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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **DENMARK**

IN 2005

submitted to the Network by **Morten KJÆRUM**

on 15 December 2005

Reference: CFR-CDF/ DK/ 2005

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The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union

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 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 (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), 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), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

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Article 1. Human dignity

Article 2. Right to life

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In April 2005 the Ministry of Gender Equality launched a new plan of action to fight men's violence against women and children in the family. It describes the activities which aim at crime prevention, support to the victims, information collection etc. A main priority is women belonging to ethnic minorities and children. All together 64 million DDK have been earmarked for implementing the plan of action.

The Danish Research Centre on Gender Equality, Roskilde University, published the report *Trapped between Law and Life* (Fanget mellem lov og liv) on violence committed against ethnic minority women in the Scandinavian countries. The report describes the dilemma confronting abused minority women, when they leave their husbands. They face the choice of either staying in the abusive relationship until they can attain permanent residence permits, or breaking out and risking expulsion. The report is based on interviews with immigration authorities, attorneys, shelters and abused minority women. In the period 1 January 1998 – 22 November 2003, the Danish Immigration Service decided 275 cases, 83 of which had a residence permit that could be prolonged or non-revoked. This means that about 33 per cent of the women obtained a positive decision. A residence permit is revoked if a marriage is terminated and e.g. violence is not sufficiently documented, the woman has only stayed shortly or has inferior ties to Denmark. The report conclude whether a woman can uphold her residence permit pivots on her ties to Denmark, which is problematic, when violence has been documented.[1]

Reasons for concern

Every year 10.000 women are subjected to sexual assaults and 65.000 women are subjected to physical violence. In two out of three incidents the violator is a current or former partner. Every week a woman is subject to attempted murder and in every second case the woman dies. The risk of being subject to violence is three times as high for young women as for women in general. In addition to this, approximately 20.000 children aged 5-14 witness their mother being subjected to acts of violence and 2.000 children move to a crisis centre with their mother.

Other relevant developments

Good practices

In 2005 many initiatives have been taken in order to combat acts of terrorism.

On the 2-3 May 2005 the Intelligence Service held a conference "The Roots of Terrorism in Europe" on terrorism and Islamic radicalisation in Europe.

[1] English version available at: http://www.celi.dk/cache/article/file/Rapport_uk1.pdf

The Government set up a working group with the task to examine the level of readiness in relation to acts of terrorism as well as the provided measures to combat such acts.
The working group published in November 2005 the report "The Danish' society's effort and readiness of action against terrorism" (*Det danske samfunds indsats og beredskab mod terror)*. The report holds 49 suggestions for e.g. increased powers for the police and more surveillance of citizens at public places (however some of them are quiet far reaching in relation to e.g. the right to privacy).

The Danish Security Intelligence Service (PET) collects data on racially motivated crimes, including racially motivated violence, arson, harassment etc. In May 2005 PET hosted a conference with the Title: *Terrorkonference 2005 - The Roots of Terrorism in Europe*[2], dealing with Islamic radicalisation and terrorism.

On 20 September 2005 the Prime Minister – as a result of the terror attacks in London in July – invited imams from different Muslim religious communities, chairmen from a range of national minority associations and elected members of political institutions with a Muslim background to a meeting in order to discuss how to counteract radicalism and attempts to misuse Islam as apart of acts of violence.

Reasons for concern

Many of the recommendations in the report on the fight on terrorism will result in interference with fundamental rights and have serious implications as to upholding the principle of the rule of law as governing the society. The Government has acknowledged that certain of the proposals have an unacceptable impact on especially the right to privacy. One proposal e.g. deals with scanning telephone conversations of an entire block of flats without any concrete suspicions. It seems that this proposal has been assessed to be to far reaching and has therefore been abandoned. To decide in the future whether the recommendations shall be implemented presupposes democratic and thorough debate on what is effective, necessary and proportional investigations methods in the light of the current terror threat.

Article 3. Right to the integrity of the person

Rights of the patients

Positive aspects

According to statistics from 2004 from the National Board of Health concerning the use of force in the psychiatry 20 per cent of psychiatric patients were subject to the use of force in 2004, which is in line with the use of force in the previous years. However, the use of fixation with a belt has been reduced with 30 per cent from 2003 to 2004 as the number of fixations was 6 859 in 2003 against 4 821 in 2004.

The main reason for the reduction is mainly an improved dialog between the patient and the medical staff, an increased awareness and respect for the integrity of the patient and an attempt to use alternative methods of treatment.

[2] Conference program available at: http://www.pet.dk/upload/konferenceprogram_2005.pdf

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

Penal institutions and institutions for the detention of persons with a mental disability

Good practices

A report on special measures for criminals with mental aberrations in a human rights context will be publicised by The Danish Institute for Human Rights (hereafter DIHR) in January 2006. The report is financed by the Council for Social Vulnerable Persons/The Ministry for Social Affairs. The report deals with the issue of discrimination when imposing sanctions on persons with a mental disability.

Fight against the impunity of persons guilty of acts of torture

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

Legislative initiatives, national case law and practices of national authorities
In May 2005 [Act (2005:369) amending the Criminal Code (Statute of limitation, increased sentence for serving sentence as a false substitute)][3] was adopted by Parliament.
The Act is a general revision of the statute of limitation in the Penal Code. Of significant importance in the revision is that the criminal responsibility is unlimited in Danish law when the crime committed is covered by an international agreement, to which Denmark is a party, and according to which the criminal responsibility is unlimited e.g. the Statute for the ICC.

Positive aspects

There is at the moment no definition or explicit prohibition of torture in the Danish Criminal Code or Military Criminal Code. The provisions on violence and threats are interpreted to also cover acts of torture, but the limitation of criminal responsibility for violence also applies to torture and is limited to 10 years. At the moment due to public pressure, politicians have become aware of the issues and plan to amend the legislation. This is a significant change in the Government's position, since the position last year was that an incorporation of the UN Convention against Torture or an explicit prohibition was legally unnecessary and only had symbolic value.

Good practices

Amnesty International in Denmark has collected 145.000 signatures recommending an explicit prohibition against torture in the Danish Criminal Code and handed them to the Danish Parliament.

Reasons for concern

The above mentioned amendment of the Criminal Code only deals with conventions where there is no time limit for criminal responsibility. Unfortunately, this is only the case for the Statute for the ICC and not for the UN Convention against Torture, since no articles deals with the question of limitation for criminal responsibility in the latter. The ordinary provision on period of limitation for criminal responsibility in relation to violent acts also covers acts of

[3] Lov (2004:369) om ændring af straffeloven. (Forældelse, skærpelse af straffen for falske afsonere m.v.).

torture and is limited to 10 years. The Special International Crimes Office[4] has therefore not been able to prosecute perpetrators in 3 cases.

Protection of the child against ill-treatments

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

The UN Committee on the Rights of the Child considered the third periodic report of Denmark (CRC/C/129/Add.3) on 30 September 2005. The Committee remained concerned at the high level of child abuse and neglect and other forms of domestic violence. The Committee recommended the State Party to continue and strengthen its efforts to provide adequate assistance to children who are victims of child abuse, through various concrete initiatives (see para. 35 Concluding Observations on Denmark).

Other relevant developments

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

During the period under scrutiny Denmark has not been found in violation of ECHR Article 3 by the European Court of Human Rights.

The Human Rights Committee has in a communication[5] stated that an expulsion order against the author of the communication would, if implemented by returning him to Uganda, constitute a violation of article 7 of the Covenant.

Denmark has not been examined by the Committee against Torture or by The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee against Torture.

Judgment on the merits:
Eur.Ct. H.R. (1st sect.), *Rohde v. Denmark* (Appl. no. 69332/01), Decision of 21 July 2005

The applicant complained that the Danish Authorities subjected him to treatment contrary to Article 3 of the Convention since they detained him in remand in solitary confinement from 14 December 1994 until 28 November 1995 allegedly in spite of being aware that solitary confinement damages the mental health of a person. Moreover, he maintained that while detained in solitary confinement medical monitoring of his condition had been insufficient, notably in that the examinations failed to aim at ascertaining whether a mental disorder was under development.

On 25 October 1994 a warehouseman found cocaine hidden in a consignment of green papaya fruits from Brazil, ordered by the applicant. On 13 December 1994 at Copenhagen Airport when the applicant was about to emigrate to England he was arrested and charged with drug trafficking. On 14 December 1994 the City Court in Copenhagen decided that the applicant be detained on remand and in solitary confinement. At the court hearing before the City Court on 28 November 1995 the City Court lifted the solitary confinement. Nevertheless, the applicant

[4] The Special International Crimes Office investigates genocide, war crimes, crimes against humanity and other serious crimes such as homicide, torture or acts of terror committed abroad. The Special International Crimes Office was established 1 June 2002 for an initial period of 4 years. So far (30 September 2005) the Office has received 99 cases; 60 per cent of the cases were received from the Danish Immigration Service.
[5] Communication No 1222/2003 : Denmark. 09/12/2004. CCPR/C/82/D/1222/2003.

remained voluntarily in solitary confinement until 12 December 1995. The length of the solitary confinement lasted from 14 December 1994 until 28 November 1995. After the solitary confinement had been lifted on 28 November 1995, the applicant's detention on remand was prolonged several times by the courts until 14 May 1996, when the High Court sitting with a jury acquitted the applicant of the drug offences. However, on the basis of the applicant's confession he was convicted of aggravated tax fraud and sentenced to 8 months' imprisonment and an additional fine. On 12 July 1996, the applicant claimed compensation for pecuniary and non-pecuniary damage pursuant to Section 1018a of the Administration of Justice Act for having been detained from 14 December 1994 until 14 May 1996. The prosecution first considered the claim, and then in June 1997 it was brought before the City Court. He also invoked article 3 of the Convention.

By judgment of 5 September 2000 the Supreme Court found the amount to be paid in compensation to DKK 1,109,600. The Supreme Court agreed unanimously with the High Court that the solitary confinement was the main reason for the applicant's mental suffering. Also, noting that there was no reason to assume that the applicant had not been treated in a proper manner during his detention on remand, it confirmed the High Court's finding that the case disclosed no appearance of a violation of Article 3 of the Convention.

The Court's assessment:
ECtHR noted that a period of solitary confinement – lasting from 14 December 1994 until 28 November 1995- may give rise to concern because of the risk of harmful effects upon mental health. However, when assessing whether the length was excessive under Article 3 the Court also took into account the conditions of the detention including the extent of the social isolation. The applicant was detained in a cell which had an area of about eight square metres and in which there was a television. Also, he had access to newspapers. He was totally excluded from association with other inmates, but during the day he had regular contact with prison staff, e.g. when food was delivered; when he made use of the outdoor exercise option or the fitness room; when he borrowed books in the library or bought goods in the shop. In addition, every week he received language lessons and he visited the prison chaplain. Also, every week he received a visit from his counsel. Furthermore, during the segregation period in solitary confinement the applicant had contact with a welfare worker; and he was attended to by a physiotherapist, by a doctor; and by a nurse. Visits from the applicant's family and friends were allowed under supervision. In these circumstances, the Court fond that the period of solitary confinement in itself, lasting less than a year, did not amount to treatment contrary to Article 3 of the Convention.

Human Rights Committee, *J.R.B v. Denmark,* communication no. 1222/2003
Decision of 9 December 2004. Article 7 of ICCPR, please refer to page 67.

Legislative initiatives, national case law and practices of national authorities

High Court of Eastern Denmark UfR 2005.88Ø
A city court sentenced E in May 1997 to 6 months imprisonment and ordered E's expulsion from Denmark for 10 years. The expulsion order was implemented 1 October 1997 and E has returned to Iran. The expulsion order was reconsidered in 2000 and in 2001 E was acquitted. Thereafter E returned to Denmark and claimed compensation while claiming that he after the deportation to Iran had been deprived his liberty for more than 3 months under conditions which could be described as torture. Because of this E had developed psychological problems which he wanted compensation for. E was granted 250.000 DKK.

High Court of Eastern Denmark UfR 2005.1104Ø
An Iraqi citizen, T, sought asylum in Denmark in 2001. H was denied asylum by the Danish Board of Refugees on 9 April 2003 and ordered to leave the country. Under a false identity T attempted again to seek asylum in November 2003 and was granted an asylum seeker card

under the false identity. T used the card as identification before the police in violation of paragraph 174 of the Criminal Code. T argued that he was exempted from punishment as the act was a legal act of emergency. The High Court found that T's use of the card was a part of this attempt to evade the decision of the Board and was grounded in his individual fear of torture in case of his return to Iran was not an act of emergency which could exempt T from punishment.

Irregular methods of interrogation
A female Danish officer has along with four military police personnel been indicted for irregular methods of interrogation of Iraqi prisoners detained by the Danish forces in Iraq.
The indictment concerns allegations of placing detainees in stressful positions and using foul language.
A judgment by the district court is expected 12 January 2006.

Positive aspects

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. The mandate of the commission included a review of the fulfillment of international- and human rights obligations concerning the judicial system. In 2004 the final report no. 1442/2004[6] was published. The report included bills amending the Criminal Code from 1954 and the Administration of Justice Act from 1951. As stated in a memorandum from April 2005 DIHR finds it positive that the commission has been aware of the problem of some Greenlanders serving sentences in Denmark for an indefinite time which under specific circumstances could be in violation of the prohibition against inhuman treatment. It is also positive that the report recommends the establishment of secure detentions centers in Greenland, thereby avoiding sending Greenlandic prisoners to facilities in Denmark, which could constitute a breach in the right to family life.

Good practices

The governmental project "Efforts to improve the education of traumatised refugees and immigrants" was closed in September 2005 after three years. As a result of the project there is material available for the education of traumatised refugees and immigrants and has generally improved the basis for better efforts of rehabilitation and integration of these groups. The report stresses that there is a need for improved educational offers. The Ministry of Refugees, Immigrants and Integration has a report on the project.

Reasons for concern

At the present a commission is evaluating the changes introduced in the Administration of Justice Act (2000:428) regarding the amendment of the rules on isolation in the period of pre-trial detention. DIHR welcomes this evaluation as the objective of the amendment in 2000 has failed. It was the Governments intention to reduce the use and the duration of isolation in custody but since 2000 both the use of and the duration of isolation in custody has increased.

Statistics show that the use of isolation in the pre-trial detention period varies in high extent in the different police district. The DHIR raises therefore the question of how the majority of police districts can manage with a minimal use of pre-trial detention isolation in opposite seems to a few other districts which use in pre-trial detention isolation as a routine.

The case of *Rhode v. Denmark* illustrates that the Danish practice in relation to the use of isolation in custody might be in violation of the ECHR. Denmark was not found in breach of

[6] Betænkning nr. 1442/2004

the convention, however 3 out of 7 judges found Denmark in violation of article 3. Act (2000:428) does not ensure that a similar case will not arise in future.

The DIHR finds that the fundamental problem by use of isolation in custody is the isolation from the necessary degree of meaningful social contact. It is therefore recommended that the persons in isolation be allowed 3-5 hours per day with other persons (eventually under supervision).

Article 5. Prohibition of slavery and forced labor

Fight against the prostitution of others

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

Denmark (ratification: 1932) Published: 2005

ILO - CEACR: Individual Observation concerning Convention No. 29, Forced Labour, 1930
The Committee notes a communication dated 22 July 2004 received from the Danish Masters' Association (Dansk Magisterforening, DM), which contains observations concerning the application of the Convention by Denmark. It notes that this communication was sent to the Government, on 16 August 2004, for any comments it might wish to make on the matters raised therein. The Committee observes that no such comments have been received from the Government so far and hopes that the Government will communicate its comments with its next report, so as to enable the Committee to examine them at its next session.
The Government is asked to report in detail in 2005.

Good practices

In the period under scrutiny a sociological survey of Danish male prostitution buyers[7] was published by the independent institution *Videns- og Formidlingscenter for Socialt Udsatte* under the Social Ministry. The survey is based upon questionnaires done by 6.350 men with and without experience with buying sex, and 20 interviews with prostitution buyers.

Trafficking in human beings

Positive aspects

The Minister of Justice requested a report from the Committee on Jurisdiction, established in 2003, on sex tourism and the Danish rules on jurisdiction in criminal activities conducted outside Danish jurisdiction by persons living in Denmark. The main focus of the report is an assessment of the necessity to depart from the principle of double criminality. The report will be publicized in 2006.

Good practices

The Government introduced in April 2005 a new plan of action, which highlights the Governments intention to focus on the areas of gender roles and youth cultures, equal opportunities on the labour marked, an increased number of women in high positions and the trafficking of women.

[7] "Det skal ikke bare være en krop mod krop-oplevelse..."

Protection of the child

Legislative initiatives, national case law and practices of national authorities

High Court of Eastern Denmark UfR 2005.3031Ø
A 40 year old person, C, had violated section 235 of the Criminal Code by having distributed pornographic photos of children below 18 years on the internet in 25-50 cases and for having possessed 703 of such photos. C was sentenced to 60 days' imprisonment.

In August 2005 Denmark submitted its initial report on the implementation of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to the Committee on the Rights of the Child. The report describes how the provisions of the Protocol have been implemented in Denmark. Effective protection of children against sale, child prostitution and child pornography necessitates action in a large number of fields. A large number of public authorities, both at national level and at local authority level, are therefore in charge of the relevant initiatives, in many cases in cooperation with NGOs. The report describes relevant initiatives in the main areas of responsibility of the following ministries in particular: the Ministry of the Interior and Health, the Ministry of Justice, the Ministry of Culture, the Ministry of Family and Consumer Affairs, the Ministry of Social Affairs and the Ministry of Foreign Affairs.

In the field of the Ministry of Social Affairs, a knowledge centre has been set up, the Danish National Centre for Social Efforts against Child Sexual Abuse (Videnscenter for Sociale Indsatser ved Seksuelle Overgreb mod Børn (SISO)), which is to monitor the social efforts made by local and county authorities. The Centre has established a telephone hotline in 2005, mainly intended for the local authorities, but open to everybody for consultation about sexual abuse of children and young people. The Centre is also preparing a catalogue of inspiration for the local authorities so that all local authorities will be working towards a set of guidelines and an emergency service for handling sexual abuse of children and young people.
The Government has initiated two studies in 2005 to uncover the extent and nature of sexual abuse of disabled children and young people and those in out-of-home placement. Completion of the studies is expected in 2007. The studies are to result in a number of recommendations to prevent sexual abuse of vulnerable children and young people.

In April 2005, the Government published an action plan to combat prostitution. Part of the action plan is a list of recommendations for a preventive effort towards vulnerable young people. The efforts among young people are mainly aimed at vulnerable young people placed outside their homes. The overall goal is to upgrade the existing work in residential institutions and the like to uncover the scope and nature of sexual exploitation of vulnerable young people against payment in cash or in kind. In addition to the focus areas which are being initiated, the action plan also includes the establishment of a specific telephone and Internet consultation service. This consultation service will be anchored in a national competence centre, see below. The action plan "A New Life" listed many recommendations concerning vulnerable young people.

On 16 June 2005, the Danish Parliament adopted the Bill (2005:157) presented by the Ministry of Culture on Obtaining Criminal Records Disclosures in Connection with Employment of Staff, etc[8]. The Act entered into force on 1 July 2005.

The purpose of the Act is to provide a basis for further strengthening the efforts against sexual abuse of children under the age of 15.

[8] Lov om indhentelse af børneattest i forbindelse med ansættelse af personale mv.

The Act has introduced a duty for public administration authorities and for private natural and legal persons to obtain a criminal records disclosure when, for example, day-care institutions, schools, scout or guide groups and sports clubs want to hire staff who will have direct contact with children under the age of 15. According to the current rules, criminal records disclosures may be obtained on a voluntary basis. The criminal records disclosure is requested from the National Commissioner of Police upon prior consent from the person in question.

A criminal records disclosure provides data on decisions (that is, convictions, etc.) about violation of a number of the Criminal Code provisions on sexual offences against children. The criminal records disclosure provides data on the following types of criminal offences:
• Incest, sexual intercourse or sexual relations other than sexual intercourse with children under the age of 15;
• Dissemination or possession of child pornography; and
• Indecent exposure to children under the age of 15.
The Act is a framework act, so that draft executive orders from all seven ministries involved had been appended to the Bill and were finalised in connection with the parliamentary adoption of the Bill on 16 June 2005.

Intentional violation of the provisions of the executive orders is punishable with a fine, but not as concerns the violations committed by public administrative authorities.
The Ministry of Culture has prepared guidelines for the subsequent handling of criminal records disclosures, including the possibilities of storing and disclosing the personal data of the criminal records disclosures. Two guidelines have been prepared – one for handling satisfactory criminal records disclosures, and one for handling criminal records disclosures that are not satisfactory. It must be ensured that these criminal records disclosures are handled in accordance with the Act on Processing of Personal Data (persondataloven) and the Criminal Code . The guidelines will be handed out by the National Commissioner of Police together with the criminal records disclosures once the Act has entered into force on 1 July 2005.

CHAPTER II FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention.

Legislative initiatives, national case law and practices of national authorities

Supreme Court UfR 2005.1672Ø
Two persons, E1 and E2, were standing at an unmanned stall at the so-called free city Christinia where it was possible to buy cannabis. After a few minutes E1 and E2 were arrested by the police for violation of the Act on euphoriant Drugs[9]. They were released after approximately 16 ½ hours of arrest. Proceedings were not brought against them and they claimed compensation according to the Act of Justice section 1018a for having been deprived of their liberty unjustified. Their claim was denied after the Act of Justice section 1018a paragraph 3 as they were found to have caused the situation themselves.

High Court for Western Denmark UfR 2005.2287V
E was arrested 4 November 2003 for a severe sexual crime and the arrest was at preliminary examination 5 November upheld 3 times 24 hours. The conditions under which E was imprisoned were similar to solitary confinement. On 7 November E has remanded in custody until 20 December 2003. During a part of the imprisonment E was according to his own wish placed in solitary confinement. After the prosecutor had decided not to bring proceedings against E, E claimed compensation for unjustified imprisonment. The State Prosecutor raised the compensation rate with 200 DKK per day for the period 5-7 November. The High Court did not grounds for raising the compensation rate additionally.

Detention following a criminal conviction

Legislative initiatives, national case law and practices of national authorities

In October 2005 the Ministry of Justice asked DIHR to comment on Draft Bill amending Act on Implementation of Punishment etc.
The draft widens the area of application of the use of serving sentence at home under intensified supervision to encompassing young people under the age of 25 and to violators of Road Traffic Act who have also violated another act. The draft also proposes deprivation of the right to leave in case of absence from the serving of sentence.

Positive aspects

The DIHR finds the widening of the use of serving sentence at home under intensified supervision positive as it supports the chances of resocialization.

[9] Lov om euforiserende stoffer

Deprivation of liberty for juvenile offenders

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

The Committee of the Rights of the Child recommended in its Concluding Observations[10] that Denmark reviewed as a matter of priority the current practice of solitary confinement and limited the case of this measure to very exceptional cases, reduced the period for which it is allowed and seek the abolition of such practice.

Positive aspects

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. The mandate of the commission included a review of the fulfilment of international- and human rights obligations concerning the judicial system. In 2004 the final report no. 1442/2004[11] was published. The report included bills amending the Criminal Code from 1954 and the Administration of Justice Act from 1951. As stated in a memorandum from April 2005 DIHR finds it positive in relation to children's rights that the commission has been aware of article 37 b og 37 c of the International Convention on the Rights of the Child in order to secure that arrest, detention and imprisonment of a child only will be used as a last resort and for the shortest time as possible and to secure that children as a main rule must be separated from adult prisoners.

Good practices

In relation to detention of children together with adults contrary to CRC article 3 and 37, a ministerial order (988:2004) regulating the detention of intoxicated youngsters has been issued. After criticism raised by DIHR the following sentence was added to section 12: "children below the age of 18 must not be detained together with detained persons of the age of 18 or above. "

Reasons for concern

Solitary confinement of juveniles can entail a particular strain on the youth on account on their age. Danish Institute for Human Rights regards this practice as being at odds with the best interest of the child/ youth and being in conflict with article 3 of CRC. Depending of the circumstances of the surrounding a case, solitary confinement can also be in conflict with article 37 of CRC.

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

High Court of Eastern Denmark UfR 2005.141Ø
A 34-year old foreigner U, who was citizen in Iran, arrived in Denmark in 2000 and seeked asylum straight away. After a rejection U left Denmark but on 24 January 2003 U was brought to Denmark according to the Dublin Convention after having entered Sweden illegally. He was immediately taken into custody according to the Aliens Act section 36 paragraph 1. U refused to apply for the necessary travel documents. 16 September 2004 the City Court prolonged the imprisonment until 14 October. U appealed the decision to the High

[10] CRC/C/15/Add.273 30 September 2005, available at :
http://www.humanrights.dk/frontpage/RogM/reports/
[11] Betænkning nr. 1442/2004

Court, which found that the length of time of the imprisonment of 1 year and 8 months had passed the limit in the Aliens Act, although there is no fixed time limit in the Act. The Court noted that consideration must be taken to the proportionality of an imprisonment in each case after an over all assessment. Having regard to the reasoning behind the imprisonment of expelled foreigners - which are to motivate them to leave the country willingly – the High Court questioned whether U's resistance against resettlement in Iran could be over won by further imprisonment. The Court did not find that further imprisonment could motivate U to leave the country. The High Court brought to mind, that an imprisonment must be ended when the authorities become aware of the impossibility of returning a foreigner to his home country according to the Human Rights Convention section 5, paragraph 1, litra f. The High Court decided on theses grounds to release U.

Supreme Court – UfR 2005.1197H
An Iraqi citizen, T, was in 1996 convicted of murder and attempt of murder and sentenced to 13 years imprisonment. The conviction also ordered T's permanent expulsion from Denmark. In July 2003 he was released on parole reaming 4 years of imprisonment conditioned by the implementation of the expulsion. T was therefore immediately taking into custody according to the Aliens Act section 35 in order to implement the expulsion. However, T did not leave voluntarily and expulsion to Iraq by force was not possible. T had two children born in 1993 and 1994. T's defence lawyer argued that continued remand in custody was unproportional and in violation of the Human Rights Convention as the situation in Iraq was so chaotic that expulsion by force has impossible and there was no information on when expulsion could implemented. The lawyer also argued that T could not be deported until a pending case of removal of T's children had been decided and that less radical means than remand on custody were sufficient bearing T's attachment to his children and family in mind. The Supreme Court stressed that the implementation of the expulsion order had been an express condition for the release on parole and that T had not fulfilled this condition. Regardless of the uncertainty of the possibility of expulsion by force to Iraq and regardless of the fact that T had been imprisoned since July 2003 the High Court found that the conditions for continued imprisonment were fulfilled.

The High Court of Western Denmark UfR 2005.1657V
The European Court of Human Rights had the 11 July 2002 stated, that an expulsion of E as ordered by conviction of 1 October 1997 would violate article 8 of the Convention. E was accordingly by judgment of 13 September 2002 acquitted for the expulsion order.
E had been released on parole on 20 December 1998 after having served 2/3 of his sentence and the 17 December 1998 he was remanded in custody according to the Aliens Act section 35 in order to implement the expulsion order. E claimed compensation for unjustified imprisonment. The Prosecutor argued that E only could claim compensation for the period which was beyond his sentence of 3 years imprisonment. The High Court found that E had a claim for compensation concerning the whole period he had been imprisoned according to the Aliens Act section 35, as the remand on custody had been unjustified.

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 23 February 2005 the Government proposed [Bill (2004:14) amending the Act on Foundation of a Central File of DNA Profiles and the Administration of Justice Act] . The bill was adopted 19 May 2005 as Act no. 369 of 24 May 2005.

The act 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 act 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.

High Court of Western Denmark UfR 2005.3007V
The police was not ordered to destroy photos which had been taken during an illegal search of an apartment without the owner's consent.

Reasons for concern

The Government established a working group to find out how the nation's response to terror could be improved.
The working group published in November 2005 the report "The Danish' society's effort and readiness of action against terrorism" (*Det danske samfunds indsats og beredskab mod terror)*. The report holds 49 recommendations for e.g. increased powers for the police and more surveillance of citizens at public places. The report contains also recommendations including a new centre for terror threat analysis, more cooperation between the country's two intelligence agencies, and increased camera and telecom surveillance.After a public debate, the intention is that some of the suggestions will be put forward as legislative proposals in Parliament. Listening to public criticism the government has stricken from the proposal plans to scan telephone use in entire apartment buildings. Also, the proposal to prevent foreigners with non-democratic and hostile views from entering the country was abolished. However the possibility to get access to information for the intelligence service which telephone companies possess without court order, seem to have been maintained. An improved effort to hire and pay civil informers was also recommended.

The report"The Danish' society's effort and readiness of action against terrorism" contains many recommendations which have a severe impact on many of fundamental rights, especially privacy, as well as limiting the safeguards which should be observed when interfering with such rights, i.e. court orders and the test of proportionality.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In June 2004 [Governmental report nr. 1446/2004 on personal names] was submitted. It holds a bill amending the [Act on Personal Names] from 1981, which is at force.
The report proposes that the legislation is modernized and it is considered which names, middle names and surnames people resident in Denmark can obtain. A bill (2005:27) introduced in February 2005 was almost identical to the draft bill is the report. In June 2005 the [Act (2005:524) Act on Personal Names)][12] was adopted by Parliament.

Positive aspects

The act might result in a positive impact on integration 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.

[12] Lov (2005:524) om Navne

Good practices

In December 2004 the Ministry of Justice published a guidance in relation to [Act no. 442 of 9 June 2004 on legal guaranties in case of the use of powers by the authorities and their information duty][13]. The act entered into force on 1 January 2005 and introduces regulation e.g. on the authorities' access to inspections without a warrant in case of suspicion of a criminal offence committed by an individual or a company.

In March 2005 a permanent committee under the Ministry of Justice published Report no. 1458 on improvement of the legal position of rape victims[14]. It discusses a range of questions in relation the victim's legal position under the investigation and in court, including the possibility of appointing a legal advisor. The report also suggests amendments to the Administration of Justice Act section § 841 in relation to deciding that the case will be decided behind closed doors, prohibition of reporting the case, and that the accused must as a main rule leave the court room while a witness is being heard.

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

High Court of Western Denmark UfR 2005.27/1V
The witness W had previously lived together with the accused A, and A og W had an 8 year old child and joint custody. W was obliged to give evidence in court, however W has not obliged to do so in relation to confidential information from A given under their life together or information from their child.

Positive aspects

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. The mandate of the commission included a review of the fulfillment of international- and human rights obligations concerning the judicial system. In 2004 the final report no. 1442/2004[15] was published. The report included bills amending the Criminal Code from 1954 and the Administration of Justice Act from 1951.
As stated in a memorandum from April 2005 DIHR welcomes the recommendation of the establishment of an institution for preventive custody in Greenland so that these convicted individual can serve their sentence in Greenland instead of Denmark, which ensures a better protection of the right to family life, but finds it of concern that the initiatives had not already been begun. The Institute also finds it very positive that the commission has underlined the requirement of proportionality in relation to the sentencing of indefinite imprisonments. It is recommended that in the future Greenlanders who are serving sentence at the present in Denmark will be brought to Greenland.

[13] Vejledning til lov nr. 442 af 9. juni 2004 om retssikkerhed ved forvaltningens anvendelse af tvangsindgreb og oplysningspligter
[14] Justitsministeriets Strafferetsplejeudvalg betænkning nr. 1458 om forbedring af voldtægtsofres retsstilling
[15] Betænkning nr. 1442/2004

Right to family reunification

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

The Human Rights Committee concluded in a communication adopted in the period under scrutiny that the author's expulsion, if implemented by returning him to Uganda, would not amount to a violation of his rights under articles 17 and 23, paragraph 1.

Struck out of the list:
Eur. Ct. H.R (1st Sect.)., *Jorgensen v. Denmark* (Appl. no. 31260/03)
Decision of 9 June 2005.

The applicant, a Danish national, lived and worked in China for many years. In May 1997 he married a woman there of Philippine nationality. When in October 2002, having retired early, the applicant returned to Denmark, the authorities refused to grant his wife a residence permit. Consequently, on 29 August 2003 she had to leave Denmark. In his application the applicant complained that the authorities' refusal to grant his spouse a residence permit in Denmark violated his right to respect for his private and family life under Article 8 of the Convention. Moreover, he invoked Articles 12 and 14 of the Convention.

The applicant's withdrew the application because the matter had been resolved in that his spouse has been granted a residence permit. The Court considers that there is no reason which would require the continuation of the examination of the application.

Legislative initiatives, national case law and practices of national authorities

The Ombudsman (J.nr. 2004-2672-644)
The complainant's wife, W, had applied for visa from India in order to visit her husband and celebrate their one year old child's birthday but was rejected by Aliens Authorities (Udlændingestyrelsen) as there was reason to believe that W would use a visa to apply for a residence permit. The Ministry rejected the complainant's application for resume of the case and noted that only in cases, where the parties cannot exercise their family life in another country than Denmark and where the parties married before the departure to Denmark, is there an obligation according to the Human Rights Convention article 8 to grant a visa.
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.

The Ombudsmand (J.nr.: 2004-4353-644)
The complainant's application for visa from Damascus to visit his wife, a Danish citizen, residing in Denmark and their two months old child was rejected by the Aliens Authorities and upheld by the Ministry of Refugees, Immigrants and Integration as they found reason to believe that W would use a visa to apply for a residence permit. The complainant 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.

The Ombudsmand (J.nr. 2004-4166-643)
The complainant's application for family reunification with his wife was rejected by the Aliens Authorities and upheld by the Ministry of Refugees, Immigrants and Integration as the complainant had received social benefits for nearly 1 year why he did not meet the

requirements in the Aliens Act section 9. The complainant argued that the rejection was in breach of ECHR article 8 and ICRC.
The Ombudsman did not find reason to criticize the rejection as the complainant did not meet the formal requirements for family reunification. The Ombudsmand did not find that a rejection was in breach of any international obligations.

The Ombudsman (J.nr.: 2005-2428-644)
The complainant application for visa in order to visit her husband X and friends residing in Denmark was rejected by the Aliens Authorities and upheld by the Ministry of Refugees, Immigrants and Integration as the Ministry found reason to believe that the complainant would not leave Denmark at the end of the duration of the visa.
The complainant argued that the rejection was in breach of ECHR article 8 and that X had lived in Denmark for 10 years and that the couple had three children with residence permit in Denmark.
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. The Ombudsmand assumed that X and the children had the possibility of visiting the complainant in her country of residence, Macedonia.

Good practices

The White book is a "follow up" (see below) to an extensive report on the Reunification of Spouses in Denmark published by DIHR in October 2004 (Udredning om Familiesammenføring i Danmark) and seems already to have had a positive impact, since the Minister of Integration has stated that the Ministry of Integration and the Immigration Service plans to open an Internet portal in 2006, where legislation, memorandums on case handling practice and single cases which are made anonymous, will be published.[16]

Reasons for concern

In 2004 the number of applications for family reunification was only 5.838. Among these 3.832 were granted permission.

The Ministry of Refugees, Immigrants and Integration published on 14 January 2005 a memorandum on the report on the Reunification of Spouses in Denmark published by DIHR from October 2004, in which the Ministry evaluates and comments all the issues raised by the Institute in relation to violations of international obligations.

The Ministry points e.g. out that article 8 of the ECHR does not obliged a state unconditionally to allow family reunifications. It is also stressed that the Aliens Acts requirements are not disproportional limitations of the right to family life, and that e.g. the rule that the resident must not have received assistance under the Active Social Policy Act or the Integration Act as well as the administration of the requirement of financial security in connection with spouse reunification results in violations of the right to family life doest not constitute discrimination in violation of ECHR Art. 14 in conjunction with Art. 8 on the right to family life. These requirements are in the opinion of the Ministry necessary in order to secure a good integration in the Danish society and labor marked.

The Danish Institute of Human Rights replied in a memorandum to the Ministry's assessments, in which the Institute commented on the requirements of human rights analysis' and the issues raised by the Ministry. The Institute found that Ministry had misinterpreted case law from the Eur Ct. H.R.. and the conclusions in the report published by the Institute as

[16] White book on Cases of Family Reunification is available (Danish only) at: http://www.humanrights.dk/upload/application/46535b00/hvidbog_endeligt_udkast111005.pdf

it was pointed out by the Institute that it is the administration of some of the rules in the Aliens Act and not the rules in them selves that may violate human rights.
The Institute stressed again the need for and ensure annual account of the administrative case law in order to ensure transparency.

In October 2005 DIHR published a compilation of cases regarding family reunification in Denmark and presented itin a public meeting on transparency in the administration of the provisions in the Aliens Act concerning reunification of spouses.
In the White Book on Cases of Family Reunification 46 cases illustrates the administration of especially the 24-year rule, the requirement of attachment, the obligation to maintenance of the spouse and pro forma marriages. DIHR has for a period of time, along with a number of NGOs, criticized the practice of the case handling of the administration to be very difficult to predict and furthermore criticized the lack of openness in relation to which criteria's in the case handling which plays a decisive role. It also lightens cases where couples have moved to Sweden in order to maintain their family life.
On basis of the collection of individual cases it is possible to assess whether the administration of the Danish legislation on spouse reunification meets the requirements of international human rights law. In the view of DIHR some of the cases violate the right to family life and the prohibition against discrimination.

Private – and family life in the context of the expulsion of foreigners

Legislative initiatives, national case law and practices of national authorities

Supreme Court UfR 2005.257H
In 1992 A, a stateless Palestinian residing in Denmark, was convicted of murder and ordered a permanent expulsion from Denmark. While serving his sentence A married a Danish woman K. After his release he applied for an annulment of the expulsion order but the order was upheld by the courts. It was, however, impossible to implement the expulsion. In 2002 the Aliens Authorities denied A's application for residence permit and the Ministry of Refugees, Immigrants and Integration upheld this decision. A filed a case against the Ministry and claimed annulment of the rejection. The Supreme Court stated that there was not a legal basis for granting A a residence permit and did not find the rejection to be in breach of the ECHR article 8, 3 or 14 in light of the seriousness of the crime committed and the fact that the family life had been established after the expulsion order.

Supreme Court UfR 2005.1766H
T1 and T2, who were Turkish citizens and below the age of 20, were convicted of murder of a young Italian tourist. Both had previously been convicted of crimes. They were sentenced to 10 and 8 years' imprisonment. T1 was born in Denmark, while T2 arrived at the age of 3 in Denmark. Both were raised in Denmark but still they had both preserved an attachment to Turkey. The Supreme Court did not find that an expulsion would be in breach of ECHR article 8 and ordered their permanent expulsion from Denmark.

High Court of Eastern Denmark UfR 2004.2536Ø
A 16 year old Bosnian citizen T was sentenced to 1 year and 9 months imprisonment for attempted robbery and violence. T had previously participated in robberies. T arrived in Denmark at the age of 8 with his parents and had attended school in Denmark. He did not know the language of his home country nor had he visited the country since his arrival in Denmark. On basis of the ECHR article 8 the High Court found that T should not be expelled from Denmark.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In May 2005 [Act (2005:367) amending the Act on implementation of punishment etc.][17] was adopted by Parliament.
The objective is to introduce a new way to serve sentence for individuals who have been sentenced to until 3 months of imprisonment on condition for violations of the Act on Traffic, so that these individuals can serve their sentence at home under intensive supervision and control in order to reduce the risk of criminal relapse.
Another objective of the act is to enable a reduction of the community between prisoners in certain situations in order to prevent attacks on employees and other prisoners etc.

Reasons for concern

A reduction of the community and social life between prisoners may be breach of the ECHR article 8 in certain situations. This depends on e.g. the conditions as such the prisoner is subject to, the duration of the limitation etc.
DIHR has in a memorandum found it of concern that the conditions under which a decision on reduction of the community between prisoners are not specified, and finds that the requirement of forseeability is not fulfilled. The Institute also stressed that is preferably that the requirement of proportionality is written into the law.

Article 8. Article 8. Protection of personal data.

Protection of personal data

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:541) on binding collaboration between local authorities][18] was adopted by Parliament.
The aim of the act is to set the framework for the obligatory cooperation between the local authorities on certain issues regulated in the act. The act enters into force on 1 January 2007. The main intention with the binding collaboration between local authorities is to ensure quality and efficiency in local assignments.
In the act the possibility of exchange of private information between local authorities without consent is introduced if it is necessary in order to perform their duties. Following the act some documents, which according to present law lost their status as “internal” documents when exchanged public authorities, will preserve their internal character. This amendment results in a limitation of the right of access to documents concerning oneself.

Also, in June 2005 [Act (2005:544) on service centers for citizens in the public authorities][19] was adopted by Parliament.
As part of the governmental agreement on the reform of municipalities is was decided to establish so-called service centres for citizens. Legislation must be given to enable performance of the duties in the centres across state, regions and municipalities. According to the reform the entrance to the public sector will in future be placed at the service centres.

[17] Lov (2005:367) om ændring af lov om fuldbyrdelse af straf mv. (Fuldbyrdelse af straf på bopælen under intensiv overvågning og kontrol samt begrænset fællesskab for »negativt stærke« indsatte m.v.).
[18] Lov (2005:541) om forpligtende kommunale samarbejder.
[19] Lov (2005:544) om kommunale borgerservicecentre.

The aim of the act is to remove inexpedient legal barriers for the performance of the centres duties. The act introduces the possibility of exporting a task from a service centre to a municipality. It also has provisions on exchange of information between a service centre and a responsible authority, as well as on collection of information by a service centre. The service centre is able to collect the same information as the responsible authority could have. According to the act internal working papers which are exchanged by a service centre and another authority does not loose its status as internal. In cases where an individual applies for something it will be possible for a service centre to exchange private information with a local authority without consent.

High Court of Western Denmark UfR 2005.2578V
T, who was a professional journalist, was convicted of violation of the Administration of Justice Act section 32 for having photographed A, who was accused in a criminal case, outside a court building without A's consent. T, who had previously been convicted of a similar offence, was imposed a fine of 10.000 DKK.

The Danish Data Protection Agency (J.nr. 2004-311-0406 and J.nr. 2005-632-0077) has in a statement from May 2005 pointed out that the central civil registration office *(Det centrale Personregister)* has a duty to secure that a private organisation, which has applied for access to information or which has received information on names and addresses according to the Act on Central Civil Registration section 38, is entitled to handle the information and that the citizen has access to information on which companies etc. have information from the civil registration office on them.

An individual filed a complaint to the Data Protection Agency for having requested the Central Civil Registration Office to delete a number of companies from subscripting for the registered information on him in the central civil register but not having done so and complained that the companies themselves had not ceased the subscription. The Data Protection Agency pointed out to the Central Civil Registration Office that it must in a case of an objection to the exchange of information, assess the objection and decides whether the objection is justified. The Agency also requested two of the companies to cease the subscription. In both cases the plaintiff had previously been customer in the companies, and in both cases it was no longer necessary for the company to update information on the plaintiff.

The Danish Data Protection Agency (J.nr. 2004-322-0064)
Two counties made an application to the Danish Data Protection Agency in relation to the question of publication on the internet of documents which where being handled in the county's journal systems and of post lists. The counties wished to publish all case material which was covered by the Act on Publicity *(Offentlighedsloven)* and did not contain any confidential information, as well as all kinds of cases and case material which is subject to the right of access to documents. The Data Protection Agency pointed out that certain personal information covered by the Act on Personal Data section 7 and 8 may not be published on the internet or in post lists. However, unconfidential information convered by the same act's section 6 may be published on the internet. The Agency pointed additionally out that the intended publication of case material was very extensive. Consideration must be taken to those who could not write to the counties without their letter being open to public. However, the Agency did not find that the Act on Personal Data hinders a publication in it self.
At last the Agency stated that publication of post lists was a usual step in consideration of a case and should not require notification to the individual concerned.

The Danish Data Protection Agency (J.nr. 2003-4500-600)
The Data Protection Agency pointed out very sensitive information had been dealt with e.g. registration of information concerning race, ethnical background, health, crime and severe social problems in a Project, which was reported to the agency in July 2004. The project concerned young people who had offended children sexually. On basis of the character of the

information the Agency found it of great concern that the Act on Personal Data and a departmental order on security had been violated e.g. by not having reported the project initially to the Agency.

Good practices

In February 2005, the Council of Prevention of Crime *(Det Kriminalpræventive Råd)* published a booklet concerning information on camera surveillance in Denmark[20]. It depicts the relation between camera surveillance and crime prevention and camera surveillance in crime investigation. It also describes the knowledge gained from Great Britain, the Danish legislation, and the public's attitude towards camera surveillance. Over 50 per cent of Danish population has a positive attitude towards this kind of surveillance.

In October 2005 a report by the Council of Technology was published. The report addresses the issue of how to avoid that the requirement of rationalisation, efficiency and service in the digital administration limits the individual's right to protection of the private life and security.

Reasons for concern

In relation to the exchange of confidential personal information between public authorities without consent and without the requirements of deep public interest and necessity one should stress that the protection of the individual is limited on behalf of an effective performance of public assignments. When administrating the act the need of necessity and proportionality must be observed in order to avoid a breech of ECHR article 8.
As to the limitation of the right of access to documents concerning one self, it should be noted that documents must be delivered if the individual which is seeking such access has an legitimate interest in the access. The acts adopted in June 2005 manifest an unfortunate development towards a limitation of the individual's rights.

Protection of the private life of workers

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:520) on gathering of children certificates in cases of employment etc.][21] was adopted by Parliament. The objective of the act 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.

In December 2004 [Act (2004:1372) on transmission of information where a mentally ill person has committed serious crime.][22] was adopted by Parliament. The act introduces the possibility of transmitting personal information on previous treatment without the consent of the person concerned.

High Court of Eastern Denmark UfR 2005.1131Ø
A person (A) had since 1997 been employed at a shop and in 2000 he was appointed to the cash desk. Six months after he was excluded from the job for having committed theft. The employer had based his evidence on a camera surveillance of the cash desk. A was acquitted in the criminal case and filed case against his employer for compensation for unjustified

[20] Fakta om TV-overvågning i Danmark
[21] Lov (2005:520) om indhentelse af børneattest i forbindelse med ansættelse af personale m.v.)
[22] Lov (2005:1372) om videregivelse af oplysninger om behandlingsforløb, hvor psykisk syge begår alvorlig kriminalitet

notice, for having made a notice in the shop with a picture of A announcing the exclusion and for the surveillance. The court found that the discharge of A was justified but awarded compensation on basis of the announcement in the shop but not for the surveillance, which had been established due to a loss from the cash desk and as there had been a briefing of the representative. In addition to this, the employees had been notified of the surveillance in a handbook and through signing in the shop.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

High Court of Western Denmark UfR 2005.2979V
A person, T, had fixed a web-cam at his property on the island Læsø. The web-cam recorded every minute a part of the harbour and a public road. T used the recordings on a web-page, which was upgraded with an interval from 5 to 30 minutes, for promotion of Læsø. The Court found that it in some cases was possible to recognise persons on the recordings. T was fined 2 000 DKK for violation of the Act on Prohibition against TV-monitoring.

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

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

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

Legislative initiatives, national case law and practices of national authorities
In March 2005 [Bill (2005:130) amending the Registered Partnership Act (Entering into registered partnership by way of the public church and other religious societies)][23] was introduced. The bill introduces the possibility of making the Act on Marriage applicable to the registration of partnership i.e. religions communities can take part in the entering of partnership. However, the bill stresses that no priest is obliged to take part in such acts.

In April 2005 [Bill (2005:142) amending the Registered Partnership Act (Equalisation of registered partnerships and hereto marriages in relation to adoption of Danish and foreign children)][24] and [Bill (2005:150) amending the Adoption Act (Access to stepchild adoption for registered partners from the birth of the child)][25] was introduced in Parliament.

The main objective of the bills are to establish equality between homosexual couples, which have entered into registered partnership, and hetero married couples in relation to adoption and the time for stepchild adoption. At present stepchild adoption is possible after 3 months. The bills contain therefore an amendment to section 4 in the Registered Partnership Act stating that the provisions in the Adoption Act concerning spouses will be applicable on registered partnership. However, a couple living as registered partners can only adopt foreign

[23] Forslag (2005:130) til lov om ændring af lov om registreret partnerskab. (Mulighed for folkekirken og andre trossamfund for at medvirke ved indgåelse af registreret partnerskab).

[24] Forslag (2005:142) til lov om ændring af lov om registreret partnerskab. (Ligestilling mellem registrerede partnerskaber og heteroseksuelle ægteskaber med hensyn til fremmedadoption af danske og udenlandske børn).
[25] Forslag (2005:150) til lov om ændring af adoptionsloven. (Adgang til stedbarnsadoption for registreret partner fra barnets fødsel).

children if the donor land and the adoption authorities in Denmark have entered an agreement in relation to registered partner's access to adoption. An amendment is also introduced in order to enable stepchild adoption by a registered partner from the birth of the child.

Article 10. Freedom of thought, conscience and religion

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Bill (2005:156) amending the Criminal Code (Abolition of the prohibition of blasphemy)][26] was introduced. The bill introduces an abolition of the prohibition of blasphemy cf. the Criminal Code section 140. The authors of the bill find the provision which dates from 1683 anachronistic and the matter should no longer be regulated in criminal law. In addition, the authors find the prohibition superfluous due to the prohibition of discrimination in section 266 b in the Criminal Code. The bill was not adopted.

In March 2005 another [Bill (2005:131) amending the Criminal Code (Abolition of the prohibition of blasphemy)][27] was introduced. The bill introduces abolition to section 140 in the Criminal Code prohibiting blasphemy. The bill was proposed as a result of a Danish television channel (TV 2) was reported to the police by the Islamic religious community for violation of section § 266 b in the Criminal Code (racial discrimination). Another Danish TV channel was reported to the police on behalf of a number of individuals for violation of section § 266 b in the Criminal Code and section 140. Both reports were due to the broadcasting of Theo van Gogh's movie"Submission". The authors to the bill believe that the prohibition of blasphemy limits religious critic's right of expression and they fear an overburden of the judicial system due to a possible large number of similar cases in the future. The bill was rejected by the Parliament.

Supreme Court UfR 2005.1265H
The Supreme Court found that a dismissal of A for wearing a head scarf for religious reasons in opposition to the rules on clothing did not amount to illegal differential treatment.
The clothing rules in the super marked applied to every employee and the rules were consequently enforced. The Court recognised that the prohibition of wearing a head scarf when having directly contact to customers mainly would affect Muslim women but found that the differential treatment was objectively reasoned in the performance of the work. The Court did neither find that the clothing rule was in breach of article 9 of the Convention of Human Rights on basis of case law from the European Court of Human Rights.

Supreme Court UfR 2005.275H
A, who had been parochial church council member since 1988, had through the press, lectures and television interviews expressed his belief in reincarnation. In 1994 the priest decided an expulsion of A as member of the State Church as A was found to have actively and openly advocated for a faith which was contradictory with the viewa of the State church. The bishop and the Church Ministry upheld the decision. A filed a case against the Ministry arguing that the decision was invalid and that A was still a member of the State Church. The Supreme Court did not find that there was basis for an expulsion of A.
Supreme Court U.2005.3346/2H

[26] Forslag (2005:156) til lov om ændring af straffeloven (Ophævelse af blasfemibestemmelsen)

[27] Forslag (2005:131) til lov om ændring af straffeloven (Ophævelse af straffelovens blasfemibestemmelse)

A verger in the State Church who believed in reincarnation was fired. He had advocated for his views in articles etc. The Supreme Court did not find that there was basis for an expulsion of A.

Eksklusion af et medlem af folkekirken ugyldig.

Reasons for concern

A Danish Professor of Constitutional law at the University of Copenhagen stressed in a discussion relating to the abolition of section 140 in the Criminal Code that an abolition of the prohibition would result in a legalisation of a conduct which was earlier a criminal offence. The Professor explained further that the prohibition does not only aim at the protection of beliefs in itself but aims at protection of individuals feelings in relation to religion and that provides protection against smear campaigns against religious groups. It was also stressed that the prohibition of discrimination in the Criminal Code does not replace the prohibition of blasphemy but supplement. The Professor also directly warned against abolition of the prohibition of blasphemy as such an act would signal a legitimisation of anti-Semitism, islamophobia and anti-Catolism etc. by the legislative branch.

In April 2005 DIHR commented in a memorandum on the Council of Animal Ethics *(Det Dyreetiske Råd)* statement on ritual slaughters of animals.
According to departmental order nr. 1037 of 14 December 1994 domestic animals can be slaughtered without being drugged when the slaughter is performed according to Jewish or Islamic tradition. The last remaining slaughter house which did ritual slaughtering without the use of drugs closed in August 2004.

Council of Animal Ethics stated in 1997 that there was not sufficient reason to prohibit ritual slaughter of animals without the use of drugs. However, in 2005 the Council recommends "due to changes in society and new research" to prohibit such slaughtering.
It is a fact that orthodox Jews according to the religious rules only accept meat from animals which have been slaughtered without the use of drugs. The Mosaic Religious Society in Denmark *(Mosaisk Trossamfund i Danmark)* as well as smaller parts of the Islamic *Religious* Society follow the orthodox line. Therefore when deciding the matter of ritual slaughtering, consideration must be made to animal care as well as the right to freedom of religion.

A prohibition by law against ritual slaughtering is in the view of DIHR an interference with the right to freedom of religion. However, such an interference can be legitimised with reference to the care of animals. The crucial point is therefore whether the interference is necessary in a democratic country and proportional.
Consideration must be had to the fact that animal ethics cannot legitimise interference with the right to freedom of religion if the interference in fact has limited effect on animal ethics.
DIHR finds it doubtful that there is basis for a prohibition of ritual slaughters and stresses the importance of respect of minorities' religious believes.

Article 11. Freedom of expression and of information

Freedom of expression and of information

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

The United Nations' High Commissioner for Human Rights, Louise Arbour, has expressed concerns about a Danish newspaper's caricatures of the Muslim prophet Mohammed (see

below under concerns) saying "I would like to emphasise that I deplore any statement or act showing a lack of respect towards other people's religion".
According to the newspaper the cartoons should be seen as a test of whether Muslim fundamentalists had begun affecting the freedom of expression in Denmark. The High Commissioner for Human Rights has appointed a UN expert in the areas of religious freedom and racism to investigate.

Eur.Ct. H.R. (Grand Chamber), *Pedersen and Baadsgaard v. Denmark* (Appl. no. 49017/99,), Decision of 17 December 2004.
Denmark was not found in violation of ECHR Article 6 or article 10 by the European Court of Human Rights.

The applicants complained about the length of criminal proceedings against them. They furthermore alleged that their right to freedom of expression had been violated in that the Supreme Court judgment of 28 October 1998 disproportionately interfered with their right as journalists to play a vital role as "public watchdog" in a democratic society.

Circumstances of the case:
The applicants were two television journalists. At the relevant time they were employed by a national TV station in Denmark. They produced two television programmes which were broadcasted in 1990 and 1991. The programmes, described as documentaries, were called "Convicted of Murder" and "The Blind Eye of the Police" respectively and dealt with a murder trial in which had convicted a person, hereafter called X, of murdering his wife. X was sentenced to 12 years' imprisonment. On 13 September 1990, subsequent to his release on probation, X requested the Special Court of Revision to reopen the case. X's retrial ended with his acquittal in a judgment in 1992 by the High Court of Western Denmark.

At the outset of both programmes it was stated that they had been produced on the following premise: "In the programme we shall provide evidence by way of a series of specific examples that there was no legal basis for X's conviction and that by imposing its sentence, the High Court set aside one of the fundamental tenets of the law in Denmark, namely that the accused should be given the benefit of the doubt.
We shall show that a scandalously bad police investigation, in which the question of guilt had been prejudged right from the start, and which ignored significant witnesses and concentrated on dubious ones, led to X being sentenced to 12 years' imprisonment for the murder of his wife. The programme will show that X could not have committed the crime of which he was convicted on 12 November 1982".

In 1993 the Chief Constable informed the applicants that they were charged with defaming the Chief Superintendent due to the broadcast of "The Blind Eye of the Police. The allegations were declared null and void and the applicants were each sentenced fines.

The Court's assessment in relation to article 10 of the convention of ECHR (no violation was found of Article 6 § 1 of the Convention in respect of the length of the proceedings)

On the basis of various elements and having regard to the nature and degree of the accusation, the Court saw no cause to depart from the Supreme Court's finding that the applicants lacked a sufficient factual basis for the allegation, made in the television programme broadcast in 1991. The national authorities were thus entitled to consider that there was a "pressing social need" to take action under the applicable law in relation to that allegation.

The Court did not find these penalties excessive in the circumstances or to be of such a kind as to have a "chilling effect" on the exercise of media freedom. The interference with the applicants' exercise of their right to freedom of expression could therefore reasonably be

regarded by the national authorities as necessary in a democratic society for the protection of the reputation and rights of others.

There had accordingly been no violation of Article 10 of the Convention.

Legislative initiatives, national case law and practices of national authorities

On 27 October 2005 [Bill (2005:40) amending the Criminal Code (Crime committed as a result of the injured party's legal expressions in the public debate as an aggravating circumstance)][28] was introduced in Parliament. The objective of the bill is to improve the protection against assaults interfering with the right to freedom of expression. It will according to the bill be an aggravating circumstance if the crime is committed as a reaction to the injured party's expressions in a public debate on issues of general interest e.g. politics, religion or of a professional character. Exempted are expressions delivered in the private sphere.

High Court of Eastern Denmark UfR 2005.123Ø
An editor Q and two journalists, S and P, had twice brought articles and photos of A and B's relationship and of A's former relationship to C without their acceptance. Both A and B were sports celebrities. Following the publication the editor in chief, Q, had in a television program mentioned A and B by name. A and B filed case against Q and S and P for defamation.
The High Court emphasised the importance of the media's extensive freedom of expression, as guaranteed by Article 10 § 1 of the Convention on Human Rights, in a democratic country but found that article 10 could not in this case legitimise the violation of the Criminal Code section 264 d. Q was fined 40 000 DKK og S and P 15 000 DKK. A and B were also awarded 50 000 DKK each as compensation.

High Court of Eastern Denmark UfR 2005.1145Ø
During a football match a group of persons initiated some demonstrations and riots. Stones were thrown at the police P. P arrested some individuals who were placed on the ground. In a distance of 10 metres from the arrested persons about 10 policemen lined up in a chain in order to bar the area. T tried repeatedly in her capacity as a journalist to get to the arrested persons in order to interview them, but the police ask her to keep away and would not let her pass the chain of police men. T was convicted of violation of the police regulation in the district of Copenhagen *(Politivedtægten for København)* section 7 and fined 400 DKK. The police order to T to keep away was not an unjustified interference with article 10 of the ECHR.

High Court of Eastern Denmark UfR 2005.3047Ø
A journalist was allowed partly access to documents in a 7 year old criminal case, in which an employee of the Royal House gave evidence as a suspect of a crime committed against two members of the Royal Family. Despite the case having a lot of publicity then the content of the evidence could not be assessed to be common knowledge at the time being. Therefore the application was only partly met.

High Court of Western Denmark UfR U.2005.3017V
A journalists application for access to documents in two criminal cases concerning sexual assaults of three minors in relation to those statements and evidence given behind closed doors was not met despite one of the children, A, now being of age and have given consent to access to A's evidence given in the case.

[28] Forslag (2005:40) til lov om ændring af straffeloven (Skærpede regler om strafudmåling for forbrydelser begået med baggrund i den forurettedes lovlige ytringer i den offentlige debat)

High Court of Western Denmark UfR 2005.3014V
A student of law, A, had for the use of his final paper on the protection of dignity in Danish law applied for access to all cases concerning violations of section 267 and 268 in the Criminal Code from 1. January 2000 to 1. April 2005. A had argued that he was in terms of the Administration of Justice Act a researcher. The Court refused the application stating that A was not a researcher in the meaning of the Administration of Justice Act.

The Ombudsman (J.nr. 2002-3533-429)
The plaintiff, a patient association, had asked a clinic at an important and large public hospital to leave the association's folder in the waiting room but the wish was rejected. The Ombudsman critised that consideration had not been taken to the association's right to freedom of expression and information and asked the hospital to reconsider the case in the light of article 10 of the ECHR.

The Ombudsman (J.nr.: 2004-3282-801)
A journalist, the plaintiff, was denied access to "all retirement and senior agreements which the municipality X had entered with its employees the last ten years". The muncipality found that the application did not meet the requirement of identification and concreteness in the Act on Publicity (*Offentlighedsloven)* section 4.
Ombudsman did not find reason to criticize the assessment of the requirement of identification not being fulfilled. However, the Ombudsman requested the municipality to reconsider the case in order to give the complainant at least partly access to the documents. It was stressed that the media must as far as possible be given access to documents in accordance with the principle in ECHR article 10. It was also noted that access to factual information concerning matters of wage must always be given.

The Ombudsman (J.nr.: 2005-0713-401)
A journalist was denied access by the Foreign Ministry to documents concerning the investment fund for the Eastern countries and the correspondence between the fund and the ministry from 1989 to today. After approach by the Ombudsman to the ministry access was given to annual reports but certain economic information was deleted. The ministry also denied access to internal working papers but did not inform the journalist hereof.
The Ombudsman found many reasons for criticizing the ministry e.g. for not giving access to certain documents, for deleting certain information in the documents etc. and noted that consideration must be made to ECHR article 10 especially when the media requests access to information.

The Ombudsman (J.nr.: 2004-3196-801)
Two journalists were denied access to documents concerning all journeys which the wife of the previous Chief Mayor had carried through financed out of public funds. The municipality of Copenhagen argued that the request did not meet the requirements of identification and that it would demand many resources to find the documents.
Ombudsman did not find reason to criticize the assessment of the requirement of identification not being fulfilled. However, the Ombudsman stressed that consideration must be made to ECHR article 10 especially when the media requests access to information and requested a reconsideration of the case.

The Ombudsman (J.nr.: 2002-3762-812)
The Ombudsman found that a consultant had participated in broadcasting as a private person. He was protected by the ruled on civil servant's freedom of expression, and he had therefore no duty to brief his employer of the interview before or after the interview. However, the consultant participated in the documentary in way of this job, why he was not protected by the rules on freedom of expression. The Ombudsman found the consultant had – although his

statements were critical of the health system as such - remained within the limits set down by the county for his participation in the program.

Danish Data Protection Agency (*Datatilsynet*)
In a statement by the Danish Data Protection Agency it was pointed out, that general information concerning an individual could be provided on the internet without acceptance as consideration must the right to information must have priority. However, strictly personal information could not be provided on the internet.

Reasons for concern

A Danish newspaper printed on 30 September 2005 twelve cartoons featuring Muslim prophet Mohammed. The newspaper had asked illustrators to make the cartoons after reports that artists were reluctant to illustrate a book on Mohammed for fear of Muslim retribution. The daily's editors said the cartoons were a test of whether the threat of Islamic terrorism had limited the freedom of expression in Denmark.

The newspaper has been subject to demonstrations and criticism by Muslims for printing the cartoons, and was forced to hire security guards after receiving hate mail and death threats over the telephone. The newspaper has also been mentioned on websites listing possible terrorist targets and features in recent propaganda images circulating on the internet.

Reports of the cartoons have worried a number of Muslim countries with embassies in Denmark and they have sent a protest to the Danish Prime and the Ministry of Foreign Affairs about the caricatures. The Danish Prime Minister refused to meet with the ambassadors, saying he had no power over the national media's actions.

In addition to Indonesia, a number of Arab states, Pakistan, Iran, and Bosnia-Herzegovina have complained about the cartoons, which they see as a hate campaign against Muslims in Denmark. Muslim organisations in Denmark, such as the Islamic Religious Community, have demanded an apology, but the Editor-in-Chief rejected the idea stating that the cartoons had been a journalistic project to find out how many cartoonists refrained from drawing the prophet out of fear and self censorship.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Act (2004:1437) amending the Televison and Radio Act (Political advertisements and extension of program permissions)][29] was adopted by Parliament.
The act introduces a new wording of the permanent prohibition against emission of certain television advertisements in section 76. The prohibition encompasses political parties, religious movements, unions and employers organizations and now also political movements, and political candidates and elected political members. The prohibition of emission of advertisements with political message is limited to 3 months at a maximum from a call for election to the holding of the election.
The amendment has been made in order to ensure that the prohibition is not in breach with ECHR article 10 mean while the wish for a more extensive prohibition against emission of political television advertisements is considered.

[29]Lov (2004:1437)om ændring af radio- og fjernsynsloven. (Politiske reklamer og forlængelse af programtilladelser).

Article 12. Freedom of assembly and of association

Freedom of association

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:530) on a military penal code)][30] and [Act (2005:531) on military Administration of Justice Act)][31] and [Act (2005:532) on an act concerning means of military discipline)][32] was adopted by Parliament.

The scope of the three acts is a revision of the military legal system, i.e. a to replace the outdated military Criminal Code and administration act from 1973, 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 acts introduces amongst others a simplified administration of justice act e.g. abolition of rules only known within the military system. However, certain special rules are maintained in the field of remand in custody and search but the conditions for these interferences are approximated to the general conditions in the civil Administration of Justice Act.
With the new acts the authority to investigate and prosecute military criminal cases is placed only within the military prosecution. Also the former access to deciding a military penal case by a penal order *(strafpålæg)* is abolished.

In addition to this the rules on the use of disciplinary means are now regulated in a single act. The new act on the use of military disciplinary means also regulates e.g. the purpose of the act, which means may be used in certain cases, when a person is liable and procedural rules.
One of the objectives with the amended military Criminal Code was to equalize the personnel of the armed forces, to some extent, to the position of civilian citizens e.g. that the military personnel only has to endure specific limitations in ordinary guarantees concerning rule of law, if this is absolutely necessary. In line with this objective section 29 in the former military Penal Code, which limited the military personnel's right to freedom of association, is abolished.

Supreme Court UfR 2005.2111H
A, who was member of a Christian union, C, and state-employed at S, was from 1992 to 1998/99 nominated by her local employer to a bonus, but not until 1998/99 was she awarded the bonus. K filed a case on behalf ofA against S arguing e.g. that decisions made in previous years not to grant the bonus were invalid. The High Court found that the basis for giving the specific bonus was an agreement between S and the entitled negotiation organisations – and K was not such. The High Court acquitted S of the charge as there was no reason to assume that S had discriminated B in the negotiations or other reason to critise S for its administration of the bonus arrangement. The Supreme Court upheld the decision of the High Court.

High Court of Eastern Denmark UfR 2005.1677Ø
A was in 1988 engaged in an organisation, O, that had entered into an agreement with the Danish Official Union, DU, which stated that O mainly would engage officials who were members of DU. A had joined DU two years earlier as a trainee. In 2002 O was fined for having broken the agreement with DU by having ignored the clause concerning priority to members of DU for more than 10 years. In 2002 A wished to resign his membership of DU,

[30] Lov (2005:530) om militær straffelov.
[31] Lov (2005:531) om militær retsplejelov.
[32] Lov (2005:532) om militær disciplinarlov.

which was denied by DU due to the clause. In addition to the specific clause the articles of DU stated that a member of DU could not resign when engaged in the field of DU.
The High Court stressed that although it is a fundamental right to not-associate there is not much legislation on the matter, why the question of the scope of this right to not associate is a political question to be decided by the legislative branch. The High Court therefore found reason of precautions in relation to the assessment under ECHR article 11 and the general clause of fairness in the Act on Agreements *(Aftalelov)* section 36. However, this case, where membership of DU was in opposition to A's union political views, the High Court found it unreasonable that A could not resign with an appropriate warning.

Article 13. Freedom of the arts and sciences

Article 14. Right to education

Access to education

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Act (2004:1457) amending the Act on Public Schools (Free place subsidy on economical, social or educational reasons)][33] was adopted by Parliament. In act introduces an obligation of reduced payment for families with children in the so-called SFOs (a care institution licked to public schools) similar to families with children in day care institutions in all municipalities, which have an income below 387.400 DKK or where it may be necessary due to social or educational purposes. Previously families with low incomes experienced in some municipalities a high increase of fees when their children went from kindergarten to a SFO.

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

Article 16. Freedom to conduct a business

Freedom to conduct a business

Good practices

Human Rights & Business Project
DIHR has initiated the Human Rights & Business Project which strives to combine the expertise of the human rights research community with the experience of business in order to develop concrete achievable human rights standards for companies, and to help companies live up to those standards in practice through training and advisory services.[34]

Especially the Human Rights and Business Project has concentrated the development of the Human Rights Compliance Assessment (HRCA).

[33] Lov (2004:1457) om ændring af lov om folkeskolen. (Fripladstilskud i skolefritidsordninger af økonomiske, sociale eller pædagogiske grunde).

[34] Further information: http://www.humanrightsbusiness.org/

The Human Rights Compliance Assessment is a diagnostic tool designed to promote corporate social responsibility by providing companies with useful information about how to avoid human rights violations in all aspects of their operations. It is a practical tool which has been mapped against the guidelines of the Global Reporting Initiative (GRI) and can assist companies with GRI and Global Compact reporting.

The questions and indicators in the HRCA are drawn from all major human rights treaties and conventions. The full check of the HRCA contains approximately 350 questions and 1000 indicators, but a computer programme allows the company to select relevant checks for its particular operations. After completing the HRCA checklist, the company receives a computerized report from the programme, which can be used to review and track performance year to year and to assign tasks for follow-up.

In June 2005, The Human Rights & Business Project published the report: "Corporate Codes of Conduct in Denmark - An examination of their CSR content" This study examines the content of Danish codes of conduct and benchmarks the performance of the codes against: 1) international norms and standards on human rights and labour; 2) codes of conduct developed in cooperation between trade unions, NGOs and companies; and 3) codes of conduct issued by foreign corporations.

Diversity in Working Life (the MIA project)
Diversity in Working Life (the MIA project) is financed by the EU and implemented by the Institute for Human Rights in the area of discrimination. The purpose of the project is to establish dialogue and focus on diversity and equal treatment in working life.

The annual prize
MIA is the Danish acronym for "Diversity in the workplace". The annual prize celebrates Danish private and public companies that through company policies and management have noticeably contributed to the promotion of diversity and equal treatment in the workplace. The MIA-project is part of the practical implementation of the two EU-directives on equal treatment and supported financially by the EU.
In 2005 the MIA-prize for diversity in the work place was awarded by Her Royal Highness Queen Princess Mary to 3 Danish private companies. At the MIA-price award in 2005 DIHR also launched a compliance tool for companies.

Publication:
Diversity in the workplace – When we are equal but not the same, Børsens forlag 2005
With this book the Danish Institute for Human Rights proposes the MIA model for diversity management as a guiding tool for for practical experts in the field of diversity and equal opportunities. The book takes its outset in the new EU legislation on discrimination and equal treatment. The publication has been co-founded by the European Union. The publication is based on the Danish publication: *Mangfoldighed I arbejdslivet. Når vi er lige men ikke ens.*[35]

Article 17. Right to property

[35] Further information: www.borsensforlag.dk

Article 18. Right to asylum

Unaccompanied minors seeking asylum

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

The UN Committee on the Rights of the Child expressed its concern in its Concluding Observations in particular in relation to the number of unaccompanied asylum-seeking children which disappear from reception centers. The Committee recommended Denmark to conduct a study on unaccompanied children who disappear from reception centers. [36]

Good practices

Panel debate on Refugee Children
On the occasion the Universal Children's Day the 20 November a panel debate on Refugee Children was arranged. The event focused primarily on the conditions and rights of unaccompanied asylum-seeking children. The presentation dealt with the concerns raised in the Concluding Observations published recently by the UN Committee on the Rights of the Child and the concerns raised in the supplementary report.

Reasons for concern

Recently the number of cases of unaccompanied asylum-seeking children (especially from China) seems to be increasing. The specific purpose is not known, but it seems Denmark is a transit country in a trafficking scheme.

Also the figures for issuing temporary residence permits for unaccompanied asylum-seeking children seem to have fallen dramatically, indicating a significant tightening in the administrative practice.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities
In May 2005 [Act (2005:324) amending the Aliens Act, Act on Marriage and Act on Repatriation (Increased sentence for illegal employment, abolishment of the pack-lunch arrangement, precision of the independence of the Refugee Board, stressing of the consideration of the principle of unity of the family, enlargement of the recipients of economical repatriation help, better enlightenment of cases concerning humanitarian residence permit)][37] was adopted by Parliament.

The purpose of the act is amongst others to implement an agreement from November 2004 entered between the Government and the political party the Danish People's Party *(Dansk Folkeparti)* concerning a number of initiatives in the areas of immigration- and refugee law e.g. enlargement of the group of recipients of economical repatriation help. Another main objective is to meet the criticism raised in the report of 8 July 2004 by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, following a visit to Denmark in April 2004 e.g. the rules of

[36] Para. 51-52, CRC/C/15/Add.273 30 September 2005
[37] Lov (2005:324) om ændring af udlændingeloven, ægteskabsloven og repatrieringsloven (Skærpet straf for ulovlig beskæftigelse, afskaffelse af madpakkeordningen, styrkelse af oplysningsgrundlaget i sager om helbredsbetinget humanitær opholdstilladelse, præcisering af Flygtningenævnets uafhængighed, fremhævelse af hensynet til familiens enhed, udvidelse af personkredsen, der kan modtage hjælp efter repatrieringsloven m.v.).

reunification of families and the independents of the Refugee Board. The impartiality of the Refugee Board is improved by placing the authority to appoint new members of the council at the chair instead of as now the Minister. In relation to the rules on family reunification it is stressed in the law that consideration of the principle of unity of the family must be taken when administrating the law.

In addition to this the amendments aim at intensifying the efforts against illegal employment of foreigners by increasing the sentence and by postponing the possibility of obtaining permanent residence permit for foreigners who have worked illegally as well as introducing punishment of persons who have participated in such, improving the factual basis in cases concerning health conditioned humanitarian residence permit, e.g. access for the Ministry of Refugees, Immigrants and Integration to collect information concerning the applicants health condition without the applicants consent, and to regulate the question of payment for the collection of such information. At last the so-called"lunch-pack" scheme is replaced by subsistence allowances.
According to a inquiry by the Danish Data Protection Agency (*Datatilsynet*) of the National Commissioners of Police Office's the 443 Danish reports to SIS has shown that 25 of the cases should not have been reported. Having serious consequences for the individuals, who have been reported to SIS, it is the Agency's view that the rate of mistakes is unacceptable. Following, the National Commissioners Office has corrected the mistakes pointed out in the inquiry.

In November 2005 DIHR was asked by the Ministry of Refugees, Immigrants and Integration to comment on [Draft bill amending the Aliens Act and Act on Marriage (advanced time of application for humanitarian permit, information duty in case of suspicion of re-educational journeys, limited access to family reunification for persons convicted of kidnapping and amended rules for education and activation of adult asylum seekers][38]. The draft bill (2005:94) was introduced in Parliament on 30 November.

Reasons for concern

DIHR has in a memorandum from December 2004 in relation to [Act (2005:324) amending the Aliens Act, Act on Marriage and Act on Repatriation] pointed out that the act raises several legal issues in relation to the principle of rule of law and that the amendments potentially might result in a de facto violation of the rights to family life as well as assaults in the scope of Article 1A of the Geneva Convention relating to the Status of Refugee adopted on 28 July 1951 and/or ECHR article 3.

In relation to the transfer of authority to assign members of the Refugee Board to the chair only has a limited effect on the council's independence of the ministry in view of the DIHR. The new arrangement does not ensure the councils structural or personal independence satisfactory. The DIHR pointed out again that there has not been given reasonable grounds for the reduction of the number of council members from 5 to 3 in 2002 by which the representatives of the Danish Refugee Council and the Ministry for Foreign Affairs were removed. The Danish Refugee Council representative was removed 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 was 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. The

[38] Forslag (2005:94) til ændring af Udlændingeloven mv. vedrørende fremrykket ansøgningstidspunkt i sager om humanitær opholdstilladelse, indberetningspligt ved mistanke om genopdragelsesrejser, begrænsning i adgangen til familiesammenføring for personer, der er dømt for børnebortførelse samt ændrede regler om undervisning og aktivering af voksne asylansøgere m.v.

participation of the Danish Refugee Council ensured that humanitarian considerations were taken in every case.
The DIHR also raised concern in relation to conditioning payment of expenses by the authorities, in relation to the collection of necessary information for humanitarian permit applications, by a written undertaking on before hand. This involves a risk for denial of such application although the applicant formally fulfils the conditions for such permission. In this light it is of concern that a denial of a request for an undertaking can not be appealed.
Finally, the DIHR raised criticism of the proposed submission of cases of reunification of refugee spouses, where the marriage is entered following the departure of the home country, to the asylum division in Danish Immigration Service *(Udlændingestyrelsen)* is not satisfactory e.g. the legal status of the reply by the Service is unclear as well as the procedure. It is also of concern that the assessment of the asylum elements can not be reviewed.

The DIHR notes in a memorandum from November 2005 in relation to [Draft bill amending the Aliens Act and Act on Marriage (advanced time of application for humanitarian permit, information duty in case of suspicion of re-educational journeys, limited access to family reunification for persons convicted of kidnapping and amended rules for education and activation of adult asylum seekers][39] that consideration must be taken to the right of the child in accordance with ICRC article 3 when deciding whether the right to family reunification shall be limited for a parent convicted for kidnapping. The DIHR reaffirms the state's duty to respect the minor asylum seeker's human rights when considering the minor's application for family reunification with e.g. a parent living in Denmark although the minor is resident abroad.
Secondly, the draft bill widens the scope in section 34 in the Aliens Act for the use of measures by making it application to foreigners in transit, in order for the Danish authorities to assist other European countries in their attempts to implement their orders of expulsion.
It will be a potential interference with the foreigner's right to liberty as stipulated in article 5 of ECHR in cases where the Danish authorities follow the foreigner from one plan to the other and where the foreigner is forced to take residence in a waiting room. Therefore the DIHR recommends that the conditions for using the measures in section 34 are regulated explicitly in the act.
Additionally, the DIHR finds the widening of the scope in section 34 in the Aliens Act for the use of measures towards foreigners in transit lacks meaning as the up-listed measures in section 34 number 1-4 are not relevant in a transit situation where the foreigner does not gain access to the Danish territory.
At last the DIHR, in relation of the widening of the liable for conveyers, repeats its general concern of such.

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

Subsidiary protection and 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 other cruel, inhuman and degrading treatments

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

Human Rights Committee, *J.R.B v. Denmark,* communication no. 1222/2003

[39] Udkast til forslag til ændring af Udlændingeloven mv. vedrørende fremrykket ansøgningstidspunkt i sager om humanitær opholdstilladelse, indberetningspligt ved mistanke om genopdragelsesrejser, begrænsning i adgangen til familiesammenføring for personer, der er dømt for børnebortførelse samt ændrede regler om undervisning og aktivering af voksne asylansøgere m.v.

Decision of 9 December 2004. Article 7 of ICCPR.

The author was a Ugandan national residing in Denmark and awaiting expulsion to Uganda. He claimed to be victim of a violation by Denmark of articles 7 of the ICCPR.
By judgment of 23 April 2002, the City Court convicted the author of drug-related offences, and sentenced him to two years and six months' imprisonment. It also ordered the author's expulsion from Denmark, finding that such expulsion would not amount to a violation of the right to family life under article 8 of the European Convention, and permanently barred him from re-entering Denmark.

While claiming that the danger he faces upon return to Uganda is a consequence of deportation, the author criticizes that the State party failed to address the evidence he had submitted. Denmark had not shown that the circumstances in Uganda had changed fundamentally, so as to render the reasons for granting him asylum, in 1986, obsolete.
The author argued that, in the light of the length of his stay in Denmark and his family's interest to continue living together, the State party's decision to deport him must be considered disproportionate to the aim pursued, despite the relatively serious nature of his conviction.

Consideration of the merits:
The Committee observed that the State party, while challenging the author's claim under article 7, did not submit any substantive grounds for its position. Consequently, the Committee concluded that the expulsion order against the author would, if implemented by returning him to Uganda, constitute a violation of article 7 of the Covenant.
In accordance with article 2, paragraph 3 (a), of the Covenant, the Committee stressed that a State party is under an obligation to provide the author with an effective remedy, including revocation and full re-examination of the expulsion order against him. The State party is also under an obligation to prevent similar violations in the future.

The Danish Refugee Board submitted on 15 December 2004 its remarks concerning communication no. 1222/2003 in which the Board found it unfortunate that The Human Rights Committee had not given the Board the opportunity of submitting its opinion of the case before making its decision and raised concern as to the fact that the Committee only had had a Danish version of the Board's decision available. The Board had assessed that an expulsion to Uganda was possible and had rejected some of the author's information as unreliable.

By letter of 18 March 2005 Denmark requested the Committee to reconsider the case on grounds of new information but the request was rejected by the Committee on 9 August 2005.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Supreme Court UfR 2005.1766H
T1 and T2, who were Turkish citizens and below the age of 20, were convicted of attempt of robbery and serious violence by the use of a knife and murder of a young Italian tourist. Both had previously been convicted. They were sentenced to 10 and 8 years' imprisonment. T1 has been born in Denmark, while T2 arrived at the age of 3 in Denmark. Both were raised in Denmark but still they had both preserved an attachment to Turkey. The Supreme Court did not find that an expulsion would be in breach of ECHR article 8 and ordered their expulsion from Denmark.

The Ombudsman (J.nr.2004-2600-649)
A foreigner, F, who's expulsion from Denmark ordered had been living with his wife for more than two years. The Danish Immigration Service decided that F had to take residence at the asylum centre Sandholm Centre north of Copenhagen after an amendment of the Aliens Act. The Ombudsman criticised the Danish Immigration Service's decision for lacking a clear legal basis. The Immigration Service reviewed the case and decided that F could stay with his wife.

CHAPTER III EQUALITY

Article 20. Equality before the law

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:
The Committee is concerned at the lack of constitutional or other legislative provisions in the State party guaranteeing the right to housing. The Committee is also concerned about the difficulties faced by disadvantaged and marginalized groups, in particular immigrants, in renting or obtaining public housing owing to discriminatory practices. The Committee also notes with concern the increase in homelessness among the immigrant population in the State party.(Denmark. 14/12/2004. E/C.12/1/Add.102. para. 21)

Committee on the Elimination of Racial Discrimination, *E.S vs. Denmark*, Communication No. 32/2003.
No violation of articles 2 paragraph 1 (d), 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

The petitioner was Mr. Sefic Emir (S.E.), a Bosnian citizen, residing in Denmark, where he held a temporary residency and work permit. The petitioner contacted an insurance company to purchase insurance. He was told that they could not offer him insurance, as he did not speak Danish. The conversation took place in English. On 12 December 2002 S.E. filed a complaint with Police of Copenhagen. The Police informed the petitioner that "it appears from the material received that the possible discrimination only consists of a requirement that the customers can to speak Danish in order for the company to arrange the work routines in the firm. Any discrimination based on this explanation and being objectively motivated is not covered by the prohibition in Section 1 (1) of the Act against Discrimination." The Public Prosecutor rejected in June 2003 the complaint under Section 749 (1) of the Administration of Justice Act.
The petitioner claimed that the State party had violated article 2, subparagraph 1 (d), and 6, by not providing effective remedies against a violation of the rights relating to article 5. The petitioner argued that the language requirement could not be considered as an objective requirement; and argued that the Danish authorities could not come to such a conclusion without initiating a formal investigation to find out the real reasons behind this policy.

The issue was whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, with regard to the extent to which it investigated the petitioner's claim in this case. The Committee noted that it is not contested that he does not speak Danish. It was considered that the language requirement "was not based on the customer's race, ethnic origin or the like", but for the purposes of communicating with its customers. The Committee found that the reasons provided by the insurance company for the language requirement, including the ability to communicate with the customer, the lack of resources for a small company to employ persons speaking different languages, and the fact that it is a company operating primarily through telephone contact were reasonable and objective grounds for the requirement and would not have warranted further investigation.

In the circumstances, the Committee on the Elimination of Racial Discrimination did not disclose a violation of the Convention by Denmark.

Committee on the Elimination of Racial Discrimination, *K.Q. mod Danmark nr. 33/2003*, Communication No. 32/2003.
No violation of articles 2 subparagraph 1 (d), 4 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

The petitioner alleged to be the victim of a violation by Denmark of articles 2, subparagraph 1(d), 4 and 6 of the Convention.

Speeches made at the Progressive Party's annual meeting, held in October 2001, were broadcast on the State party's public television system, which has a duty to broadcast from annual meetings of political parties seeking election. Complaints were filed against the six of the speakers, as well as the members of the executive board of the Progressive Party for approval of the statements, for violating section 266(b)(1) and (2) of the Criminal Code on the basis that they threatened, insulted or degraded a group of persons on account of their race and ethnic origin. Four of the charges were withdrawn – in one case on the basis that completion of the trial would entail difficulties, costs or trial periods not commensurate with the sanction to be expected in the event of conviction and in the tree others on the basis that that further prosecution could not be expected to lead to conviction. Two of the speakers at the annual meeting were convicted.

The Committee recalled that in its decision on the first petition presented by the complainant it emphasized that the focus of its examination was on steps taken on the basis of the State party's legislation, primarily criminal, against the individual actors alleged to have personally engaged in an act of racial discrimination. In the present case, two speakers at the party conference were convicted and sentenced for violations against of 266(b) of the Criminal Code.
The Committee recalled that one person made offensive statements about "foreigners" at the party conference. The Committee noted that, about regardless of what may have been the position in the State party on the past, a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin. The Committee was thus unable to conclude that the State party's authorities reached an inappropriate conclusion in determining that statement, in contrast to the more specific statements of the other speakers, at the party of the conference, did not amount to an act of racial discrimination, contrary to section 266(b) of the Danish Criminal Code. It also followed that the petitioner was not deprived of the right to an effective remedy for an act of racial discrimination in respect of the statement. Nevertheless, the Committee considered itself obliged to call the State party's attention to the hateful nature of the comments concerning foreigners made by the individual and of the particular seriousness of such speech when made by political figures. The Committee was of the opinion that the facts before it did not disclose a violation of the Convention.

The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted on 9 December 2004 its second opinion on Denmark-

The Advisory Committee welcomed in its opinion the passing of the Act on the Establishment of the Danish Centre for International Studies and Human Rights (Act No. 411 of 6 June 2002) which establishes within this Centre, DIHR. DIHR has an important role to play in terms of promoting equal treatment of all people regardless of race or ethnic origin. It provides assistance in handling complaints of victims of discrimination launches independent inquiries into discrimination and publishes reports and submits recommendations in matters regarding discrimination.

The Institute will in view of the Committee need additional resources to cope with the growing demands placed on it.

The Advisory Committee noted that the Complaints Committee lacks the power to enforce disclosure of material information on a case, and that the Complaints Committee can not address direct discrimination on the grounds of religion unless it can be perceived as indirect discrimination on the grounds of race or ethnic origin.

The Advisory Committee considered that within DIHR, the National Department can play an important role in helping to implement the spirit of the Framework Convention in Denmark, in particular for persons belonging to ethnic or religious groups that would like the protection offered by the Convention.

The Committee pointed out that Denmark has a tradition for tolerance and respect for others and that there has been a progress in developing anti-discrimination legislation in Denmark, notably in relation to the passing of the Act on Ethnic Equal Treatment (Act No. 374 of 28 May 2003). This legislation, reflecting the principles of Articles 4 and 6 of the Framework Convention, provides additional safeguards against discrimination on the grounds of race or ethnic origin in a number of societal settings. A further positive development has been the establishment of DIHR along with its Complaints Committee for processing cases and providing opinions on whether there have been contraventions of the prohibition against discrimination.

However, the Committee found a strong seam of intolerance has developed in Danish society; particularly towards immigrants and also Muslims and that there are particular concerns about the introduction of an anti-immigrant agenda in the political arena. Concerns also exist about the way in which certain media portray persons from different ethnic and religious groups, including members of the Muslim faith. The policy and practice of the Government towards immigration, as evidenced by the reform of the Aliens Act, may in view of the Committee have contributed to an increase in hostility towards persons belonging to different ethnic and religious groups. The Government's policy towards integration, while following a laudable aim, has been criticised for not sufficiently taking into account the problems, including discrimination, faced by persons from different ethnic and religious groups. The Government is therefore invited to further its efforts to tackle intolerance in society and to reconsider its immigration and integration policy.

In relæation to the German minority it is pointed out by the Commission there are current concerns, which need to be addressed by the authorities, about proposed administrative reforms and the impact that these could have on the political representation of persons belonging to the German minority at municipal and regional levels as well as at the level of the Region South-Jutland Schleswig.

The system of State support for the Danish National Church raises issues of equality of treatment with respect to other religions under Article 4 of the Framework Convention. Persons not belonging to the Danish National Church, outside of South Jutland, are required to register names at birth with the Danish National Church. This could pose an issue of conscience for persons not belonging to the Danish National Church. The authorities are encouraged to review this issue by the Committee.

The Advisory Committee considered in its first Opinion on Denmark that given the historic presence of Roma in Denmark, persons belonging to the Roma community could not *a priori* be excluded from the personal scope of application of the Framework Convention and echoes its conclusions in the second opinion.

Legislative initiatives, national case law and practices of national authorities

In March 2005 [Bill (2005:115) amending the Act on artificial insemination in connection with medical treatment, diagnosing and research etc. (abolition of requirement of marriage for insemination)][40] was introduced in Parliament.
The proposed amendment aims at giving every woman regardless of their civil status the possibility of artificial insemination with an abolition of the requirement of marriage as civil status.

In December 2004 [Act (2004:1416) amending the Act on the legal relation between employers and employees (abolition of the age limit in section 2 b)][41]. The act is part of the implementation of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and parts of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement
on fixed-term work concluded by ETUC, UNICE and CEEP2.
As part of the implementation of Council Directive 2000/78/EC of 27 November 2000 the act abolishes an age limit (18 years old) for the award of compensation for unfair dismissal as the differential treatment on ground of age could not be justified.

The Complaints Committee for Ethnic Equal Treatment
The Committee was established in accordance with the mandate given to DIHR as stipulated in the Act on Ethnic Equal Treatment of 28 may 2003 to handle individual complaints in the area of ethnic discrimination. The Act partly implements the EU Race Equality Directive. DIHR had the mandate expanded by [Act (2004:253), amending the Act prohibiting differential treatment on the labour market].[42] Now DIHR/The Complaints Committee for Ethnic Equal Treatment can deal with complaints on ethnic discrimination in the labour market. In The number of complaints received in the period May 2003 – December 2005 is 172 in total. 47 cases are still pending. 47 cases have been rejected as ill-founded or found to be outside the mandate. In 47 cases the plaintiffs withdrew the complaints or did not return with requested additional information. No violation was found in 25 cases. The Committee has made 32 statements; in 7 cases a violation was found. 20 cases have been reviewed ex officio. In 1 case free legal aid has been recommended and has been granted. In this case the District Court found in a judgment from December 2005 no violation of the Act on Ethnic Equal Treatment, but the judgment will probably be appealed.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 770.11/Decision of 5 February 2005
The complainant argued that the sale of sandals in a super marked with a print, which, according to the complainant, meant Allah, was offensive towards Muslims and in breach of section 2 and 3 in the Act on Ethnic Equal Treatment. The Complaints Committee pointed out that the sale of a product, which may offend a specific group of individuals on grounds on their ethnic origin, can not be qualified as an act of harassment towards individuals. The Committee did not find the sale of the product to be covered by the prohibition against harassment in the Act on Ethnic Equal Treatment.

[40] Forslag (2005:115) til lov om ændring af lov om kunstig befrugtning i forbindelse med lægelig behandling, diagnostik og forskning m.v. (Ophævelse af krav om ægteskab m.v. i forbindelse med kunstig befrugtning).
[41] Forslag (2004:1416) til lov om ændring af lov om retsforholdet mellem arbejdsgivere og funktionærer. (Ophævelse af 18-års-grænsen i § 2 b).

[42] Lov (2004:253) Lov om forbud mod forskelsbehandling på arbejdsmarkedet.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 711.3/Decision of 4 February 2005
A medical consultant had in relation to the municipality's consideration of the complaint's early retirement case given certain statements concerning the complaint's health and ability to work, which were grounded on the complaint's ethnic origin. The Complaints Committee rejected the complaint as the municipality's decision of giving the complainant an early retirement as the case had been decided before the Act on Ethnic Equal Treatment entered into force.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.8/Decision of 19 September 2005
The Complaints Committee did not find sufficient evidence for an alleged violation of the Act on Ethnic Equal Treatment by a cooperative housing society for having informed a person with a foreign sounding name of a longer waiting time (10-15 years) than to a person with a Danish sounding name (minimum 5 years). The housing society had argued that their had been made a mistake due to a person with an identical name being registered in the association's card index.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 860.2/Decision of 16 April 2005
Through a newspaper article the Committee became aware of the fact that some temporary employment agencies were willing to comply with some companies' wish for "white looking" substitutes. As the Complaints Committee lacks the power to enforce disclosure of material information on a case the Committee could not look into whether the agencies statements in the newspaper meant that the agency was willing to comply with companies' wishes for "white looking" substitutes as it would need evidence. The Complaints Committee did therefore not find sufficient evidence for a general discriminating practise in the agency.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.2/Decision of 6 April 2005
A legal aid bureau argued that a private cleaning company, which delivered in the municipality of Copenhagen, was willing to comply with some customers wish for receiving help from employees with only Danish ethnic background. The Committee did not find reason to criticise the cleaning company.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.5/Decision of 4 February 2005
The Complaints Committee did not find grounds on the available information in the case for deciding whether a municipality had used general information concerning social and/or cultural characteristics of a certain ethnic group in its consideration of cases.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.3/Decision of 4 February 2005
A legal aid bureau had informed the Committee of the fact that a municipality had established a school class only for pupils with another ethnic origin than Danish and that another municipality placed pupils in separate classes on basis of a language test.
The Committee pointed out that the placement of pupils in separate classes on grounds of their ethnic origin is a direct violation of the Act on Ethnic Equal Treatment and that placement on grounds of linguistic or educational criteria in certain circumstances might be indirectly discrimination on ground of ethnic origin. It was noted that pupils may only be placed in special classes if the criteria for the placement are reasonable and necessary.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.17/Decision of 10 August 2005

The Complaints Committee found that a cooperative housing society had violated the Act on Ethnic Equal Treatment by having informed a person with a foreign sounding name of a longer waiting time for an apartment than to a person with a Danish sounding name.

Complaints Committee for Ethnic Equal Treatment/ Journal no. 780.11/Decision of 2 September 2005
The Complaints Committee did not find an arrangement of placement of bilingual children in day care institutions in violation of the Act on Ethnic Equal Treatment. The bbilingual children needing education in Danish were placed in the day care institutions as that the rate of these children did not amount to more than 30 per cent. However, the Committee advised the municipality to lay down written guidelines for the identification of the bilingual children.

Positive aspects

In November 2005 DIHR published a report[43] concerning equal treatment describing e.g. the development of the implementation of the principles of non-discrimination and equal treatment in relation to age, sex, race and ethnic origin, disabled persons, religion and faith and sexual orientation. The report also contains suggestions for new legal and non-legal instruments to protect against discrimination and to promote equal treatment as well as a plan of action.
This is the first result of the national strategy for implementing equal treatment. The report is compiled by the DIHR with contributions from the Council for Human Rights Equal Treatment Committee based on the participatory action research method.

DIHR's objective with the strategy is to:
- Describe and identify how far we, in Denmark, have reached in implementation of the principles of non-discrimination and equal treatment in Danish legislation in regard to the six discrimination areas (age, gender, race and ethnic origin, disability, religion and belief and sexual orientation).
- Describe each single discrimination area and identify the core problems related to that area.
- Identify multiple discrimination.
- Raise awareness among organisations, institutions and actors working within each area of discrimination in other areas.
- Create innovation and new modes of combating discrimination as a phenomenon by pooling the six areas' efforts horizontally.
- Create the basis for developing legal and non-legal instruments to enhance equal treatment and provide protection against discrimination.
- Create consensus on and a common platform for a horizontal action plan to promote equal treatment and combat discrimination among the six areas.

Diversity in Working Life (the MIA project)
Diversity in Working Life (the MIA project) is financed by the EU and implemented by the Institute for Human Rights in the area of discrimination. The purpose of the project is to establish dialogue and focus on diversity and equal treatment in working life.

In 2003 the DIHR launched The MIA-prize. MIA is the Danish acronym for "Diversity in the workplace". The annual prize celebrates Danish private and public companies that through company policies and management have noticeably contributed to the promotion of diversity and equal treatment in the workplace. The MIA-project is part of the practical implementation of the two EU-directives on equal treatment and supported financially by the EU.

[43] Ligebehandling – status og fremtidsperspektiver

In 2005 the MIA-prize for diversity in the work place was awarded by Her Royal Highness Queen Princess Mary to 3 Danish private companies (Experimentarium, Novo Nordisk, and Dansk Cleaning Service) and one municipality. At the MIA-price award in 2005 the DIHR also launched a compliance tool for companies on the Act on Ethnic Equal Treatment.

In February 2005 the municipality of Copenhagen launched a months long campaign in cooperation with e.g. the Complaints Committee of Equal Treatment to fight discrimination in night life e.g. denial of access to a bar, night club or discotheque on grounds of ethnic origin. The main objective of the campaign was to inform of complaint possibilities in case of experienced discrimination in light life. Two weekends the Campaign against Discrimination took part in the night life in Copenhagen in order to spread its information.

The Copenhagen-Bonn Declarations from 29 March 1955 regulates the German and the Danish minority's status and rights. The Advisory Committee on the Framework Convention for the Protection of National Minorities recognised in its second opinion on Denmark adopted on 9 December 2004 the importance and success of the Copenhagen-Bonn Declarations that have been a central pillar for developing the rights of persons belonging to the German minority in Denmark and also the rights of persons belonging to the Danish minority in Germany and that the Copenhagen-Bonn Declarations have become models for peaceful solutions to minority problems and have contributed to the development of fruitful relations in the border region.

As stated by the Committee, the German minority in Denmark enjoys a significant level of protection in terms of the system of German minority schools and day care facilities and the consultative structure established for the German minority through the Secretariat of the German Minority in Copenhagen and the Liaison Committee concerning the German minority. However, the protection is geographically limited to Southern Denmark.

The 50th Anniversary of the Copenhagen-Bonn Declarations was celebrated in March 2005 in Denmark. The celebration had a particular political, social and cultural importance for the German minority in Denmark and the Danish minority in Germany.

In December 2004 DIHR organised in cooperation with the Nordic human rights institutions a round table on the status for ratification of protocol 12 to the ECHR in the Nordic countries. The objective of the seminar was to analyze and discuss the five Nordic Countries opinions of the protocol and to reach an understanding of the countries different approaches to the protocol. Denmark has not signed the protocol at present.

Good practices

Since 1992 every police district has been obliged to report committed crime and events which might have a racist background and are addressed at foreigners to the intelligence service. With a change in 2001 now every case which has a potential racist or religious background regardless of the background of the person which is targeted. The objective with the reports is to spot organised and systematic crime caused by racism or xenophobia.

Reasons for concern

Until September 2005 51 cases of racial crime were reported to the intelligence service (PET) against 37 cases in 2004. In 39 of the reported cases in 2005 ethnic Danes had committed the crime.

According to the Commissioner of Police's annual statistics 27 cases of violations of the Criminal Code section 266 b and 266 c (racial utterance) were reported. Here among 15 were

charged. Until 15 September 2005 41 cases of violations of the Criminal Code section 266 b and 266 c were reported, among which 15 were charged.

The private survey bureau Catinét Research has been conducting surveys on integration every half year since 1999. These omnibus surveys are based on immigrants' and refugees' own perceptions and experiences. The survey is based on approximately 1,000 telephone interviews and approximately 50 questions which are repeated in each survey in addition to supplementary questions relating to events which have been debated intensely in the media. The survey focuses on seven groups, namely persons originating from Pakistan, Turkey, Somalia, former-Yugoslavia, Iran, Iraq, Lebanon, Palestine and Stateless persons.

The survey on from 2005[44] concluded that an increased number of foreigners have experienced discrimination during the last 2 years. There has been a rise from 25 to 33 per cent. The survey also showed that there has been a decline from 50 to 43 per cent from 2004 to 2005 of employed foreigners.

Denmark has still not signed and ratified protocol 12 to the ECHR on discrimination.

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

Positive aspects

Denmark ratified 21 June 2005 the Council of Europe's Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

The Commissioner for Human Rights, Mr. Alvaro Gil-Robles, expressed concern in his report, after his visit to Denmark 13th-16th April 2004, in respect to prevention of discrimination, concerning the Roma children's difficult access to education e.g. the special classes in the Municipality of Elsinore which 30 children at the time attended. The majority of the children never returned to "normal" classes again. In reality, the criteria for placement of the children in these classes were the children's ethnic background and not the individual need. The Commissioner wondered why the Roma children with special educational needs are not placed in traditional special classes with Danish pupils with similar needs. The Romi-classes had also been criticised by the OECD in its report from 2003.
The practice of the Municipality of Elsinore has since been deemed illegal by the Minister of Education and the last remaining romi-classed was closed down in the summer of 2005.

Good practices

Towards Common Measures for Discrimination
DIHR presented together with Norwegian and Dutch colleagues in Oslo, Norway a preliminary report on exploring new possibilities for combining existing data for measuring ethnic discrimination. The project's aim is to improve the measurement and examine the comparability of discrimination by linking data from individual complaints, surveys on perceived discrimination and statistics on negative outcomes for ethnic minority groups. The report focuses on discrimination three different areas (education, labour and income). The project is supported by the European Community Action programme to combat discrimination (2001-2006).

[44] 1. Halvår 2005, Integrationsstatus, Catinét Research september 2005.

Remedies available to the victims of discimination

Positive aspects

The Complaints Committee on Ethnic Equal Treatment received 15 complaints in 2003, 70 complaints in 2004 and has so far received 87 complaints in 2005 (December 2005).In total 172 cases has been received.

Reasons for concern

As stated by The Advisory Committee on National Minorities (see above), the Complaints Committee on Ethnic Equal Treatment, established by DIHR lacks the power to enforce disclosure of material information on a case, and that the Complaints Committee can not address direct discrimination on the grounds of religion unless it can be perceived as indirect discrimination on the grounds of race or ethnic origin. From mid – 2003 until December 2005 the Complaints Committee has received 172 complaints, the Committee has made 32 statements and found 7 violations of the Act on Ethnic Equal Treatment. Of the 172 complaints, 42 cases are still under consideration, 47 have been rejected and 47 cases have been withdrawn by the applicant. In 25 cases no violation was found. The figures of complaints in relation to social goods and services were 59, education: 15 and labour market: 26.

Positive actions aiming at the professional integration of certain groups

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:403) amending the Aliens Act (changed criteria for the selection of and improved integration of quota refugees.)][45] and [Act (2005:402) amending the Act on Danish education for adult foreigners etc., amending the Integration Act and the Aliens Act (improved Danish education of family reunited foreigners and advanced and intensified Danish education for refugees etc.)][46] were adopted by Parliament.

An enquiry made by the Ministry of Refugees, Immigrants and Integration showed that all though 61 per cent of the quota refugees are in the "working-life age" only 7 per cent here off are in occupation. As a consequence of these figures it is the Government's intention with the acts to improve the integration of quota refugees in the labour marked and the Danish society. The acts ensure that every foreigner is offered Danish classes and submits to a final test. The acts also introduce improved Danish education of family reunited foreigners and advanced, compulsory and intensified Danish education for refugees and new criteria for the selection of and improved integration of quota refugees.

In May 2005 [Act (2005:328) amending the Act on Common Housing etc. and Act on Allocation by Municipalities (Prevention of foreigners being ghettoed)][47] was adopted by Parliament.
The act is part of the Government's strategy towards prevention of ghettoes from May 2004. The main provisions concern a limitation of certain groups' access to accommodation which they have been listed for. According to the amended section 51 b of the Act on Common Housing etc. a municipal council can decide that an accommodation association must reject

[45] Lov (2005:403) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).
[46] Lov (2005:402) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).
[47] Lov (2005:328) om ændring af lov om almene boliger samt støttede private andelsboliger m.v. og lov om kommunal anvisningsret. (Indsats mod ghettoisering).

an applicant for accommodation, which meets the requirements for accommodation when the accommodation is situated in a area with a very high rate of unemployed persons and when the applicant is not already accommodated in the association and the applicant as well as the applicant's spouse has received certain types of social security benefits for more than 6 consecutive months. However, the council must allocate another reasonable housing to the applicant who has been rejected within 6 months.

Positive aspects

In May 2005 the Gorvernment introduced its action plan in relation to integration "A new chance for all" *("En ny chance til alle")* which with a number of initiatives is to improve the integration efforts in Denmark e.g. access to the labour marked, education in relation to immigrants and their descendants. The main focus has been on young immigrants and descendants e.g. improvement of the efforts towards children in public schools and those who have finished primary and lover secondary school.
The yearbook from 2005 about foreigners in Denmark[48] considers the part of immigrants and their descendants who do not take part in the labour marked and focuses on the female immigrants and descendants. A majority of these women do not have a Danish education.
The yearbook illustrates that Denmark receives far less refugees in 2005 than in 1999 which means that the majority of the refugees who are referred to the municipalities are quota refugees. This change must be taken into consideration to improve the integration efforts.

DIHR has in a memorandum concerning [Act (2005:403) amending the Aliens Act (changed criteria for the selection of and improved integration of quota refugees.)][49] and [Act (2005:402) amending the Act on Danish education for adult foreigners etc., amending the Integration Act and the Aliens Act (improved Danish education of family reunited foreigners and advanced and intensified Danish education for refugees etc.)][50] pointed out that it is a good effort to advance the possibility of participation in Danish classes for refugees and welcomes the Government intends to enlarge the range of quota refugees to foreigners who risk assaults at a return etc.

Good practices

In 2003 the Social Ministry published a comprehensive report about socially vulnerable Greenlanders. As a result of the report an improved effort towards this marginalised group has been initiated e.g. a effort of distributing knowledge of the efforts towards the socially vulnerable Greenlanders to the different authorities and organisations in this field in order to facilitate cooperation. Among others a home page has been established, net work groups and campaigns have been completed[51].

Reasons for concern

DIHR has in a memorandum concerning [Act (2005:403) amending the Aliens Act (changed criteria for the selection of and improved integration of quota refugees.)][52] and [Act (2005:402) amending the Act on Danish education for adult foreigners etc., amending the

[48] Årbog om udlændinge i Danmark 2005 – Status og udvikling

[49] Lov (2005:403) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).

[50] Lov (2005:402) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).

[51] Vidensformidling og udvikling af indsatsen omkring socialt udsatte grønlændere

[52] Lov (2005:403) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).

Integration Act and the Aliens Act (improved Danish education of family reunited foreigners and advanced and intensified Danish education for refugees etc.)][53] pointed out that every foreigner in Denmark should have equal access to Danish Education. The DIHR did not find reason to criticise that language and social science education is compulsory and that applicants for reunification with a spouse, signs a declaration concerning active participation in the spouse's integration in the Danish society and participation in Danish classes as a requirement for the reunification. However, the DIHR does question whether the requirement of signing such a declaration is proportional to the actual extent of the problem as the majority of the self-supporting, family reunificated foreigners, whom are subject to the Integration Act, do participate in Danish classes. It must also be taken into consideration that 1/3 of the whose who cease the classes do so due to illness, maternity leave, employment or because they have moved to another municipality.

The DIHR is of the opinion that the problems of lacking participation in classes and knowledge of Danish ought to be solved in a more appropriate way which focuses at the individual circumstances of the case e.g. ensures that the a person who has been on maternity leave resumes the education here after.
The DHIR has also pointed out that the applicant is required to declare that he or she will abstain from hurting their children physically is of concern as it signalises that foreign parents do not respect the rights of children.
In relation to the changes criteria for the selection of quota refugees the DIHR finds it regrettable that in future only refugees from chosen geographic areas as Asia and Africa will be selected. The given reason is that Denmark on before hand does not want to be committed to selecting certain groups of refugees, which is the case with a binding to certain nationalities. A valid reason would be appropriate.

The DIHR does additionally raise concern of the abolition of the existing quota committee as the authority to organise the quota is instead placed at the Minister of Integration. The existing quota committee does to a higher degree in the view of the DIHR ensure an objective selection of quota refugees without political considerations.

DIHR has in a memorandum concerning Act (2005:328) amending the Act on Common Housing etc. and Act on Allocation by Municipalities[54] from December 2004 pointed out that Denmark must fulfil its obligations in relation to ICESCR article 11 e.g. not interfere in an individuals right to a reasonable accommodation. In accordance with ICESCR article 11 an applicant who has been rejected must be allocated another accommodation. The DHIR also stressed the principle of non-discrimination, especially ICERD article 1 and 5 and ECHR article 14, which must be taking into consideration in relation to the administration of such an arrangement.
From the facts available it is unclear in view of the DIHR to which extent the alleged ghettoes cause problems that could legitimise the interference with the individual's right to housing.
The DIHR also underlines the right to private property according to the Constitution section 73 and the additional protocol no. 1 to ECHR which is of relevance in cases where the individual could be said to have gained a right to a certain apartment.

[53] Lov (2005:402) om ændring af udlændingeloven. (Ændret udvælgelse af og styrket integrationsindsats over for kvoteflygtninge).

[54] Lov (2005:328) om ændring af lov om almene boliger samt støttede private andelsboliger m.v. og lov om kommunal anvisningsret. (Indsats mod ghettoisering).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:577) on the Home Rule of Greenland's access to entering international agreements)][55] and [Act (2005:579) on the Home Rule of the Faeroe Islands' access to entering international agreements)][56] were adopted by Parliament.
The acts are a part of the Government's general policy on modernising the Kingdom of Denmark e.g. by involving Greenland and the Faeroe Islands in matters of foreign politics of relevance to themselves. The objective of the act is therefore to given the home rules an explicit access to negotiating and entering international relevant agreements with foreign states and international organisations. Exempted are agreements which involve the defence and security politics, agreements which are to cover the Kingdom of Denmark and agreements which are negotiated within an international organisation of which Denmark is a member state. However, the Home Rules must inform the Government in advance of and during the negotiations in order to ensure the interest of the Kingdom are not neglected.

Positive aspects

The improvement of Greenland's and the Faeroe Island's right to self-determination is welcomed by DIHR.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

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

The United Nations' High Commissioner for Human Rights, Louise Arbour, has expressed concerns about a Danish newspaper's caricatures of the Muslim prophet Mohammed (further information see under Freedom of Expression) saying "I would like to emphasise that I deplore any statement or act showing a lack of respect towards other people's religion".
According to the newspaper the cartoons should be seen as a test of whether Muslim fundamentalists had begun affecting the freedom of expression in Denmark. The High Commissioner for Human Rights has appointed a UN expert in the areas of religious freedom and racism to investigate.

Legislative initiatives, national case law and practices of national authorities

Several bills have been put forward with the aim of abolishing the prohibition against blasphemy, since the provision by some parliamentarians is perceived to be outdated. No bills on the issue have been adopted.

[55] Lov (2005:577) om Grønlands landsstyres indgåelse af folkeretlige aftaler.
[56] Lov (2005:579) om Færøernes landsstyres indgåelse af folkeretlige aftaler.

Other relevant developments

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

CEACR: Individual Observation concerning Convention No. 169, Indigenous and Tribal Peoples, 1989 Denmark (ratification: 1996) Published: 2005

The Committee notes with regret that the Government's report has not been received. It was therefore forced to recall its previous observation.

The Governing Body requested the Government to provide information to the Committee of Experts on a certain number of points, including the decision of the Danish Supreme Court on the appeal taken from the 20 August 1999 decision of the High Court of the Eastern district of Denmark in the case arising out of the 1953 relocation of the population of the Uummannaq community in the Thule district of Greenland, further measures taken or envisaged to compensate the persons relocated from the Uummannaq community for losses incurred as a result of the relocation and which measures have been taken or are contemplated to ensure that no Greenlanders are relocated in the future without their free and informed consent or, if this is not possible, only after appropriate procedures in accordance with Article 16 of the Convention.

Positive aspects

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. The mandate of the commission included a review of the fulfillment of international- and human rights obligations concerning the judicial system. In 2004 the final report no. 1442/2004[57] was published. The report included bills amending the Criminal Code from 1954 and the Administration of Justice Act from 1951. As stated in a memorandum from April 2005 DIHR finds it positive that the commission has taken the uniqueness of the circumstances in Greenland into consideration e.g. the traditions in the legal system in accordance with ILO Convention no. 169 of 28 June 1989 concerning Indigenous and Tribal Peoples in Independent Countries article 8 which states that due regard shall be had to their customs or customary laws in applying national laws and regulations to the peoples concerned.

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

European Social Charter
European Committee of Social Rights[58]has considered Danish conditions in relation to the Right to maternity leave. The Committee recalls that while Denmark provides for a generous system of maternity leave (30 weeks) the situation is not in conformity with the Charter as the compulsory period of postnatal leave is less than six weeks. There have been no changes to

[57] Betænkning nr. 1442/2004
[58] Conclusions XVII-2 (Denmark), Articles 8, 11, 14, 17 and 18 of the Charter and Articles 1and 4 of the 1988 Additional Protocol.

this situation. The Committee concludes that the situation in Denmark is not in conformity with Article 8§1 of the Charter.

Concluding Observations of the Committee on Economic, Social and Cultural Rights :
While appreciating the measures taken by the State party to promote equality between men and women, the Committee remained concerned about the persistent gender inequalities in the State party, particularly with regard to wages (a differential of 12-19 per cent) and the low participation of women in certain levels of decisionmaking.
(Denmark. 14/12/2004. E/C.12/1/Add.102.)

Legislative initiatives, national case law and practices of national authorities

On 5 October 2005 [Bill (2005:17) amending the Act on Equal Treatment for men and women as regards access to employment and maternity leave etc. (Definition of differential treatment, harassment and sexual harassment, abolition of maximum for compensation etc.)][59] was introduced in Parliament.

The bill implements Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as adopted by the European Parliament and Council in September 2002.
The right for workers to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship at the end of parental leave, is harmonised in accordance with section 2 paragraph 5 in Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC in section 7 of the bill.
The bill introduces definitions of direct and indirect discrimination, harassment and sexual harassment. It is written into the law that discrimination includes harassment and sexual harassment and instructions of discrimination.
Also, the previous limit for compensation for violations of Act on Equal Treatment is abolished.

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[59] Forslag (2005:17) til lov om ændring af lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse og barselorlov m.v. (Definitioner af forskelsbehandling, chikane og seksuel chikane, ophævelse af lofter for godtgørelse m.v.).
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Also, the previous limit for compensation for violations of Act on Equal Treatment is abolished.

On 4 October 2005 [Bill (2005:1) amending Act on Succession (Equality between men and women in the order of succession)] was introduced in Parliament by the Ministry of State[61].
Having been informed that the Crown Prince of Denmark's wife Queen Princess May was expecting a child the Government announced that the Act on Succession from 1953 should be amended in order ensure equality between men and women in the order of succession by abolishing the priority for the male successor and replacing the order with a priority to the eldest successor. Generally, the wording of the act will be modernised accordingly by adding "or the reigning Queen" to "the King". The amendment will follow the procedure in section 88 of the Constitution.

Also on 4 October 2005 [Bill (2005:3) amending the Constitution (Section 2)] was introduced in Parliament by the opposition[62].
Section 2 of the Constitution is proposed amended by writing three fundamental democratic principles into the Constitution i.e. that Denmark is an independent state which regime is grounded on democracy and the rule of law. In paragraph 2 equality between men and women in the order of succession is written into the Constitution as well the fact that Denmark is a monarchy.

Another bill amending the Constitution was [Bill (2005:4) amending the Constitution] was introduced in Parliament by the Socialistic Folk Party on 6 October 2005[63]. A total amendment of the Constitution is proposed to ensure a modernisation, especially in relation to human rights obligations. E.g. a general prohibition against torture, discrimination etc. is proposed. The bill does not abolish the monarchy but limit its (symbolic) powers of today and ensures equality between male and female successors.

Supreme Court UfR 2005.1265H
The Supreme Court found that a dismissal of A for having worn a head scarf for religious reasons in opposition to the rules on clothing did not amount to illegal differential treatment.
The clothing rules in the super marked applied to every employee and the rules were consequently enforced. The Court recognised that the prohibition of wearing a head scarf when having directly contact to customers mainly would affect Muslim women but found that the differential treatment was objectively reasoned in the performance of the work. The Court did neither find that the clothing rule was in breach of article 9 of the Convention of Human Rights on bases of case law from the European Court of Human Rights.

High Court of Western Denmark UfR 2005.2269V
A male, M, was awarded compensation corresponding to 6 months' wage for illegal dismissal in violation of section 9 in the Act on Equal Treatment due to M's 14 days on maternity leave.

The Gender Equality Board (No. 22/2005 decision of 6 July 2005)
It was not proved that a dismissal of the complainant was not grounded in the complainant's pregnancy. She was awarded 100 000 DKK in compensation.

[61] Forslag (2005:1) til lov om ændring af tronfølgeloven. (Ligestilling mellem kønnene i arvefølgen - fremsat i henhold til proceduren i grundlovens § 88).
[62] Forslag (2005:3) til lov om ændring af Danmarks Riges Grundlov. (Vedrørende grundlovens § 2).
[63] Forslag (2005:4) til Danmarks Riges Grundlov.

Good practices

In March 2005 the Ministry of Gender Equality introduced a new plan of action[64] aiming at promoting gender equality among ethnic minorities, fighting violence against women and trafficking, achievement of an increased number of women in highly estimated posts and securing equal possibilities in the labour marked.

Gender discrimination in the access to goods and services

Legislative initiatives, national case law and practices of national authorities

The Supreme Court UfR 2005.1741H
The appeal authorities' (*Ankestyrelsen)* decision of the use of the criteria "additional occupation" in a retirement case was not in violation of the Act on Equal Treatment. The Supreme Court pointed out that it was not a case of indirect discrimination on grounds of sex where consideration was taken to which extent the disablement reduced the plaintiff's possibility of doing household work when she before the disablement had chosen to use her ability to work in this manner.

Remedies available to the victim of gender discrimination

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:558) amending the Act on Administration of Justice (Improvement of the legal status of rape victims)][65] was adopted by Parliament.
The aim of the act is to improve the legal status of rape victims and victims of other serious sexual crimes e.g. by offering access to a legal assistance and giving legal assistance the authority to object to evidence in violation of the Act on Administration of Justice section 185 concerning the victims' previous sexual habits.

Participation of women in political life

Positive aspects

Statistics shows during the last 9 years the number of female directors of department in the State has increased from 25 per cent in 1996 to 34 per cent in 2005.

Reasons for concern

Statistics from 2005 show that only 9 per cent of mayors are women and that only 17 per cent in municipal council's are female.

The reform of the structure of municipalities is expected to have an impact on the participation of women in decision making municipal bodies. An assessment of the gender equal treatment impact has, however, not been conducted, although it has been a demand from women rights organisation and recommended by DIHR.

[64] Minister for ligestillings Perspektiv- og handlingsplan 2005 / Redegørelse 2004
[65] Lov (2004:588) om ændring af retsplejeloven (Forbedring af voldtægtsofres retsstilling m.v. og beskikkelse af bistandsadvokat for pårørende til afdøde i straffesager mod politipersonale)

Other relevant developments

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 Right:
The Committee is concerned at 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 notes that the situation has 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.
(Denmark. 14/12/2004. E/C.12/1/Add.102. para. 18)

Legislative initiatives, national case law and practices of national authorities

The Consumer Ombudsman (no. sagsnummer 11131/5-41)
The Consumer Ombudsman criticised an advertisement for breeding of pigs for being humiliating and discriminating on grounds of sex and age. The two advertisements had by far exceeded the limit for use of humour in advertisements.

The Consumer Ombudsman (no. sagsnummer 2004-11131/5-39)
A picture and the text in the advertisement for a real estate company associated to a woman being exploited and being disposal and the Consumer Ombudsman found that it reduced the women to a sexual object and criticised the advertisement for being discrimination on grounds of sex.

Article 24. The rights of the child

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

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

The Committee on the Rights of the Child considered the third periodic report of Denmark (CRC/C/129/Add.3) adopted on 30 September 2005 its concluding observations.
The Committee reiterated its previous concern regarding de facto discrimination against and xenophobia and racist attitude to children of ethnic minorities, refugee and asylum-seeking children and children belonging to migrant families. In this regard, the Committee joint its voice to the concerns raised by the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.102) and the Committee on the Elimination of Racial Discrimination. The Committee remained concerned at the legislative reform that reduces the age limit of the child to family reunification from 18 to 15 years and notes with concern the increasing number of children placed in out-of home care.

The Committee was particularly concerned at the limited capacity to provide adequate psychological support as well as recreational opportunities. The Committee was also concerned that a number of unaccompanied asylum-seeking children disappear from reception centers. It was additionally recommended to undertake all necessary measures to recruit foster families and institution staff of non-Danish ethnic origin.

The Committee recommended also that the State party strengthen its efforts to prevent commercial sexual exploitation of children, including through the development of a National

Plan of Action on Commercial Sexual Exploitation of Children as agreed at the First and Second World Congresses Against Commercial Sexual Exploitation of Children in 1996 and 2001 and to adopt adequate measures in combating child pornography, including by defining as illegal the distribution of erotic images involving children.

As to the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts the Committee notes with satisfaction that the minimum age of compulsory recruitment was raised, owing to a decision that Denmark should work more actively towards a general minimum age of 18 years for compulsory and voluntary recruitment to the Armed Forces in the negotiations on the Optional Protocol.

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Act (2004:1442) amending the Act on Social Service and Act on public security and administration.][66] was adopted by Parliament.
The main objective of the act is to improve the efforts towards children, who have a special need for support and therefore are vulnerable, in order to give these children equal opportunities in their future life in relation to education, work and family life. The act also oblige the municipalities to set down a policy on children which focus on their schooling. In addition to this the act introduces courses for the preparation of care families. It is also stressed in the act that irrelevant economical consideration must not be taken when deciding a case.

In June 2005 [Act (2005:525) amending the Act on Custody of the child and Act on entering and abolishment of marriage etc.][67] was adopted by Parliament. The act is part of the general reform concerning the organisation of the municipalities. The revision ensures a more accessible system for the citizens.

Secondly, in June 2005 [Act (2005:594) amending the Act on Public Schools (Improved education in Danish as second language e.g. extend access to referring bilingual pupils to other schools than the district school)][68] was adopted by Parliament.
The main objective of the act is to ensure that bilingual pupil improve their educational skills to give them equal opportunities to other children. With the act the municipalities and the schools are given the tools to reach this goal e.g. by referring bilingual children to other schools than the district school if deemed necessary due to pedagogical needs for improvement of skills in Danish.

An enquiry[69] from February 2005 into the legality of the municipalities decisions according to section 40 of the Social Service Act concerning supportive measures for children. It is concluded that the requirement in section 58 of a dialog with the child is not fulfilled in many cases. In only 42 per cent of the cases the municipality had not had a dialog with the child. It was recommended that the dialog becomes a routine when considering a case.

[66] Lov (2004:1442) om ændring af lov om social service og lov om retssikkerhed og administration på det sociale område
[67] Lov (2005:525) om forældremyndighed og samvær, lov om ægteskabs indgåelse og opløsning og forskellige andre love (udmøntning af kommunalreformen på det familieretlige område).
[68] Lov (2004:594) om ændring af lov om folkeskolen. (Styrket undervisning i dansk som andetsprog, herunder ved udvidet adgang til at henvise tosprogede elever til andre skoler end distriktsskolen).
[69] Ankestyrelsens praksisundersøgelse om frivillige foranstaltninger - servicelovens § 40.

Positive aspects

DIHR pointed out in a memorandum from January 2005 in relation to Act (2005:525) amending the Act on Custody of the child og Act on entering and abolishment of marriage etc.[70] that section 29 b is incoherent with ICRC article 12.

Good practices

Along with NGOs DIHR submitted a supplementary report to the the Committee on the Rights of the Child prior to the consideration of the third report of Denmark and the initial report of Denmark regarding the Optional Protocol on the rights of the child involved in armed conflict.[71]

Panel debate on Refugee Children
On the occasion the Universal Children's Day the 20 November, a panel debate on Refugee Children was arranged. The event was initiated by Amnesty International and focused primarily on the conditions and rights of unaccompanied asylum-seeking children. The presentation dealt with the concerns raised in the *Concluding Observations* published recently by the UN Committee on the Rights of the Child and the concerns raised in the supplementary report submitted to the Committee earlier this year. Panellists with were: DIHR, the Danish Refugee Council, Amnesty International, the Danish Red Cross, and a psychologist with experience in treatment of ethnic minority children.

Reasons for concern

In relation to Act (2005:594) amending the Act on Public Schools (Improved education in Danish as second language e.g. extend access to referring bilingual pupils to other schools than the district school)[72] DIHR stresses that the administration of the referral rule must be in compliance with the principle of non-discrimination. Additionally, the DIHR stresses that the child's opinion must be heard before a decision of referral to another school than the district school in accordance with ICRC article 12.
Generally the DIHR stresses the importance of respect of the child's opinion.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In November 2005 the Ministry of Justice asked DIHR for comments in relation to draft departmental order on the primary schools special educational support to children, who have not started school[73].

The Danish Data Protection Agency published a statement (J.nr. 2003-321-024)
of 19 March 2005 concerning the interpretation of the rules on the duty to inform children under the age of 18 in accordance with the Personal Data Act section 29 in social and family related cases. Many State Counties had been reluctant towards informing children being

[70] Lov (2005:525) om forældremyndighed og samvær, lov om ægteskabs indgåelse og opløsning og forskellige andre love (udmøntning af kommunalreformen på det familieretlige område).

[71] An overview of supplementary report is avaialable at: http://www.humanrights.dk/frontpage/RogM/reports/Supplementary_reports/

[72] Lov (2004:594) om ændring af lov om folkeskolen. (Styrket undervisning i dansk som andetsprog, herunder ved udvidet adgang til at henvise tosprogede elever til andre skoler end distriktsskolen).

[73] Udkast til bekendtgørelse om folkeskolens specialpædagogiske bistand til børn, der endnu ikke har påbegyndt skolegangen

concerned of the negative consequence such information could have on the child. The Agency pointed out that the duty of information of the child must be decided on grounds of a general assessment of the individual case and that the exemption clause must administrated strictly. The Agency also pointed out that the child must as a main rule be 15 years old to be informed. For children below 15 years of age the custody holder must be informed on behalf of the child as the general rule.

On 9 November 2005 [Bill (2005:61) for abolition of Act on a public school as experimental centre for 8th to 10th school year] was introduced in Parliament .
The aim of the bill is to abolish the Public Educational Experimental Centre by August 1. 2007. The centre's mandate was e.g. to develop and test educational ideas for the senior classes, to establish contact to international organisations and to bridge the public schools with the trades and industries. The Government funds will instead be spend on the Government's initiatives in relation to the public schools. The Youth City, which has been conducted by the centre among others, might possibly continue in the private sector. The State will financially support such an initiative.

In November 2005 DIHR was asked by the Ministry of Social Affairs to comment on [Draft bill amending the Social Service Act and Act on Social Benefits to Families with Children (Increasement of parent responsibility)][74].
The draft bill introduces two main amendments i.e. possibility for the municipalities to impose a duty on a child's parents to take steps of action to ensure their child's appropriate development, and secondly, a suspension of payment of benefits if the parents do not fulfil the imposed duty.
The main objective of the draft bill is to support vulnerable children by requiring that the children's parents fulfill their responsibility as holders of custody.

Positive aspects

The DIHR finds it positive that section 1 in the draft departmental order must be offered special educational support to a potentially wider range of children who are in the need for such and not only to children with language- and speaking difficulties. The DIHR stresses however that every kind of support to these children must take the child's cultural and linguistic background into consideration to ensure a unified approach to children with another ethnic background than Danish. The respect of the child's own cultural identity etc. could be written into the departmental order.
The DIHR welcomes the amended wording of section 1 concerning the objective with the special educational support, which is in better compliance with ICRC article 23. Secondly, it is welcomes by the DIHR that the support of the child must be arranged in understanding with the parents and that the parents must always be informed in writing of every decision in better compliance with article 18 of the ICRC.

The DIHR finds it positive that the municipalities aim at improving the municipalities' efforts towards vulnerable children. Secondly, it is positive that the importance of the compliance with fundamental legal and human rights principles, when imposing duties on parents, is acknowledged in the draft bill e.g. the principle of foreseeability, proportionality and the right of the child to give its opinion. The DIHR stresses also the need for respect of the child's cultural background.

[74] Udkast til lovforslag om ændring af lov om social service og lov om en børnefamilieydelse (Styrkelse af forældreansvaret)

Good practices

Two enquiries concerning the so called "re-educational journeys" were published in 2005. They show that 50 municipalities have knowledge of 554 children who have since July 2002 stayed in a foreign country for a longer period. The enquiries also show that holidays and family visits are the primary reasons for going abroad.

A survey of interrogation of children by the use of video in cases concerning sexual offences was published in March 2005[75].

Reasons for concern

A report from December 2004 concerning child poverty in Denmark in 2002 shows that 8 per cent of the children, i.e. 90 000 children, lived in implicit or relatively poor families. The report also highlighted that ethnic minorities had a far higher risk of poorness than ethnic Danes. However, their had been a decrease in the risk of poorness for ethnic minorities.

A working group appointed by the Prevention of Crime Council *(Det Kriminalpræventive Råd)* published in February 2005 the report"Children of prisoners – a vulnerable group"[76].
Children of prisoners have statistically a higher risk of committing crime themselves. Since January 2002 all together 44 200 children below the age of 18 have experienced a parent serving sentence. The Council intends to increase the focus on the children's situation and an advanced effort to reduce the number of children who get involved with crime.

In January 2005 DIHR submitted its supplementary NGO report to the Danish Government's 3rd periodic report submitted to The UN Committee on the Rights of the Child.
The report illuminates many areas where children with another ethic origin than Danish are discriminated e.g. are these children not as often moved from their homes. It stresses the need of teaching the children the mother tongue of their parents in order to support the communication between parent and child. The working group criticises the lowering of the age limit from 18 to 15 years which meant that children between 15 and 18 do not have a statutory right to family reunification. This is found to be in violation of article 1 of the Convention.
Another important point of criticism are the conditions for children serving sentence.

As regards to Bill (2005:61) for abolition of Act on a public school as experimental centre for 8th to 10th school year] it is noted that DIHR has since 1990 cooperated with the Public Educational Experimental Centre in order to provide general education. As a result of the cooperation much material for educational purpose has been published as well as many courses in human rights and democracy have been arranged for public schools. In addition to this, the centre has played an important role in international programs e.g. The U.N. program for 10 years human rights education (1995-2004) and European Year of Citizenship through Education (2005). Both programs were supported by the Ministry of Education. The DIHR has by the help of the centre succeeded in reaching a very important target group in the educational system. Therefore, the institute finds it very regrettable that the introduced bill aims at an abolishment of the centre.

The DIHR lacks documentation for the expediency of conditioning the payment of benefits if the parents by fulfillment of the imposed duties by the municipalities. Potentially families with an ethnic origin other than Danish, which often have limited funds, will be subject to these sanctions. The DIHR recommends a reconsideration of the amendment.

[75] Undersøgelse af videoafhøring af børn i sædelighedssager

[76] "Fængsledes Børn – en udsat gruppe"

Article 25. The rights of the elderly

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

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 :

The Committee is concerned about the level of long-term unemployment, affecting men aged 55-59, and the high rate of unemployment among immigrants, refugees, new college graduates and women, which are well above the national average.
Denmark. 14/12/2004. E/C.12/1/Add.102. Para. 15

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

In October 2005 the Ministry of Education asked DIHR for comments to a draft departmental order on sign language in primary school.

In December 2004 [Act (2004:1417) amending the Act on Prohibition against differential treatment on the labour market etc. (Insertion of age and disability as criteria)][77] was adopted by Parliament. The act amends the Act on prohibition against differential treatment on the labour market and partly implementing the EU Council Directive 2000/78/EC by implementing disability and age as criteria's for discrimination.

Positive aspects

The DIHR finds it positive that education in sign language for children with reduced hearing abilities is possible in the Danish school system. This improves their chance of equal participation in the school classes and in better compliance with ICRC article 23.

Good practices

In November 2005 DIHR published a comprehensive report concerning individuals with a disability in Denmark and in human rights law[78].
The report analyses whether Denmark fulfils its human rights obligations to ensure individuals with a disability equal possibilities in the Danish society.
It is concluded that Denmark has a duty to criminalising discrimination on grounds of a disability generally and not only in relation to the labour marked according to ICCPR article 26. It is recommended that a right to access for all people to public buildings is adopted by law. It is also concluded that people with a disability in the field of housing in some cases are discriminated.

[77] Lov (2004:1417) om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (Indsættelse af alder og handicap som kriterier i loven).
[78] Udredning om Personer med funktionsnedsættelser i Danmark og i menneskeretten

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

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

Legislative initiatives, national case law and practices of national authorities
In December 2004 [Act (2004:1417) amending the Act on Prohibition against differential treatment on the labour market etc. (Insertion of age and disability as criteria)][79] was adopted by Parliament. The act amends the Act on prohibition against differential treatment on the labour market and partly implementing the EU Council Directive 2000/78/EC by implementing disability and age as criteria's for discrimination.

On 6 October 2005 [Bill (2005:31) amending Act on free schools and private primary schools etc. (Travel arrangement)] was introduced in Parliament[80].
According to the bill the previous travel arrangement for pupils in free schools will be ended at the end of the school year 2005/2006. However, the travel support for pupils with a disability will be continued. It is the intention to give the free schools the possibility of giving the travel support from their own funds due to economic circumstance and long distance from home to the school.

Good practices

A survey financed by the Social Ministry was published in October 2005 concerning e.g. the state resort responsibility in relation to the policy on persons with disabilities[81]. It concludes to which extent people with a functional disability experience a greater accessibility in society. The main priority must according to the conclusion of the report by the labour marked.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:580) amending the Act on the local and regional transportation of persons in the provinces and Act on the public transport in the capital][82] was adopted by Parliament.
The intention with the act is to give precise minimum requirement for individual transportation disabled persons.

[79] Lov (2004:1417) om ændring af lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (Indsættelse af alder og handicap som kriterier i loven).
[80] Forslag (2005:31) til lov om ændring af lov om friskoler og private grundskoler m.v. (Befordringsordning).

[81] Princip og virkelighed. Om sektoransvar i handicappolitikken

[82] Lov (2005:580) om ændring af lov om den lokale og regionale kollektive personbefordring uden for hovedstadsområdet og lov om hovedstadsområdets kollektive persontrafik.

CHAPTER IV SOLIDARITY

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

Workers' information on the economic and financial situation of the undertaking

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

CEACR: General Observation - Denmark, Greenland. Published: 2005
The Committee notes that, for the second year in succession, the reports due have not been received. It trusts that the Government will in future discharge its obligation to supply the reports due on the application of ratified Conventions, in accordance with its constitutional obligations and, if necessary, requesting appropriate assistance from the Office.

Article 28. Right of collective bargaining and action

Social dialogue

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

ILO -CEACR
The Committee reiterates the request previously addressed to the Government to indicate in its next report the measures taken to ensure that Danish trade unions may represent all their members - residents and non-residents employed on ships sailing under the Danish flag - without any interference from the public authorities, in accordance with Articles 3 and 10.

The comments and the Government's reply concern section 10 of Act No. 408 of 23 June 1988 which sets up a Danish International Shipping Register (DIS). The Committee has been requesting since 1989 the amendment of this provision because it has the effect of prohibiting workers employed on ships sailing under the Danish flag who are not residents of Denmark from being represented in collective bargaining, if they so wish, by Danish trade unions of which they are members.
The Committee notes that according to the LO, the Government continues to avoid amending the Act and maintains that it is not in contravention of the Convention.[83]

Article 29. Right of access to placement services

Article 30. Protection in the event of unjustified dismissal

[83] CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Denmark (ratification: 1955) Published: 2005;

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

High Court of Western Denmark UfR 2005.3019V

A female nursing aid, S, strained her back due to a lift of a client from the bed to a wheel chair. S was injured on 1 February 1993 and it was reported to the assurance company for work accidents on 18 March 1993. The Court recognized that the injury was to be assessed as an accident, which would allow A assurance benefits.

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

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Act (2004:1186) amending the Criminal Code in Greenland (child pornography)][84] was adopted by Parliament. The act introduces in section 56 a in the Criminal Code a prohibition against production, possessment and spreading of pornographic material and the use of children as porn models.

Positive aspects

Act (2004:1186) amending the Criminal Code in Greenland (child pornography)[85] intends to protect children against sexual abuse etc. and is in line with national and international efforts towards the fight against this kind of abuse e.g. the Nordic Council's recommendation from 1996 and ILO Convention no. 182 concerning the worst forms of child labour.

Article 33. Family and professional life

Parental leaves and initiatives to facilitate the conciliation of family and professional life

Legislative initiatives, national case law and practices of national authorities

Supreme Court UfR 2005.602H
Sickness benefits to two women on (child) leave were calculated on grounds of the benefit they received due to the leave and not on grounds of their wages before the leave. The Supreme Court did not find that the calculation violated the Act on Equal Treatment or Directive 79/7 on equal treatment on social security.

Good practices

At the moment it is being considered whether Denmark should introduce compulsory maternity leave for male parents, the so-called Icelandic model.

[84] Lov (2004:1186) om ændring af kriminallov for Grønland. (Børnepornografi).

[85] Lov (2004:1186) om ændring af kriminallov for Grønland. (Børnepornografi).

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

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

European Social Charter - European Committee of Social Rights, Issue of work and residence permits[86]

The Committee recalls that a foreigner's residence and work permit can be revoked if he or she loses his or her job even through no fault of his/her own or if a self-employed worker closes his or her independent business. In the event that the Danish Immigration Service has decided to revoke a residence permit or deny its extension, the concerned foreign national can appeal against this decision to the Ministry of Immigration, Refugee and Integration Affairs. If the foreign worker files the complaint no later than seven days after the decision of the Danish Immigration Service is announced, he or she may remain in the country during the appeal process and may look for another job. The Committee concludes that the situation in Denmark is not in conformity with Article 18§3 of the Charter since the restrictive conditions for the granting of residence and work permits have not been liberalised.

Legislative initiatives, national case law and practices of national authorities

In October 2005 DIHR was asked to comment on Bill amending Act on an Active Employment Effort and Act on an Active Social Policy as well as Bill amending the Integration Act and the Aliens Act. Bill (2005:93) amending the Integration Act and the Aliens Act and Bill (2005:89) amending Act on an Active Employment Effort and Act on an Active Social Policy were introduced in Parliament on 30 November 2005.

Reasons for concern

The amendment of Act on an Active Employment Effort and Act on an Active Social Policy section 13 means that the duty of being available for the labour marked is proposed replaced by a requirement of actual attachment to the labour marked, i.e. 300 hours per 2 years. The DIHR finds it of doubt whether every one at every time and in all parts of the country will be able to get the required amount of work. Specially women with another ethnic background than Danish with no or poor attachment to Danish labour marked, no education and poor knowledge of Danish will have difficulties in meeting the requirement. This raises also the question of possible discrimination.

There is no official poverty limit in Denmark. However, in theory and legal practice it is acknowledged that there is a limit to what is acceptable. Also, the UN Covenant on Economical, Social and Cultural Rights has in view of the Committee minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. The Committee has expressed its concern of the lacking official poverty limit in Denmark. Accordingly, there is found to be a poverty threshold in the European Social Charter. According to section 26 in Act on an active Social Policy in the bill a married couple, whereas one of them or both do not meet the job requirement, shall live of 10 245 DKK despite less of their number of children, i.e. 686,5

[86] Conclusions XVII-2 (Denmark), Articles 8, 11, 14, 17 and 18 of the Charter and Articles 1 and 4 of the 1988 Additional Protocol.

Euros per spouse, and below the 1999-limit of 808 Euros. If the amendment is adopted it will expectedly result in criticism form the European Committee for Social Rights.

The objective of the amendments of the Integration Act og Aliens Act is to promote integration of foreigners in Denmark. As part hereof the foreigner must according to the proposed amended section 19 in the bill sign a statement of 16 issues on integration and actively participation as a citizen in the Danish society. Some of the issues concern crimes e.g. the foreign must declare that he/she is aware of the illegality of hitting children and spouse and that the Danish society dissociates itself from terrorism. Other issues concern matters of facts and opinions which can not be said to be commonly agreed on by all Danes e.g. the foreign must declare that he/she acknowledges that both men and women must contribute to the society by education, employment and participation in democratic proceedings. In order to stress the importance of the statement it is suggested that permanent residence permit is conditioned by a 7 years limit for having signed the statement. The DIHR does not find the proposal as such in relation to the requirement of the statement gives raise to human rights considerations but the DIHR would prefer to see documentation for the positive effect of such statements. It is at last stressed that despite the wording in the statement there is no legal duty of men and women to contribute to the society by education, employment and participation in democratic proceedings.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In May 2005 [Act (2005:304) amending Unemployment Insurance Act etc., Act on an Active Social Policy, Act on Benefits in case of sickness or birth, Act on an Active Employment Effort, Act on Public Security and Administration in the Social area and Act on Integration of Foreigners in Denmark (Combating benefits abuse etc., extended powers, introduction of sanctions, swift employment effort .)][87] was adopted by Parliament.

The main objective of the amendments is to combat abuse of benefits etc. in cases where the receiver of benefits is not entitled to receiving the benefits while having a job. Therefore the administrative sanctions towards such abuse are proposed raised and new sanctions are introduced. Secondly, the Directorate of Employment and the municipalities are given wider authority to control its employees e.g. by extending the employee's information duty. Finally, a rapid employment effort in relation to employees who receive benefits, but - in case of a control mission – it is doubtful whether the person is available to labour marked, is introduced.

In November 2005 DIHR was asked by the Ministry of Social Affairs to comment on [Draft bill amending the Social Service Act and Act on Social Benefits to Families with Children (Increasement of parent responsibility)][88].
The draft bill introduces two main amendments i.e. possibility for the municipalities to impose a duty on a child's parents to take steps of action to ensure their child's appropriate development, and secondly, a suspension of payment of benefits if the parents do not fulfil the imposed duty.

[87] Lov (2005:304) om ændring af lov om arbejdsløshedsforsikring m.v., lov om aktiv socialpolitik, lov om dagpenge ved sygdom eller fødsel, lov om en aktiv beskæftigelsesindsats, lov om retssikkerhed og administration på det sociale område og lov om integration af udlændinge i Danmark.
[88] Udkast til lovforslag om ændring af lov om social service og lov om en børnefamilieydelse (Styrkelse af forældreansvaret)

The main objective of the draft bill is to support vulnerable children by requiring that the children's parents fulfil their responsibility as holders of custody.

The DIHR finds it positive that the municipalities aim at improving the municipalities' efforts towards vulnerable children. Secondly, it is positive that the importance of the compliance with fundamental legal and human rights principles, when imposing duties on parents, is acknowledged in the draft bill e.g. the principle of foreseeability, proportionality and the right of the child to give its opinion. The DIHR stresses also the need for respect of the child's cultural background.

The DIHR lacks documentation for the expediency of conditioning the payment of benefits if the parents by fulfilment of the imposed duties by the municipalities. Potentially families with an ethnic origin other than Danish, which often have limited funds, will be subject to these sanctions. The DIHR recommends a reconsideration of the amendment.

Reasons for concern

A survey made by the Social Research Institute (*Socialforskningsinstituttet*) in April 2005 evaluated the given maximum for certain social benefits (not employee benefits)[89]. In 2004 amendments were made in relation to the calculation of social benefits to increase their motivation for job search. Approximately 18 000 families have had their benefits reduced in the first quarter of 2004. The survey illustrates that few of those, who have received benefits for more than 6 months, have found a job in the following year. Those, who have had their benefits reduced, have not either been much more active in relation to job search.

Article 35. Health care

Access to health care

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

European Social Charter
Denmark has been evaluated by European Committee of Social Rights[90]

Drugs

Other relevant developments

Reasons for concern

A survey carried through by The Institute for Public Health illustrates the persistent alcohol problem in Denmark. Each year 8000 people in Denmark are diagnosed acute alcohol poisoning, i.e. 22 persons per day.

[89] Evaluering af loftet over ydelser til kontanthjælpsmodtagere

[90] Conclusions XVII-2 (Denmark), Articles 8, 11, 14, 17 and 18 of the Charter and Articles 1and 4 of the 1988 Additional Protocol.

Article 36. Access to services of general economic interest

Article 37. Environmental protection

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Legislative initiatives, national case law and practices of national authorities

In March 2005, the Danish Maritime and Commercial court convicted the mobile phone company Debitel Denmark for spamming. The company was imposed a fine of € 269,000 (DKK 2.000.000) for sending out unsolicited advertising material. In Denmark, this is the largest fine ordered up till now for spamming. Debitel Denmark had sent between 12.000 text messages and 36.000 e-mails advertising for products. The level of the fine was also based on other violations of the Marketing Practices Act. The judgment was appealed and the fine was lowered by Supreme Court to DKK 400.000.

Positive aspects

The Danish Consumer Ombudsman has published guidelines for industry regarding the Marketing Practices Act Section 6a and spamming. Furthermore, The Danish Consumer Ombudsman has established e-mail addresses, where consumers can file complaints regarding spam.[91]

[91] The Guidelines can be downloaded (in Danish) from www.forbrug.dk and complaints can be filed on spamdk@fs.dk and spam@fs.dk.

CHAPTER V CITIZENS' RIGHTS

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

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

Participation of foreigners in public life at local level

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 or observations, national legislation, case law or practice of national authorities.

Advisory committee on the framework convention for the protection of national minorities[92]

"The Advisory Committee welcomes the willingness of the Government in the proposals published on 1 December 2004 to provide special measures to safeguard the interests of the German minority. It remains, however, concerned about the effective participation of the German minority in those municipalities where they reach the 25 per cent threshold to have a seat but without the right to vote. The Advisory Committee considers that without the right to vote, the room for political manoeuvre is considerably weakened and represents a reduction in the level of political influence for the German minority by comparison with the situation they currently enjoy."

"The Advisory Committee recommends that the Danish Government keeps up its discussion with the German minority, in particular on the issue of voting rights at municipal level, in order to find appropriate solutions to ensure that effective participation guaranteed under Article 15 of the Framework Convention is not undermined by the proposed administrative reforms."

Reasons for concern

The reform of the structure of municipalities is expected to have an impact on the participation of ethnic minorities decision making municipal bodies. An assessment of the ethnic minorities equal treatment impact has, however, not been conducted, although it has been demanded from ethnic minorities organisations and suggested by DIHR.

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.

[92] Second Opinion on Denmark, adopted on 09 December 2004

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

Article 46. Diplomatic and consular protection

CHAPTER VI JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

In December 2004 [Act (2004:1436) amending the Administration of Justice Act and Act on Court Fees (Reduction and revision of the court fees in civil lawsuits)][93] was adopted by Parliament. The act is based on the bill proposed in Report no. 1436/2004 on Reformation of the Administration of Justice in Civil Cases III, by The Council on Administration of Justice.
The main objective of the act is to improve the access to courts by a reduction and revision of the court fees in civil lawsuits. E.g. fees in relation to lawsuits concerning minor amounts (less than 50 000 DKK) are in all cases 500 DKK. Previously, the fees varied from 500 DKK to 1660 DKK. Also, a maximum of 150 000 DKK is introduced, and at last a special low maximum of fees for citizens or companies suing a public authority is introduced.

In June 2005 [Act (2005:554) amending the Administration of Justice Act and several other acts (court fees, costs, legal aid and free access to the courts.)][94] was adopted by Parliament.
The act is also based on the bill proposed in Report no. 1436/2004 on Reformation of the Administration of Justice in Civil Cases III, by The Council on Administration of Justice.
The act modernises and improves the rules in the Administration of Justice Act concerning court fees, costs, legal aid and free access to the courts in civil cases. The act introduces a significant increasement of the standard amount which is used for the award of costs to pay the legal expenses.

Supreme Court UfR2005.294H
A person, A, appealed a judgement by the High Court to the Supreme Court, which fixed the court fees at 311 490 DKK, stating that this calculation of fees was not in violation with article 6 of the ECHR. A had not succeeded in filing the case of the fees to the European Court of Human Rights.

High Court of Eastern Denmark UfR 2005.1118Ø
S had been remanded in custody for all most 9 months. S's defence lawyer, D, argued that S should be released with reference to ECHR article 6 section 3 (b) due to the visiting hours for D making it impossible to prepare the defence. Despite the visiting hours in the prison were inconvenient for D, the Court noted that the question of the practical problems which D had due to the visiting hours was not a question for the courts in a case concerning a possible prolonging of the remand in custody. However, the Court noted that every person under arrest had a right to a proper defence in relation to ECHR article 6 section 3 (b). At the present time their has not grounds for stating that S's remand in custody limited S's defence to such an extent that ECHR article 6 section 3 (b) had been violated. The Court noted that D since the A was initially remanded in custody D had been aware of the necessity of finding time for preparing the extensive and time demanding case and that it was a natural part of D's job as a defence lawyer that he in such circumstances e.g. involved himself in fewer cases than usual

[93] Lov (2004:1436) lige andre love (sagsomkostninger, retshjælp og fri proces). Forslag til lov om ændring af lov om retsafgifter og retsplejeloven. (Nedsættelse og omlægning af retsafgifterne i civile retssager).
[94] Lov (2005:554) om ændring af retsplejeloven og forskellige andre love (sagsomkostninger, retshjælp og fri proces).

to find the time. As there had been no violation of article 6 and the conditions in the Administration of Justice Act were fulfilled the City Courts decision of prolonged remand in custody was upheld.

High Court of Western Denmark UfR 2005.403V
A defence lawyer, D, who in a previous case had defended the now offended person, could not defend the accused person. Despite the ECHR article 6 D would not be appointed as defence lawyer of the accused person.

High Court of Eastern Denmark UfR 2005.2321/2Ø
A crime was committed by T in October 2001. The indictment was made in September 2003 and the City Court delivered its judgement in January 2004. After appeal the High Court delivered its judgement in April 2005. The High Court amended the verdict to a suspended sentence due to a violation of the ECHR article 6 paragraph 1 as the case had not been decided within a reasonable time from the crime was committed to T was finally accused.

The Ombudsman (J.nr.: 2004-3144-630)
The complaint's application for free legal aid for a lawsuit against a Ministry was denied by the State County and upheld by the Civil Directorate with reference to the Administration of Justice Act 330 and 331 as it was a commercial case and there was no special social need for fee legal aid. The Directorate did not find that a denial was in violation of article 6 of the ECHR. The complainant argued that the Ministry had expropriated his property as an amendment of an act and a decision only involved him. The Ombudsman did not find reason to criticize the rejection of the application for free legal aid.

Positive aspects

DIHR finds it positive that the conditions for free access to the courts are written into the Act (2005:554) amending the Administration of Justice Act and several other acts (court fees, costs, legal aid and free access to the courts.)[95].

Reasons for concern

DIHR points out in relation to the decision of costs as introduced in Act (2005:554) amending the Administration of Justice Act and several other acts (court fees, costs, legal aid and free access to the courts.)[96] that the requirement of contradiction in article 6 of the ECHR must be respected also in civil cases. Therefore the DIHR finds it regrettable that the right of contradiction is to written into the Administration of Justice Act in relation to the decision of costs. Secondly, the DIHR finds it appropriate that the requirement of reasoning also is written into the act. At last the DIHR stresses that every one has a right to access to documents in relation to decisions of costs as a main rule.

[95] Lov (2005:554) om ændring af retsplejeloven og forskellige andre love (sagsomkostninger, retshjælp og fri proces).

[96] Lov (2005:554) om ændring af retsplejeloven og forskellige andre love (sagsomkostninger, retshjælp og fri proces).

Independence and impartiality

Legislative initiatives, national case law and practices of national authorities

In May 2005 [Act (2005:368) amending the Administration of Justice Act (informational- and formal requiremements for the Minister of Justice's instructions to the Prosecution in criminal cases)][97] was adopted by Parliament.
In accordance with section 98 in the Administration of Justice Act the Minister of Justice is entitled to giving the Prosecution instructions in criminal cases i.e. start, continue, restrain from or end a prosecution. In order to ensure greater transparency in the use of these powers the act introduces certain requirements e.g. the instruction must be in written, follow by a reason and the Chair of the Parliament must be informed.

The Supreme Court UfR 2005.270H/A
A sentence delivered by the High Court in a criminal case was rescinded. At the renewed consideration of the case by the High Court the new judged were not found impartial being colleges to the judges in the initial verdict nor had there been a violation of article 6 of the ECHR.

Reasonable delay in judical proceedings

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

Eur.Ct. H.R. (Grand Chamber), *Pedersen and Baadsgaard v. Denmark* (Appl. no. 49017/99,), Decision of 17 December 2004.
Denmark was not found in violation of ECHR Article 6 by the European Court of Human Rights.

The applicants complained about the length of criminal proceedings against them. They furthermore alleged that their right to freedom of expression had been violated in that the Supreme Court judgment of 28 October 1998 disproportionately interfered with their right as journalists to play a vital role as "public watchdog" in a democratic society. For the circumstances of the case please refer to Article 11: Freedom of Expression.

Alleged violation of article 6 of the convention:
The applicants submitted that the period from May 1991, when the Chief Superintendent reported the applicants to the police, until January 1993, when the applicants were formally charged, should be included in the Court's assessment of the overall length of the proceedings. The Court underlined that, according to its case-law, the period to be taken into consideration under Article 6 § 1 of the Convention must be determined autonomously. It begins at the time when formal charges are brought against a person or when that person has otherwise been substantially affected by actions taken by the prosecuting authorities as a result of a suspicion against him. In this case the Court considered that the applicants were charged, for the purpose of Article 6 § 1 of the Convention, on 19 January 1993 and that the "time" referred to in this provision began to run from that date.
It was common ground between the parties that the proceedings ended on 28 October 1998, when the Supreme Court gave its judgment. Thus, the total length of the proceedings, which the Court assessed under Article 6 § 1 of the Convention, was 5 years, 9 months and 9 days.

[97] Lov (2005:368) om ændring af retsplejeloven (Underretnings- og formkrav ved justitsministerens pålæg til anklagemyndigheden i straffesager).

The Court considered that certain features of the case were complex and time-consuming.
The Court found that although the applicants' use of available remedies could not be regarded as hindering the progress of the proceedings, it did prolong them. Moreover, the applicants never objected to any adjournment. On the contrary, it appears that in general the preparation of the proceedings, including the scheduling of the final hearing before the High Court and the Supreme Court, was done in agreement with counsel for the applicants. In these circumstances, the Court found that the applicants' conduct contributed to some extent to the length of the proceedings.

Making an overall assessment of the complexity of the case, the conduct of all concerned as well as the total length of the proceedings, the Court considered that the latter did not go beyond what may be considered reasonable in this particular case. Accordingly, there has been no violation of Article 6 § 1 of the Convention in respect of the length of the proceedings.

Struck out of the list:
Eur.Ct. H.R (first section)., *Case of Ohlen vs. Denmark* (Appl. no. 63214/00),
Decision of 24 February 2005.

The applicant complained that the criminal charge against him was not determined within a reasonable time as required by Article 6 § 1 of the Convention (8 years). The applicant asked the Court to rule on the merits as he remained victim of a violation of Article 6 of the Convention. He claimed compensation for pecuniary damages in the amount of DKK 350,000 and non-pecuniary damage in the amount of DKK 110,000.

The Eur.Ct. H.R. found that since the High Court acknowledged the failure to observe the reasonable time requirement, the applicant's status as a victim depended on whether the redress afforded at domestic level on the basis of the facts about which he complains before the Court was adequate and sufficient having regard to just satisfaction as provided for under Article 41 of the Convention. Comparing the compensation granted for non-pecuniary damage in the present case with the sums awarded for comparable delays in the Court's case-law, the Court considered that the sum accorded to the applicant cannot be considered as unreasonable. Moreover, even assuming that the applicant had exhausted domestic remedies as to his request for compensation for his alleged pecuniary damages in the amount of DKK 350,000, the Court considered this claim unsubstantiated. In these circumstances, having regard to the facts subsequent to the Court's admissibility decision, and to the parties' observations, the Court considered that the matter had been resolved within the meaning of Article 37 § 1 (b), and that no particular reason relating to respect for human rights as defined in the Convention required it to continue the examination of the application in accordance with Article 37 § 1 in fine of the Convention. Consequently, the case should be struck out of the list.

Decision as to the admissibility of the case:
Eur.Ct. H.R (first section)., *Wallin Karlsen v. Denmark* (Appl. no. 23523/02),
Decision of 1 February 2005.

On 23 February 1993 the applicant was arrested and charged with tax asset stripping of companies. By judgment of 19 December 2001, the applicant was convicted by the Supreme Court in accordance with the indictment, but for seven counts, including the four counts that the prosecution had already withdrawn. Thus, the applicant was found guilty of sixty-five counts, in which the total sum of unpaid taxes amounted to approximately DKK 71,000,000 equal to approximately € 9,466,500. The applicant's request of 21 December 2001 for leave to appeal against the judgment to the Supreme Court was refused by the Leave to Appeal Board (Procesbevillingsnævnet) on 15 April 2002.

The applicant complained under Article 6 § 1 of the Convention that the criminal charge against him was not determined within a reasonable time. Moreover, he complained under Article 2 § 1 of Protocol No. 7 to the Convention that due to the submission before the appeal court of the amended indictment of 21 March 2001, he was not afforded the right of appeal.

Having regard to these circumstances, the Court found the investigations and the court proceedings relevant, time-consuming and difficult. Thus, for the purposes of Article 6 of the Convention the case was particularly complex.
The Court did not find, that the applicant during the criminal proceedings against him acted in a way that inappropriately prolonged those proceedings. In the Court's opinion, the facts of the case do not disclose that the investigating authorities or the prosecution acted inappropriately or otherwise failed to perform their duties with due diligence after the applicant became involved. In the circumstances, and although the length of the proceedings lasted a total of nine years and fifty-one days, they did not, in view of their magnitude, disclose to the Court such periods of inactivity which could bring the proceedings at variance with Article 6 § 1 of the Convention.
In the Court's opinion the events described in the amended indictment did not differ from the original indictment to such an extent as to raise an issue under Article 2 § 1 of Protocol 7 to the Convention. Accordingly, the Court considered that the applicant was afforded the right of appeal envisaged by the said provision. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. For these reasons, the Court unanimously declared the application inadmissible.

Legislative initiatives, national case law and practices of national authorities

The Ombudsman (J.nr. 2003-4500-600)
The complainant, a lawyer, argued that the Ministry of Refugees, Immigrants and Integration had not decided an application for resumption of a humanitarian residence permit case within a reasonable time. There had been an inactive period for 9 ½ months. The Ombudsman criticised the length of the proceedings (2 years and 10 months).

Supreme Court UfR 2005.523H
A municipality did not compensate a citizen who during the length of the proceedings of a case had caught a restraint syndrome. The citizen had claimed compensation with reference to the ECHR article 6 as the length of the proceedings had inflicted the syndrome. The High Court stated that the cause of the syndrome had not been foreseeable for the municipality and acquitted the municipality. The Supreme Court upheld the verdict.

Reasons for concern

A lecturer at the University of Copenhagen has in the light of Supreme Court judgment UfR 2005.523H concluded in an article concerning the state's responsibility to compensate violations of international human rights[98] that the Danish rules on the state's compensation liability is to sufficiently strict and that the access to compensation for not-economical loss is too limited. The Danish rules are not is compliance with the right to effective remedies for violations of human rights.

[98] Weekly Law Review (Ugeskrift for Retsvæsen) (U.2005B.133)

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In June 2005 [Act (2005:553) amending Act on Arbitration)][99] was adopted by Parliament. The former act on arbitration from 1972 is with the amendment modernized. The act regulates the handling of arbitration into great detail.

Supreme Court UfR 2005.383H
The defence lawyer, D, was not entitled to access to search material in another similar case in which the injured party was identical. The material was of no importance for the defence of the accused which and therefore not contradictory to ECHR article 6.

In December 2004 a committee assigned by the Ministry of Justice published Report no. 1454 on financial crime and data crime[100]. The committee drew attention to the requirement of a trial within a reasonable time etc.

On the 26th July 2005 a Member of Parliament raised the question of whether a refusal of adoption on the Nationality Act to a person who satisfied the requirements for obtaining Danish citizenship, without explanation or means for appeal complies with the international human rights conventions. An explantation for a refusal is denied to individuals who are assessed by the intelligence service to constitute a threat to the national security.

Positive aspects

The amendment of the Act on Arbitration ensures the compliance with Denmark's international obligations in relation to the New Yorker Convention from 1958 and UNCITRAL Model Law on International Commercial Arbitration (1985) (as adopted by the United Nations Commission on International Trade Law on 21 June 1985).
Due to the lacking publicity of cases of arbitration it is important to legislate the conditions for the handling of these cases.

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. The mandate of the commission included a review of the fulfillment of international- and human rights obligations concerning the judicial system. In 2004 the final report no. 1442/2004[101] was published. The report included bills amending the Criminal Code from 1954 and the Administration of Justice Act from 1951. As stated in a memorandum from April 2005 DIHR finds it positive that the commission has stressed the importance of writing fundamental legal guaranties in the criminal procedure into the law. Also the efforts in relation to ensuring impartial judges and education of the supporters of the accused are welcomed to ensure"equality of arms".
At last the DIHR finds it of great importance that the committee has been aware of the problems in relation to the use of Danish as the legal language.

Reasons for concern

DIHR raises concern in relation to the issue of refusals of citizenship without explanation and no possibility of appeal when the refusal is based on an assessment by the Intelligence Service

[99] Lov (2005:553) om voldgift
[100] Delbetænkning XI om behandlingen af større straffesager om økonomisk kriminalitet m.v. Betænkning nr. 1454

[101] Betænkning nr. 1442/2004

as to constituting a threat to national security. As a minimum the individual should be informed that the refusal is based on grounds of national security in order to secure corrections of misinformation.
Secondly, The Institute finds the lack of appeal of concern as the individual has a right to verification of arguable claims against the assessment by the intelligence service. The individual concerned must be able to challenge the assertion that national security is at stake.

Article 48. Presumption of innocence and right of defence

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 16 November [Bill (2005:67) amending the Administration of Justice Act (Implementation of the EU-rules on enforcement of intellectual property rights etc.)] was introduced in Parliament. The objective of the bill is to implement Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

Reasons for concern

In October 2005 the Ministry of Justice asked DIHR for comments to a draft bill amending act the Administration of Justice Act (Implementation of the EU-rules on enforcement of intellectual property rights etc.).
The DHIR noted the amendment of section 653 widens its scope as also suspicion of future assaults is embraced by the section. It would be in better compliance with the human rights principle of quality of arms is a lawyer always was present under the search for evidence.

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

In May 2005 [Act (2005:366) amending the Criminal Code etc. (financial crime headed at public funds, crime committed by a legal person, appeal limitations and money laundring in casinos)][102] was adopted by Parliament.

The objective of the act is to ensure a stream lined criminal protection against financial crime headed at public funds and to implement Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.
Act (2005:366) amending the Criminal Code etc. (financial crime headed at public funds, crime committed by a legal person, appeal limitations and money laundering in casinos)][103]

[102] Lov (2005:533) om ændring af straffeloven og visse andre love. (Berigelseskriminalitet rettet mod offentlige midler, kriminalitet i juridiske personer, klagebegrænsning og hvidvaskning i spillekasinoer m.v.).

[103] Lov (2005:533) om ændring af straffeloven og visse andre love. (Berigelseskriminalitet rettet mod offentlige midler, kriminalitet i juridiske personer, klagebegrænsning og hvidvaskning i spillekasinoer m.v.).

amends section 20 b of the Casino Act which after the amendment obliges every employee at casinos to be aware of transactions which may have some relation to money laundering. Several duties are imposed on the employees in case of a suspicion. If the rules are violated a fine may be imposed.

In December 2004 [Act (2004:1434) on consummation of certain penal decisions in the European Union.][104] was adopted by Parliament.
The purpose of the act is, among others, 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 it 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 act, 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.

Reasons for concern

It is the DHIR's opinion that the duty of being aware of transactions which may have some relation to money laundering attention is not in compliance with ECHR article 7 being too unprecise.

The basis of the Act (2004:1434) on consummation of certain penal decisions in the European Union.act 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 act creates warrant to initiate certain compulsory measures infringing on convention rights. In particular the act raises questions in relation to the right to respect for private life and correspondence.

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

[104] Lov (2004: 1434om fuldbyrdelse af visse strafferetlige afgørelser i Den Europæiske Union.)