that a caseworker had put forward racial degrading remarks during a meeting.

Reasonable accommodation of the specific needs of certain groups, especially religious or ethnic minorities

Legislative initiatives, national case law and practices of national authorities

In June 2004 the Parliament adopted [Act (2004:441 amending act on hospital service and act on public health security][36]. The act introduces in section 5 (h) a charge for interpretation for citizens who have been resident in Denmark for at least 7 years. The objective is to incite the learning of Danish.

Reasons for concern

In relation to Act (2004:441) amending act on hospital services and act on public health security, this may infringe the duty for public hospitals to provide interpretation free of charge when necessary.

Positive actions aiming at the professional integration of certain groups

Good practices

An initiative financed by the European Union and initiated by the Danish Institute for Human Rights (DIHR) to implement the EU directives on equal treatment focusing on diversity in the labour market. The objective of the project is to start a dialogue and bring diversity in the labour market into focus. A price (Mangfoldighed i Arbejdslivet) has since March 2004 been awarded by the DIHR to private and public enterprise which have taken steps to promote diversity and prevent unequal treatment on grounds of sex, ethnicity, age, handicap, sexual orientation or religion.

Protection of Gypsies / Romas

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Commissioner for Human Rights, Mr. Alvaro Gil-Robles, expressed concern in his report, after his visit to Denmark 13th-16th April 2004 concerning the separation of ethnic Danish pupils and bilingual pupils in special classes and the decision to establish a school just for bilingual pupils in Høje Taatrup. The separation deprives the children from getting acquainted with each other and the possibility to teach them to live aside as equal citizens. In addition to this, the pupils with another ethnic background than Danish risk being marginalised later in life. In respect to the prevention of discrimination the Commissioner criticizes the Roma children's difficult access to education e.g. the special classes in the municipality of Helsingør which 30 children at the present attend. The majority of the children never return to "normal" classes again.
In reality, the criteria for placement of the children in these classes are the children's ethnic background and not the individual need. The Commissioner wonders why the Roma children with special educational needs are not placed in traditional special classes with Danish pupils with similar needs.

Legislative initiatives, national case law and practices of national authorities

Few cases of discrimination, racism and xenophobia towards pupils, students, teachers etc. are documented and publicly accessible. This does not necessarily indicate that no such cases

[36] Lov (2004:441) om ændring af lov om sygehusvæsenet og lov om offentlig sygesikring

exist. It is more likely to be a result of not having - until autumn 2003 - any centralised body dealing specifically with incidents of this nature in educational settings.

One well documented case, however, does exist: On behalf of the parents of 30 children with Roma descent, Romano (a Danish Roma Association) wrote a complaint in December 2002 to the supervisory committee of Frederiksborg County and asked them to look into the policy of the Municipality of Helsingør of ascribing children to special Romi-classes. No thorough psychological-pedagogical investigation was made as to why each child did not fit into the standardised offers of education and whether an offer other than placement in the Romi-classes would suit the individual needs of the child better. The Municipality has described these children as "being beyond placement in normal classes or special needs classes." The Romi-classes do nonetheless show common signs of being special needs classes (e.g. only 10 children in each of the three classes). The complaint calls attention both to the unclear status of the classes (as the Municipality may potentially have violated the Act on the Folkeskole*),* as well as to the practice of operating with a type of class that is based only upon ethnic criteria (seemingly as a consequence of regarding ethnic descent as one of the children's greatest problems) and thereby practising racial segregation. In a later letter from Helsingør Municipality to the Council of Supervision in the County of Frederiksborg, dated February 4th 2003, the Municipality of Helsingør state that the classes are meant for children with remarkable absence from school, and "The children in these classes are at the moment only children with Romi background as they happen to be the only children with a remarkable absence from school". After the complaint was processed the practice of the Municipality of Helsingør has been deemed illegal.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

Please refer to article 10 concerning the Proposal (2004:201) for parliamentary resolution prohibiting public employees wearing culturally conditioned headgear.

Reasons for concern

Please refer to article 10 concerning the Proposal (2004:201) for parliamentary resolution prohibiting public employees wearing culturally conditioned headgear.

Protection of linguistic minorities

Legislative initiatives, national case law and practices of national authorities

The structural reform of the municipalities. Please see the Thematic Report on National Minorities 2004.

Reasons for concern

In relation to the introduction of compulsory pre-school language stimulation courses, The Committee on Economic, Social and Cultural Rights heard NGOs on the situation in Denmark before the examination of Denmark. The Representative of Documentary and Advisory Centre on Racial Discrimination (DRC), said that a number of teachers with a minority background had had experiences at child care institutions in Denmark, where they were not allowed to speak in their mother tongue with children, who spoke the same language. The fact that those children were banned from speaking their mother tongue violated their rights. Many

institutions imposed the Danish language on minority children. Employers also tended to only recruit workers who spoke Danish, thus discriminating against others.

The German minority in southern Jutland is the only recognized minority in Denmark. Please see the Thematic Report on National Minorities 2004.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The International Labour Organisation's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has in 2004 in respect to ILO Convention no. 169, indigenous people's rights, noticed that the committee not yet has received Denmark's report from 2004. The committee therefore repeats its former comments and requests the government to review for Supreme Court decision U.2004.382 H concerning the Thule tribal in Greenland and the initiatives concerning compensation to the involved persons and initiatives with a view to securing that Greenlanders will not be forced be move without consent in the future and only if the procedure in article 16 is followed.

Legislative initiatives, national case law and practices of national authorities

Supreme Court U.2004.382H

The Supreme Court maintained that the Thule tribe was not a tribe or a special indigenous people as it is defined in the ILO Convention from 1989 on Indigenous People and Tribal People in Sovereign States, article 1, paragraph 1.
The Supreme Court did not find reasons to raise the compensation awarded by the High Court. Furthermore, the Supreme Court found that the applicants claim for an individual compensation of Danish KKR 250.000 could not be reimbursed, as the Thule tribe had already received a full compensation for relocation and therefore only had a claim of reimbursement for indignity. On this basis, the Supreme Court upheld the decision of the High Court.

Good practices

The government's strategy towards ghettoization was released at a press conference in May 2004. The objective is to stop the tendencies towards ghettoization and to solve some of the problems in the ghettoized areas e.g. initiatives concerning assignment of housing, crime prevention, home-work help etc. are proposed.

Due to the significant changes in society in Greenland during the last 40-50 years a commission was appointed in 1994 by the Danish government in order to revise the judicial system in Greenland. In 2004 the final report no. 1442/2004[37] was published. The report included bills amending the Criminal code from 1954 and the Administration of Justice Act from 1951.

Reasons for concern

Attention must be drawn to the problems in relation to the placement of ethnic minorities' children outside their homes. The importance of equal treatment of children is emphasised as well as the importance of showing respect of the child's cultural background and diversity in general.

[37] Betænkning nr. 1442/2004

The Think tank appointed by the Ministry of Integration has published its fourth report 'Foreign- and integration politics in Denmark and other selected countries" in 2004[38]. It is on basis of a comparison between the chosen countries concluded that the Danish rules concerning family reunification are more restrictive than those of other countries and that Denmark along with Sweden and Holland are the only countries, which have a specific program for integration of new arrived aliens.

Article 23. Equality between man and women

Gender discrimination in work and employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.

The Committee called upon Denmark to adopt effective measures to ensure equality between men and women as provided for in articles 2 (2) and 3 of ICESCR, including through implementing the principle of equal pay for work of equal value and ensuring participation of women in decision-making. The Committee requested Denmark to provide, in its next periodic report, detailed information on the progress made on gender discrimination issues, including through affirmative actions.

Legislative initiatives, national case law and practices of national authorities

In December 2003 [Act (2003:1153) amending act on daily benefits in case of sickness or birth][39] was adopted by the Parliament.

Decision no. 10 on the 26. September 2002 from the Equal Opportunities Commission (Ligestillingsnævnet) stated that female wage earners, who do not earn the right to holiday allowance according to the current legislation on vacation during the first 14 weeks of their maternal leave, will not be able to have a right to holiday allowance in the following year. Approximately 1000 women are affected by these rules. These women are therefore as mentioned in a poor situation due to their maternal leave. The objective of the act is to improve these women's conditions after and under the maternal leave. In the explanatory notes to the bill it is mentioned that it is also the Government's intention to ensure a correct implementation of the EU directive 92/85/EF. Since the decision in the Boyle-case C-411/96 from 1998 the Government has been unsure of where a right to vacation with payment is covered by the directive.

The Consumer Ombudsman received more than 100 complaints concerning Cult Scandinavia ApS's advertisement for Cult Shaker which were displayed at bus stop places and pillars. The advertisement depicted two naked women embracing each other intimately with the writhing "Enjoy Shaker – with a twist". One of the women held a Shaker bottle in her hand. The marketing of Cult Shaker was according to the Consumer Ombudsman unethical and in breach of the principle of good marketing practice in section 1 in the Marketing Act. The advertisement might also infringe the Ombudsman's guidelines for sex discriminating advertisements according to which a person must not be reduced to a sex object.

[38] Udlændinge- og integrationspolitikken i Danmark og udvalgte lande
[39] Lov (2003:1153) om ændring af lov om dagpenge ved sygdom eller fødsel

The Company did not agree with the Consumer Ombudsman but chose however to remove the advertisements.

Reasons for concern

In November 2004 the organization KTO published a statistic report concerning sex related differences in salary between employees in the private and public sector.
In both sectors the women's salary amount to 83 % of the men's. If other factors such as age and education are taken into consideration the percentage rises however.

Positive actions seeking to promote the professional integration of women

Reasons for concern

Reluctance to adopt positive measures with the aim of ensuring 50 per cent representation of women in decision making bodies.

Remedies available to the victim of gender discrimination (burden of the proof, level of penalties, standing of organisations to file suits)

Legislative initiatives, national case law and practices of national authorities

The Gender Equality Board
A total of 26 decisions in the period. In 11 cases the board found a violation.

Unjustified dismissal in relation to pregnancy or parental leave
Cases regarding unjustified dismissal: 14
Cases where compensation was awarded: 8

In average compensation varies from approx. DKK 100.000 (13.500 EURO) to DKK 300.000 (40.500 EURO).

Other relevant developments

Reasons for concern

Muslim women according to Danish legislation have a *de facto* and *de jure* access to divorce if the they meet the ordinary requirements. The right to divorce is not a protected human right. However, the state is obliged, according to ICCPR article 23 and ICEDAW article 16 (1) litra a, to protect women from being discriminated on grounds of gender and must therefore ensure that women in reality enjoy the same right to divorce as men.
It could be suggested that the protection of the equal access to divorce is ensured in a non legal way e.g. by educating of the women and by teaching imams and other preachers Danish marriage legislation. If the legal way is chosen the right to freedom of religion risks being infringed.

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Positive aspects

There is a tendency towards hearing younger children, however there still exits some inconsistencies in Danish legislation.

Reasons for concern

As also stated by the Committee of the Right of the Child concerns could still be raised, even taken the positive developments in regard, whether there exits an effective hearing of the child, not only in court proceedings but also in various administrative decisions, including with respect to child protection services, custody proceedings and the placement of children in institutions. Concerns could in particular be raised in regard to the effective promotion and encouragement of the respect for the views of children below the age of 12 years, according to his/her evolving capacities.

Juvenile offenders

Legislative initiatives, national case law and practices of national authorities

In July 2004 [Bill (2004:443) amending the Administration of Justice Act][40] came into force.

The purpose of the bill is to create a clear and exhaustive law regulation of procedural compulsory interferences, with a penal element, against children below the age of criminal responsibility. It is suggested that a new chapter (75b), containing provisions of this, is inserted in the Administration of Justice Act. In this way the necessary power to use compulsory interferences against children are created. In order to strengthen the attention to the vulnerability of children, a special provision regarding proportionality (§821) is inserted.

[Draft order concerning solitary confinement and order on how the police use certain measures of force etc.][41]
The objective of the order is to regulate solitary confinement of intoxicated persons and children between 12 and 15 years of age. It is suggested that a lower age limit (12 years) is set for solitary confinement. Furthermore, children between 12 and 15 years of age must, as an absolute maximum, only spend 4 hours in detention. Solitary confinement can only take place when alternative placement is unwarrantable as a result of the child's behaviour. It appears from the order that there is no absolute prohibition against placing a child and an adult in the same cell.

Positive aspects

As regards the draft order concerning solitary confinement and order on how the police use certain measures of force etc. it should be emphasized, that in general it is positive that an enhanced precision of the law foundation, regarding solitary confinement, is proposed. This will help in fulfilling the qualitative demands of human rights law regarding the amplification of the law foundation. Also, it is positive that an age limit has been set for solitary confinement, meaning that children below the age of 12 cannot be placed in confinement.

In relation to the amendment of the Administration of Justice Act it is positive that clear and exhaustive law regulation is created. This will prevent non-regulated compulsory interferences.

Reasons for concern

As regards the draft order concerning solitary confinement it is a matter of concern that a child's right to be heard before being placed in solitary confinement does not appear directly

[40] Forslag (2004:443) til lov om ændring af retsplejeloven
[41] Udkast til bekendtgørelse om detentionsanbringelse og bekendtgørelse om politiets anvendelse af visse magtmidler m.v.

from the order. Therefore, it is important to emphasize the duty of the police to inform and communicate with the child.
Based on the wording of the ECHR article 5, 1 and practice from The European Court of Human Rights, the restraining of children and intoxicated people could be assessed as a serious measure and should be subject to an strict proportionality test. Imprisonment must be necessary and other less radical measures considered. To emphasize the importance of solitary confinement being used as a last measure, the fact that it is an exceptional measure should appear clearly from the wording of the provision (§1, 4.)
The publication does not in a satisfactory manner secure an intoxicated child from assault, if placed in a cell with one or more adults. It is recommended that an absolute prohibition, against placing children in detention with adults, is induced into the law, as such a placement would violate Denmark's international obligations, in specific the ICRC, litra c.

As regards the amendment of the Administration of Justice Act, it is regrettable that the ICRC, in general, is not introduced in the considerations. The bill should reflect the ICRC article 12 to a greater extent and that warrant to solitary confinement is not created. It is also suggested that children should have an increased opportunity to have legal assistance – in relation to the right to remain silent and that the legal guarantees ensured by the Administration of Justice Act applying to persons who are "charged" also apply to children under the age of criminal responsibility, who cannot be "charged" in the meaning of the act.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Supreme Court found that the testimony of the two young boys in a case, where their mother was accused of assaulting a child. was of crucial importance to the case, and that the nature of the case made it plausible to demand the two boys to testify Such a demand was not deemed to be contrary to the ECHR article 8 or the United Nations Convention on the Rights of the Child article 3.

Positive aspects

In the plan of action 'The Government's visions and strategies for an improved integration'[42] from June 2003 the Government has launched an initiative to improve the use of removal of children from the home. According to initiative No. 11 the Government has launched a project to improve the effort in relation to ethnic minority children and ensure that the authorities do not refrain from proper measures on the basis of a mistaken respect for cultural norms. The project is expected to be finalized in January 2005.

Good practices

In September 2004, The Ministry of Social Affairs announced that it plans to distribute 61 million DDK to 38 projects all over the country to help children of addicts and mentally ill persons during a period of 4 years.

The plan is to improve the prevention of child abuse through targeted work in exposed communities and by focusing on the problem through information campaigns and by educating people in order to discover abuse early. Also, it is suggested that a time limit is determined in the law, and that the council must act within this time limit, whenever notified of abuse. Finally it is recommended that initiative is taken to ensure that knowledge of the symptoms of child abuse is part of the education of the relevant occupational group.

[42] Regeringens visioner og strategier for bedre Integration, juni 2003

Reasons for concern

In the Commissioner for Human Rights' report concerning Denmark it is suggested that the rules concerning family reunification of children are amended, so that the maximum age is raised to 18 years, in accordance with the principles in the ICRC.
The government has lowered the age limit from 18 to 15 years, because of the regard to integrating children and to avoid children being brought up and educated in their country of origin and brought to Denmark shortly before they turn 18 years old.
The Commissioner mentions that the Council for Ethnic Minorities have assessed that such a practice can be seen, although moderately.
The obligations of the state, in connection with the ICRC, to ensure the interest of the child in questions relating to the child, along with the right of the child to be raised in a family environment in relation to article 10, means that children should be given the opportunity to apply for family reunification.

In a survey on the procedure in the municipalities of forced removal of children from the family, it is in the report concluded that case workers treat children with ethnic minority background differently from ethnically Danish children.
Some case workers fear an alienation of the child from the biological parents afterwards if the mother tongue of the child is not stimulated. Furthermore some case workers state that they do not judge some incidents as severely as they would if a Danish family was concerned due to acceptance of special cultural patterns in the ethnic minority family environment. This causes the case workers to intervene only when an abuse is extreme, the end result being differential treatment of ethnic minority children and Danish children.

There exists a practical problem in relation to the placements of ethnic minority children outside the home and look forward to specific initiatives from the Government. While it is important to treat children equally, irrespective of their ethnic origin, it is still important to take into consideration the respect for the cultural norms of the child.

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Legislative initiatives, national case law and practices of national authorities

On 17th of November 2004 [Bill (2004:114) on care testaments for use in cases where a person is struck be senile dementia] was introduced in Parliament[43]. The bill secures that elder patients suffering from senile dementia maintain the possibility of staying in their usual surroundings The aim of the bill is therefore to support that the persons concerned remain capable of taking a responsibility for their own lives and have the possibility of expressing their wishes concerning care which will be provided in the future.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

A bill was put forward in parliament in November 2004 amending the Act on prohibition against differential treatment in the labour market and partly implementing the EU Council Directive 2000/78/EC by implementing disability and age as criteria for discrimination. According to an agreement with the European Commission the criteria should at the latest be implemented by December 2004.

[43] Forslag til lov (2004:114) om plejetestamenter til brug i tilfælde af at en person rammes af demens.

Reasons for concern

Concerning the rights of the Elderly, in Danish legislation there exists no protection outside the labour market against discrimination based on age, furthermore there is a lack of an effective remedy on issues of discrimination based on age, since no specialized body exist in this area of discrimination.

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

[Bill (2004:92) amending the Act on Prohibition Against Differential Treatment in the Labour Market (Insertion of disability and age as criteria in the act][44], was introduced in parliament on November 11 2004. The bill partly implements the EU Council Directive 2000/78/EC by implementing disability and age as criteria for discrimination. According to an agreement with the European Commission the criteria should at the latest be implemented in December 2004.
According to the amendment it will be a case of direct discrimination if an employer omits hiring, discriminates or fires an employee because of the person's handicap or age. It will be a case of indirect discrimination, if an employer lists conditions that reduce the possibilities of employees belonging to a certain age group or employees with a handicap, compared to others, unless the conditions are objective and proportionate to the occupation in question.
Moreover the employer is obliged to provide reasonable accommodation, with the purpose of giving a person with reduced functions access to occupation, unless the employer is placed with a disproportionately large burden.

Reasons for concern

As regards the Act on Prohibition Against Differential Treatment in the Labour Market (Insertion of disability and age as criteria in the act) it is a necessity that complaints regarding discrimination on grounds of age and handicap, can be treated by an administrative complaints organ, in order to put these complaints on equal footing with complaints regarding gender and ethnicity and avoid listing grounds of discrimination hierarchically.
One could recommend that the treatment of complaints of discrimination is joined in a complaints organ, dealing with all grounds of discrimination. Such unification will signal that all forms of discrimination are equally serious and should enjoy the same effective protection. Moreover, a joint complaints organ will be of enhanced practical use to the individual complainant, as double discrimination often occurs – e.g. in relation to ethnicity and handicap. In order to achieve a composition of employees reflecting the structure of the society, the one could recommend a special provision on positive steps, recognizing that it can be necessary, for a limited period of time, to prefer minority groups, when an employer recruits new employees. It could be suggested that it is made clear, either in the text of the law or in the remarks hereto that an equal protection applies to persons, who are discriminated upon, because they have or do not have a certain handicap.

Denmark still does not have a general ban against discrimination protecting against discrimination in other fields than employment, including in access to services and in education.

[44] Forslag til lov (2004: 92) om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (Indsættelse af alder og handicap som kriterier i loven)

Professional integration of persons with disabilities: positive actions and employment quotas

Good practices

An Internet Job website has been established: http://www.ijobnu.dk. The website is a portal for jobs for persons with disabilities and for companies seeking employees. The website also contains information on legislation and subsidy arrangement for hiring persons with disabilities. The project is initiated by disability NGO's, private companies, labour market organisations and the union of municipalities.[45]

Reasons for concern

Persons with disabilities continue to have a relatively low participation in the field of employment. Thus a statistical survey published in 2004 showed that 21 per cent of persons of working age have a disability and that 11 per cent in addition have a reduced capacity to work. Only 58 per cent of persons with a disability are employed in the labour market on ordinary or special terms. Of the group of persons who have a disability and a reduced capacity to work, only 47 per cent are in employment. Approximately 50 per cent of persons with disabilities who are not in employment answered that they would be able to work. Among the population of working age without disabilities, as many as 94 per cent are employed.[46]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 4 November, the Ministry of Traffic tabled a new act on individual transportation schemes.

Positive aspects

In June 2004 an amendment to the Building Act was passed. According to the new legislation, owners of publicly accessible building will have to make certain improvements to the building's accessibility provided that the costs of the improvements are lower than 9 per cent of the total costs of the planned building alteration. Improvements include accessible toilets and entrances in alignment with the ground.

Good practices

On the 1st of March 2004 the Minister of Science presented two new It-handicap projects, with the purpose of improving the access to the internet society for persons with reduced functions. The projects consist of establishing voice controlled navigation on the internet and linux for the blind and the visually impaired.

A leaflet concerning the use of force and other interferences in the right of self determination was published by the Ministry of Social Affairs in 2004. It is addressed to employees working with adult human beings, who physically have severely reduced functions. The purpose is to ensure the rule of law for persons with reduced physical functioning, who are not themselves able to oversee the consequences of their choices and actions and who are not capable of giving an informed consent. The use of force and other interventions in the right of self determination should be limited to situations where use of force is strictly necessary.

[45]De Samvirkende Invalideorganisationer, Arbejdsmarkedsstyrelsen, DA, LO, KL and major Danish companies: Novo Nordisk, Coloplast, TDC and McDonald's Danmark.

[46] Source: Clausen, Thomas and others: Handicap og beskæftigelse – et forhindringsløb? 2004:03, Copenhagen: Socialforskningsinstituttet.

It is emphasized in the leaflet that, as a ground rule, forcible measures must never be used when nurturing people, as all human beings have a constitutional right to decide over their own lives. People who have severely reduced physical functioning can nevertheless end up in situations, where he or she puts him or herself at risk, which is why interferences with the right to self determination can be legitimate. It is further emphasized that power must never replace care and social aid and that the use of force presupposes documentation for the reduced physical functioning and that an attempt to make the person participate voluntarily should always be made. Furthermore the principles of proportionality, legality and leniency are underlined.

The Ministry of Social Affairs has published a leaflet in September 2004 regarding the balance between the duty to care and the use of force in relation to disabled persons e.g. the purpose of the rules concerning the use of force is described.

CHAPTER IV : SOLIDARITY

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

No significant developments to be reported

Article 28. Right of collective bargaining and action

The right of collective action (right to strike) and the freedom of enterprise or the right to property

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Social Charter, European Committee on Social Rights Conclusions XVII-1 (Denmark) 2004.
European Committee on Social Rights delivered 17 conclusions regarding Denmark in 2004 and found an inconsistency between Danish law and the European Social Charter in five incidents. The Committee considered that the situation in Denmark was incompatible with Article 5 of the Charter because closed shop clauses were permitted in national law, in breach of the right to freedom of association.
Also, civil servants employed under the Civil Service Act are denied the right to strike. The Committee noted that there was no guarantee for workers who participated in a lawful strike to be re-employed and considers that this situation was not in conformity with Article 6 (4) of the Charter. Finally, The Committee concluded that the situation in Denmark was not in conformity with Article 6 (2) of the Charter because the right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register was restricted.

Article 29. Right of access to placement services

No significant developments to be reported

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

Legislative initiatives, national case law and practices of national authorities

The Gender Equality Board

A total of 26 decisions in the period. In 11 cases the board found a violation.

Unjustified dismissal in relation to pregnancy or parental leave

Cases regarding unjustified dismissal: 14
Cases where compensation was awarded: 8

Compensation due in the event of an unjustified dismissal

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In average compensation varies from DKK 100.000 (13.500 EURO) to DKK 300.000 (40.500 EURO).

Article 31. Fair and just working conditions

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

No relevant information concerning international case law and observations, national legislation, regulation, case law or administrative practice.

The Committee on Economic, Social and Cultural Rights has reviewed the fourth periodic report of Denmark on how Denmark has implemented the provisions of the International Covenant on Economic, Social and Cultural Rights.
The members of the Committee raised a series of questions. One expert said that foreigners working on Danish flag-carrier ships did not enjoy the same rights as Danish seamen in terms of income, trade union activities and collective bargaining. The delegation was asked to clarify the situation.

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

No significant developments to be reported

Article 33. Family and professional life

Parental leaves

Legislative initiatives, national case law and practices of national authorities

The establishment of a Ministry for the family and the consumers

Family life and professional promotion

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.

The Committee recommended that Denmark continue strengthening programmes to reduce unemployment targeting the most affected groups, including immigrants, refugees, men in the agegroup 55-59, new college graduates and women. It also recommended that Denmark take further facilitative measures for men and women to reconcile professional and family life.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion (in general)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

European Social Charter, European Committee on Social Rights Conclusions XVII-1 (Denmark) 2004.
The European Committee on Social Rights has delivered 17 conclusions regarding Denmark and found an inconsistency between Danish law and the European Social Charter in five incidents. Article 13 (1), the right to social and medical assistance, was mentioned, as foreigners who are legally residing in Denmark or migrant workers were not treated as Danish citizens in regards to continued assistance and the demand of 7 years of residence in Denmark in order to receive assistance allowance.
Also, article 12, the right to social welfare, including for foreigners, was mentioned. Here the starting aid, in relation to assistance allowance, was assessed to be an expression of indirect discrimination, as the obligation to reside affects foreigners in a substantial way. This was not in conformity with the Social Charter.

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee called upon Denmark to strengthen its efforts to combat poverty and social exclusion and to develop a mechanism for measuring the poverty level and to monitor it closely. In this respect, the Committee referred Denmark to its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10). The Committee requested that Denmark provided, in its next periodic report, disaggregated and comparative data on the number of people living in poverty and on progress made in reducing the incidence of poverty.

Social security in favour of persons moving within the Union

Legislative initiatives, national case law and practices of national authorities

On the 17th of November 2004 [Bill (2004:115) on improvement of the supplementary pension allowance] was introduced in Parliament[47]. The allowance in proposed raised with DDK 1.000. The bill is of interest to any one who is entitled to pension according to the Danish legislation but is resident in another European member state.

The board receiving and treating complaints about administrative decisions settled on the 17th of June 2004 a principle case concerning economical help to a woman, who was resident in Sweden but working in Denmark, which she was entitled to according to the Danish Act on Service. The decision was published as SM C-20-04.
It was stressed by the board that the woman was embraced by Danish legislation according to regulation (EEC) No 1408/71 of the Council. It was also noted that allowance covering increased expenses and lost earnings where to be characterised as family allowances as defined in the regulation.
The provision in the Danish Act on Service according to which it is a condition in order to receive the allowance that the person is legally resident in Denmark. The regulation had to be given priority to the Danish provision.

[47] Forslag til lov (2004:115) om forbedring af den supplerende pensionsydelse.

Measures promoting the right to housing

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark. E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee encouraged Denmark to consider enacting specific legislation providing for the right to housing. The Committee also recommended, in line with the Committee's general comment No. 4, the State party to adopt national policies to ensure that all families have adequate housing facilities, and that adequate resources are allocated for social housing, particularly for disadvantaged and marginalised groups such as immigrants. The Committee further encouraged Denmark to take measures to address the problem of homelessness, particularly among the immigrant population.

Legislative initiatives, national case law and practices of national authorities

On the grounds of Act no. 374 of 28 May 2003 on Ethnic Equal Treatment, the Complaints Committee for Ethnic Equal Treatment was established at the Danish Institute for Human Rights (DIHR). The committee has been given the power to hear cases on discrimination. The committee's power includes hearing cases regarding discrimination in the housing sector. The committee can examine cases on its own initiative.

Complaints Committee for Ethnic Equal Treatment, journal No. 770.3/Decision of 19th August 2004:
On the 3rd of December 2003 DACoRD referred a case to the committee regarding a building association letting apartments to students. The building association requested information on nationality in their application forms. The committee decided to examine the case on its own initiative. It had not received any concrete complaints from students, who had been discriminated against by the building association.
The committee concluded, based on the information provided by the building association that the association did not use the information on nationality to discriminate against students of other ethnic origin than Danish.
The committee, however, stated that the use of information on nationality can result in indirect discrimination due to race or ethnic origin as prohibited in section 3 (1) of the Act on Ethnic Equal Treatment, and that persons or companies delivering goods or services shall not request information on customers' nationality, unless it is founded on an objective purpose and the means to fulfil it are proportional and necessary.

The committee has on its own initiative examined a case regarding a building association in the north of Jutland. Prior to the committee's examination the newspaper "Politiken" had discovered a very low percentage of immigrant inhabitants in the buildings of the association compared to other buildings in the same area. The chairman of the building association denied that racial discrimination had taken place in the administration of the waiting lists for accommodation in the association's buildings. The decision made by the committee has not been published, but the committee has informed the author that based on the information available in the case, it could not be concluded that racial discrimination had taken place in the administration of the waiting lists of the association.

In September 2004 the newspaper "Urban" made enquiries to several building associations in order to investigate if racial discrimination took place in the administration of waiting lists. The result indicated discrimination. Due to the public debate on racial discrimination in building associations' administration of waiting lists, the committee has contacted the Ministry of Social Affairs, in order to get the minister's response to what will be done to

combat racial discrimination in the housing sector. The committee is currently waiting for the minister to answer.

The board receiving and treating complaints about administrative decisions settled on the 3rd of December 2003 a case concerning definition of the notion of homelessness. The decision was published as SM C-60-03. The board found that the decision whether a person, who suddenly has lost his or her home and therefore is homeless, temporarily is entitled to housing according to the Act on Service paragraph 66, must depend on a current and concrete assessment.

Reasons for concern

In the period under review no reports or surveys have been produced on the subject of racism and discrimination in the housing sector. However, one report has touched the issue briefly. Catinét Research has prepared a report on the status of integration in Denmark for the first half-year of 2004. Chapter 6 of the report is about the discrimination experienced by refugees, immigrants and descendents. The overall result is that 62.6 percent of the respondents do not experience discrimination, while 27 percent of the respondents answer that they do experience discrimination. The numbers show an overall decrease in experienced discrimination compared to the numbers for the previous four years. One of the questions asked in the survey is "where have you experienced discrimination?" 5 percent of the respondents answer that they have experienced discrimination in the process of finding accommodation. The number shows an increase of experienced discrimination in this situation compared to the years 2000 and 2002. 7 percent answer that they experience discrimination in their neighbourhood. The number shows a decrease of experienced discrimination compared to the 1st quarter of 2000 (app. 19 percent) and 2002 (app. 12 percent).

Other relevant developments

Reasons for concern

The Act on an Active Social Policy and the Act on Integration were in 2002 amended whereby the Government introduced new principles for entitlement to cash benefit allowances so that only persons who have resided lawfully in Denmark for at least seven out of the preceding eight years are entitled to the full amount of cash benefits. Persons who do not meet the residence requirement, but otherwise satisfy the conditions laid down by the regulations, will be entitled to a starting allowance benefit which is a lower cash benefit allowance than the ordinary cash benefit allowance. All persons coming to Denmark are subject to the new regulations. This applies to both Danes and non-Danes, irrespective of the persons' race, color, national or ethnic origin. The new regulation could cause social marginalization, poverty and a greater dependence on the social welfare system than before the enforcement of the regulation. The regulation is an indirect discrimination of ethnic minorities since it has an impact mainly on foreigners coming to Denmark.

It is concerning that the amendments in the Act on active Social Policy and the Act on Integration in regards to starting allowance indirectly discriminate lawful residents of ethnic minority origin in Denmark. This concern has equally been acknowledged in the latest report from the European Committee on Social Rights.

In regards to supplementary payment to spouse (Ægtefællebidrag) in June 2003 The Act on Active Social Politics Section 13 (7) and (8) was amended so that the municipalities have got an extended mandate to evaluate whether one of the spouses, when both are on cash allowance benefits (kontanthjælp), is not available for the labor market.
Cash allowance benefits are given to persons who due to a change in their situation (unemployment, illness, pregnancy or birth, separation or divorce) are not able to provide for

themselves or for their family. It is generally required that persons receiving cash allowance benefits should be available for the labor market and be actively seeking work. The persons may not have any other economic assets. Spouses have the obligation to provide for each other. Cash allowance benefits are subject to taxation.
It is concerning that the new provision will indirectly discriminate women, especially women of ethnic minority origin who in comparison to ethnic Danish women have a very low affiliation to the labor market. According to the Ministry for Refugees, Immigrants and Integration, 53 per cent of women from underdeveloped countries (countries outside EU, Iceland, Norway, Switzerland and North America) are not affiliated with the labor market.

Article 35. Health care

Drugs (regulation, decriminalisation, substitutive treatments)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

No relevant information concerning international case law and observations, national legislation, regulation, case law or administrative practice.

The Committee on Economic, Social and Cultural Rights has reviewed the fourth periodic report of Denmark on how Denmark has implemented the provisions of the International Covenant on Economic, Social and Cultural Rights. The members of the Committee raised a series of questions. One expert referred to a newspaper article that indicated that the population in Greenland was decreasing; infant mortality was four times higher than in Denmark; alcoholism was a problem among indigenous pregnant women; and hospitals were far from the people. The Committee asked the delegation to clarify the situation.

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

Legislative initiatives, national case law and practices of national authorities

A draft bill amending the supply of electricity, gas and heat has been submitted to some organisations. The primary objective of the draft bill is to implement the political agreements of March 29th, concerning energy.

Reasons for concern

In an assessment to the Danish Energy Authority, the Danish Consumer Council criticizes a proposal on the alteration of electricity, gas and heat supply. The Council will now make an application to the Parliamentary Commission on Energy and Politics. In connection with this criticism the Council would like specific assurances on, how the Danish energy sector will evolve into a solid and competitive market and on, how the private consumers are ensured an enhanced influence.

The Danish Consumer Council commented on the political energy agreement and expressed its regrets of the lack of political objectives on the development of the Danish energy sector. The political energy agreement seems to focus merely on adapting the structure of the market of the energy sector, without any criteria of success being formulated, according to the council. It is of great importance that the representatives of the consumers in the board solely safeguard the interests of the private consumers.

In just eight years the expenses of an average family for use of water has risen from 2800 DKK to 7000 DKK. More than half of the expenditures are fees.

Article 37. Environmental protection

Right to a healthy environment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

No relevant information concerning international case law and observations, national legislation, regulation, case law or administrative practice.

Concluding Observations of the Committee on Economic, Social and Cultural Rights on Denmark E/C.12/1/Add.102 26 November 2004
Adopted by CSECR at the Thirty-third session 8 -26 November 2004.
The Committee recommended Denmark to continue taking measures for the effective implementation of programmes to prevent illicit substance consumption, tobacco smoking and alcohol abuse.

Article 38. Consumer protection

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In December 2003 The Maritime and Commercial Court delivered its verdict in two cases dealing with competition, instituted by the Consumer Ombudsman (the Carlsberg case and the Quaker Oats case.)
Both cases dealt with the use of competitions as a tool of marketing. The Consumer Ombudsman was convinced that the competitions were in breach of section 9 of the Marketing Act, stating the prohibition to initiate drawing lots or other aleatoric competitions, if participation is conditional upon purchase.
The Court did not agree with the Consumer Ombudsman. In the competition initiated by Carlsberg, the consumers could participate by sending in caps from bottles or by calling a voice response. Based on this, the Court believed the competitions to be compatible with the Marketing Act.

In another case from January 2004 The Maritime and Commercial Court assessed how large a fine, for sending out between 7650 and 15300 telefax commercials without the consent of the recipient, should be. The fine was set at 400.000 DKK.
The Consumer Ombudsman suggested a calculation model, to be used when measuring out the size of the fine, when the Marketing Act has been breached. The model should be used regardless of whether the unrequested marketing takes place via telefax, SMS or e-mail. The Court agreed with the Consumer Ombudsman and further emphasized the amount of unrequested applications, the economic damage the applications have caused the recipients and the number of complaints sent to the Consumer Ombudsman.

Positive aspects

The internet and telephone industry has for quite some time been criticized for not observing the Marketing Act. In the course of 2003, the Consumer Ombudsman held a number of meetings with firms operating in this area. As a result of these meetings, the Consumer

Ombudsman and the firms agreed to set out a number of guidelines in order to influence the business community to act in accordance with the law.

Good practices

In the last couple of years the Consumer Ombudsman has targeted his supervision towards problem areas affecting a large number of consumers.. In 2004 the Consumer Ombudsman has chosen to look at consumer problems relating to the tele industry and price marketing. Furthermore he has improved the effort to extend, to the public, the knowledge of the rules of the Marketing Act.

CHAPTER V : CITIZEN'S RIGHTS

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

No significant developments to be reported

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

No significant developments to be reported

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

No significant developments to be reported

Article 46. Diplomatic and consular protection

No significant developments to be reported

CHAPTER VI : JUSTICE

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

Access to a court

Legislative initiatives, national case law and practices of national authorities

High Court of Western Denmark U.2004.1378V
Rejection of trial with reference to settlement by arbitration did not constitute a violation of the ECHR article 6, 1.

The Ombudsman – Journal nr. 2004-0833-319
The case concerned a complaint about a fee for considering complaints. The Ombudsman denied dealing with the case rationae materiae as he agreed with the Ministry of Economy that the fee was not in breach of the principle of proportionality nor the ECHR article 6.

Good practices

The Ministry of Justice has drawn up a revised guide "How to complain to The European Court of Human Rights" describing the individual complaint access in the European Convention on Human Rights, i.e. cases where individuals or non governmental organizations wish to complain directly to the Court. Also, the complaints procedure is described in details.

Legal aid / judicial assistance

Positive aspects

With Report no. 1436/2004 on Reformation of the Administration of Justice in Civil Cases III, The Council on Administration of Justice delivered a partial report on access to court. The report deals with the general economic composition, of importance to the citizen's access to court, as well as the rules on court fees, costs, legal aid, free legal aid and legal expenses insurance. The report was based upon a request from the Ministry of Justice.

Report no. 1435/2004 concerns a revision of the military penal code and administration act, with the purpose of undertaking a general assessment of the military penal- and administration system, in the light of the development in society along with the new tasks of the armed forces, as well as in relation to Denmark's obligations under international law and human rights law, including The European Convention on Human Rights.
The focal point of the commission is that the position of the personnel of the armed forces should, to some extent, be equal to that of civilian citizens, with the effect that military personnel only has to endure specific limitations in ordinary guarantees concerning rule of law, if this is absolutely necessary.
Furthermore, the mandate of the commission was to assess if the access of military leaders and judge advocates to investigate and impose penalties should be altered – in specific if the access of the judge advocates to sentence personnel to imprisonment should be abolished, if the possibilities of judicial control with sentenced penalties should be improved and if the competence of military leaders to impose penalties and the organization of the military prosecution could raise problems in terms of independence and capacity.

Reasonable delay in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

Supreme Court U.2003.2031H

A sentence was reduced to imprisonment for 1½ years, which was considerably lower than a usual sentence for such a crime, as the length of the proceedings in the case that lasted 10 years amounted to a violation of the ECHR article 6.

High Court of Eastern Denmark U.2004.938Ø
As the case against T, was merely a part of the investigation of a number of more complex cases, which included many cases, a lot of persons and a large number of transactions necessitating many time consuming investigative steps, the length of the proceedings did not result in a violation of article 6,1.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In March the Parliament adopted [Act (2004:215) amending the Administration of Justice Act and various other acts][48].
The purpose of the bill is to widen the access to documents, in such a way that access to documents is no longer conditional upon legal interest. Moreover the rules on access to documents, in terminated penal cases, are simplified and joined in the Administration of Justice Act. As a correlate to this, a prohibition on publication of judgments and decisions in penal cases is proposed – unless the judgment or decision has been made anonymous, along with a prohibition to take pictures of the person charged, the accused and witnesses coming to or leaving the court in a penal case.
Finally an alteration of the rules on closing the doors in civil cases is suggested. This would make the courts more attractive as dispute solving organs for parties, who agree that they want limited publicity and who would otherwise be inclined to seek their dispute solved by private arbitration

Supreme Court U.2004.976H
The Supreme Court maintained that the case dealt with money or the value of money and that the court fee was calculated in accordance with law and that the fee did not, therefore, violate articles 6 and 14 of the ECHR.

High Court of Eastern Denmark U.2003.2624Ø
Playback of tapped phone conversations between police and an informer, who was deceased, did not constitute a violation of the ECHR article 6.

Article 48. Presumption of innocence and rights of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

Supreme Court – U.2004.1326H

[48] Lov (2004:215) om ændring a retsplejeloven og forskellige andre love

The trial in a case against T1 and T2 was expected to end at the city court in 2005, whereas the cases regarding participation where expected to end much earlier. T1 and T2 objected to the secretion of matters dealing with participation in certain cases and demanded that the city court should join the processing of all three penal cases. Otherwise there would, in cases regarding participation, be a risk of violating the presumption of innocence, as ensured by article 6, 2. Prosecution on the other hand felt that a joining of the cases would in itself lead to a considerate and unnecessary delay in cases regarding participation – contrary to the demand of a decision within a reasonable time, as ensured by article 6, 1.
The Supreme Court found that the case raised questions of important nature but decided that secretion of the cases should none the less take place.

The right to an interpreter

Legislative initiatives, national case law and practices of national authorities

Supreme Court U.2004.1054H

The Supreme Court upheld the decision of the High Court on the choice of an interpreter, who was not a state certified translator. This was not deemed to be a violation of the ECHR article.6.

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

Legality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

[Draft on proposal on consummation of certain penal decisions in the European Union.][49]
The purpose of the proposal is, among other things, to put into effect the Councils framework decision, 2003/577/RIA, on consummation, in the European Union, of decisions concerning freezing of assets or evidence. Furthermore, the proposal shall put into effect two drafts for framework decisions from the Council on mutual recognition of fines and of decisions on confiscation.
The key elements of the proposal, therefore, consists of rules on the consummation of the Danish authorities of decisions on sequestration, fines and confiscation, made in other member states, but with the desire to consummate them in Denmark.
The basis of the proposal is a duty for the Danish authorities to consummate such decisions, without further examining the decision, forming the actual basis of the consummation request, unless one of the grounds for dismissal, explicitly mentioned in the proposal, should prevent this.
On this basis the proposal creates warrant to initiate certain compulsory measures infringing on convention rights. In particular the proposal raises questions in relation to the right to respect for private life and correspondence.

Reasons for concern

One could draw attention to the question whether Denmark, when carrying out an interference with a convention right, can automatically assume that the guarantees concerning rule of law, inherent within the conventions, are taken into consideration in the country issuing the request. There is reason to believe that there is a passivity liability in specific cases, namely where it can be assumed that the rule of law is not respected and where Danish authorities neglect to investigate if that is in fact the case.

[49] Udkast til forslag til lov om fuldbyrdelse af visse strafferetlige afgørelser i Den Europæiske Union

In accordance with article 8 (2) (ECHR), an interference with the right to respect for private life and correspondence can be legit if the interference is in accordance with law, is necessary in a democratic society and is proportionate. The condition that the interference must be in accordance with law is not satisfied by the mere passing of a law. Article 8 (2) implies a demand of predictability in the application of the law. It is questionable whether the proposed law meets the requirements for predictability and accessibility, as a number of those actions that may lead to a decision on confiscation, are worded in a broad and unclear manner.

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

No significant developments to be reported

ANNEXE: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
a) the free and informed consent of the person concerned, according to the procedures laid down by law,
b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
c) the prohibition on making the human body and its parts as such a source of financial gain,
d) the prohibition of the reproductive cloning of human beings.

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

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

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

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

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

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY

Article 20: Equality before the law

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic
features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27 : Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32: Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient
resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
a) the right of every person to be heard, before any individual measure which would affect him or her
adversely is taken;
b) the right of every person to have access to his or her file, while respecting the legitimate interests of
confidentiality and of professional and business secrecy;
c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered

office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence
1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

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

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

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

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission
which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under

the conditions and within the limits defined by those Treaties.

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.