

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

HUMAN RIGHTS IN DENMARK

STATUS 2013
A SUMMARY



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HUMAN RIGHTS IN DENMARK STATUS 2013 – A SUMMARY

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FOREWORD

For the second year running, the Danish Institute for Human Rights has produced a status report on the most important human rights challenges in Denmark, thus making it possible to track progress year by year.

In 2012, we embarked on a systematic and comprehensive review of human rights issues in Denmark. This year, we have updated the 14 chapters from last year's status report. They are: Implementation of human rights; Asylum; Children; Data protection; Deprivation of liberty; Disability; Gender; Human trafficking; Race and ethnic origin; Citizenship; Education; Deportation and extradition; and Freedom of expression. This year, five new chapters have been added: Armed conflict; Use of force and intervention; Freedom of religion; Right to a fair trial; and Elderly.

This publication is a summary of the chapters on each of the 19 topics. The summary introduces each topic and highlights the most important recommendations. In future, this material will be part of the annual report that the Danish Institute for Human Rights must submit to the Danish Parliament (Folketinget) presenting the Institute's activities and the

progress in the area of human rights in Denmark.

Assessing the state of human rights in Denmark is a dynamic process, and as a national human rights institution, we find it important to be in constant dialogue with the world around us. We therefore welcome more suggestions for topics and additions that can improve the report. Please write to us at statusrapport@menneskeret.dk.

On the Institute's website, www.menneskeret.dk/status, you will find a full-length review in Danish of all the topics, including all the recommendations. You can also see the Institute's annual report in English here: <http://humanrights.dk/publications/annual+reports>.

It is our hope that the 2013 Status Report from the Danish Institute for Human Rights will contribute to strengthening human rights in Denmark.



Jonas Christoffersen
Director

CHAPTER 1

INTRODUCTION TO HUMAN RIGHTS

DENMARK'S HUMAN RIGHTS COMMITMENTS

Denmark has taken on human rights commitments both nationally and internationally. Nationally, human rights are protected by the Danish Constitution. Internationally, Denmark has entered into a number of agreements (conventions/treaties) on the protection of human rights. These agreements fall under various institutions, in particular the United Nations, the Council of Europe and the European Union.

TWO TYPES OF RIGHTS

Human rights law distinguishes between civil and political rights on the one hand and economic, social and cultural rights on the other. All these rights are interrelated, but there are significant differences in how the various types of rights are implemented. Regardless of the type of right we are dealing with, discrimination must not occur. Freedom of expression, freedom of assembly and the right to a fair trial are examples of civil and political rights. Economic, social and cultural rights include the right to health and the right to an adequate standard of living.

INTERPRETATION OF HUMAN RIGHTS

International human rights are based on the principle that any interference with these rights by the state must be legitimate and proportionate. A legality principle, a proportionality principle and a prohibition of discrimination also apply.

The legality requirement means that any interference with the protected rights must be in accordance with national law, which must be made available and be reasonably predictable.

The proportionality assessment must take into account the protection of human rights, on the one hand, and opposing interests, on the other. Striking the right balance involves a legal assessment of the opposing interests: How important is the right, how severe is the interference with the individual's rights, how important is the pursued aim/the opposing interest, and how important is the interference for safeguarding the aim/opposing interest.

The prohibition of discrimination means that discrimination must not occur – neither when rights are interfered with nor when legislation etc. is enforced and amended.

MONITORING OF HUMAN RIGHTS

When a convention or a treaty has been adopted by an international organisation, e.g., the United Nations, the organisation's member states must decide whether they want to be bound by the agreement through ratification. After this, the state has entered into a commitment to comply with the content of agreement in its national legislation and practice. Ratification also means that the citizens of the state can invoke the provisions of the agreement before administrative authorities and courts of law if they believe that the agreement's provisions have been violated.

The UN monitors the member states' compliance with the human rights commitments they have undertaken, via the treaty bodies and through the Universal Periodic Review (UPR) and the Special Procedure mandate holders.

Several monitoring agencies have been established under the Council of Europe, including the European Court of Human Rights (ECtHR), which gives all people the possibility of enforcing their rights.

In the European Union, human rights are often called fundamental rights. The EU Court of Justice and the EU Agency for Fundamental Rights monitor that these rights are respected.

Denmark protects, monitors and enforces human rights at several levels. Anyone can demand that the public authorities comply with

the international agreements Denmark has ratified. Moreover a case can be brought before the Danish courts if one or more provisions of the agreements are violated. This also applies to violation of the human rights ensuing from the Danish Constitution and other national legislation.

The Danish Institute for Human Rights is tasked with contributing to the protection and promotion of human rights. This takes place in collaboration with the international control mechanisms as well as with other national monitoring agencies.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 2

IMPLEMENTATION OF HUMAN RIGHTS

International human rights conventions regulate only to a limited extent how human rights should be implemented in national law in practice. States therefore have a high degree of freedom to decide how to ensure adequate protection of human rights. The only requirement is that the protection be effective.

There are a number of areas in which the implementation of human rights in Denmark can be strengthened. This chapter comprises the following themes:

- Accession of human rights documents
- Incorporation
- A human rights action plan
- Revision of the Danish Constitution
- Revision of the equal treatment legislation and the Aliens Act.

ACCESSION OF HUMAN RIGHTS DOCUMENTS

Of the nine UN core conventions on human rights, Denmark has ratified seven. Denmark has not yet acceded to the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Nor has Denmark adopted the optional protocols introducing individual complaint

mechanisms to the Convention on the Rights of Persons with Disabilities (CRPD), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). Finally, Denmark has not adopted the Council of Europe's Protocol no. 12 of the European Convention on Human Rights (ECHR), which introduces a general prohibition of discrimination.

Accession to these conventions and protocols would increase the Danish people's opportunities to complain about violation of their human rights and ensure that all groups in Denmark are protected from discrimination.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- accede to Protocol 12 of the ECHR;
- accede to the International Convention for the Protection of All Persons from Enforced Disappearance;
- accede to the optional protocols to the CRPD, the CRC and the ICESCR regarding individual complaint mechanisms.

INCORPORATION

Incorporation of a convention means that it has become part of the Danish legal framework as a law. International law does not regulate how a convention should be implemented in national law as long as the state faithfully complies with the provisions of the convention. However, an incorporated convention has a stronger status than unincorporated conventions.

The ECHR is the only international human rights convention that Denmark has incorporated. In practice this means that both Danish courts and Danish authorities in general apply the ECHR significantly more often than the UN human rights conventions.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- incorporate the UN core human rights conventions into Danish law.

A HUMAN RIGHTS ACTION PLAN

The World Conference on Human Rights (1993) encouraged the individual states to draw up a human rights action plan in order to strengthen national protection and development of human rights. As part of the UN Universal Periodic Review of Denmark in 2011, it was recommended that the country develop and implement a national human rights action plan to create the framework for a systematic and comprehensive effort in the area.

The efforts to promote and protect human rights in Denmark are decentralised and involve a large number of ministries and other public authorities. There is no centralised coordination, implementation or follow-up on international recommendations.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- prepare a national, interministerial action plan for human rights that follows up on such issues as international human rights recommendations.

REVISION OF THE DANISH CONSTITUTION

There is no international requirement that human rights protection be included in the national constitution. However, ensuring the protection of human rights by the Constitution would strengthen human rights protection in relation to other legislation.

The level of protection afforded to fundamental rights by the Danish Constitution is outdated in relation to the development of modern human rights standards. This is demonstrated, for example, by the fact that the Constitution is only very rarely quoted by Danish authorities or courts in cases involving human rights. A number of fundamental human rights do not figure in the Constitution, such as a general prohibition of discrimination or the right to a fair trial.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- revise the Danish Constitution's catalogue of human rights.

REVISION OF THE EQUALITY LEGISLATION

Equal treatment is a fundamental human right, which is included in practically all human rights conventions.

European Union law has been of particular importance to the formulation of the Danish equality legislation. As a result of the gradual incorporation of the EU discrimination directives, protection against discrimination in Denmark is distributed across a number of laws regulating different aspects of equality. In practice this means that the Danish equality legislation affords different levels of protection to different groups and thus varies from area to area in society. It is doubtful that the Danish equality legislation in all cases complies with Denmark's international commitments.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- revise Danish equality legislation and compose a comprehensive law protecting all groups against discrimination.

REVISION OF THE ALIENS ACT

Human rights law sets out certain requirements of the national legislation when a person's rights are interfered. For example, the regulations must be sufficiently clear and precise, and it must be possible to predict to some degree the consequences of the regulations.

The Danish Aliens Act regulates foreign nationals' entry and residence in Denmark. The Aliens Act has been amended 94 times during the period from June 1983 until 2013. As a result, the regulations, practice and relationship to the international commitments can be difficult to understand for both experts and the affected parties.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- revise the Danish Aliens Act to ensure a clear and systematic presentation of the Danish alien legislation, including describing the relationship to Denmark's international commitments;
- ensure that all relevant documents are made public, kept up-to-date and made available in the most commonly used languages. This includes, for example, processing of specific types of cases and systematic practice in specific case areas.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 3

ASYLUM

There are number of issues in the area of asylum where Denmark can improve its efforts to protect and promote the rights of refugees and persons granted asylum. This chapter comprises the following themes:

- General conditions in a country and suspension of forced return
- Return/transfer of asylum seekers to another EU member state according to the Dublin regulation
- The special circumstances for unaccompanied minor asylum seekers
- Punishment for asylum seekers who enter the country on false papers
- Detention of vulnerable asylum seekers

GENERAL CONDITIONS IN A COUNTRY AND SUSPENSION OF FORCED RETURN

According to human rights law, the general situation in a country can mean that a state cannot return a refugee to that country. Denmark can also be obliged to postpone the return.

If the immigration authorities in Denmark determine that the general security situation in a country is of a particularly serious nature,

a person may be granted asylum on those grounds alone. The immigration authorities have not viewed the situation in Syria as being of so serious a nature that asylum may be granted based solely on the difficult general conditions in Syria. However, asylum seekers from Syria who have had their applications for asylum in Denmark rejected have not been forcefully returned to Syria.

In September 2013, the Danish Refugee Appeals Board changed its practice so that persons who come from areas in Syria where, according to the available background information, there is armed conflict or attacks on civilians, or where such events have recently taken place, may be granted asylum in Denmark.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- account for the key criteria applied by the Danish asylum authorities when assessing whether the general situation in a country can be grounds for granting asylum pursuant to Section 7 of the Danish Aliens Act;
- account for under what authority, in what circumstances and on which conditions forced return can be postponed and for how long.

THE DUBLIN PROCEDURE

According to human rights law, Denmark may not send an asylum seeker to countries where there is a genuine risk that the person could be subject to death penalty, torture, inhuman or degrading treatment or punishment. Moreover, the absolute prohibition of torture implies the right to have a reasonably founded complaint about torture considered by an independent and impartial authority.

With a judgment made on 23 January 2011, the European Court of Human Rights found that sending asylum seekers back to Greece was a breach of the European Convention on Human Rights (ECHR) due to the country's inadequate asylum system. The judgment highlights the need for clarification of the Danish rules and practice in the area.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Danish Aliens Act so that it is made explicit that a complaint about a ruling to return/transfer an asylum seeker to another EU member state according to the Dublin procedure can be granted delaying effect;
- amend the Danish Aliens Act so that it is made explicit that Denmark shall accept an asylum application if it is assumed that the asylum seeker risks being treated contrary to the prohibition of torture if he/she is sent back to another EU member state.

UNACCOMPANIED MINOR ASYLUM SEEKERS

In cases involving minor asylum seekers, Denmark must take into account the principle of "the best interests of the child" enshrined in the United Nations Convention on the Rights of the Child. Moreover, the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Committee on the Rights of the Child have published a number of recommendations in the area.

In Denmark, unaccompanied minor asylum seekers do not have their asylum applications processed until they are mature enough to undergo a standard asylum case process. In the interim period, some of them may be granted a

residence permit as an unaccompanied minor. In other cases, they will be in a legal vacuum. A residence permit as an unaccompanied minor lapses as a rule when the minor turns 18. A number of unaccompanied minors disappear from Denmark before their cases are concluded.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- initiate a study of the disappearance of unaccompanied minor asylum seekers and consider whether there is a basis for special initiatives with a view to preventing such disappearances;
- amend the Danish Aliens Act so it is made explicit that in cases of residence permits for unaccompanied minors, the authorities must take the child's best interest into primary consideration and must hear the child and draw on any necessary professional expertise;
- determine a clear legal status, including residence status for those unaccompanied minor asylum seekers who are not assessed to be mature enough to undergo asylum case processing, but cannot be granted a residence permit as an unaccompanied minor.

PUNISHMENT FOR REFUGEES WHO ENTER ON FALSE PAPERS

According to the United Nations Convention Relating to the Status of Refugees, a refugee may not be punished for entry on false identity papers if he/she applies for asylum immediately upon entry. The prohibition of discrimination embedded in human rights law also means that Denmark may not discriminate among citizens in relation to their rights.

In recent years, questions have been raised about the Danish practice of prosecuting asylum seekers who enter Denmark on false papers. According to the Director of Public Prosecutions' recent guidelines, a person who enters the country on false papers and seeks asylum cannot be prosecuted if that person is granted a residence permit as a convention refugee. However, if the person is given a residence permit as a refugee with protection status, the person is generally prosecuted. These guidelines apply to both children and adults.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- consider whether this differential treatment between asylum seekers granted residence permits as convention refugees and those granted residence permits as refugees with protection status is in accordance with the prohibition of discrimination in human rights law.

DETENTION OF VULNERABLE ASYLUM SEEKERS

According to human rights law, Denmark must, when detaining people, give special consideration to vulnerable individuals, and children should only be detained as a last resort. In Denmark, psychologically and physically vulnerable asylum seekers are placed in the Danish Prison and Probation Service's closed institution for detained foreigners, called Ellebæk. Moreover, in a number of cases minor asylum seekers have also been detained at Ellebæk.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- seek to limit the detention of psychologically and physically vulnerable asylum seekers, including in particular minimising the detention of children;
- introduce a compulsory health examination of the asylum seekers whom the police intend to detain, including ensuring the involvement of doctors, psychologists etc.

Read the full text in Danish, including all the recommendations, at www.menneskeret.dk/status.

CHAPTER 4

CHILDREN

In the area of children's rights, a number of important initiatives have been implemented, including a broad political agreement on social supervision reform called "Et Nyt Socialtilsyn". Moreover, the Danish Parliament has adopted the "abuse package", which contains a number of information and education initiatives and strengthens consultancy services and the IT tools used at local level. Most recently the Ministry of Social Affairs, Children and Integration has appointed a committee on the use of force at residential institutions for children and adolescents (Ministerial Committee on the Use of Force). The Danish Parliamentary Ombudsman has appointed a dedicated office of children's affairs, and the legal basis for the National Council for Children has been strengthened. However, there is still a need for initiatives that can strengthen the rights of the child. This chapter comprises the following themes:

- Protection of children from abuse
- Children as secondary victims
- Conditions for children and adolescents placed outside the home
- Detention of children and adolescents due to criminality
- Detention outside the criminal procedure
- Other uses of force on children and adolescents

PROTECTION OF CHILDREN FROM ABUSE

According to the United Nations Convention on the Rights of the Child (CRC), children must be protected from all types of physical or mental violence, neglect and abuse, including sexual abuse, while the child is in the care of parent(s), guardian(s) or any other persons.

In 2012-2013, the Danish Parliament has adopted a number of initiatives aimed at increasing protection for children against violence and sexual abuse. This has led to marked improvements in the opportunities for prevention and support in connection with violence and sexual abuse against children. However, the reform applies a definition of the need for protection that is narrower than what is required in the CRC. Moreover, new research suggests that psychological abuse and neglect are more widespread than violence and sexual abuse. This emphasizes a need for a broader perspective in the protection of children.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that the municipal child abuse response is expanded and supported to include prevention and handling of all types of abuse against children;
- ensure that all municipalities offer open and anonymous counselling available in practice to parents, children and adolescents;
- ensure that all study programmes for educationalists, teachers and other professionals that work with children provide the necessary competencies to be attentive and react appropriately to signals from children in distress.

CHILDREN AS SECONDARY VICTIMS

There is well-documented research indicating that children live under very difficult conditions if their parents have psychological problems due to substance abuse or mental illness. Children often become secondary victims when their father or mother is the primary victim. These children are much more frequently subject to abuse compared to other children, they experience higher mortality rates and live with a much higher risk of mental illness, suicide as well as alcohol and drug abuse.

Some of the children living in families with alcohol problems or mental illness is not part of the municipal assistance system, and specialists in this area report that many children and adolescents are not receiving the help and support they need. Moreover, these children risk taking second place in social cases where the focus is often on ensuring good collaboration with the adults.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensures that professionals working with children have a professionally founded understanding of the influence a parents' abuse has on a child's well-being;
- expands the regional health agreements to also include responsibility for providing help to children of parents with substance abuse;
- ensures opportunities for treatment to persons suffering from the consequences of a childhood with parents or guardians with substance abuse or mental illness.

CONDITIONS FOR CHILDREN PLACED OUTSIDE THE HOME

Children and adolescents placed outside the home have the same rights as other children. The child's best interests must be prioritised and children and adolescents must be involved

in all initiatives regarding their lives, including being heard and having their points of view taken into consideration and been given due weight in accordance with their age and maturity.

Recent research shows that the living conditions of children placed in institutions are below average compared to the conditions of their peers. Statistically, children placed in institutions also experience a disproportionately high degree of exclusion and social problems in their adult lives. Ethnic minority children can experience special problems because the institutions where they are placed do not show consideration and understanding of the importance of their cultural or religious background.

A new law on social supervision seeks to ensure that the municipalities are informed by employees, residents or relatives through, among other initiatives, a whistle-blower scheme that ensures the anonymity of the informant.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that children and adolescents are informed of the rules and their rights during placement, including their right of complaint and the whistle-blower scheme, in a language they can understand;

- ensure that there are sufficient specialised care institutions in which to place children with special problems;
- ensure that there is regular, qualified and effective inspection of placed children's conditions and the institutions, including through an evaluation of the social supervision activities.

DEPRIVATION OF LIBERTY OF CHILDREN AND ADOLESCENTS DUE TO CRIMINALITY

Arrest, detention or imprisonment of children and adolescents is particularly serious because children and adolescents are extremely receptive to outside influences. According to the CRC, no child may be arbitrarily confined. Arrest, detention or imprisonment of children may only take place as a last resort and for the shortest period of time possible. Children who are detained must be confined separately from adults and they have the right to maintain contact with their families by way of letters and visits.

Children under the age of 18 who are remanded in custody must primarily be placed in a surrogate prison. This is a less radical alternative to detainment in a remand prison or prison, typically a secure institution.

We have seen a positive development in the use of remand custody of children/adolescents

in Denmark. The number of children in remand custody is falling. However, approximately one-quarter of the children and adolescents held in custody are still placed in prisons rather than in surrogate prisons during some or all of their custody period.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- prohibit solitary confinement for minors;
- specify the terms for use of remand custody of adolescents with a view to minimising its use;
- consider introducing an absolute maximum limit for the length of remand custody of people under the age of 18;
- ensure that adolescents are confined in institutions suitable for them;
- reinstate a maximum sentence for people under the age of 18 and focus on helping them out of a life of crime.

DETENTION OUTSIDE THE RULES OF CRIMINAL PROCEDURE AND OTHER USES OF FORCE ON CHILDREN AND ADOLESCENTS

Detention of a child may take place with the aim of educational supervision or in order to bring a minor before a competent legal authority.


In Denmark, children and adolescents between the ages of 12 and 17 may be confined under special circumstances in secure institutions. Moreover, it is possible to detain a child or adolescent in partially closed institutions and in partially closed sections of open institutions. It is also possible to detain a child or adolescent for up to 14 days after placement in an open institution or residence. During confinement, force may be used under special circumstances. Despite preventive efforts to ensure that the use of force is only exceptional and a last resort, we have seen examples of exaggerated use of force and even violence.

The Danish Parliamentary Ombudsman has conducted inspection visits at a number of social-educational institutions, which have expressed uncertainty about the rules applying to the use of force.



THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that the placement of children and adolescents in secure institutions is limited to the greatest possible extent;
- ensure mandatory training of staff at care institutions and institutions for children and adolescents with a view to avoiding the use of force to the greatest possible extent;
- clarify the legislation on the difference between restricted freedom of movement and confinement so that children can exercise their constitutional right to a judicial review of any confinement.



Read the full text in Danish, including all the recommendations, at www.menneskeret.dk/status.

CHAPTER 5

DATA PROTECTION

Denmark faces a number of challenges in relation to citizens' rights to protection of their data and communication. This chapter comprises the following themes:

- Data retention
- Social media
- Control of social services
- Cloud computing
- Codification of the Danish Security and Intelligence Service (PET).

DATA RETENTION

Human rights law protects the individual's right to privacy and also sets out the conditions that must be met before states may interfere with this right. For example, Denmark may interfere with the right to privacy when it monitors specific individuals.

The Danish Executive Order on Data Retention, which implements the EU Data Retention Directive of 2006, has been criticised for being a disproportionate interference in the right to privacy of Danish citizens. The data retention obligation requires telecom and Internet providers to store information on all telephone and Internet communication of Danish citizens for one year for possible inquiries.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- conduct an independent evaluation and analysis of how the Executive Order on Data Retention is used and of its effectiveness compared to the significant infringement on the right to privacy which data retention represents.

SOCIAL MEDIA

Protection of the right to privacy is implemented in the EU Data Protection Directive, which stipulates requirements for how public institutions and private companies gather and process information on individual citizens of the European Union.

The use of social media in Denmark has increased considerably in recent years, raising a number of issues related to companies' comprehensive and non-transparent handling of personal data. For example, Danish Facebook users with complaints about Facebook's use of personal data are directed to the Irish Data Protection Agency, since Facebook's European division is located in Ireland.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- initiate an investigation into the possible consequences of the use of social media for freedom of expression, freedom of information and the right to privacy;
- examines how the Danish supervision of social media's retention and sharing of personal data may be strengthened, including mapping how other EU member states enforce national legislation on social media.

CONTROL OF SOCIAL BENEFITS

Protection of the right to privacy under human rights law entails that any intervention be based on law and that the legislation invoked must fulfil certain qualitative requirements, including that rules are sufficiently clear, precise and predictable.

In recent years, there has been some debate about the Danish authorities' means of monitoring citizens with a view to combating social benefit fraud. One example has been the Danish Pension Agency's access to control of individuals passing through airports and other such public places. The Danish Pensions Agency may request information from a broad group of citizens with a view to ensuring that those who must reside in Denmark as a condition for receiving their benefits actually reside in the country.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- establish objective and impartial criteria for the selection of people to examine for social benefit fraud in order to ensure that the selection process is clearly defined and based on specific data;
- establish explicit rules for complaint mechanisms and oversight in connection with control interventions;
- monitor the use of control interventions in order to determine the number of unsuccessful and thus specifically unfounded control interventions.

CLOUD COMPUTING

When public authorities use personal data, they must take into consideration protection of the right to privacy under human rights law as well as the EU Data Protection Directive, which stipulates requirements for data protection for the affected citizen.

Cloud computing is a relatively new means of data storage which raises some fundamental issues in relation to the processing and protection of personal data. For example, it is unclear how different types of personal data may be handled by the cloud computing services and in relation to that, which security requirements that are needed. In many cases, cloud computing services will place data

outside of Denmark, thus making it subject to foreign legislation. Cloud computing underscores the need to determine the privacy implications of a given IT solution before it is implemented. This is one of many examples of the challenges that come with new IT solutions in relation to privacy and data protection.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- require public authorities to conduct privacy impact assessments prior to the implementation of IT solutions that process personal data, including cloud computing;
- strengthen independent analysis and consulting regarding privacy and data protection in connection with the many public digitalisation projects being implemented at present.

CODIFICATION OF THE DANISH SECURITY AND INTELLIGENCE SERVICE (PET)

When PET collects and processes personal data, the right to privacy must be taken into consideration, as must the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and the EU Council Framework Decision on the Protection of Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters.

The first legislation on PET's activities in this area was adopted in 2013. The act sets out new regulations for PET's access to gathering and processing personal data based on the standards of the Act on Processing of Personal Data. Moreover, the act stipulates the establishment of a PET oversight mechanism and the strengthening of the parliamentary supervision committee (Folketingets Kontroludvalg). The new act has been criticised for primarily focusing on PET's handling of personal data, without a similar focus on PET's other activities.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- conduct an assessment of the impact of the Danish terrorism response on human rights, including the rule of law in Denmark;
- conduct mapping and a systematic assessment of all oversight of PET.

Read the full text in Danish, including all the recommendations, at www.menneskeret.dk/status.

CHAPTER 6

RACE AND ETHNIC ORIGIN

Denmark has a number of challenges in implementing the principle of equal treatment and non-discrimination on the basis of race or ethnic origin. This chapter comprises the following themes:

- Access to the labour market
- Ethnic minority pupils in Danish public schools
- Access to health services for refugees and immigrants
- Psychiatric treatment for ethnic minorities
- Equal treatment of Greenlanders
- Hate crimes
- Access to information and interpreting services

ACCESS TO THE LABOUR MARKET

The EU Directive on Ethnic Equal Treatment protects against direct and indirect discrimination in employment and occupation due to race or ethnic origin. With a view to ensuring full equality in practice, the Directive gives member states the possibility to adopt specific measures to prevent or compensate for disadvantages in the labour market linked to race or ethnic origin.

Ethnic minorities have a weaker participation rate in the labour market than the rest of society. Studies show that ethnic minorities are strongly overrepresented in positions that do not require a higher education and underrepresented in senior management and middle and high-level white-collar positions.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- map discriminatory institutional barriers that prevent ethnic minorities from achieving a foothold in the labour market and attaining jobs that match their level of education.

ETHNIC MINORITY PUPILS IN DANISH PUBLIC SCHOOLS

According to the Conventions on the Rights of the Child (CRC), all children have the right to education. This right must be enjoyed without subjective or disproportionate differential treatment due to race or ethnic origin.

Studies show that pupils with origins other than Danish do not perform as well as ethnic Danish pupils in public schools. Minority pupils, to a significantly higher degree than Danish pupils, lack the necessary scholastic skills to commence and/or complete vocational training programmes. There are indicators that the present education in primary and lower secondary schools does not sufficiently ensure that minority pupils – especially ethnic minority boys – benefit sufficiently from their schooling. A number of studies suggest that the lack of success may be due to institutional factors – partly because of race and ethnic origin, partly because of the intersection of gender and ethnicity.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines whether the Danish Public School Act (Folkeskoleloven), the Agreement on the Danish Public School and the educational efforts in public schools involve unintended indirect discrimination of ethnic minorities, including in particular the causes of ethnic minority boys' poor academic performance and high drop-out rate;
- examines the causes of ethnic minority boys' poor academic performance and drop-out rate.

ACCESS TO HEALTH SERVICES FOR REFUGEES AND IMMIGRANTS

Human rights principles states that everyone has the right to health, including equal access to health services.

In practice, according to health professionals, quota refugees and family reunified persons do not have the same possibilities as others to exercise their right to health in Denmark. Upon arrival in Denmark, they are not systematically offered a health check even though health professionals deem it vital to detect people requiring treatment and/or suffering from infectious diseases. They also lack knowledge of their rights and of the possibilities for prevention and treatment offered by the Danish healthcare system. Finally, in cases of especially complex needs, there is also a lack of targeted programmes.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- compose guidelines for general practitioners, describing the health-related challenges doctors should be aware of when they come into contact with refugees and family reunified persons.

PSYCHIATRIC TREATMENT OF ETHNIC MINORITIES

Human rights principles states that everyone has the right to health. According to a recent Danish study, patients of ethnic minority background are more often subject to involuntary admission to psychiatric institutions compared to ethnic Danish patients. This affects, in particular, refugee men and women reunified with their families. The study also points out that patients of ethnic minority background are more often exposed to compulsory treatment and use of physical force during psychiatric admission than ethnic Danish patients.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- prevent the use of force in psychiatric treatment by ensuring that it is possible to communicate with the patient with regard to obtaining consent, including ensuring as needed the use of qualified interpreting services prior to the initiation of treatment.

EQUAL TREATMENT OF GREENLANDERS IN DENMARK

In general, Greenlanders are socially, culturally and family-wise well-integrated into Danish society. Despite that studies show that Greenlanders face challenges – primarily in relation to contact with the social authorities,

access to education and work, and the right to family life. Moreover there are language barriers to communication with various public authorities and insufficient access to interpreting services. Greenlanders with special needs, in particular, find that the social services are, to a great extent, directed at “the negative image of Greenlanders” rather than at the specific individual.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- offer an integration programme to Greenlanders settling in Denmark, equal to what is offered to other ethnic minorities, to ensure access to health examinations upon arrival, vaccinations, interpreting services, Danish classes, access to education and assistance entering the labour market;
- examines resident Greenlanders’ access to education, health, social services, housing and the labour market.

HATE CRIMES

Human rights and European Union laws impose a number of minimum requirements on Denmark in relation to hate crimes motivated by race or ethnic origin.

A study of hate crimes in Denmark conducted by the Danish Institute for Human Rights in

2011 shows a lack of knowledge of the subject, including a lack of training of the police in hate crimes and human rights issues, insufficient registration of these crimes and a lack of investigation of hate crimes.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- draft a national action plan against hate crimes and initiate a broad effort to promote victims' courage, willingness and ability to report hate crimes.

ACCESS TO INFORMATION AND INTERPRETING SERVICES

According to human rights principles, everyone has the right to publicly available information. Studies show that in practice, ethnic minorities often do not have equal access to information and thus to the necessary knowledge of their rights and obligations in Danish society. This concerns access to information from public authorities via websites, folders and pamphlets as well as via personal contact with the authorities. There is also insufficient use of trained interpreters and translators in the social and health care sectors as well as in courts of law.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure increased access to information from the public sector to citizens that do not speak Danish;
- ensure that public authorities use qualified interpreting services whenever possible.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 7

DEPRIVATION OF LIBERTY

There are a number of areas where Denmark can make improvements in relation to deprivation of liberty. This chapter comprises the following themes:

- Remand custody
- Overcrowding in the Danish Prison and Probation Service institutions
- Voluntary solitary confinement
- Disciplinary punishment of prisoners
- Violence and threats in the Danish prisons
- Confinement of mentally ill criminals
- Women in prison
- Children of prisoners
- Preventive detention under the Danish Police Act

REMAND CUSTODY

Human rights law states that everyone who is deprived of their liberty must be treated humanely and with dignity. Deprivation of liberty, including remand custody, may only occur if other measures are found to be inadequate.

The scope and duration of remand custody in Denmark has continuously been subject to criticism. The public prosecutor has launched new initiatives to limit the use of remand custody; however Denmark still uses remand custody significantly more often than Sweden and Finland, for example.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- maintain focus on significantly reducing the use and duration of remand custody.

OVERCROWDING IN THE DANISH PRISON AND PROBATION SERVICE INSTITUTIONS

Overcrowding in prisons can create conditions that amount to inhumane and demeaning treatment.

In recent years, overcrowding has become a problem in the Danish Prison and Probation Service institutions. Prisons and remand prisons periodically experience occupancy rates exceeding their maximum capacity.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- take the initiative to reduce occupancy significantly in the Danish Prison and Probation Service institutions.

VOLUNTARY SOLITARY CONFINEMENT

Voluntary solitary confinement of prisoners can have seriously harmful consequences. A number of human rights recommendations are therefore aimed at either abolishing or significantly reducing various forms of solitary confinement.

The use of voluntary solitary confinement in Danish prisons and remand prisons has previously been subject to severe criticism, especially in the case of voluntary solitary confinement during remand custody. Other critical areas include the use of punitive isolation cells (voluntary solitary confinement as disciplinary punishment), administrative isolation (preventive isolation) and voluntary exclusion from general population (so-called voluntary solitary confinement).

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- consider alternatives to voluntary solitary confinement and reduce the use of all types of solitary confinement in Danish prisons;
- ensure that prisoners in all types of solitary confinement have sufficient access to meaningful social contact.

DISCIPLINARY PUNISHMENT OF PRISONERS

Disciplinary punishment in a prison or remand prison is an administrative reaction to a prisoner

who has displayed unacceptable behaviour. Human rights law states that everyone who is deprived of their liberty must be treated humanely and with dignity. It must not lead to a loss of rights beyond what is a natural consequence of the deprivation of liberty.

According to Danish law, disciplinary punishment may comprise warnings, fines or punitive isolation cells. There are indications that the use of disciplinary punishment in Danish prisons has increased significantly in recent years.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- review the rules for disciplinary punishment to ensure that they are in accordance with the European rules for prisons;
- focus on limiting the use of disciplinary punishment on children and adolescents, and in this connection compile separate statistics on the use of disciplinary sanctions on prisoners under the age of 18.

VIOLENCE AND THREATS IN PRISONS

It is incompatible with human rights standards if prisoners, personnel or visitors are subject to acts or threats of violence. There must be a fixed set of procedures that minimise the risk of violence and other events that can threaten personal safety. Prisoners should be able to participate fully in daily activities without suffering harm.

The Danish Prison and Probation Service has noted an increase in episodes where prisoners have been subject to violence and threats by other prisoners. Research suggests that the amount of violence and threats against prisoners may be much higher than indicated by the Danish Prison and Probation Service statistics.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- launch an investigation into the scope and nature of violence and threats in the Danish Prison and Probation Service institutions.

CONFINEMENT OF MENTALLY ILL CRIMINALS

People with mental illness at the time of a crime due to mental illness, or who are severely mentally ill, are not punished but sentenced to psychiatric care. Mentally ill individuals make up the majority of those remanded to psychiatric care. However, in many cases, people with mental disorders can be detained in remand prisons and prisons for up to several months, primarily due to insufficient capacity in the psychiatric institutions.

According to the UN Convention on the Rights of Persons with Disabilities (CRPD), people with disabilities – including the mentally ill – have the right to freedom and personal security and may not be arbitrarily deprived of their freedom. When people with disabilities are

imprisoned, they have the right to be treated according to the standards of human rights law.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that mentally ill people who have committed crimes or are suspected of doing so are placed in special institutions that can provide them with the best possible treatment in relation to the mental disorder they suffer from.

WOMEN IN PRISON

For many years, Denmark has allowed men and women to serve sentences in the same institutions. This is contrary to normal practice in most prison systems abroad and is not in accordance with the recommendation in human rights law that men and women should be separated during confinement.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- give consideration to the special needs and conditions of women prisoners in connection with remand custody and serving sentences.

CHILDREN OF PRISONERS

According to the UN Convention on the Rights of the Child (CRC), children have the right to

maintain regular personal connections and have direct contact with both their parents. The child's best interest must be a primary consideration in all relations concerning the child.

Studies show that children of prisoners and their families often struggle with a large number of problems, including financial hardship and stigmatisation. Children of prisoners are also at greater risk than other children of committing crimes later in life.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- maintain focus on the children of prisoners and ensure better counselling and support for the children of prisoners and the families affected by imprisonment.

PREVENTIVE DETENTION UNDER THE DANISH POLICE ACT

Human rights law does not permit preventive detention in connection with disturbance of public security or public order. However, the European Court of Human Rights (ECHR) has made it clear that confinement may occur in special situations. In all other cases, people may only be detained if it takes place with a view to bringing charges against them for violation of national law.

During the COP15 demonstrations in Copenhagen in 2009, the authority of the Danish police to conduct preventive detention was expanded. A total of 1,900 demonstrators were preventively detained during the summit. Many subsequently filed court cases on the legality of these detentions. The court found in favour of the majority of the plaintiffs, whom it said had been subjected to illegal detention. The High Court found that the conditions during some of the interventions had been demeaning and in conflict with human rights, including freedom of expression, freedom of assembly, personal freedom and protection against demeaning treatment.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- revise the Police Act regulations on preventive detention in order to limit the scope and duration of the detention.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/ status.

CHAPTER 8

DISABILITY

The Danish Institute for Human Rights has identified some of the biggest challenges for Denmark when it comes to protecting the rights of persons with disabilities. This chapter comprises the following themes:

- Accessibility
- Coercion in psychiatry
- Self-determination
- Political participation
- Inclusion in the labour market
- Equal access to health

Other significant challenges for persons with disabilities include legal protection, which is covered in the chapter on implementation of human rights law; equal access to education, which is covered in the chapter on education; prejudices; and an action plan in the area of disability.

ACCESSIBILITY

According to the UN Convention on the Rights of Persons with Disabilities (CRPD), Denmark has a commitment to promote access to public areas for persons with disabilities, for example transport options, information, communication and other facilities. However,

in addition to the physical aspects, accessibility applies to information and technology as well. Accessibility is a prerequisite for creating an inclusive society in which persons with disabilities can fully participate.

The Danish building legislation sets out accessibility requirements in buildings, especially new and renovated buildings. The requirements do not accommodate all disability groups, but primarily persons with physical disabilities. And yet, a study conducted by the Danish Building Research Institute in 2012 shows that in practice new buildings are often not accessible for persons with disabilities. Furthermore, a review of public-sector websites by the Danish Agency for Digitisation, also from 2012, shows that 34 per cent of the public-sector websites are not as accessible as they should be.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- strengthen accessibility to public-sector buildings and websites in order to avoid unlawful discrimination due to disability;
- design digital solutions that can be used by all groups in society, regardless of disability.

COERCION IN PSYCHIATRY

The CRPD builds on a strengthened recognition that persons with disabilities have the right to make decisions regarding their own bodies and lives. For example, the convention emphasises respect for individual autonomy, including the freedom to make one's own decisions, and independence from others. Moreover, the CRPD prohibits the deprivation of liberty of a person based on disability.

Psychiatric law permits the use of coercion – in connection with admission as well as the treatment of persons with mental illness. In Denmark, the use of coercion in connection with both admission to psychiatric units and treatment for psychiatric illness is very widespread. According to Danish Health and Medicines Authority figures from 2010, coercion is used for approximately 21 per cent of the patients who are admitted to psychiatric units.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines whether the Danish psychiatric legislation and the criteria for involuntary commitment and forced treatment ensure in practice sufficient respect for the autonomy of the individual;
- consider whether forced restraints over an extended period of time should continue to be permitted.

SELF-DETERMINATION

The CRPD has a strong focus on self-determination and legal capacity. Making decisions on behalf of a person with a disability must be the last resort. Moreover, the convention protects the right to live independently and to participate fully in society. This includes having the right to choose where and how to live. To ensure that persons with disabilities can live independently, for instance in their own home, they must have access to various forms of support.

If a person with a disability in Denmark has difficulty taking care of their own affairs and making their own decisions, one option is to offer guardianship as a support measure. According to a study conducted by the Danish Institute for Human Rights, there are a number of conflicts and dilemmas associated with guardianship, especially the

most comprehensive Section 6 guardianship (limitation of legal capacity). Persons subject to this type of guardianship feel a lack of self-determination, frustration over the loss of their rights and also feel disempowered.

In 1998 the term “institution” was removed from the Danish Act on Social Services. And yet some persons with disabilities still live in institution-like housing, and housing is still being built that resembles institutions in both size and location. Such housing can ultimately limit opportunities to live independently and be included in society.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- limit the use of Section 6 guardianship;
- reduce the number of institution-like housing types;
- increase the self-determination of people with disabilities in relation to choice of housing.

POLITICAL PARTICIPATION

According to the CRPD, persons with disabilities have the right to participate in politics and society, including the opportunity to vote and be elected, by ensuring that voting procedures, voting facilities and election

material are accessible and easy to understand and use. According to a study conducted by the Equal Opportunities Centre for Disabled Persons in 2010, persons with a disability experience problems in connection with public elections, such as lack of sign language interpretation during election broadcasts, and ballots that are not accessible to blind people or persons with learning disabilities.

It is in contravention of the CRPD to take away a person’s right to vote because he or she is subject to guardianship. In Denmark, people who have an appointed guardian under Section 6 of the Guardianship Act do not have the right to vote or be elected, which is in contravention of Article 29 of the CRPD.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure persons with disabilities equal opportunity to participate in the political process;
- amend the election legislation to ensure that persons subject to Section 6 guardianship continue to have the right to vote and be elected.

INCLUSION IN THE LABOUR MARKET

The CRPD states that persons with disabilities have equal rights to employment. The labour market must be open, inclusive and accessible – also for people with disabilities. Discrimination based on disability must be prohibited and reasonable accommodation should be made to meet the needs of persons with disabilities. Moreover, public authorities should promote employment opportunities for persons with disabilities.

Persons with disabilities are strongly under-represented in the Danish labour market. Only around 25 per cent of all persons with disabilities and persons with reduced working capacity are employed. By comparison, in Sweden around 50 per cent of all persons with disabilities and persons with reduced working capacity have jobs. Danish legislation prohibits discrimination in the labour market based on disability and requires employers to make reasonable accommodation to meet the special needs of a person with a disability.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that the labour market legislation protects against dismissal based on reduced working capacity, and ensure that employers have an obligation to make reasonable accommodation.

EQUAL ACCESS TO HEALTH

According to the CRPD, persons with disabilities have the right to the same health services and the same quality of care as everyone else in society. Moreover, persons with disabilities have the right to any health services arising from their disability. Persons with disabilities have the right to treatment based on free and informed consent, just like everyone else in society. Persons with disabilities should also have access to health insurance without discrimination based on disability.

Under Danish law, persons with disabilities are offered no specific protection from discrimination based on disability in the area of health. Moreover, it is uncertain to what extent persons with disabilities actually have equal access to health services.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines how prioritisation in the public health services affects persons with disabilities.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 9

GENDER

Denmark faces a number of challenges in the area of gender equality. This chapter comprises the following themes:

- Enforcement of the principle of equal pay
- Access to gender-dominated education
- Drop-out rates in vocational training programmes
- Gender mainstreaming
- Violence in close relationships.

ENFORCEMENT OF THE PRINCIPLE OF EQUAL PAY

EU legislation and the human rights principle of equal pay states that for the same work or for work to which equal value is attributed, all direct and indirect discrimination based on gender with regard to all aspects and conditions of remuneration must be eliminated.

Figures from Statistics Denmark show that women earn on average 15 per cent less than men and that this difference has basically remained unchanged for the past ten years. The number of lawsuits over equal pay is low, both in Denmark and in Europe as a whole.

EU and international monitoring bodies have, in this regard, pointed out the need for the social partners to ensure wage transparency, monitor wage differences between women and men and develop gender-neutral job evaluation systems.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS, THAT DENMARK:

- urge the social partners to improve wage transparency;
- conduct systematic follow-up on the Wage Commission's recommendations on equal pay and the gender segregated labour market;
- encourage state, regional and municipal employers and unions to conduct a service check of, among other things, agreements, collective negotiation systems and informal routines;
- specify the Equal Pay Act's concept of work to which equal value is attributed.

ACCESS TO GENDER-DOMINATED EDUCATION

It follows from the prohibition of discrimination in human rights law that men and women must have equal access to participate in society, including equal access to education. The prohibition of direct or indirect discrimination according to the EU Directive on Equal Opportunities in Employment and Occupation includes all types and levels of education. According to the UN Convention on the Elimination of All Forms of Discrimination against Women, states must also work to eliminate stereotyping of roles for men and women in all areas of society, including the educational system.

Gender segregation in the Danish educational system manifests itself by females dominating areas within care, health, office work, and the humanities, while males dominate the trades, technology, IT, and the natural sciences. The authorities that provide educational and vocational guidance should be aware of whether their counselling is subject to gender stereotyping. Bias in public-sector programmes and services can represent subjective discriminatory treatment in relation to equal integration, influence and opportunities for men and women.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS, THAT DENMARK:

- ensure that institutions responsible for the educational and vocational guidance of young people present educational opportunities that are not limited by gender stereotyped conceptions of education and work;
- ensure that knowledge of the gender mainstreaming commitment is strengthened in the institutions that provide educational guidance to young people.

DROP-OUT RATES IN VOCATIONAL TRAINING PROGRAMMES

It follows from the prohibition of discrimination in human rights law that boys and girls must have equal access to participate in society, including equal access to education. The prohibition of direct or indirect discrimination according to the EU Directive on Equal Opportunities in Employment and Occupation includes all types and levels of education.

The majority of young people in Denmark commence an upper secondary education, but a large share do not complete their studies. This applies in particular to young men, and four out of ten 26-year-old men of immigrant background have not completed an upper secondary education. Meanwhile, vocational

schools have problems attracting women to their study programmes.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS, THAT DENMARK:

- initiate an investigation of the causes of drop-outs in vocational training programmes with special focus on gender, ethnicity and socioeconomic background.

GENDER MAINSTREAMING

The concept of “gender mainstreaming” has been part of the United Nations’ equality strategy since 1995. In the EU, the principle of mainstreaming is treaty-bound and written into a number of equality directives. Gender mainstreaming means incorporating consideration of equality between women and men throughout all functions in society to create equal opportunities and equal rights for women and men.

Gender mainstreaming has been the official equality strategy in Denmark since 2000. However, human rights monitoring organisations have pointed to the uneven implementation of the gender mainstreaming strategy in the Danish state, in the regions, and particularly in the municipalities.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS, THAT DENMARK:

- strengthen oversight of the public authorities’ fulfilment of the mainstreaming commitment;
- ensure interdisciplinary knowledge-sharing between a number of key gender equality players to make information available to the state, regions and municipalities.

VIOLENCE IN CLOSE RELATIONSHIPS


Under human rights law, Denmark has a commitment to protect people from violence. This means, among other things, that violence and the taking of life must be prohibited in the penal code. Moreover, the authorities must enforce such a prohibition through effective investigation and prosecution of cases of violence in close relationships. In 2011, the Council of Europe adopted a convention preventing and combating violence against women and domestic violence. Denmark has neither signed nor ratified this convention.

A study shows that approx. 33,000 women and 13,000 men in Denmark annually are assessed to have been subjected to physical violence by their partners. Both homosexual and bisexual men are included in this statistic. At this time, Denmark does not have an action plan for combating intimate partner violence.



THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS, THAT DENMARK:

- ratify the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence;
- draw up a separate action plan for combating violence in close relationships.



Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 10

USE OF FORCE AND INTERVENTION

In Denmark, the state may, under specific circumstances, use force and intervene to maintain law and order in society and to protect citizens from each other and themselves. Opposite these considerations are the interests of the individual, such as personal freedom, respect for physical integrity and the individual's legal rights, including protection from arbitrary intervention. This chapter comprises the following themes:

- Pepper spray
- Stop-and-search zones
- Use of tracking by the police
- Marking of police uniforms

PEPPER SPRAY

Human rights law protects citizens against illegal use of force by the authorities. Pepper spray is a relatively new weapon used by the police and in the prison service.

The Danish Health and Medicines Authority points to studies which show that pepper spray can cause serious damage. Since pepper spray was introduced in the Danish police force, the use of force has more than tripled. Use of

pepper spray in prisons appears to also have escalated the use of all types of force. Human rights organisations, including the European Court of Human Rights (ECHR), have made it clear that pepper spray may not be used in confined areas, such as in prison cells.

The Danish Institute of Human Rights is in the process of investigating the use of pepper spray.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines whether authorities use pepper spray to an extent and under circumstances in contravention of Denmark's international commitments.

STOP-AND-SEARCH ZONES

When a citizen is stopped in a specified zone so the police can search their clothing, possessions and any vehicle, this is an interference of their right to privacy. However, this type of search can be justified if the aim is to combat crime. In a verdict from 2010, the ECtHR made it clear that a stop-and-search zone's designated geographic area and time intervals should always be well-founded and that stop-and-search zones increase the risk of discrimination.

Since 2008, the police districts have designated stop-and-search zones covering large geographic areas over extended periods of time.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines whether Denmark's regulations and practice in the area are in compliance with ECtHR practice and the intentions of the Danish Parliament, as expressed in the travaux préparatoires of Section 6 of the Danish Police Act;
- call attention to the risk of discrimination in stop-and-search zones.

USE OF TRACKING BY THE POLICE

Human rights law protects the right to privacy. Interference with the right to privacy can be justified if the aim is to prevent crime. However, the interference must be in accordance with Danish law. The ECHR has found that the systematic collection of information on people in public spaces with the aim to possibly use the information in an investigation together with other personal information may be an unlawful interference with the right to privacy.

The Danish police may, as an investigative power and without statutory prescription, use a GPS tracker if it is placed on the outside of a vehicle in a freely accessible place. The police may also collect mass information on the vehicle's movements from the telephone companies without a court order.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- introduce a provision in Section 791a of the Danish Administration of Justice Act to regulate the area for observation with the use of technical aids in freely accessible places.

MARKING OF POLICE UNIFORMS

The United Nation's Human Rights Council (HRC) has recommended that Denmark ensure that police officers are identifiable. Every year, complaints against police officers are dropped because it is impossible to establish the actual police officer involved.

Today, police officers must state their name and place of duty if asked by citizens with whom they interact while on duty. However, there are a number of exceptions to this rule – if the request is given during arrest or major police operations or if the request comes from a person who is under the influence, aggressive or highly unstable.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- introduce identification numbers on police uniforms or ensure in another way that it is possible to identify police officers should a complaint be brought against them.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 11

HUMAN TRAFFICKING

Denmark can improve its efforts to stop human trafficking. This chapter comprises the following themes:

- Identification of victims of human trafficking
- Forced labour

IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING

Human trafficking is a serious violation of a person's dignity and integrity. According to human rights law, Denmark has a commitment to build up adequate, lawful and effective protection of victims of human trafficking.

In recent years, Denmark has made combating human trafficking a higher priority. One of the areas that can still be strengthened is the identification process. It is important, but often difficult, to identify victims of human trafficking. Identification is necessary in order for the victim to be entitled to protection and support, otherwise the victim risks immediate return.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that relevant authorities have the necessary qualifications for identifying victims of human trafficking, including through regular training;
- ensure that possible victims of human trafficking are not detained but provided accommodation in a safe house during the identification process;
- examines the terms of the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others from 1951 with a view to ratifying the convention;
- ensure that victims of human trafficking are granted residence if the authorities find that the personal circumstances of the person in question deem it necessary that the person remain in Denmark.

FORCED LABOUR

Under human rights law, Denmark has a commitment to protect persons from forced labour. Effective protection for the victims of forced labour, including trafficking for forced labour, requires knowledge of the scope, identification of the victims of forced labour, clear legal regulations and that the victims know their rights.

In the past, the primary focus has been on human trafficking for prostitution, but in recent years focus has also been at trafficking for forced labour. This has led to the registration of more identified victims in the area. However, there is a need for better understanding of the scope of forced labour and knowledge among the relevant players. This applies not only to human trafficking for forced labour but also to forced labour or situations that can develop into forced labour.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that the relevant authorities and other relevant players have the necessary qualifications for identifying cases of forced labour, including human trafficking for forced labour;
- ensure that information about employee rights in Denmark is available in the most commonly used languages.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 12

FREEDOM OF RELIGION

Freedom of religion is one of the classical civil rights. It includes the right to have, practice and change religion, to have non-religious and atheistic convictions and to not have any religion or faith. Freedom of religion is closely associated with other rights, such as freedom of expression and the right to privacy. In some instances, freedom of religion may collide with other interests and rights, including individual rights and the principle of equal treatment. This chapter comprises the following themes:

- Religious divorce
- Male circumcision
- Protection from discrimination based on religion

RELIGIOUS DIVORCE

Freedom of religion and gender equality co-exist in Danish society. In relation to religious divorce, this can cause friction because women within Islam and Judaism do not enjoy equality in relation to religious divorce, which normally requires the consent of the husband. This can impact on a woman's access to a civil divorce in practice and can have a negative effect on her life, even in cases where a civil divorce has been obtained.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- conduct an exploratory study of the human rights issues relating to religious divorce in Denmark with a view to launching initiatives to ensure genuine equal treatment of men and women in the area.

MALE CIRCUMCISION

Freedom of religion includes the right to manifest one's religion. Circumcision of male children is a very important ritual for most Jewish and Muslim parents, who, according to human rights law, have the right to raise their children within a specific faith. The UN Convention on the Rights of the Child (CRC) also protects the child's right to physical integrity. Circumcision of boys is increasingly attracting attention, nationally and internationally. The Parliamentary Assembly of the Council of Europe has passed a resolution and a recommendation that express concern about male circumcision. Female circumcision is illegal in Denmark.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines the human rights aspects of religiously motivated circumcision of boys in Denmark.

PROTECTION FROM DISCRIMINATION BASED ON RELIGION

The Danish Constitution prohibits discrimination based on religious affiliation. However, there is no Danish legislation that protects from religiously oriented discrimination outside the labour market.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- expand the Danish equality legislation to also include the prohibition of discrimination based on religion;
- in the effort to combat hate crimes, ensure protection from discrimination based on religion.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 13

RIGHT TO A FAIR TRIAL

The right to a fair trial is a basic civil right in all constitutional states. This chapter comprises the following themes:

- Legal aid and free legal representation
- Departure from the right of access to documents in criminal cases
- Breach of the confidentiality of information and “secret” judges
- The prohibition of double prosecution in cases against prisoners in Danish Prison and Probation Service institutions
- Legal costs in criminal cases
- Long case processing times

LEGAL AID AND FREE LEGAL REPRESENTATION

Article 6 of the European Human Rights Convention (EHRC) does not guarantee the right to free legal representation free of charge in civil cases. However, the European Court of Human Rights (ECtHR) has found that lack of access to free legal representation may be a violation of the right to a judicial review and a fair trial. Consequently, depending on the circumstances, states may be obliged to remove financial obstacles to taking legal action and conducting civil cases.

In Denmark, the legal aid system comprises legal aid, free legal representation free of charge and legal expenses insurance. The regulations in the area of legal aid and free legal representation are adjusted on a regular basis. This has resulted in a significant drop in state expenses for legal aid provided by a lawyer. The expenses for and the number of applications to legal aid institutions, however, have increased, as have the expenses for free legal representation free of charge, despite a drop in the number of cases.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- conduct a complete analysis of whether the existing legal aid schemes are adequate for ensuring equal access to the judicial system.

DEPARTURE FROM THE RIGHT OF ACCESS TO DOCUMENTS IN CRIMINAL CASES

Under the right to a fair trial, the defendant/ defence counsel in a criminal case is entitled to

see the prosecution's evidence and documents. This applies regardless of whether the material speaks for or against the innocence of the defendant. A limit can be placed on this right out of consideration for national security or to protect witnesses and others, but only if it is necessary and the restrictions can be compensated by sufficient legal defence guarantees to protect the defendant.

In Denmark, the courts may, at the request of the public prosecutor, decide that a defendant/defence counsel should not be granted access to specified evidence if special circumstances apply.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Danish Administration of Justice Act to ensure that material that is kept withheld from the defendant/defence counsel by court order cannot be presented during the main legal proceedings and be included in the court's assessment of evidence in a criminal case against the defendant;
- present statistical information regarding court orders on departure from the right of access to documents, including the use of special counsel;
- consider the actual need for keeping the identities of special counsel confidential.

BREACH OF THE CONFIDENTIALITY OF INFORMATION AND "SECRET" JUDGES

When the authorities place taps on telephones, collect telecommunications data etc. in breach of the confidentiality of information, it is generally considered a violation of the right to privacy. In Denmark, these types of activities require a court order. In nearly all cases, the court approves such activities. The occurrence of these activities has increased significantly in recent years. The figures do not include activities conducted by the Danish Security and Intelligence Service (PET). When PET requests a court order for such activities in breach of the confidentiality of information in order to investigate crimes against national security, specially appointed judges are used whose identities are kept secret out of consideration for their safety and national security.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- present statistical information on the use of activities that breach the confidentiality of information, including by PET;
- examines and evaluate the practice of Danish courts of breaching the confidentiality of information;
- specify the terms for the use of "secret" judges.

DOUBLE PROSECUTION IN CASES AGAINST PRISONERS IN PRISON AND PROBATION SERVICE INSTITUTIONS

The ECtHR has made it clear that certain disciplinary criminal cases must be treated as criminal cases under Article 6 of the EHRC if the prisoners are subjects of a "criminal charge" within the meaning of this article. It is important to take into consideration the degree of severity of the penalty that the person concerned risks incurring

When prisoners commit criminal offences in a Danish Prison and Probation Service institution, the offence must be investigated and treated in the same way as when someone in society commits a crime. In Denmark, it is common practice to bring both a criminal case and a disciplinary case regarding a criminal offence if a separate violation of order and safety in the institution is committed. According to legal practice, the sentencing of such offences does not always consider the disciplinary sentence in order to avoid double punishment.

This fact raises issues in relation to the prohibition of double prosecution in the ECHR as well as the European rules for prisons, which state that prisoners may not be sentenced twice for the same act or conduct. If both a disciplinary case within the prison and a criminal case in the courts are conducted, questions arise regarding the prohibition of double prosecution.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- assess further whether the practice of using punitive isolation cells as disciplinary punishment depending on the circumstances should be treated as criminal cases under Article 6;
- examines cases brought against prisoners where disciplinary punishment and ordinary punishment have been imposed for the same offence with a view to assessing whether a previous disciplinary sentence has been taken into account in connection with the sentencing by the court.

LEGAL COSTS IN CRIMINAL CASES

According to the right to a fair trial, a defendant in a criminal case has the right under certain circumstances to receive legal aid. The ECtHR has made it clear that it is not in contravention of this article to impose on a sentenced person the legal costs of the criminal case, including costs for the appointed defence counsel, provided it does not have a negative effect on the criminal case and the sentenced person subsequently has access to seek full or partial waiver of the legal costs due to inability to pay.

In Denmark, people who are sentenced in a criminal case must, as a general rule, pay the legal costs of the case. However, the court can

limit the responsibility for paying the legal costs if certain conditions are met.

The matter of possible waiver of legal costs will be considered by a committee on prevention and resocialisation, which is appointed under the Danish Ministry of Justice.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- examines the practice for imposing legal costs and the consequences of this, including possible waiver of legal costs based on considerations relating to resocialisation;
- separately consider, in connection with the committee on prevention and resocialisation, whether to limit legal costs for young offenders and to waive legal costs in criminal cases involving mentally ill who have been found to be exempt from prosecution.

LONG CASE PROCESSING TIMES

According to human rights law, criminal cases should be processed without unnecessary delay and everyone has the right to a fair and public trial within a reasonable period of time.

The reform of the courts of Denmark in 2007 has generally resulted in longer case processing times for all types of cases. In

recent years, there has been increased focus on case processing times in connection with civil cases and criminal cases.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- continue to maintain focus on reducing case processing times for all court cases;
- ensure that the courts have the necessary resources to perform their duties;
- maintain the fundamental principle that a legal decision may initially be tried in two courts.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 14

CITIZENSHIP

Denmark can strengthen its efforts in relation to non-citizens with close ties to Denmark. This chapter comprises the following themes:

- Procedures for granting citizenship
- Appointment of a citizenship commission
- Protection against statelessness from birth
- Children's right to citizenship
- Citizenship for immigrants, refugees and stateless persons
- Dispensation from the requirements for obtaining citizenship

PROCEDURES FOR GRANTING CITIZENSHIP

Human rights law does not set out any requirements for how citizenship is granted. However, it implies that discrimination must not occur, that decisions must not be arbitrary, that the principle of proportionality must be complied with and that there must be access to redress in connection with any infringements.

In the Government Platform from 2011, the Danish government has expressed its intention to strengthen the civil rights of applicants and to adopt the requirements for obtaining citizenship by law rather than by changing political agreements.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Act on Danish Nationality so that the competency to grant citizenship is to the greatest extent possible delegated from the legislative power to the administrative authorities and, in this connection, so that clear conditions are adopted for obtaining Danish citizenship.

APPOINTMENT OF A CITIZENSHIP COMMISSION

According to the 2011 Government Platform, amendments to legislation are to be made in several areas concerning citizenship (the Act on Danish Nationality). Some of these changes were passed effective from 15 June 2013, and thus the Danish citizenship legislation is now in better harmony with human rights law.

However, the Danish Institute of Human Rights is of the opinion that there continues to be a need for a more comprehensive review of the citizenship legislation to ensure that it complies on the whole with Denmark's international obligations in the area of citizenship rights.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- appoint a law reform commission to make recommendations for a reform of the citizenship legislation.

PROTECTION AGAINST STATELESSNESS FROM BIRTH

The United Nations has adopted several conventions to protect stateless persons and prevent statelessness, most significantly the Convention Relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961). Moreover, the UN Convention on the Rights of the Child states that children have the right to acquire citizenship from birth.

According to the 1961 convention, Denmark has a commitment to grant Danish citizenship to persons who are born on Danish territory and who would otherwise be stateless. Citizenship can be granted at birth pursuant to the law or later following application.

Currently, the granting of Danish citizenship requires registration in the Central Civil Registration System (CPR register), which presumes either a residence permit or an entry clearance according to the Danish Aliens Act. This requirement is not in accordance with the 1961 convention, which permits requirements of habitual residence of a specified duration, but not a legal or formal residence requirement.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- introduce a provision in the Act on Danish Nationality so that stateless children born in Denmark are automatically granted Danish citizenship at birth.

CHILDREN'S RIGHT TO CITIZENSHIP

Human rights law does not stipulate that the host country must grant citizenship to foreign children (who are not stateless). With the exception of cases of statelessness, Denmark does not adhere to the principle that being born in the country gives the right to citizenship. The fundamental premise of the Act on Danish Nationality is that children acquire Danish citizenship at birth if the mother or father is Danish, according to the *jus sanguinis* principle.

Children born abroad out of wedlock acquire Danish citizenship at birth if the mother is Danish. Adopted alien children over the age of 12 and adopted step-children must apply for Danish citizenship and meet specific criteria.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Act on Danish Nationality so that every child acquires Danish citizenship at birth if one parent is Danish, regardless of whether the parents are married or not and regardless of whether the child is born in Denmark or abroad;
- amend the Act on Danish Nationality so that adopted children over the age of 12 and adopted step-children have the same status as adopted children under the age of 12, so they are automatically granted Danish citizenship upon adoption and no longer required to apply for citizenship;
- amend the Act on Danish Nationality so that children can achieve citizenship independent of their parents.

CITIZENSHIP FOR IMMIGRANTS, REFUGEES AND STATELESS PERSONS

The UN Convention Relating to the Status of Refugees and the Convention Relating to the Status of Stateless Persons stipulate that the contracting states must, as far as possible, facilitate the inclusion of refugees and stateless persons in society and their access to citizenship.

However, there are currently a number of limitations on the right to the acquisition of Danish citizenship and thus on the process of becoming fully integrated in Denmark. These limitations can exclude vulnerable groups, including stateless persons, from obtaining citizenship.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Act on Danish Nationality so the self-support requirement and the language and knowledge requirements do not exclude vulnerable groups, including stateless persons, from obtaining citizenship.

DISPENSATION FROM THE REQUIREMENTS FOR OBTAINING CITIZENSHIP

According to human rights law, all people are equal before the law and entitled to the law's equal protection without any discrimination. The Council of Europe's Convention on Nationality stipulates that the state must ensure that negative rulings on citizenship contain written justifications.

Danish citizenship legislation contains a provision stipulating that applicants with disabilities may apply for dispensation from the Danish language and citizenship exam requirements. It is also possible to obtain

dispensation from other requirements due to a disability. However, the legislation does not contain any rules on the treatment of dispensation applications in the Parliamentary Naturalisation Committee. Refusals of dispensation do not come with written motivation. According to the Supreme Court verdict of 5 September 2013, applicants whose application for citizenship are rejected may take their case to court in order to determine whether a human rights violation has occurred that may lead to claims for damages or compensation.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- clarify the Act on Danish Nationality so it specifies which conditions must be fulfilled in order to obtain dispensation from the various requirements;
- introduce procedural safeguards in the processing of dispensation cases, including justification of negative rulings;
- provide guidance on the scope for bringing a refusal of a citizenship application before the courts.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 15

EDUCATION

In the area of education, Denmark can increase its efforts to ensure access to education and to ensure that school pupils receive and participate in human rights education. In 2012-2013, the Danish Institute for Human Rights conducted a study of the teaching of human rights in primary and lower secondary schools and teacher education programmes in Denmark. This chapter comprises the following themes:

- Inclusion
- Accessibility
- Teaching of human rights in primary and lower secondary schools and teacher education

INCLUSION

According to the UN Convention on the Rights of Persons with Disabilities (CRPD), participating states must ensure an inclusive education system. It also emphasises that there must be legal protection against discrimination due to disability in all areas, including education.

Denmark's first report to the UN Committee on the Rights of Persons with Disabilities states that the aim of creating an inclusive school

system has not yet been achieved. Children with disabilities are often referred to special classes or special schools and receive a poorer education than children without disabilities. If a pupil receives fewer than 12 hours of support per week, there are no complaint options, which weakens the assurance that children receive the right care and support.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- continue to promote inclusion in public schools and consider amending the Public School Act to clearly state the objective of inclusion;
- ensure that the equality legislation protects from discrimination in education based on disability.

ACCESSIBILITY

According to the CRPD, the state has an obligation to promote access for persons with disabilities to schools and other educational institutions, physical surroundings, transport

options, information, communication and other publicly accessible facilities.

There is currently no overview of the level of accessibility to the educational institutions in Denmark and there is no action plan on how accessibility can be improved. It is documented that pupils with physical disabilities do not perform as well as other pupils in public schools.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensure that Danish equality legislation protects against inadequate accessibility to educational institutions for persons with disabilities;
- adopt an action plan with objectives for how Danish educational institutions can be made more accessible.

HUMAN RIGHTS IN PRIMARY AND LOWER SECONDARY SCHOOLS AND TEACHER EDUCATION

In 2011, the United Nations emphasised the fundamental importance of primary and lower secondary schools as regards human rights education, recommending that states ensure human rights education in the education system.

The UN Committee on the Rights of the Child has recommended that Denmark strengthen children's knowledge of human rights, including the Convention on the Rights of the Child (CRC) in schools so that human rights are given priority in the education system.

Furthermore, Denmark should develop systematic and ongoing education programmes on human rights for all people working with children.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- add human rights into the preamble of the Danish School Act and strengthen human rights education in the Common Objectives of the Danish public schools (Folkeskolen);
- strengthen the teaching of human rights in basic and in service training for teachers and school principals, and implement human rights in university college curricula.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 16

DEPORTATION AND EXTRADITION

The deportation and extradition of persons from Denmark is an area with well-known human rights challenges. This chapter comprises the following themes:

- Deportation of foreigners due to criminality
- Deportation of foreigners suspected of terrorism
- Use of diplomatic guarantees for extradition
- Foreigners under “tolerated residence”

DEPORTATION OF FOREIGNERS DUE TO CRIMINALITY

According to human rights law, states may not deport a person, including foreigners, to another state if there is a real risk that the person will be subjected to torture, inhumane or degrading treatment. Moreover, the right to privacy and family life means that a deportation must be proportionate with the purpose of the deportation. This assessment takes into account the foreigner’s ties to the country of residence and to the native country, as well as the type and severity of the crime.

Since 1996, Denmark has continuously introduced more strict rules for deportation,

and today the general rule is that foreigners who are sentenced to imprisonment for committing a crime are deported. Deportation can only be circumvented if deportation would be in conflict with Denmark’s international commitments. If deportation is circumvented, the foreigner must always be sentenced to suspended deportation, even though the “suspended deportation” sanction has no legal effect.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- amend the Danish Aliens Act’s provisions on deportation due to criminality to better reflect Denmark’s international commitments;
- abolish the “suspended deportation” sanction which has no legal consequence.

DEPORTATION OF FOREIGNERS SUSPECTED OF TERRORISM

According to human rights law, everyone has the right to a fair and public trial within a reasonable period of time before an independent and impartial court of law. Similarly, everyone is entitled to bring a possible violation of a right before an independent and impartial authority.

In Denmark, a special court trial of administrative rulings exists on the deportation of foreigners suspected of terrorism. The court trial is split into an open and a closed part. As the Danish Supreme Court has also established, this can give rise to human rights issues. If the evidence submitted in the open material does not make it possible for the defendant to give effective instructions to his or her legal counsel, a true and fair legal process is not possible.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- present statistical information on the use of the special court procedure under Chapter 7b of the Danish Aliens Act on the hearing of certain decisions about administrative deportation etc.

USE OF DIPLOMATIC GUARANTEES FOR EXTRADITION

According to the prohibition of torture in human rights law, states may not send or extradite a person to another state if there is a real that the person will be subjected to torture, inhumane or degrading treatment in the receiving state.

In recent years, some states have entered into diplomatic guarantees with receiving states to the effect that the person being extradited will not be subjected to torture etc. in the receiving state. In a case regarding the extradition of a Danish citizen for legal proceedings for a charge of terrorism in India, Denmark received a diplomatic guarantee from India that the person in question would not be subjected to torture etc. The Eastern High Court subsequently overruled the extradition of the person in question based on the diplomatic guarantee, because there was a genuine risk that the person would be exposed to treatment in conflict with the prohibition of torture in human rights law.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- display great caution in using diplomatic guarantees as a basis for extradition.

FOREIGNERS UNDER “TOLERATED RESIDENCE”

According to human rights law, anyone who is legally in the territory of a state has the right to move freely within this area and to freely choose their place of residence. The prohibition of discrimination in human rights law also means that states may not exercise direct or indirect unfair or disproportionate differential treatment.

Foreigners who cannot be deported by Denmark, because they risk being subjected to torture or similar assault in the receiving country, reside in Denmark under so-called “tolerated residence”. Persons under tolerated residence must, as a general rule, reside in the Sandholm asylum centre and regularly report to the police. The rights of persons under tolerated residence are also limited in other ways.

In 2012, the Supreme Court considered the use of the stricter Danish rules on reporting and required residence and found that the violation of the freedom of movement should be considered on an ongoing basis in order to be proportional. There is no clear overview of the basis for residence and the conditions for persons under long-term tolerated residence.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- regulate the legal position of foreigners under tolerated residence;
- stipulate guidelines for access to imposing residence and/or reporting obligations in the Sandholm asylum centre and for setting the duration of the interventions.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 17

ARMED CONFLICT

In recent years, Denmark has contributed to a number of international military operations and participated actively as a belligerent party in several armed conflicts, including Afghanistan, Iraq, Libya and, most recently, Mali in 2013.

As a result, a number of new international law issues have developed in relation to Denmark's participation in armed conflict. One issue is when it is legal to participate in armed conflict (*jus ad bellum*); another is which rules of international law regulate the actual conduct of war (*jus in bello*). This chapter comprises six themes, of which the following four themes are summarised here:

- Danish forces in international operations
- Detention and deprivation of liberty of prisoners
- Investigation into violations of human rights and international law
- Training in international humanitarian law and human rights law

DANISH FORCES IN INTERNATIONAL OPERATIONS

When Danish forces in international military operations become involved in an international or non-international armed conflict, they must

observe the rules of international humanitarian law. Human rights law also applies to armed conflict, influencing and impacting on the actions of Danish forces in many areas.

It has not been fully clarified when a state's human rights commitments apply outside the territory of the state. There is also uncertainty about how human rights interact with the rules of international humanitarian law.

Furthermore, binding UN Security Council resolutions adopted under Chapter VII of the Charter of the United Nations also regulate the behaviour of states in armed conflict.

The Danish legal basis for the deployed forces comprises the parliamentary decision from Parliament ("Folketinget") on participation in the mission in question and specific mission directives as prepared by Defence Command Denmark. Moreover, Danish forces are bound to a certain extent by Danish legislation.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- clarify the extent to which Danish forces participating in international military operations are bound by human rights law, the Danish Constitution and other Danish legislation.

DETENTION AND DEPRIVATION OF LIBERTY OF PRISONERS

Both international humanitarian law and human rights law regulate the deprivation of liberty of prisoners of war and civilians. However, the regulations of human rights law are much more restrictive than the regulations of international humanitarian law, stipulating that the deprivation of liberty take place “in accordance with a procedure prescribed by law” and that the detainee be charged with a criminal offence and brought before a judge.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- clarify the legal basis in international and Danish law for detaining individuals under international operations and assess whether the Danish imprisonments comply with these terms;
- clarify Denmark’s responsibilities in connection with joint operations with forces from other countries for captured and detained prisoners.

INVESTIGATION INTO VIOLATIONS OF HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW

Both international humanitarian law and human rights law require that states on their own initiative investigate possible violations of international and national law committed during international military operations.

However, the duty of the state to conduct investigations, both material (what is subject to investigation) and procedural (the requirements applying to the investigative body), is significantly more comprehensive and demanding under human rights law than under international humanitarian law.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- clarify whether the Danish Military Prosecution Service (FAUK) complies with the requirements stipulated in the European Human Rights Convention (EHRC), including whether FAUK possesses the necessary independence and impartiality vis-à-vis the Danish Armed Forces.

TRAINING IN INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

According to international humanitarian law and human rights law, states must ensure that military personnel and law enforcement personnel receive training in the relevant aspects of international law.

The Danish Armed Forces provide training in international humanitarian law and, to a more limited extent, in human rights law. An amendment to the Defence Act in 2013 made it clear that the Danish Minister for Defence can draft and lay down specific regulations on the armed forces training programmes.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- draw up a complete overview and evaluation of the training in international humanitarian law and human rights within the Armed Forces;
- strengthen training in international humanitarian law and human rights law within the Armed Forces.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 18

FREEDOM OF EXPRESSION

Denmark has a number of challenges associated with freedom of expression. This chapter comprises the following themes:

- Journalists' working methods
- Public employees' freedom of expression
- Hate speech
- Prohibition of blasphemy in the Danish criminal code

JOURNALISTS' WORKING METHODS

The European Court of Human Rights (ECtHR) has established that the press, in its capacity of "public watchdog", has expanded freedom of expression compared with ordinary citizens. The expanded protection of journalists' freedom of expression applies primarily to the communication of the punishable expressions of others. The extent to which journalists themselves can undertake otherwise criminal actions as part of their discovery and publication of information of significant social interest with impunity is less certain.

In Denmark there is similar uncertainty in this area, because the legislation provides no clear guidance and because sufficient case law has not been developed.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- stipulate clear rules for journalists' privileges in relation to freedom of expression, including the extent to which journalistic working methods are covered.

PUBLIC EMPLOYEES' FREEDOM OF EXPRESSION

According to human rights law, public employees have a basic right to freedom of expression.

Recent studies have shown that many public employees are reluctant to express themselves about conditions at their workplace and/or do not have knowledge of the applicable rules, including the limits of their so-called duty of loyalty.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- implement initiatives to disseminate knowledge of the rules for the freedom of expression of public employees, especially in relation to their duty of loyalty;
- describe the rules for public employees' notification obligations in such a way that employees and managers will have simple and easy-to-understand access to the rules.

HATE SPEECH

Under human rights law, Denmark has a commitment to criminalise and efficiently investigate hateful expressions against groups motivated by race, skin colour, religion, descent or national or ethnic origin.

In Denmark, hateful expressions are criminalised in Section 266b of the Criminal Code. Violations of Section 266b are subject to public prosecution. Complaints about prosecution proceedings being dropped and complaints about the public prosecutor's rejection of a case can be submitted by anyone who is specifically affected by the case. However, expressions that are covered by Section 266b of the Criminal Code will often be of such a general nature that individuals are not entitled to complain. Today there are no public statistics available on the number of cases that are rejected and on which grounds.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- publish practice from the police and public prosecutor on reports, investigations and charges in cases involving Section 266b of the Criminal Code so that the public can gain greater insight into the area and the police can conclude their investigations more quickly;
- consider whether the complaint options in cases involving Section 266b of the Criminal Code can be strengthened.

ABOLISHMENT OF THE PROHIBITION OF BLASPHEMY IN THE DANISH CRIMINAL CODE

Human rights law does not protect against the mocking of religion. However, human rights law does protect against public incitement to violence or hate directed towards people on the basis of their religious affiliation. Human rights law allows a certain degree of discretion with regard to whether states retain existing prohibitions of blasphemy or choose to repeal them. The UN Human Rights Committee's general recommendation on the interpretation of the right to freedom of expression indicates a still more limited acceptance of the prohibition of blasphemy compared with previous practice.


Based on the Director of Public Prosecution's latest ruling in the area, it cannot be excluded

that the prohibition of blasphemy in Denmark would be enforced in connection with the interpretation of religious texts, which makes it difficult to meet the requirement of predictability in a state based on the rule of law. Likewise, there is uncertainty as to whether religious prohibitions can be enforced uniformly among different religions. Many European countries have already phased out the prohibition or are considering doing so.



THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- review the prohibition of blasphemy in the light of freedom of expression with a view to revoking it.



Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

CHAPTER 19

ELDERLY

Elderly people have the right to dignity, personal integrity and protection from demeaning treatment. There are several areas where Denmark can strengthen its efforts to ensure the rights of elderly people. This chapter comprises the following themes:

- Protection of feeble elderly from abuse
- Care of elderly with dementia
- Digitalisation of communication with the public authorities

PROTECTION OF FEEBLE ELDERLY FROM ABUSE

Many feeble elderly will be covered by the UN Convention on the Rights of Persons with Disabilities (CRPD), which protects people who have long-term physical, mental, sensory or motor disabilities. According to the CRPD, the public authorities must take all appropriate legislative, administrative, social, educational and other measures to protect people with disabilities from any type of exploitation, discrimination, violence and abuse both within and outside the home.

The scope of abuse of elderly people is unknown. There are only a few limited studies

of abuse of elderly people, and they report very varying results, though some show alarmingly frequent episodes of abuse of various types. However, there are no guidelines for reporting and handling of abuses. Moreover, there is a lack of documentation of the knowledge of nursing personnel and other professional groups regarding adequate prevention and intervention in cases of abuse of elderly within and outside the home.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- ensures knowledge of the scope and nature of abuse against feeble elderly;
- ensures that front-end personnel have sufficient knowledge about prevention, identification and reporting of abuse of elderly;
- considers, from an improved knowledge base, whether there is a need for a stricter reporting obligation in cases of abuse of feeble elderly.

CARE OF ELDERLY WITH DEMENTIA

According to human rights law, if a person does not understand the importance of a health or treatment-related procedure, for instance due to dementia, then such a procedure may only take place if it is to the direct benefit of the person in question. The number of people with dementia in Denmark is estimated to be around 85,000 (2011), while approx. 15,000 new cases are expected each year. Two-thirds of nursing home residents in Denmark suffer from dementia.

In recent years, it has been pointed out that the Danish Health Care Act and the Danish Social Services Act apply different principles and that this causes confusion and violations in the care of people with dementia. Moreover, the Health Care Act does not present the possibility of treating a patient against his or her express will, regardless of whether the person is incapable of giving informed consent, even if the person who may give proxy consent on behalf of the patient to the treatment. This has led to publicity in the media about health personnel who have felt obliged to violate the provisions of the Health Care Act in order to provide for the health-related interests of elderly people with dementia.

Furthermore, it is possible that the care of people with dementia in relation to their personal safety and health during stays in care homes etc. is inadequate.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- gathers knowledge on how the regulations for the use of force work in practice with a view to ensuring that care personnel are equipped to act in accordance with the regulations to the best possible benefit of people with dementia;
- prepares a guide on the treatment of behavioural and psychological symptoms of people with dementia;
- amends the Health Care Act to meet the critical treatment needs of long-term incapacitated patients, regardless of whether they resist treatment;
- considers whether the existing regulations on the use of alarm systems and the possibility of detention in a care home etc. are sufficient for ensuring the rights of people with dementia to personal safety and health;
- ensures that care of people with dementia and feeble elderly focuses on their dignity and personal autonomy while respecting their other human rights, including social rights.

DIGITALISATION OF COMMUNICATION WITH THE PUBLIC AUTHORITIES

Equality before the law is a fundamental principle of human rights. This also includes equal access in communication with public authorities. In recent years, there has been an increase of digitalisation in the public sector resulting in comprehensive revisions of the regulations which are also aimed at citizens' contact with the public.

The digitalisation strategy requires that citizens have access to computers and the Internet and that they are capable of using the necessary technology such as the NemID digital signature solution. In recent years, Statistics Denmark has continuously collected data on IT usage in the population, and among people over the age of 65 there is a sizeable share – just over one-third – that does not have access to a computer at home and does not know how to use the Internet, and therefore does not have the necessary prerequisites for using digital public-sector communication forms.

THE DANISH INSTITUTE FOR HUMAN RIGHTS RECOMMENDS THAT DENMARK:

- evaluates the information, guidance and support offered by public authorities so that any citizen, regardless of IT abilities and computer and Internet access, effectively has the opportunity to communicate with the public sector.
- when assessing whether to grant dispensation from digital self-service, places significant weight on citizens' personal assessment of their own IT abilities and access to the necessary equipment.

Read the full text in Danish, including all the recommendations at www.menneskeret.dk/status.

