

THE DANISH  
INSTITUTE FOR  
HUMAN RIGHTS

HUMAN RIGHTS  
IN DENMARK

STATUS 2016-17



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# PREFACE

In this fifth issue of its status report, the Danish Institute for Human Rights provides a current overview of the most important human rights challenges facing Denmark.

In the past year, there have been a number of examples of legislation, guidelines and practices that we consider conflicting with human rights. For example, this concerns errors in municipal treatment of child cases, abuse of children in asylum centres, conditions for people on tolerated stays, and restrictions on the freedom of expression for religious preachers. Fortunately, there have also been several significant improvements. To mention just a few, but important ones: there is a prospect that there will be a general prohibition on discrimination against persons with disabilities, persons under guardianship have been given voting rights in relation to municipal elections and elections to the EU, the use of isolation in prison has continued decreasing, and the new military manual clarifies the importance of human rights during armed conflict.

A prerequisite for protecting and promoting human rights is to have an overview of the situation in all major areas and to systematically monitor developments. Monitoring and reporting the human rights situation in

Denmark is one of the Danish Institute for Human Rights' core responsibilities as Denmark's National Human Rights Institution.

Our status report consists of 22 thematic reports covering topics ranging from asylum, data protection, family life, through gender equality and deprivation of liberty, to expulsion and the rights of elderly, which are updated every couple of years. To these should be added this report, which provides a brief, updated insight into the development of the 22 areas and the most important recommendations. The thematic reports, which are 25–50 pages each, and in Danish only, can be downloaded from our website: [www.menneskeret.dk/status](http://www.menneskeret.dk/status).

We place great emphasis on being in dialogue with the public. Therefore, we encourage interested parties to submit proposals for topics and additions that could improve the status report. You can contact us at [statusrapport@menneskeret.dk](mailto:statusrapport@menneskeret.dk).

We hope that 'Status 2016-17' will provide a clear overview and thereby strengthen human rights in Denmark.

Jonas Christoffersen  
Executive Director

Louise Holck  
Deputy Executive Director

# CHAPTER 1

## INTRODUCTION TO HUMAN RIGHTS

### **DENMARK'S HUMAN RIGHTS OBLIGATIONS**

Denmark is bound by a large number of human rights obligations. At national level, the Danish Constitution provides for protection of many important human rights. Internationally, Denmark has entered into agreements (conventions and treaties) on the protection of human rights. These agreements fall under various institutions, in particular the UN, the Council of Europe and the European Union. You can read more about Denmark's human rights obligations in the thematic report 'Introduction to human rights' (in Danish) from the institute's Status Report 2015-16.

### **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. The rights are interrelated and are therefore equally important. However, there are significant differences in how they are implemented. Regardless of the type of right in question, discrimination must never occur. Freedom of expression, freedom of assembly and the right to a fair trial are examples of civil

and political rights. Examples of economic, social and cultural rights are the right to health and the right to an adequate standard of living.

### **INTERPRETATION OF HUMAN RIGHTS**

International human rights are based on principles that any restriction in these rights by the state must be in accordance with the law, pursue a legitimate aim and be proportionate.

The requirement that restrictions must be prescribed by law (the principle of legality) entails that any interference in protected rights must be based in national law and be made public to safeguard citizens from arbitrary infringements.

The proportionality assessment includes, on the one hand, consideration for the protection of rights and, on the other, consideration for opposing social interests. Striking the right balance requires a legal assessment of the significance of the opposing interests at stake: The importance of the right in question, the severity of the intervention in the individual's right, the significance of the objective being pursued/ the opposing interest, and the

importance of the intervention for safeguarding the objective/the opposing interest.

The principle of non-discrimination means that a person or group of persons may not be treated less favourably than others without valid justification.

### **MONITORING OF HUMAN RIGHTS**

When a convention or treaty has been adopted by an international organisation such as the UN or the Council of Europe, the organisation's member states must decide whether they will be bound by the agreement. This occurs when they ratify the agreement. With ratification, the member state is obliged to comply with the contents of the agreement in the state's national law and practice.

Within the UN framework, member states are monitored with respect to compliance with the human rights obligations that they have undertaken. This is primarily carried out by the committees associated with the various conventions, through the UN Universal Periodic Review (UPR) and through the UN's special procedures. Monitoring activities can include both general assessments of the human rights situation in a state or handling individual complaints.

Several monitoring bodies have been established under the Council of Europe, such as the European Court of Human Rights and the Commissioner for Human Rights. The European Court of Human Rights is unique

because individuals who claim their rights have been violated can have their case tried before an international court of law, which will make a legally binding judgement pursuant to the European Convention on Human Rights.

In the EU, human rights are often referred to as fundamental rights. The Court of Justice of the European Union (CJEU) ensures that EU law (including the EU Charter on Fundamental Rights) is interpreted and applied in the same way in all EU Member States. The European Union Agency for Fundamental Rights (FRA) provides advice to decision makers in the EU and Member States on fundamental rights.

Denmark protects, monitors and enforces human rights at several levels. Any citizen can demand that the public authorities comply with the international conventions that Denmark has ratified. Moreover, a case can be brought before the Danish courts if one or more provisions of the conventions have been violated. The rights can be invoked by the parties and applied by Danish courts. This also applies to violations of human rights enshrined in the Constitution and other national legislation.

The Danish Institute for Human Rights is moreover tasked with monitoring human rights compliance in Denmark and with contributing to the protection and promotion of human rights. This is carried out in collaboration with the international control mechanisms as well as other national monitoring bodies.

## CHAPTER 2

# IMPLEMENTATION OF HUMAN RIGHTS

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

The year 2016 saw political debate about whether Denmark should continue to protect all the human rights that follows from international law, and to what extent. The debate was triggered in particular by the large numbers of refugees arriving in Europe, including in Denmark, in 2015, with especially high numbers arriving in the summer and autumn of that year. The expulsion of criminal immigrants was also at the centre of debate about whether to restrict human rights in Denmark.

The human rights debate in Denmark also left its mark on the November 2016 Government coalition agreement. In the agreement, the government declares that Denmark has a clear interest in upholding a strong international legal order, including respect for human rights, and that the government intends to contribute to active international collaboration and to comply with international conventions. However, the agreement also states that the government sees a need to take a critical approach to the European Court of Human Rights' dynamic style of interpretation which,

although it ensures that human rights law reflects the times, also extends the application of the European Convention on Human Rights.<sup>1</sup>

According to the Government coalition agreement, the government will host an international conference for experts about the Convention in connection with the upcoming Danish chairmanship of the Committee of Ministers of the Council of Europe in 2017.

In October 2016, the Danish People's Party presented a proposal for a parliamentary resolution ordering the Government to submit a proposal to repeal the Danish Incorporation Act, which incorporated the European Convention on Human Rights into Danish law in 1992. The proposed resolution included ordering the Government to make a reservation in respect of the Convention, in order for the Government to pursue a stricter immigration and refugee policy, supported by a parliamentary majority.<sup>2</sup> It was suggested that such a reservation could be made by withdrawing from the Convention and then reentering into the Convention with a reservation to allow expulsion of criminal immigrants in situations where expulsion would be in conflict with the right to respect for family



life. However, in December 2016, the proposal for parliamentary resolution was rejected by the other parties in the Danish Parliament.

In December 2016, the Danish Supreme Court delivered its ruling in the so-called Ajos case.<sup>3</sup> This is a principal case, because it concerns the relationship between Danish law and EU law when these conflict with each other. The Supreme Court found that the principle of EU law prohibiting age discrimination cannot (contra legem) overrule a Danish legal provision in disputes between private parties.

## HUMAN RIGHTS IMPROVEMENTS

- In its 2016 coalition agreement, the Government states that legislation must be user-friendly and promote the rule of law in Danish society. Ensuring due process of law for individuals and businesses requires clear, simple legislation that is easy to understand and manage. In this way, the Government pledges to reduce and simplify the regulatory burden and open up for greater use of sunset provisions in legislation on selected areas (i.e. that a law will cease to have effect after a specific date unless it is renewed).

## NEW CHALLENGES

- The institute notes the continued occurrence of very short public consultation deadlines for draft Bills.
- The institute finds that in some cases there has been no, or insufficient, human rights impact assessments of draft Bills. Furthermore, relevant rulings from the European Court of Human Rights are rarely taken into consideration in impact assessments, and Denmark's obligations under the UN human rights conventions are also rarely considered.

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). Denmark received a total of 199 recommendations covering a wide range of areas. In April 2016, out of these 199 recommendations, Denmark had accepted 120 in full, while 14 recommendations had been partially accepted.
- In spring 2016, the UN Special Rapporteur on freedom of religion or belief made an official visit to Denmark. The Special Rapporteur will present his final report on freedom of religion and belief in Denmark to the UN Human Rights Council in 2017.
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. In July 2016, the Committee issued its concluding observations, which contains the Committee's concerns on a number of areas, as well as recommendations for how to improve implementation of the Covenant in Denmark. Among other things, the Committee recommends that Denmark implement a general prohibition against discrimination.<sup>4</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- take steps introduce a ban on discrimination outside the labour market on grounds of disability, religion, sexual orientation and age.
- in cooperation with the Faroe Islands, establish a national human rights institution for the Faroe Islands.
- take steps to incorporate the core UN human rights conventions into Danish law.
- incorporate a mandatory human rights impact assessment in Bills.
- formulate a national human rights action plan, which, among other things, follows up on recommendations from international bodies and which is anchored at inter-ministerial level.

## CHAPTER 3

# ASYLUM

### **HUMAN RIGHTS AND ASYLUM**

As a general rule, any state has the right to control entry into the state, and presence in the state, of aliens, including asylum-seekers. However, this right may be restricted by the international obligations of the state. Among other things, it follows from the Universal Declaration of Human Rights that everyone has the right to seek and to enjoy in other countries asylum from persecution. The so-called principle of non-refoulement means that a State may not expel an alien if this means said person risks being exposed to torture or political persecution, for example. Non-refoulement is a fundamental principle in several human rights conventions, including the Refugee Convention and the European Convention on Human Rights. In such situations, the states are required to accept aliens' presence in their country. You can read more about the rights of refugees in the thematic report on 'Asylum' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

The large numbers of refugees that have come to Europe, including to Denmark, since 2015

have occasioned much debate about the rights of refugees.

At the end of 2015 there were 65.3 million displaced persons across the world, of whom 40.8 million were internally displaced, 21.3 million were refugees and 3.2 million were asylum seekers. Of the 21.3 million refugees, 16.1 million come under the mandate of the UN High Commissioner for Refugees (UNHCR), which relates to people who are displaced outside of their own country and in need of protection as a result of persecution and conflict, for example. In 2015, 86 percent of refugees under the UNHCR mandate were refugees in their regions of origin. The largest group of refugees came from Syria (4.9 million).<sup>5</sup>

Since 2015, there has been a sharp increase in the number of refugees seeking protection in Europe. From January to September 2016, around 950,000 first-time asylum-seekers applied for asylum in the EU. This was an increase of around 120,000 compared with the same period in 2015.<sup>6</sup> The number of asylum-seekers in Denmark fell significantly in 2016, from 21,316 in 2015 to 6,235 in 2016.<sup>7</sup>

Coping with the refugee situation has been high on the agenda throughout Europe. In March 2016, the EU signed a much-debated agreement with Turkey regarding e.g. the return of asylum-seekers from Greece and the submission of Syrian asylum-seekers in Turkey for resettlement in the EU.<sup>8</sup> Furthermore, the European Commission presented a proposal in May 2016 for new regulations on how to determine which Member State is responsible for examining an asylum application (the new Dublin Regulation). One objective of this proposal is to prevent the movement of asylum-seekers between EU Member States. Furthermore, the proposal contains an allocation mechanism to ensure a fair division of responsibilities between Member States.<sup>9</sup> Among other things, the proposal has received criticism as it is unable to meet the challenges facing EU Member States and does not ensure sufficient solidarity.<sup>10</sup>

A series of initiatives and proposals for coping with the refugee situation saw the light of day in 2016 in Denmark.<sup>11</sup> In September 2016, the former Liberal Party Government decided to suspend acceptance of around 500 quota refugees annually.<sup>12</sup> According to the November 2016 Government coalition agreement, amongst other things, the Government will introduce a so-called emergency instrument enabling Denmark to reject asylum-seekers at the Danish border in a crisis situation in which Danish borders are under pressure. The Government coalition agreement also states that the Government will place priority on

providing assistance in the regions of origin, and that it will work to establish an entirely new asylum system in Europe, in which refugees will apply for asylum from a country outside the EU instead of travelling to Europe to seek asylum.

## HUMAN RIGHTS IMPROVEMENTS

- In December 2016, the Minister for Immigration and Integration presented a Bill on the transfer of tasks from the Ministry to the Refugee Appeals Board and the Immigration Appeals Board.<sup>13</sup> Several organisations welcomed the proposed transfer of tasks to independent quasi-judicial bodies and the establishment of a right of appeal in certain cases.<sup>14</sup>
- Following a prolonged period of lack of clarity about the relationship between the Aliens Act and the Social Services Act, in June 2016 the, then Ministry of Social Affairs and the Interior published an analysis about when aliens with procedural residence or without residence have the right to receive benefits under the Social Services Act. The Minister sent the analysis enclosed with a letter to the municipalities to provide clarity in the matter. Among other things, the analysis concluded that asylum-seekers are covered by the Social Services Act.<sup>15</sup> New guidelines on the Social Services Act are being prepared on the basis of the analysis.

## NEW CHALLENGES

- In February 2016, the Minister for Immigration, Integration and Housing at the time announced that asylum-seekers under the age of 18 will not be allowed to live with a spouse or cohabitee at asylum centres.<sup>16</sup> The institute has criticised this move on various grounds, including the lack of any provision for assessing in each case whether separation was in accordance with the right to family life.<sup>17</sup> This practice has subsequently been changed again, so that, now, a specific assessment is carried out. On the basis of the debate and criticism, the authorities have drawn up guidelines for accommodation and a memo on interpretation of human rights law in this area.<sup>18</sup> The Ombudsman is currently examining the case.<sup>19</sup>
- The Parliamentary Ombudsman made an unannounced visit in February 2016, along with DIGNITY and the institute, to the former prison in Vridsløselille, where foreign nationals due to leave Denmark, or foreign nationals whose asylum case is pending, may be detained in order to ensure their continuing presence. The Ombudsman expressed serious concern about the conditions. He pointed to a number of criticisable conditions, including lack of information, communication and human contact. Among other things, the Ombudsman recommended the introduction of screening for torture and the risk of suicide. On the basis of a new visit in June 2016, and subsequent information, in September 2016, the Ombudsman said that conditions had improved significantly. However, the Ombudsman is still monitoring developments.<sup>20</sup>
- In October 2016, a children's centre was closed down, amongst other things due to suspicion of sexual abuse. Oversight of the centres was subsequently the object of much debate, including about the division of responsibilities between the local government level and the Danish Immigration Service, and about whether the existing supervision effort was satisfactory. The issue led to an open consultation being held in December 2016 in connection with which the Minister for Immigration and Integration concluded that a new concept of supervision was needed.<sup>21</sup>
- Since October 2015, a number of cases concerning removal to Hungary pursuant to the Dublin rules have been put on hold by the immigration authorities. Amongst other things, this is due to uncertainty about whether applicants risk being removed from Hungary to Greece or Serbia in contravention of their rights. An estimate at the end November 2016 revealed that 10 percent of applicants who had waited the longest time for a decision in their case had waited 526 days on average for a decision. In late November 2016, a large group of the applicants were notified that their case would be processed in Denmark, as the time limit for removal would expire at the beginning of December 2016.<sup>22</sup>

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). The review resulted in a number of recommendations in the field of foreign nationals, including on issues such as the need to consider the best interests of the child in asylum cases, deprivation of liberty for children, the right to family reunification and the possibility to confiscate refugees' valuables.<sup>23</sup>
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. In its concluding report, the Committee expressed its concern with the conditions for detained foreign nationals, a legislative amendment from 2015 providing for the possibility to suspend the automatic judicial review of the legality of detentions under the Aliens Act and of the access to confiscate the valuables of asylum-seekers.<sup>24</sup>

In 2016, the European Union Agency for Fundamental Rights (FRA) had sharp focus on the migration area and published a series of reports on asylum:

- In its annual report on fundamental rights in the EU, FRA focussed in particular on asylum and migration. In this connection, FRA reported that national child protection

systems are not always integrated in asylum and migration processes and procedures, and that more needs to be done to bridge the resulting protection gaps. FRA moreover encouraged all relevant actors to work together to protect refugee children and, in particular, address the phenomenon of unaccompanied children going missing.

- Since September 2015, FRA has reported regularly on the migration situation in the European Union, and since January 2016 reporting has been monthly. Denmark has been included in the reports since November 2016. The reports describe the situation in selected countries, identify a number of challenges and highlight promising practice. The December report had a separate report on children, in which, amongst other things, FRA pointed at problems in Denmark with separating young couples and oversight of asylum centres.<sup>25</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Ministry of Justice:

- ensure that any detention of asylum seekers etc., including minors and other particularly vulnerable persons, take place under appropriate conditions, and that detention is only used if appropriate facilities and conditions are available.
- ensure that, prior to or directly in connection with detention, a mandatory and more extensive medical examination be conducted of all asylum seekers, including that physicians, psychologists, etc. are consulted, and that access to qualified interpreting is ensured. The results of the examination should be included in the assessment of whether the person in question may be detained and under what conditions.

We also recommend that the government:

- examine the consequences that granting temporary residence permits have for the development and well-being of unaccompanied minors (since, in principle, the temporary residence permit ends when the holder turns 18) and review whether the rules should therefore be amended.

## CHAPTER 4

# CHILDREN

### **HUMAN RIGHTS OF CHILDREN**

Children have special needs for protection and care. Human rights apply to any person and therefore to any child. However, traditionally, judicial systems and rules of law have addressed adults. Since the adoption in 1989 of the UN Convention on the Rights of the Child it has become generally recognised that children have independent rights and must be respected as individuals in the same way as adults. You can read more about the rights of children in the thematic report on 'Children' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Every five years, the Danish Government must submit a report to the UN Committee on the Rights of the Child, which monitors implementation of the UN Convention on the Rights of the Child in Denmark. The Government submitted its report to the Committee on the Rights of the Child in early 2016.<sup>26</sup> The report will be used as background material for the review of Denmark in 2017. In connection with the review, Danish authorities will meet with the Committee on the Rights of the Child to discuss how best to protect the rights of children in Denmark and how

Danish authorities have taken action on the recommendations which the Committee gave Denmark in connection with the previous review in 2011. The Danish Institute for Human Rights,<sup>27</sup> the National Council for Children and the Cooperation Committee on the Convention on the Rights of the Child (a network of children's organisations) have also prepared reports, all of which were submitted to the Committee on the Rights of the Child in autumn 2016. These reports supplement the Government's own report and, typically, also bring attention to issues that the organisations find problematic with regard to the rights of children under the Convention. The Committee on the Rights of the Child discussed the supplementary reports with representatives of the organisations and institutions behind the reports at a meeting in Geneva in February 2017.

The Parental Responsibility Act and the Social Services Act were both amended in 2016.<sup>28</sup> The amendments mean that, in future, the regional state administration must decide who is to have custody of the child in situations in which one of the parents has caused the death of the other parent and no other person than the remaining parent has requested custody of the child. The regional state administration must decide what



is in the child's best interest in such situations. In consultation with the municipality in which the child is a resident, the regional state administration can decide to find a suitable alternative custody holder for the child, if this is in the child's best interests.

In 2016, the Government introduced a ceiling on social security benefits, which took effect from October 2016.<sup>29</sup> The ceiling means that families with young children, in particular, will be affected financially. The Economic Council of the Labour Movement estimates that single-parent providers will lose 10-39 percent of their disposable income if they are affected by the ceiling. Along with integration benefits, which were introduced in 2015 and expanded in 2016, the ceiling on social security benefits will entail that the number of children living below the poverty line defined by the former government almost doubles, to around 15,000.

The set of rules under the child abuse policy (Overgrebspakken) entered into force on 1 October 2013. The objective of the policy is to strengthen municipality capacity and management in child abuse cases. In 2016, two large surveys were issued on the occurrence of different types of child abuse in the home: The Danish National Centre for Social Research asked around 2,000 children aged 14-15 years old whether they had been exposed to physical, psychological or sexual violence at home in the preceding year.<sup>30</sup> The National Council for Children has performed a similar survey based on responses from around 4,000 children aged 13-14 years old.<sup>31</sup> It appears from both analyses

that physical and psychological violence against children occur in a considerable number of families. The SFI survey showed that 7 percent of the children surveyed had been exposed to physical abuse more than once over the past year. In the survey by the National Council for Children, around 9 percent had been exposed to serious violence, i.e. hitting or kicking, while both surveys found that 8 percent had been exposed to a pattern of psychological violence. This includes being called by names that make the children feel sad, being ignored through silence for long periods of time, or being exposed to threats of various kinds.<sup>32</sup>

In 2016, the institute published two analyses looking into different aspects of the child abuse policy (Overgrebspakken) from the perspective of human rights, including the specific implementation of the policy at local government level. Among other things, the institute sees large differences across municipalities with regard to financial resources and the number of vulnerable children. Therefore, it is important to secure the required resources in municipalities with many vulnerable children and a weak tax base of high-income tax payers.

At the end of 2015, a total of 11,049 children and young people (around 1 percent of all children in Denmark) were in care outside their home; the lowest figure in the period 2010 to 2015. An ever-greater number of children are being placed in care with foster families. At the end of 2015, a total of 62 percent of all child placements were foster family placements.<sup>33</sup>

In August 2016, the Public Accounts Committee commented on the report from the Danish National Audit Office (Rigsrevisionen), on interventions aimed at children in care.<sup>34</sup> Among other things, there was critique of the fact that, despite ten years of interventions, the Ministry of Social Affairs and the Interior could not document any improvements in child placement cases by municipalities, or that intervention had had the intended outcome. The Public Accounts Committee also criticised the fact that the Ministry had not provided sufficient support to ensure that municipalities meet the targets of the child placement reform. It was cited as particularly problematic that, in many child placement cases, case processing by the municipalities is not in line with the requirements of the law with regard to interviews with the children, action plans and examinations to determine whether a child needs special support measures pursuant to section 50 of the Social Services Act. Furthermore, it was also cited as problematic that the Ministry of Social Affairs and the Interior had only provided the municipalities and the social care institutions with few instruments to help measure and document the effect of interventions aimed at children in care. This resulted in a risk that quantity and money rather than quality and effects were determinant for the municipalities' practices of placing vulnerable children in care.<sup>35</sup> The Ministry provided an account of the matter in October 2016.<sup>36</sup> The Danish National Audit Office has subsequently published a memorandum about the initiatives that have been launched as a consequence of the report.

The Danish National Audit Office will continue to monitor intervention and initiatives by the Ministry, as well as other developments, including improved measurements and documentation of the effect of interventions aimed at children in care.

Action plans for children in care are important tools, e.g. because they contain targets for children's development and well-being. There has also been criticism from the Parliamentary Ombudsman, who, after inspection visits to a number of residential institutions for children, has criticised the municipalities for failing to prepare action plans for children and young people in care and failing to ensure that relevant parts of the plans are passed on to the institutions caring for the children.<sup>37</sup>

The new Adult Responsibility Act was adopted in June 2016 and was followed up in December 2016 by an executive order and guidelines regarding adult responsibility for children and young people in care.<sup>38</sup> The rules entered into force on 1 January 2017, and new registration and reporting forms regarding use of force, etc. have been prepared.<sup>39</sup>

Crime by children and young people continues to fall. The number of suspected offences by children below the age of criminal responsibility (10-14 year-olds) dropped by 70 percent from 2006 to 2015, while for 15-17 year-olds the drop was 46 percent.<sup>40</sup> The number of rulings in cases involving suspected youth offenders aged between 15 and 17 almost halved during the same period.<sup>41</sup>

The new November 2016 Government coalition agreement contains a more detailed proposal for a reform of efforts to curb juvenile delinquency than the 2015 Government coalition agreement.<sup>42</sup> The Government aims to establish an entirely new system for delinquents. The system will be supported by an overall legislative framework which cuts across the social and the criminal law systems. Among other things, the reform will establish a Juvenile Delinquency Board to determine actions to be taken against the individual youngster, as well as a separate Juvenile Prison and Probation Service. A Bill on this is expected to be presented in March 2017.<sup>43</sup>

## HUMAN RIGHTS IMPROVEMENTS

- A total of DKK 96 million has been set aside in the public pool of funds agreement for the years 2016 to 2019 to provide support for early prevention and more effective interventions aimed at vulnerable children. Inspired by Sweden, the money is to be used primarily to enhance efforts by municipalities to develop comprehensive and early interventions aimed at vulnerable children.
- An extra DKK 2.2 million has been set aside annually for the period 2016 to 2019 for the children's office of the Ombudsman under the public pool of funds agreement.<sup>44</sup>
- Furthermore, under the public pool of funds, DKK 9 million has been set aside

for the years 2016 to 2019 for interventions aimed at children of mentally ill or seriously somatically ill parents.

- The new rules regarding adult responsibility for children and young people in care have been adopted and will take effect from 2017.
- The rules regarding video-recorded interviews of children in criminal proceedings were amended with effect from 1 April 2016. In future, video-recorded interviews of children aged 13-14 will always be allowed in sex crime cases or cases concerning violence within the family. In exceptional situations it is allowed to use video-recorded interviews of children and young people under 18. As a general rule, the child or young person is exempt from having to testify as a witness during the main legal proceedings.
- The number of criminal offences by children and young people continues to drop.<sup>45</sup>

## NEW CHALLENGES

- The municipalities have a high error rate in the practical handling of child protection cases. They relatively often fail to conduct child interviews and examinations to determine whether a child needs special support measures pursuant to section 50 of the Social Services Act. They also fail to prepare and revise action plans as prescribed by law. Several surveys of practice in the

municipalities carried out by the National Social Appeals Board and inspection visits at care facilities etc. for children by the Ombudsman have provided documentation of this.

### DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). The review resulted in a number of recommendations about children's rights, including recommendations to provide a stronger mandate and more funds to the children's office at the Danish Parliamentary Ombudsman; strengthen interventions aimed at vulnerable children and children exposed to domestic violence; as well as establish an independent body to improve children's rights on the Faeroe Islands.
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. In its concluding report, the Committee criticised the Danish regulations on solitary confinement and recommended that Denmark abolish solitary confinement of children.<sup>46</sup>

### RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- take steps to introduce a ban on solitary confinement of children within the criminal justice system.
- clarify to what extent the current socio-economic parameters determining the allocation of funds to different municipalities sufficiently cater for the local expenses needed to secure efficient protection of vulnerable children against abuse.
- take steps amend the legislation so that staff in the health sector provides information and the relevant support to children who are close relatives of seriously ill patients or patients with an addiction.

We also recommend that municipalities:

- ensure that their response to abuse covers psychological abuse and neglect to the same extent as physical and sexual abuse.
- ensure that all foster families receive training and supervision and the necessary support in the form of courses and frequent visits from the authorities.

## CHAPTER 5

# DATA PROTECTION

### **HUMAN RIGHTS AND DATA PROTECTION**

The right to respect of privacy is a human right that affects us all. This right is closely related to other rights, such as the right to freedom of expression, however, it often conflicts with legitimate concerns for public security and efforts to combat crime.

The right to privacy is protected by a number of human rights conventions, including the UN International Covenant on Civil and Political Rights and the European Convention on Human Rights. The EU Charter on Fundamental Rights contains a separate provision on the right to protection of personal data. You can read more about data protection in the thematic report on 'Data protection' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

The right to privacy has come under pressure, because an ever increasing amount of personal data is being submitted, collected and exchanged digitally. The rights to privacy and data protection have therefore loomed large in the public debate in recent years, both in Denmark and abroad, and have led to

increased political attention in Denmark, in the EU and the wider world.

In 2015, the UN Human Rights Council appointed the first UN Special Rapporteur on the right to privacy.<sup>47</sup> He published his first report in March 2016<sup>48</sup> and visited Denmark in June 2016.<sup>49</sup>

Data and privacy protection have also been high on the agenda in the EU. In October 2015, the Court of Justice of the European Union (CJEU) declared the US Safe Harbor scheme about the transfer of data from the EU to the US as invalid, among other things because the US intelligence services have general access to the data that are transferred.<sup>50</sup> In July 2016, the European Commission and the US entered into a new agreement, the Privacy Shield,<sup>51</sup> against which, however, a case was filed at the CJEU as early as in September, contesting the compatibility of the new scheme with EU law, including the EU Charter and its protection of the right to privacy and the right to protection of personal data.<sup>52</sup> At the same time, there is an ongoing case concerning the legitimacy of the European Commission's standard contractual clauses for data transfers.

In April 2016, the European Council adopted the new EU data protection reform. The reform consists of the General Data Protection Regulation (GDPR) and a directive on the protection of personal data when this is being used by police and criminal justice authorities (the Police Directive), both of which enter into force in May 2018.<sup>53</sup> The objective of the GDPR is to increase the level of data protection in the EU, among other things through a requirement for privacy by design, which entails taking protection of privacy into account in the design of IT systems; through increased focus on the rights of individuals and IT security; through risk management; and through fines of up to EUR 20 million. The Ministry of Justice has launched comprehensive work to implement the GDPR, and this work is expected to be completed during the first quarter of 2017.<sup>54</sup> The Police Directive is covered by the Danish EU opt-out, however the Danish Parliament has decided to accede to the Directive.<sup>55</sup>

In the autumn 2015, the Government worked to reintroduce session logging without any prior evaluation of the current data retention rules, and this spurred much debate in early 2016.<sup>56</sup> However, in March 2016, the Government announced that session logging, to the extent it had envisaged, would be too expensive to introduce. Subsequently, in collaboration with the police and the telecom industry, the Ministry of Justice continued work to find a cheaper alternative, and a revision of the rules on data retention has been postponed to the 2016-17 Parliamentary session.<sup>57</sup> In July 2016, the current data retention rules were submitted

for consultation and, subsequently, the Legal Affairs Committee<sup>58</sup> was consulted and a series of meetings were held at the Ministry of Justice with relevant experts and organisations. In December 2016, the CJEU delivered its judgement in a case about Swedish and British data retention rules.<sup>59</sup> The Court stated that a general data retention obligation, which makes requirements neither for a link between the data that is being retained and the threat to public security, nor is limited to a specific period in time, a specific geographical area and/or a specific group of people that could be involved in serious crime, is in conflict with EU law. Targeted retention of data is still allowed but in the institute's opinion a general retention obligation as the one that currently applies under Danish law is not compatible with EU law.

## HUMAN RIGHTS IMPROVEMENTS

- The November 2016 Government coalition agreement states that the Government affords the protection of personal data high priority and wants to strengthen the protection of personal data. The Government will prepare an overall strategy for protection of personal data, including providing more resources for the Danish Data Protection Agency.<sup>60</sup> It is proposed to allocate DKK 2 million annually to the Danish Data Protection Agency from 2017 and onwards, which corresponds to an increase in appropriations of around 10 percent.<sup>61</sup>

- In 2016, the Ministry of Justice conducted a consultation (evaluation) of the current data retention rules in the context of work to design new rules. The Ministry suggested differentiating between different forms of retained data and shortening the retention period for some of this data.<sup>62</sup> If the Government goes through with these suggestions, it will be following some of the institute's recommendations. However, following the judgement by the European Court of Justice with regard to Swedish and British data retention rules, the question is whether the intended changes are enough to bring Danish data retention rules in compliance with EU law.

## NEW CHALLENGES

- On 1 January 2016, the Executive Order on automatic number plate recognition (ANPR) entered into force.<sup>63</sup> In its consultation memorandum, the Ministry of Justice stated that ANPR can constitute an interference with citizens' right to respect of privacy, and so the question is whether ANPR instead ought to be regulated directly through an act.<sup>64</sup>
- In July 2016, it was revealed that a registered letter from SSI (the Danish national institute responsible for infectious diseases preparedness), which contained two CDs with the health data of approximately 5 million Danes, was erroneously delivered to the Chinese Visa Application Centre.<sup>65</sup> The case is an unfortunate example of insufficient security with regard to the management of personal data.
- In December 2016, the Danish Parliament adopted an amendment to the Danish Security and Intelligence Service Act. The Act lifts the obligation of the Danish Security and Intelligence Service (PET) to delete information about a person, even when this information is no longer necessary for the work of the Service. Furthermore, the Act also lifts the obligation to continuously assess the need to continued registration of personal data as long as the time limits for deletion are not exceeded.<sup>66</sup> As a result, data which are unnecessary, incorrect or outdated will not be deleted. The legislative amendment has therefore been the object of critique from the institute and others.
- Since the Danish population voted not to abolish the Danish EU opt-out, the Government has tried to initiate negotiations about accession to the EU Passenger Name Record (PNR) Directive via a so-called parallel agreement. The Danish Security and Intelligence Service (PET) has previously, without authorisation, collected PNR data through the Central Customs and Tax Administration (SKAT). In 2015, however, the Danish Parliament adopted an act authorising PET to collect the data. The Act was implemented through an executive order in December 2016.<sup>67</sup> In this connection, the

institute expressed its concerns again that the legislation would mix competences in respect of administrative law, in that the Central Customs and Tax Administration (SKAT) is given competence to carry out investigations in an area in which the Tax Administration is not the responsible authority. For this same reason, it would seem doubtful that collecting the data meets the requirement for data minimisation, because the Tax Administration (SKAT) is collecting data that is not necessary for the performance of its own authority tasks.<sup>68</sup>

## SURVEYS BY INTERNATIONAL BODIES

- In 2016, the European Union Agency for Fundamental Rights (FRA) had sharp focus on the right to privacy and data protection: In May 2016, FRA published its annual report on fundamental rights, which sheds light on a number of common European challenges with regard to data protection.<sup>69</sup> FRA encourages Member States to incorporate human rights protection in legislation on national intelligence services and to secure the independence of national data protection authorities (DPAs) by providing these authorities with adequate resources and competences to safeguard that national data retention rules take account of the Digital Rights Ireland judgement by the CJEU.

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- replace the general Danish data retention obligation with an obligation that meets the strict requirements for necessity and proportionality in accordance with the judgements by CJEU in the Digital Rights Ireland and Tele2 Sverige and Watson cases, as well as - by presenting specific alternatives - demonstrating that the revised rules are necessary and proportionate.
- initiates an overall review of Danish anti-terrorism legislation.
- initiates an analysis and systematic assessment of the overall supervision and oversight of the intelligence services, including the Danish Centre for Cyber Security.



## CHAPTER 6

# ETHNIC ORIGIN

### **HUMAN RIGHTS AND ETHNICITY**

Human rights law protects the rights of all people, and the principle of non-discrimination is therefore central to human rights law. Prohibition against discrimination is directly or indirectly included in all human rights conventions. The UN International Convention on the Elimination of All Forms of Racial Discrimination protects specifically against discrimination on the grounds of race, colour, descent, national or ethnic origin.

Any person, irrespective of race or ethnic origin, is entitled to equal access to all existing rights without discrimination. The equality requirement entails that the state is obliged to ensure equal treatment as well as prevent discrimination. Ethnic minorities can also be particularly vulnerable in a large number of contexts due to prejudice and stigmatisation. The thematic report on 'Ethnic origin' (in Danish) from the institute's Status Report 2015-16 contains more information about the challenges and issues affecting persons of other ethnic origin than Danish.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Prohibition against discrimination on grounds of race or ethnic origin is guaranteed by Danish law, both within and outside the labour market. In practice, however, many people experience discrimination due to their ethnic origin.<sup>70</sup> Prejudices and negative stereotypes can increase the risk of not only discrimination against individuals but also of polarisation and stigmatisation of entire groups within a population.

Lack of equal opportunities for persons with ethnic minority background remains the most significant challenge in the field of ethnicity. In the area of education, 58 percent of immigrants and descendants of immigrants of non-Western origin between the age of 20 and 24 had completed an upper secondary level education programme in 2015, while the corresponding share of young people of Danish origin was 71 percent.<sup>71</sup> In the labour market, the employment gap between non-Western immigrants and ethnic Danes is still considerable. Employment rates for male and female non-Western immigrants are 53 percent and 46 percent, respectively, while

the employment rates for ethnic Danes is 76 percent for men and 73 percent for women.<sup>72</sup> At the same time, a survey has revealed that people with an ethnic minority background have to submit on average 52 percent more job applications in order to be invited for the same number of job interviews as people of Danish ethnic origin.

In November, the institute launched a new survey of vocational college students and their access to apprenticeships. The survey results show that up to one in three apprenticeship consultants at Danish vocational colleges regularly encounter enterprises which deselect young people with an ethnic minority background when filling their apprenticeship positions.<sup>73</sup>

In 2015, a survey by the National Social Appeals Board of the private rental market found that people with an ethnic minority background are being discriminated against. The survey revealed that applicants with Middle-Eastern-sounding names on average have to submit 27 percent more applications than applicants with Danish-sounding names if they are to have the same chance of a positive reply.<sup>74</sup>

According to the national integration barometer, 43 percent of immigrants and descendants of immigrants of non-Western origin have experienced being discriminated against on account of their ethnicity.<sup>75</sup>

Recent years have seen intense political and public debate about what constitutes

Danishness and about who can be called Danish and what being Danish entails. The debate has primarily been about whether you are automatically Danish if you are born in Denmark or whether you have to acquire certain values and attitudes to become Danish.

The debate about Danishness became particularly topical when it was revealed that an upper secondary school had decided to divide its pupils into classes based on their ethnicity. It was subsequently discussed whether ethnicity had been a criterion in connection with the division or whether emphasis had solely been placed on academic and pedagogical considerations. The institute has decided to bring the matter before the Board of Equal Treatment since there is need to clarify which criteria were actually involved in the division and clarify when it is permissible for schools and upper secondary schools to make such a division.

During the summer of 2016, a number of media outlets described problems with camps of homeless foreign nationals creating insecurity and disorder. The camps were referred to as Roma camps by media, politicians and ministers alike.<sup>76</sup> In December 2016, the Ministry of Justice submitted an amending executive order to consultation, the objective of which is to criminalise establishing and staying in camps. Statements by the legal affairs spokesperson of Denmark's Liberal Party that only Roma camps are covered by the criminalisation, not Danish homeless

people, occasioned the institute to raise critique about the use of the 'Roma camps' as a term.<sup>77</sup> The institute finds it problematic to associate an ethnic group with a certain and problematic conduct, because this may lead to discrimination and further stigmatisation. See also chapter 19 below about unregistered migrants.

In November 2016, a tweet by Copenhagen Police sparked debate. The tweet said that several foreigners (gy...) are after your pin code. Take care at Vesterbro where these thieves offer to help you - Say, No thanks! Copenhagen Police was criticised for using the brackets to imply 'gypsies', a word which is considered a condescending term for the Roma ethnic group. Copenhagen Police apologized for the statement and said that it should have said 'Roma' in the tweet. Copenhagen Police then tweeted that spoken out of line. Best for communication to use only one word for Eastern European travelling criminals: Roma. The statements by Copenhagen Police were met by extensive criticism from Amnesty International, for example, which criticised the statements for stigmatising an already vulnerable group of people. Copenhagen Police has apologized for the statements and has conceded that it was wrong to refer to ethnicity.<sup>78</sup> The Minister for Justice at the time expressed his satisfaction with the apology from Copenhagen Police.<sup>79</sup>

## HUMAN RIGHTS IMPROVEMENTS

- In spring 2016, the Government established an agreement with the labour market social partners (a tripartite agreement) about better integration of refugees in the Danish labour market.
- On the basis of the tripartite agreement, the Danish Parliament agreed to introduce a new basic integration training programme in 2016. The objective of the basic integration training programme is to ensure jobs and qualification enhancement for refugees and reunited family members of refugees whose qualifications and productivity do not yet meet the requirements of the Danish labour market. It is the intention that the programme form the basis for refugees and reunited family members of refugees to obtain qualifications that will allow them to embark on a vocational education or find permanent employment on the Danish labour market. Companies which establish and conduct basic integration training programmes receive a special bonus. The integration training programme has been introduced as a three-year test scheme.<sup>80</sup>
- On the basis of the tripartite agreement, in 2016 the Danish Parliament also agreed that the state could pay a bonus to companies which employ a refugee or a reunited family member of a refugee in the period 1 July 2016 to 30 June 2019, if the employment is no later

than two years after the person in question has been granted a residence permit. The employment has to be ordinary employment for more than 19 hours a week.<sup>81</sup>

- The Government has prepared a new 2017-2020 national action plan on honour-related conflicts and negative social control.<sup>82</sup>

## NEW CHALLENGES

- In March 2016, the Danish Parliament agreed to extend the group entitled to receive the so-called integration benefits, with effect from 1 July 2016. This means that all persons who have not lived in Denmark for a total of seven out of the last eight years are no longer entitled to education support or cash benefits, but only to the lower integration benefits. The integration benefits may be supplemented by a Danish supplement. To receive the Danish supplement, you must have passed a Danish language test at a certain level. In practice, foreign nationals have far more difficulties getting the supplement than Danes, because Danish nationals generally have less difficulty documenting the required Danish skills.<sup>83</sup>
- In March 2016, the Danish Parliament agreed to introduce a ceiling on the benefits for recipients of integration benefits, education support or cash benefits. In this context, a requirement was imposed on the recipients of these benefits that, after having received support for a total of 12 months, they have to document at least 225 hours of ordinary, non-subsidised employment within the last 12 months in order to be able to maintain their entitlement to full benefits. The rules entered into force on 1 October 2016.<sup>84</sup> It is assumed that the so-called 225-hour rule will affect persons not born in Denmark in particular.
- In spring 2016, the Danish Parliament agreed to make changes to the rules pertaining to refugees and reunited family members of refugees to the effect that municipalities will no longer have to offer all refugees and reunited family members of refugees a health assessment by a physician by no later than three months after they become the responsibility of the municipality. The amendment means that, now, municipal case officers are left with the assessment as to who may be in need of a health assessment. The institute has criticised the amendment on the grounds that it is difficult for case officers to assess who may need a health assessment.<sup>85</sup>
- In 2013, the Ministry of Justice set up a committee to assess the quality and administration of interpretation services in Denmark. So far, the work of the committee has resulted in the preparation of an interpretation services handbook, a set of guidelines and a revised reporting form. However, the core issue has yet to be addressed: namely, that Denmark lacks an education programme for interpreters aimed specifically at the most important refugee

and migrant languages. The time limit for final reporting from the committee has been postponed on several occasions.

### **DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016**

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). The review resulted in a number of recommendations regarding discrimination and equal treatment with regard to race or ethnic origin.<sup>86</sup> The review included a recommendation that Denmark enhance its efforts to eliminate discrimination and racism and to promote tolerance, inclusion and intercultural understanding by preparing a national action plan against racism and xenophobia.
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. In its concluding report, amongst other things, the Committee expressed concern over the lack of health assessments for asylum-seekers who may have been exposed to torture in their home countries.<sup>87</sup>

In 2016, through a number of publications, the European Union Agency for Fundamental Rights (FRA) focussed on the conditions and rights of ethnic minorities:

- On the basis of surveys conducted in nine EU Member States, the EU-MIDIS II report on Roma concluded that one-third of Roma children go to bed hungry at least once every month, while 50 percent of Roma children and youngsters aged between 6 and 24 do not attend school. Denmark did not take part in the survey. The report concluded that Roma, the largest ethnic minority in the EU, are experiencing continued discrimination, lack of equal treatment and lack of access to fundamental benefits.<sup>88</sup>
- In 2016, FRA published a report on antisemitism in which the agency collected data on anti-Semitic incidents in 28 EU Member States – including Denmark – from 2005-2015. The survey shows that the number of anti-Semitic incidents has been increasing in recent years.<sup>89</sup>
- FRA also published a report on incitement to discrimination, hatred or violence against specific groups both in media content as well as in political discourse. The report concludes that the media and the political discourse – online as well as offline – have a tendency to incite to discrimination, hatred or violence against various groups. Among other things, FRA expressed concerns over the fact that the possibility of spreading false accusations that incite to hatred is expanding rapidly in an age where the internet serves as the primary source of information for many people.<sup>90</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- prepare a national action plan to combat hate crime.
- take steps to amend the Integration Act to the effect that all new refugees and reunited family members of refugees will again be offered a health assessment by a physician after they have been allocated housing in a municipality.

We also recommend that:

- The Ministry of Higher Education and Science encourage the establishment of an education programme for interpreters aimed specifically at the most important refugee and migrant languages. The objective of the programme should be to ensure good language skills, knowledge about relevant specialist terminology, as well as interpretation competences, including interpretation techniques, and ethical regulations for interpreters.
- The Ministry of Immigration and Integration establish a certification scheme to clearly identify the level of competence of persons working as interpreters today.

## CHAPTER 7

# FAMILY LIFE

### THE RIGHT TO FAMILY LIFE

The right to family life is a human right that concerns every one of us. Among other things, the right to family life protects the relationship between parents and children, between spouses and cohabitants as well as between close family members. This right is protected in a number of human rights conventions and primarily protects against interference by the state in family life. Nevertheless, this right can also entail positive obligations for the state to establish conditions in which family life can be exercised. The right to family life is reflected in many parts of Danish legislation. The thematic report on the 'Right to Family Life' (in Danish) from the institute's Status Report 2015-16 contains more about the right to family life with regard to access to family reunification etc.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

The right to family life and particularly the consequences of this right regarding immigration have been the subject of debate in 2016. The limitations which the right to family life put on the possibilities to expel criminal immigrants are discussed in chapter 18 on 'Expulsion and extradition'. As in 2015, 2016 focussed on family reunification with a view to making it less attractive for foreign

nationals to move to Denmark, but also with a view to ensuring integration of the reunited family members. The Government wishes to tighten the family reunification rules for foreign nationals who are poorly positioned to be integrated into society.<sup>91</sup>

Pressure on the asylum process has also meant that, in February 2016, the Danish Immigration Service extended the expected maximum case processing time for cases relating to family reunification.<sup>92</sup>

In April 2016, the Court of Justice of the European Union (CJEU) delivered its judgement in the Genc case. The Court ruled that a Danish family reunification rule violates agreements between the European Union and Turkey. The rule meant that the integration potential for children over six-years old would not be assessed if family reunification was applied for by no later than two years after the parent residing in Denmark fulfils the requirements for applying.<sup>93</sup> A Bill abolishing the two-year rule was fast-tracked by the Danish Parliament to bring Danish law into compliance with the ruling. The Bill was adopted in June 2016. At the same time, the limit for assessing the integration potential was changed from six to eight years.<sup>94</sup>

## HUMAN RIGHTS IMPROVEMENTS

- In November 2016, the Government proposed a Bill to amend the rules for when people can get married in Denmark, and for when a foreign marriage will be recognised in Denmark.<sup>95</sup> Even though the Bill also raised criticism, especially regarding the abolition of the exemption option for married children under 18 years, exempting them from having to get married (again) in Denmark,<sup>96</sup> the proposed legislation that marriages entered into in a foreign country will be recognised, is positive.

## NEW CHALLENGES

- In January 2016, the Danish Parliament adopted an amendment, which, among other things, means that the right to family reunification for people with temporary protection status has now been postponed, in principle, from one to three years. In addition, fees for applications for family reunification were reintroduced.<sup>97</sup> Postponing the access to family reunification was met with particularly severe criticism, both nationally and abroad.<sup>98</sup> During 2016, the new rule was applied by Danish authorities, and this has had significant consequences for those affected. The institute assesses that this is a violation of their right to family life. Therefore, the institute has entered into legal proceedings to support a foreigner with temporary

protection status whose application for family reunification has been rejected due to the new rules.

- In February 2016, the Minister for Immigration, Integration and Housing at the time announced that asylum seekers under the age of 18 will not be allowed to live with a spouse or cohabitee at asylum centres.<sup>99</sup> The institute has criticised this move on various grounds, including the lack of any provision for assessing in each case whether separation was in accordance with the right to family life.<sup>100</sup> The practice has subsequently been changed, so that, now, a specific assessment is carried out. On the basis of the debate and criticism, the authorities have drawn up guidelines for accommodation and a memo on interpretation of human rights law in this area.<sup>101</sup> In May 2016, the Ombudsman announced that he would initiate an investigation of the case based on the criticism. The results of the investigation were issued in February 2017. However, the investigation could not be fully completed, as new legislation on this area had been proposed by the Danish Parliament.<sup>102</sup> Nevertheless, the conclusion of the preliminary investigation was clear: According to the Ombudsman, the Minister's instructions to routinely separate young asylum-seeking couples was unlawful. This also carried a significant risk that wrong decisions would be made in specific cases regarding separate accommodation. In summary, the Ombudsman found that the approach by the Minister for Immigration,



Integration and Housing in the specific case was open to significant criticism.<sup>103</sup>

- In May 2016, the Grand Chamber of the European Court of Human Rights issued its judgment in the Biao case (Biao v. Denmark) on the so-called 28-year rule (now the 26-year rule) exempting people who have had Danish citizenship for 28 years (now 26 years) from the 'attachment requirement' in family-reunification cases. The attachment requirement means that a couple's aggregate ties to Denmark must be stronger than their ties to any other country. The majority of judges found that the rule constituted discrimination between Danish nationals.<sup>104</sup> The ruling left it to the Danish Government to adopt new non-discriminatory rules. In June 2016, the Minister announced that the Danish Immigration Service was to disregard the 26-year rule until a legislative amendment had been adopted.<sup>105</sup> According to the institute, this is not legal.<sup>106</sup> In October 2016, the Ministry submitted a Bill for consultation. March 2017, the Bill was put forward in Parliament together with another Bill introducing a new family residence permit allowing Danish expats with certain employment qualifications to return to Denmark with their families.<sup>107</sup> If adopted, it will mean that, in future, Danes without the particular employment qualifications who return from abroad and their accompanying spouse or partner will also have to fulfil the attachment requirement and thus, they will find it more difficult to obtain family reunification.<sup>108</sup>

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). Denmark received a total of 199 recommendations, including on postponement of family reunification for three years for persons with temporary protection status.
- In April 2016, the Court of Justice of the European Union (CJEU) delivered its judgment in the Genc case. As mentioned above, the Court ruled that a Danish family reunification rule violates some agreements between the European Union and Turkey.
- As mentioned above, in May 2016, the ECHR Grand Chamber ruled that the Danish 26-year rule constituted discrimination.<sup>109</sup>
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. In its concluding report, the Committee criticised the three-year rule for family reunification.<sup>110</sup>

In 2016, the European Union Agency for Fundamental Rights (FRA) generally focussed on the migration area, including family reunification:

- The annual FRA Fundamental Rights Report focussed on asylum and migration. In this connection, FRA announced that, in order to respect the right to family life and to prevent illegal entry into the European Union, there is a need to overcome practical and legal obstacles preventing or significantly delaying family reunification and to refrain from imposing new ones.<sup>111</sup>
- Since September 2015, FRA has reported regularly on the migration situation in the European Union, and since January 2016 the reports have been monthly. Denmark has been included in the reports since November 2016. In September 2016, the report focussed on family tracing and family reunification. The December report had a separate report on children, in which FRA highlighted the challenges in Denmark regarding accommodation of young couples.<sup>112</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- take steps to repeal the provisions of the Aliens Act requiring that people with temporary protection status cannot in principle achieve family reunification within the first three years.

## CHAPTER 8

# INVESTIGATORY POWERS OF PUBLIC AUTHORITIES

### **HUMAN RIGHTS AND INVESTIGATORY POWERS OF PUBLIC AUTHORITIES**

Citizens of a constitutional state have a right to privacy and to own and enjoy private property. Only under specified conditions may the state interfere with the rights of citizens. This is stipulated in the Danish Constitution and in international human rights law. The right to interfere is not only for the police. Under certain conditions, administrative authorities may also conduct inspection visits to businesses and citizens and put citizens under surveillance.

Investigatory powers of administrative authorities are not necessarily subject to the same strong protection guarantees as criminal-procedure interference pursuant to the Administration of Justice Act. In addition to setting the frameworks for interfering in the rights of individuals, human rights law obliges Member States to launch investigations of possible violations of human rights obligations and to ensure the possibility of challenging any infringement before a national authority or court.

The thematic report on 'Investigatory Powers of Public Authorities' (in Danish) from the institute's Status Report 2015-16 contains more about human rights and investigatory powers of public authorities.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

According to the Danish Constitution, authority access to private property generally requires a court order. However, this may be derogated from if stipulated in a provision. Over the years, the authorities have acquired an increasing number of options to gain access to private property without a court order. In February 2016, the number of statutory authorities derogating from the requirement to obtain a court order was at its highest level ever, i.e. 271 (in 2015 the figure was 266).<sup>113</sup>

The Danish Ministry of Justice's annual report on coercive measures shows that, in 2015, 16 provisions were adopted regarding public authorities' right to carry out coercive measures. Five provisions were new, eight extended the area, and two repealed the right to carry out coercive measures.<sup>114</sup> The provisions are used particularly within areas involving foodstuff, employment, tax, competition and the environment. Despite the fact that the point of departure in the legislative framework is often that inspection visits from authorities must be with advance notice, in practice notice is given for only a limited number of visits within the areas mentioned above.

In some cases, the authorities carry out joint inspections. When authorities carry out joint inspections, there is a risk that the legal basis of the individual authorities will become blurred, and that the authorities will actually interfere in matters in which they have no legal basis.<sup>115</sup>

In 2015, a new IT body, Den Fælles Dataenhed (a data unit to help collaboration between municipalities on control work), was established under Udbetaling Danmark (the Danish authority for payments of benefits etc.). The new unit is to expose social security fraud or benefits wrongly paid by combining data from various registers at public authorities and unemployment insurance funds. However, up to August 2016, the establishment of Den Fælles Dataenhed had only resulted in demands for small amounts to be repaid.<sup>116</sup>

Since the establishment of Udbetaling Danmark in 2012, access to combine information regarding individuals has continuously expanded. By coordinating registers, data collected for one purpose is processed for another and new purpose. From a human rights perspective, Udbetaling Danmark's comprehensive access to combine data on citizens is worrying.

In 2015, Udbetaling Danmark paid benefits to a total of 2.75 million recipients. Once a year, the National Social Appeals Board (the appeals body for complaints against decisions made by Udbetaling Danmark) prepares a report on appeals cases regarding Udbetaling Danmark.<sup>117</sup> The 2015 report showed that the

number of appeals cases decreased by around 25 percent compared with 2014. A total of 79 percent of decisions were upheld. This is an improvement compared with the previous year, when 65 percent of cases were upheld. In comparison, when these areas were under the municipalities, 48 percent of cases were upheld.<sup>118</sup> However, the report also shows that Udbetaling Danmark has made material case-processing errors in several cases, including insufficient consultation of parties or justification. There are large differences within each individual case areas. Rulings in cases about housing benefits and social pensions in particular were criticised and commented on, even though decisions were upheld. For instance, more than half of the rulings in cases regarding housing benefits were criticised, even though decisions were upheld.<sup>119</sup> Almost 10 percent of cases in this area were remitted for reconsideration.

As a consequence of rules existing at the time on mutual obligation to maintain (one another) for cohabitants, in 2014 cash benefits for a large group of recipients were cut because of the income of their cohabitee. Several municipalities made the recipient aware of the decision on mutual obligation to maintain (one another), but they did not inform the cohabitee. The decisions were invalid, and the cases had to be reopened. In July 2016, the Ombudsman stated that municipalities themselves were obliged to review invalid decisions if they could retrieve the cases, and if this did not cause them serious administrative difficulties.<sup>120</sup>

## HUMAN RIGHTS IMPROVEMENTS

- In May 2016, the former Government under the Liberal Party entered into an agreement with the Danish Social Democrats, the Danish People's Party, Liberal Alliance, the Danish Social-Liberal Party, and the Conservative People's Party on improving due process in the tax area (Retssikkerhedspakke II). The agreement includes several initiatives within the tax area, including the establishment a tax office with the Danish Parliamentary Ombudsman to improve due legal process for citizens, reintroducing the right to reimbursement of expenses for expert assistance etc. for companies and foundations liable to pay tax, changing the deadline that limits lodging cases before the Ombudsman, and finally establishing a tax law council.<sup>121</sup>
- Further to the agreement, in December 2016 the Danish Parliament reintroduced reimbursement of expenses for expert assistance etc. for companies and foundations liable to pay tax.<sup>122</sup>
- In 2016, the Government removed the annual airport checks introduced in order to expose social security fraud. The institute had criticised the previous rules in the area as they granted access to arbitrary measures against all travellers.<sup>123</sup> However, several parties in the Danish Parliament have suggested that the airport checks be reintroduced.<sup>124</sup>

## NEW CHALLENGES

- The number of occasions on which administrative authorities carried out inspection visits without a court order on the basis of statutory powers increased from 264 in 2014 to 271 in February 2016.

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- take steps to regulate by law the measures of municipalities in having citizens, who receive social security benefits, under observation in the public space. Such measures are currently only limited by the principle of proportionality enshrined in administrative law.
- take steps to amend the Act on Udbetaling Danmark so that regulations are laid down on informing citizens when they figure on a list of questionable persons (undringsliste), as well as special regulations for the correction and possible deletion of information on the list. This will give citizens the chance to prevent initiation of a formal enforcement case.

# DEPRIVATION OF LIBERTY

### HUMAN RIGHTS AND DEPRIVATION OF LIBERTY

Deprivation of liberty is one of the most intensive interventions a human being can be exposed to. The right to personal liberty implies prohibition against arbitrary deprivation of liberty and a fundamental principle that deprivation of liberty should only be used as a last resort. Personal liberty is primarily protected by human rights law defining acceptable reasons to deprive individuals of their liberty. Human rights law also imposes a range of procedural requirements to be complied with in connection with deprivation of liberty, e.g. judicial control, so that deprivation of liberty only takes place with satisfactory legal safeguards and on the basis of societal necessity. The Danish Constitution also protects the right to personal liberty.

Human rights law also states the essential and fundamental principle that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Read more about deprivation of liberty in the thematic report on 'Deprivation of liberty' (in Danish) from the institute's Status Report 2015-16.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

The overall number of prison sentences is decreasing and this is a positive trend. However, this trend should also be seen in light of the greater use of alternatives to imprisonment, such as community service and electronic tagging. The greater percentage of the use of alternatives to imprisonment also means that inmates in Danish prisons have become more hardened.

An increasing number of prison officers report being subjected to violence or threats from inmates. Preliminary figures for the first nine months of 2016 show that 522 employees were subjected to violence or threats of violence.<sup>125</sup> For comparison, this figure was 538 for all of 2015. The majority of episodes took place in closed prisons and detention centres.

The Danish Prison and Probation Service user survey for 2015 shows that 75 percent of inmates state that they have a positive relationship with prison staff.<sup>126</sup> Nevertheless, the survey also shows that 22 percent of all inmates state that they have been threatened by staff. For inmates in closed prisons, this

figure is 33 percent. Similarly, 11 percent stated that they have been exposed to violence by the staff. In closed prisons, this figure is 19 percent.

In 2016, the Danish Parliament adopted two Bills regarding radicalisation and extremism in prisons. The Bills concern exchange of information about signs of radicalisation and extremism<sup>127</sup> and sectioning radicalised and extremist inmates.<sup>128</sup> Exchanging information between authorities about inmates “deemed to be radicalised or at risk of being radicalised” has become easier. Inmates can be sectioned to minimise, as far as possible, their access to influence other inmates to carry out extremist actions. Among other things, the institute has criticised the Bills for not being sufficiently clear and precise.

Measures against illegal mobile phones in prisons were tightened significantly in 2016. Mandatory disciplinary measures, more severe penalties (including increased period for assigning inmates to punishment cells from two to four weeks) and suspension of exit entitlements for inmates were introduced for inmates violating the mobile-phone ban.<sup>129</sup> The institute has criticised this change and pointed out that Denmark risks being the subject of international criticism for its increasing use of punishment cells.

Detention of asylum seekers and their conditions under detention have also been discussed in 2016. Based on an unannounced visit to the Vridsløselille facility, in February 2016, the Ombudsman, Dignity and the

institute expressed general concern about the conditions under which detained foreign nationals were being held at the facility. After a later re-visit to the facility, the Ombudsman concluded in a statement dated 20 September 2016 that the conditions for foreign nationals had improved significantly. Foreign nationals are no longer locked inside prison cells most of the time – they can now walk around and interact with other people in common areas. In addition, they are offered activities and employment.

## HUMAN RIGHTS IMPROVEMENTS

- Conditions for detained asylum seekers in Vridsløselille have improved significantly after the Ombudsman visited the facility.
- The number of pre-trial detentions in 2015 fell by 11.8 percent compared with 2014, and amounted to 4,404. At the same time, the number of long-term pre-trial detentions fell by 7.8 percent compared with 2014. However, the average duration of these pre-trial detentions rose by 0.6 months in 2015 compared with 2014.<sup>130</sup> Pre-trial detention is considered long-term if it lasts longer than three months.
- Pre-trial detention in solitary confinement continues to fall. From 2001 and up to 2006, this figure was fairly stable at around 500 annual solitary confinements. After 2006 and up to 2011, the figure varied considerably

between 327 in 2008 at its peak and 127 in 2010 at its lowest. Particularly from 2011 and until now, the figure fell considerably – from 186 in 2011 to only 32 in 2015, corresponding to 0.7 percent of the total number of people remanded in custody.

- The number of inmates in voluntary solitary confinement (voluntary exclusion from other prisoners) in Danish prisons and detention centres fell to 382, the lowest figure in the past 10 years, during which period the figure has fluctuated between 512 at the lowest and 788 at the highest. The figure is still high, though. The number of disciplinary sanctions, including solitary confinement during remand custody, also fell in 2015.
- In 2015, 842 sentences to psychiatric treatment were delivered, corresponding to a decrease of almost 7 percent compared with 2014, when 901 were delivered.<sup>131</sup>

## NEW CHALLENGES

- Despite a decrease in the number of pre-trial detentions, people remanded in custody still make up almost one-third of inmates in the Prison and Probation Service's institutions. At the same time, on average around 45 percent of people remanded in custody in 2015 were subject to checks on correspondence and during visits, and this is a serious intervention in the life of people remanded in custody.<sup>132</sup> There are also considerable differences within the individual districts. In one police district, 72 percent of inmates were subject to checks on correspondence and during visits in 2015.
- In 2015, the Danish Prison and Probation Service had an average capacity of 3,777 spaces, of which, on average, 90.6 percent were occupied. This is a material improvement compared with previous years, in which the average occupancy rate was around 97 percent and in certain periods exceeded 100 percent.<sup>133</sup> Nevertheless, new figures from the Danish Prison and Probation Service show that in 2016 capacity was reduced to 3,590 spaces, and that the average occupancy rate subsequently had risen to 95.3 percent.<sup>134</sup>
- Despite the decrease in the use of remand custody as a disciplinary measure in 2015, the figure remains at a high level and is significantly higher than at the beginning of the millennium.<sup>135</sup>
- A significant number of inmates experience violence or threats from their fellow prisoners, and female detainees are at risk of sexual harassment from fellow inmates. Inmates are also exposed to violence and threats of violence from prison staff.<sup>136</sup>
- An increasing number of prison officers report being subjected to violence or threats from inmates. 2016 saw examples of serious attacks on prison officers during their time off, including shootings.



- A very large number of inmates in the Prison and Probation Service's institutions have mental health problems, and a significant number are mentally ill.

### **DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016**

- In 2016, Danish issues were assessed by the UN Human Rights Council as part of the Universal Periodic Review (UPR)<sup>137</sup> and the UN Human Rights Committee in the review of Denmark's implementation of the UN International Covenant on Civil and Political Rights.<sup>138</sup> Among other things, both bodies recommended prohibiting solitary confinement of children. This had also been recommended by the UN Committee Against Torture (CAT) in 2015.<sup>139</sup>
- In November 2016, the European Union Agency for Fundamental Rights (FRA) published a report on human rights aspects with regard to EU cross-border transfers of detained people. The report describes the application of EU extradition regulations and their relationship with fundamental rights protection in all 28 EU Member States, including Denmark.<sup>140</sup>

### **RECOMMENDATIONS**

The Danish Institute for Human Rights recommends that the Government:

- take steps to reform the provisions of the Criminal Code on leniency and criminal sanctions other than imprisonment for the mentally ill in order to ensure proportionality between the actual offence and the prescribed measure.
- take steps to minimise the use of all forms of solitary confinement in Danish prisons.

We also recommend that the Danish Prison and Probation Service:

- ensure that inmates in remand custody gain better access to meaningful social contact and meaningful activities.
- undertake a thorough investigation into the extent and nature of violence and threats in the Prison and Probation Service's institutions with a view to subsequent preventive measures.

See also recommendations regarding detained asylum seekers in chapter 3 on 'Asylum'.

## CHAPTER 10

# DISABILITY

### **HUMAN RIGHTS AND DISABILITY**

As a group, persons with disabilities were overlooked when the UN Universal Declaration of Human Rights was adopted in 1948 and when the two large UN covenants on human rights were adopted in 1966. In principle, persons with disabilities are covered by general human rights, but practice has shown that persons with disabilities often do not enjoy these rights. The 2006 Convention on the Rights of Persons with Disabilities is the first legally binding convention solely about persons with disabilities. The convention stipulates that States parties must promote equal opportunities for persons with disabilities in all aspects of life regulated by human rights. The thematic reports on 'Disability' and 'Family life' (in Danish) from the institute's Status Report 2015-16 contains more about the rights of persons with disabilities and about the right of parents with disabilities to receive support for parenthood.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Between 18 percent and 30 percent of the Danish population have a disability, i.e. a long-term illness or impairment.<sup>141</sup> Persons with

disabilities are a very diverse group of people. For some people, a disability does not result in unequal opportunities, but for others it does.

Lack of equal opportunities and inclusion in society for persons with disabilities remains the most significant challenge in the field of disability.

Persons with disabilities generally have a weaker attachment to the labour market, complete shorter training programmes, are more often single, have fewer children and are less socially active than persons without disabilities.<sup>142</sup> A total of 23 percent of persons with major physical disabilities and 32 percent of persons with major mental disabilities experience being discriminated against on grounds of their disabilities.<sup>143</sup> Despite this, there is no general prohibition against discrimination on grounds of disability.<sup>144</sup> However, in February 2017, the Government announced that such a prohibition will be introduced.<sup>145</sup>

Even though this area has seen improvements, there are still massive problems with coercion in psychiatric treatment. In 2016, a number of

tragic cases of killings in sheltered housing facilities for persons with a mental illness have prompted discussions on better security in sheltered housing. In September 2016, a working group set up by the Government with representatives from a number of ministries, Danish Regions and Local Government Denmark published a report recommending establishing a new type of sheltered housing for an estimated target group of around 150 people with aggressive behaviour, mental illness and substance abuse.<sup>146</sup> According to the proposal from the working group, it should be possible to place these people in this type of sheltered housing against their will. Moreover, the proposal suggests more possibilities to utilise deprivation of liberty and use of force. Even though the proposal aims at reducing use of force, the institute has expressed concern that the proposal will relax the requirements for use of force and deprivation of liberty.

Following a series of critical consultation responses from the institute, the Danish Medical Association, etc., the Government withdrew the Bill. Therefore, introduction of the new type of sheltered housing facility is pending additional political negotiations, but the Government has maintained its aim of establishing a new type of sheltered housing.

In Denmark, all Danish nationals over 18 years have, in principle, the right to vote in parliamentary elections and in referendums. However, this does not apply to anyone who has had a guardian appointed under section

6 of the Guardianship Act. When people have a guardian appointed, this is to protect them against financial abuse, including to prevent them from squandering their fortune. There is no link between the person's need for guardianship and their ability to vote. According to the institute, denying this group access to vote contravenes human rights law.

Following the most recent parliamentary election, a number of persons under guardianship brought an action against the Danish state to obtain recognition for their right to vote.<sup>147</sup> In 2016, the institute intervened in the proceedings and supported their case. The case is being complicated by the fact that the Danish Ministry of Justice has assessed that granting these people the right to vote in parliamentary elections and in referendums would be in breach of the Danish Constitution. The institute does not agree with this assessment. The Danish High Court will give its verdict in the first half of 2017.

In recent years, there has been increased municipal focus on due process for vulnerable groups.<sup>148</sup> Disability organisations have expressed concern that municipal budgets put pressure on due legal process for citizens in specific decisions taken under administrative law. The National Social Appeals Board annual statement for 2015 shows that the National Social Appeals Board changed or remitted 33 percent of decisions under the Social Services Act, and changed or remitted 52 percent of decisions under the Due Process Act.

## HUMAN RIGHTS IMPROVEMENTS

- The Danish Parliament has adopted an amendment to give persons under guardianship the right to vote in local and regional elections as well in as elections to the European Parliament.<sup>149</sup>
- Bills have been presented for the Election to the Danish Parliament Act, the Election of Danish Members to the European Parliament Act and the Local and Regional Elections Act, according to which persons who are not able to cast their vote can choose a representative to help them vote.<sup>150</sup>
- The latest figures from the Danish Health Authority indicate that, nationwide, the use of prolonged physical restraint in psychiatric treatment (over 48 hours) continues to fall.<sup>151</sup>
- The Government, Local Government Denmark, and Danish Regions have published a common public-sector digitisation strategy which, among other things, focusses on making digital solutions from public authorities available to everyone, including persons with disabilities.<sup>152</sup>
- In February 2017, the Government announced that a general prohibition against discrimination on grounds of disability will be introduced.<sup>153</sup>

## NEW CHALLENGES

- There has been an increase in the number of physical restraints shorter than 48 hours.<sup>154</sup>
- The percentage of people who are forcibly medicated with sedatives was almost constant at around 7.8 percent of inpatients in psychiatric treatment in the period 2011-2015/2016.<sup>155</sup>
- Introduction of the ceiling on social security benefits risks afflicting persons with disabilities as these are over-represented in the category of recipients of social security benefits who are not ready for the labour market.<sup>156</sup>
- In October 2016, the political parties behind the public pool of funds agreed on an action plan to prevent violence in sheltered housing facilities. The action plan includes a proposal to establish 150 spaces in a new type of specialist social psychiatric department aimed at citizens with severe mental illness, substance abuse and aggressive behaviour. Ensuring that the establishment of the new sheltered housing facilities does not result in additional use of coercion towards persons with a mental illness may be challenging.<sup>157</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government take steps to:

- introduce a general ban on discrimination on grounds of disability which also applies outside the area of employment.
- change the legislation on voting, so that anyone who has had a guardian appointed under section 6 of the Guardianship Act will still have the right to vote and be eligible for election in parliamentary elections and referendums.
- amend the conditions of the Adoption Act governing adoption against the will of the parents. Adoption of this type should only occur provided there are overriding considerations pertaining to the child for so doing. It should not be undertaken, however, where the biological parents and child enjoy well-functioning visitation, as this is the only possibility open to the child and parents of engaging in family life.

We also recommend that:

- the Ministry of Transport, Building, and Housing and the Ministry of Finance ensure effective monitoring of compliance with requirements for access to public buildings, public transport and public websites.
- the Danish Ministry of Health introduce an expiry date for the prolonged use of physical restraint in psychiatric treatment of more than 48 hours, in order to phase out such use.
- the Danish Ministry of Health refrain from introducing deprivation of liberty options in the specialist social psychiatric departments, as proposed in the public pool of funds agreement from October 2016.

## CHAPTER 11

# GENDER EQUALITY

### HUMAN RIGHTS AND GENDER EQUALITY

Human rights law protects the rights of all people, and the principle of non-discrimination is therefore central to human rights law. The prohibition against discrimination on the grounds of gender is either directly or indirectly included in all human rights conventions.

Any person, irrespective of gender, is entitled to equal protection by all relevant human rights without discrimination. The principle of equal rights entails that the state is obligated to ensure equal treatment as well as prevent discrimination. Discrimination against women is a global problem, and the UN Convention on the Elimination of All Forms of Discrimination against Women deals specifically with ensuring women equal human rights protection and promoting actual equality between men and women in society. Specific human rights conventions also exist, e.g. on violence against women and domestic violence, and these focus particularly on protecting women in vulnerable situations. The thematic report on 'Gender' (in Danish) from the institute's Status Report 2015-16 contains more information about human rights and gender equality.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

Danish regulations on protection against gender discrimination and promotion of equality cover a broad spectrum of Danish society, and apply particularly for the labour market. Thus the goal of equality between men and women has a broad scope and covers people with very different living conditions, needs, wants and behaviours.

For the second successive year, Denmark slipped down the global equality rankings by the World Economic Forum.<sup>158</sup> Denmark went from being number 14 in 2015 to number 19 out of 144 countries in 2016. Iceland, Finland, Norway and Sweden are numbers 1, 2, 3 and 4, respectively. According to the World Economic Forum, Denmark has not made as much progress as the other Nordic countries e.g. with regard to its maternity/paternity system and percentage of female leaders.<sup>159</sup>

As in 2015, 2016 was marked by a debate on online sexism and sexually offensive behaviour. A number of cases fuelled the sexism debate. These cases included the media's portrayal of the Danish Olympic swimmer Pernille Blume<sup>160</sup>

and discrimination of women in politics in the wake of former Danish Prime Minister Helle Thorning Schmidt who left Danish politics in 2016 with the words “there is much more gender in Danish politics than meets the eye. This may be about our hair and handbags, about what we’re wearing, and the height of our heels”.<sup>161</sup>

In August 2016, the Danish Broadcasting Corporation (DR) brought attention to the phenomenon of revenge porn in its programme series *Ung, nøgen og udstillet* (young, naked and exposed). In 2016, revenge porn assumed a prominent place on the political agenda.<sup>162</sup><sup>163</sup> The debate and subsequent cases indicate that sharing compromising photos without consent is a more widespread problem than previously assumed.

A study carried out by the market research institute YouGov in 2016 for DR showed that up to four out of ten young persons between 15 and 30 years old have sent or shared nude photos of themselves, while more than half have received a nude photo of another person.<sup>164</sup> The number of police reports has grown significantly from 2011 to 2016, and the police have had difficulties investigating and prosecuting offenders, e.g. because the offenders use foreign file-sharing services.<sup>165</sup>

A 2012 survey from the National Institute of Public Health showed that about 30,000 women annually state that they have been exposed to domestic violence, whereas the

number of men is estimated to be around 13,000. An EU survey from Eurobarometer on violence in close relationships showed in 2016 that Danes exceed the EU average with regard to the number of people who know of a victim of domestic violence in their circle of friends and family. However, Danes do not consider violence against women to be very common and in this respect Denmark is far below the EU average.<sup>166</sup>

In March 2016, the Government presented its ‘Stop Stalking’ proposal; a broad range of initiatives to improve measures by the police and enhance the assistance offered to victims. In April 2016, the Legal Affairs Committee of the Danish Parliament held a consultation on stalking. In December 2016, the Danish Parliament adopted a Bill on instant restraining orders to ensure quicker protection of stalking victims.

For the first time ever, in 2017 Denmark will be reviewed by the Council of Europe’s expert group monitoring implementation by Member States of the Istanbul Convention on violence against women and domestic violence.

## HUMAN RIGHTS IMPROVEMENTS

- In November 2016, almost DKK 5 million of the public pool of funds were earmarked for a campaign to encourage more men to take parental leave and ensure a more equal division of parental leave. One of the reasons for the campaign was the institute's survey from 2015 which showed that one-fifth of men worry that long paternity leave will have negative impacts on their job and career. The debate led the former Minister for Children, Education and Gender Equality to hold a series of meetings in 2016 on this issue with Danish businesses, employers' organisations and unions.<sup>167</sup> The meetings resulted in a decision to launch the campaign financed by the public pool of funds. Many large businesses and organisations will help develop the campaign, including Mærsk, Danfoss, the Danish Confederation of Trade Unions (LO) and the Confederation of Danish Employers (DA).<sup>168</sup>
- In June 2016, the Danish Parliament adopted a Bill intended to ensure more severe sentences for rape, false accusations, and sexual intercourse with children under 15 where the adult uses their physical or psychological superiority. The amendments entered into force on 1 July 2016 and came in the wake of the Government's proposal from January 2016, 'Respect for victims of rape'. One aim of the proposal is to set clear limits as to how the police work with rape

victims and ensure a dignified response to rape victims. The proposal contains several initiatives, including the provision of central guidelines for receiving and dealing with rape reports, further police training in interview techniques, and strengthening the role of the duty solicitors by introducing special duty solicitors' lists.<sup>169</sup>

- Men constitute 27 percent of students in teacher training and social education programmes, but only 7 percent of kindergarten teachers are men, whereas the figure for day nursery teachers is only 3 percent. Moreover, a survey carried out on behalf of the Ministry of Children, Education and Gender Equality at the time showed that parents would like to see more male preschool teachers. In 2016, the Ministry launched a national campaign to create awareness about the importance of pedagogical work, and why it is important to attract and retain more male preschool teachers in Danish daycare facilities. The campaign material had reached more than 1.5 million Danes by the end of 2016.
- With regard to gender identity and gender expression, from 1 January 2017 transsexuality as a disease category was removed from the Sundhedsdatabasen (health database). This occurred against the backdrop that the Danish Parliament had processed a proposed parliamentary resolution in which a unanimous health committee recommended to the Minister



that transsexuality should no longer be considered a disease, disorder or sexual condition.<sup>170</sup> In December 2016, the Minister declared that transsexuality would be removed as a disease category.

## NEW CHALLENGES

- In 2016, a major survey by the Danish National Centre for Social Research showed that the Danish labour market is still very segregated by gender. Even though the level of education is increasing, men and women with the same qualifications choose completely different careers. Women typically choose a career in the public sector and men typically in the private. This situation has not changed much over the past 20 years. This severe gender segregation may pose a major challenge. This applies for instance to the public sector dominated by women in which the current average age is fairly high, and therefore this sector may face a shortage of labour in future. However, there is great competition for unskilled jobs in many sectors dominated by men, and these sectors are at risk of unemployment.
- In 2016, revenge porn proved to be more widespread than anticipated, with only weak legal protection of victims and weak enforcement of the Danish Criminal Code in cases regarding photo sharing. Cases are being investigated on the basis of section 264d of the Criminal Code on forwarding pictures. However, due to a demanding workload in 2016, the police have not been able to quickly examine all reports on illegal sharing of photos, and therefore it may take up to six months before a report is investigated. Several political parties support tightening legislation, and the Danish Ministry of Justice is examining whether the Criminal Code needs updating in order to process cases satisfactorily.<sup>171</sup>
- The low percentage of female leaders is one of the areas that has caused Denmark to slip down the World Economic Forum Gender Index.<sup>172</sup> In order to create a more equal representation of genders at management level, in 2012 the former Government introduced an Act on targets to promote female representation in boards of management and boards of directors. Nevertheless, a 2016 analysis from the institute shows that this Act has only had limited effect. From the entry into force of the Act until September 2015, only around 18 percent of new top leaders were women. The analysis shows that even the most optimistic projections forecast that there will not be equal representation of genders at management level until 2074.

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- take steps to roll back the reduction of gender-specific pay statistics in the Equal Pay Act, so that businesses with at least 10 (and not, as currently is the case, 35) employees are again subject to the regulations.
- initiate measures to increase take-up of parental leave by fathers in order to create more equality in this area.

We also recommend that:

- the Commissioner of Police ensure uniform and effective practices in individual police districts, in order to provide victims in cases of domestic violence with adequate and quick protection and to prevent further escalation of violence, including through the use of personal attack alarms and safety plans.
- the Danish Business Authority prepare a publicly available benchmarking of businesses covered by the regulations on targets for gender-based composition of management, describing businesses' gender composition targets and status.

## CHAPTER 12

# USE OF FORCE

### **HUMAN RIGHTS AND USE OF FORCE**

The UN International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights and the EU Charter on Fundamental Rights all contain provisions that protect against arbitrary use of force by the state. Generally, use of force by the state must always be absolutely necessary and as mild as possible, and the force used must be proportionate to the objective sought. In the choice between several types of force, milder types of force should always be preferred to more severe ones, and use of force may not extend for longer than necessary. You can read more about use of force in the thematic report on 'Use of force' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Based on the institute's report on the use of pepper spray in Danish prisons and detention centres, in 2015, the Prison and Probation Service stressed to prisons and detention centres that pepper spray may only be used if no other means are effective and that staff have to be cautious when using pepper spray

in confined spaces. However, in May 2015, restrictions on prison staff carrying pepper spray on their person were relaxed in high-security departments and detention centres (at Politigårdens Fængsel prison, the state prison in Nyborg and the state prison in Eastern Jutland), and this is not in compliance with the recommendation for Denmark by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>173</sup> Use of pepper spray by staff fell in 2015.<sup>174</sup>

In 2016, the Danish Ministry of Justice presented a Bill specifying that the Minister for Justice must lay down regulations regarding the types of use-of-force equipment prison officers may carry. The preliminary work states that this amendment will create a legal basis for prison officers to carry pepper spray as part of their standard equipment. There is an increased risk of incorrect or illegal use of pepper spray if it becomes part of the standard equipment. Therefore, it is all the more important that conditions for when pepper spray can be used are stated clearly in legislation if regulations that pepper spray is to be part of prison officers' standard equipment are issued.<sup>175</sup>

Use of pepper spray by the police has also declined over recent years. The Danish National Police have explained that the decline is due to increased knowledge of the effects of pepper spray. This means that the use of pepper spray has proven necessary in fewer cases.<sup>176</sup>

A study by the think-tank Justitia shows that the number of administrative detentions undertaken by the Copenhagen Police has risen significantly in the last 10 years. A large number of administrative detentions have subsequently proven to be unjustified.<sup>177</sup> The National Police cannot explain the increase in administrative detentions, but will examine the background for the increase.<sup>178</sup> Moreover, in 2016, the National Police extended its reporting procedures to cover all detention cases in which it was subsequently proven that detention was unjustified.<sup>179</sup>

In 2016, the police continued to use stop-and-search zones. The Danish Parliament has questioned the effect of stop-and-search zones. Some police districts have replied that stop-and-search zones have a preventive effect with regard to conflicts in the biker and gang environment. Others have stated that it is difficult to make definite conclusions regarding the direct effect of stop-and-search zones.

The Public Prosecutor's statistics of interventions in the secrecy of communications and searches for 2015 showed a decrease in the number of interventions in the secrecy of communications from 2014 (with 8,476 interventions) to 6,576 interventions, 5,175 of

which were with a prior court order. Some of the reasons for this decrease are the change in the police's tasks regarding emergency preparedness and surveillance in 2015 as well as increased focus on costs in connection with interventions, as expenses are paid by the police districts themselves.<sup>180</sup> The number of searches also fell from 5,304 in 2014 to 5,162 in 2015. Out of the 5,162 searches, 1,312 took place with a prior court order.

In November 2016, the Danish Tibet Commission began the questioning of police personnel.<sup>181</sup> The Danish Tibet Commission was set up in September 2015, and one of its tasks is to investigate the reason for the police's detention of protesters who waved the Tibetan flag during the Chinese state visit to Denmark in 2012.<sup>182</sup> Chapter 21 below on 'Freedom of expression and assembly' provides more information about the work by the Commission.

On 31 October 2016, the Independent Police Complaints Authority had received a total of 1,945 cases, including 402 reports on criminal offences and 419 complaints about police behaviour.<sup>183</sup> The 2015 reporting year was marked by several large and resource-intensive cases, and therefore the Independent Police Complaints Authority only settled 1,369 cases, which is slightly less than the previous years.<sup>184</sup>

## HUMAN RIGHTS IMPROVEMENTS

- Police use of pepper spray was regulated in the Police Act in 2016. One of the recommendations in the institute's study on police use of pepper spray was such a regulation. The reasons for using pepper spray have also been enacted in legislation, and the Act stresses that the police must always carry out an assessment of necessity and proportionality before using pepper spray.<sup>185</sup>
- In October 2016, the Director of Public Prosecutions updated the guidelines for police reports on technical surveillance. In future, police reports must always state whether surveillance of a suspect was by means of technology, e.g. GPS. Up to this point, police use of GPS surveillance has been confidential in cases in which the police and the prosecuting authority have assessed that the information did not have any evidential significance to the case. As GPS surveillance is no longer considered a technical innovation, the Director of Public Prosecutions no longer finds it necessary to keep this investigation technique confidential.<sup>186</sup>
- A new scheme in which police wear their ID numbers on their uniforms entered into force on 1 February 2016.

- Prison personnel's use of force such as by hand, batons, tear gas, shields and pepper spray fell in 2015 compared with 2014.<sup>187</sup>

## NEW CHALLENGES

- Despite more specific regulation on the use of pepper spray in the Police Act, guidelines have yet to be prepared specifying that the use of pepper spray should be limited as far as possible, particularly in confined spaces, and should not be used against individuals who have been brought under control.<sup>188</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that, in cooperation with the National Police, the Danish Ministry of Justice:

- prepare guidelines specifying that the use of pepper spray should be limited as far as possible, particularly in confined spaces, and should not be used against individuals who have been brought under control.
- specify time limits and limits on the geographical scope of stop-and-search zones.

We also recommend that:

- in cooperation with the Prison and Probation Service, the Danish Ministry of Justice lay down the scope for use of pepper spray in prisons and detention centres, including a prohibition in principle on using pepper spray in confined spaces and against inmates that have been brought under control.
- in cooperation with the Prison and Probation Service, the Danish Ministry of Justice introduce a legal hierarchy of permitted means of force, including that pepper spray may only be used if less intrusive means are clearly unsuitable similar to the provisions of the Police Act.
- the Government ensure that the provisions of the Police Act on preventive detention are in accordance with Article 5 of the European Convention on Human Rights.

## CHAPTER 13

# RELIGION

### **HUMAN RIGHTS AND RELIGION**

Freedom of religion is one of the classical human rights. It includes the right to have, exercise and change one's religion, have non-religious and atheistic convictions, as well as the right not to have any religion or belief. Freedom of religion is closely linked to other rights, such as freedom of expression, assembly and association and the right to respect for private life. Religious freedom can also come into conflict with other rights and with principles of equal treatment. You can read more about freedom of religion in the thematic report on 'Religion' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

In recent years, freedom of religion has in many ways been subject to increasing pressure, both globally and in Denmark, including persecution or harassment of religious minorities and religiously motivated extremism and terrorism. This development has resulted in significant human rights challenges, also in Denmark.

On 14 and 15 February, 2015, just over a month after the terrorist attacks against the

satirical magazine Charlie Hebdo in Paris, two shootings took place in Copenhagen, first during a public meeting on 'Art, Blasphemy and Freedom of Expression' and then at the central Jewish synagogue. Since then there has been particular focus on the safety and security of the Jewish minority and their institutions.

In June 2016, the National Police annual report was published regarding hate crimes in Denmark in 2015.<sup>189</sup> Of the 198 cases registered by the police as hate crimes in 2015, 60 were characterised as religiously motivated hate crimes. According to this registration, Muslims and Jews are predominantly exposed to religiously motivated hate crimes. In 41 of the cases, hate crimes were aimed at people with a Muslim background and often involved hate speech and online threats. A total of 13 of the cases concerned hate crimes against people with a Jewish background (a high figure compared to the small number of Jews in Denmark). A very significant proportion of the registered hate crimes are thus aimed at religious minorities.

The TV2 programme series 'Moskeerne bag sløret' (the mosques behind the veil) presumed

to give insight into how some Muslim religious preachers propagate values and rules that are in direct contradiction to Danish values and laws. Following the programme, the Government, the Social Democrats, the Danish People's Party and the Conservatives entered into a political agreement in May on initiatives "aimed at religious preachers who seek to undermine Danish laws and values and who support parallel conceptions of law".<sup>190</sup> The agreement meant that a number of Bills were presented in the Danish Parliament in autumn 2016, and most of them had been adopted before the end of the year. The Bills have caused concern in religious communities for throwing general suspicion on the communities and limiting freedom of religion and expression in specific areas. This concern should be seen in the context that some religious minorities in Denmark already feel that they are under pressure with regard to practicing their religion. The institute has expressed concern about several of the Bills, as they conflict with protected human rights and are unclear. According to the institute, the initiatives should await the work by the Expert committee on regulation of non-state church religious communities, see below.

In 2016, the Expert committee on regulation of non-state church religious communities continued its work. The committee is a pre-legislative expert committee set up by the Government effective from 2015. The committee is to propose a Bill to establish uniform regulations for religious communities

outside the Evangelical Lutheran Church in Denmark. The objective is that such an Act is to meet section 69 of the Danish Constitution regarding religious communities outside the Evangelical Lutheran Church. According to its terms of reference, the committee is to ensure that draft legislation and recommendations are consistent with the Danish Constitution, the European Convention on Human Rights and Denmark's other international obligations.<sup>191</sup>

Cases of harassment of Christian asylum seekers in some asylum centres in Denmark reportedly occurred in 2016 as well.

In 2016, freedom of religion in Denmark attracted international attention. The UN Special Rapporteur on freedom of religion or belief paid an official visit to Denmark in March 2016 to review the freedom of religion in Denmark. During his visit, he met with ministers, members of the Danish Parliament and local authorities as well as a number of representatives of religious communities and life stance communities, academics and civil society; see more about the visit below.



## HUMAN RIGHTS IMPROVEMENTS

- Efforts to establish coherent regulation of religious communities outside the Evangelical Lutheran Church – and thus establish legislation to implement section 69 of the Danish Constitution regarding religious communities outside the Evangelical Lutheran Church – is a positive step towards continued efforts to facilitate the successful functioning of these religious communities in Danish society. Such legislation may provide uniform rules and rights for religious communities and stipulate obligations on, for instance, transparency in the communities' finances. In the summer of 2016, the Expert committee on regulation of non-state church religious communities submitted a proposal for public consultation with all religious communities and various faith-based organisations in order to include input from the religious communities in the process. The committee is expected to complete its work in early 2017.
- On 1 January 2016, the Danish Institute for Human Rights was mandated to bring cases based on matters of principle or cases that are in the general public interest before the Board of Equal Treatment.<sup>192</sup> This mandate also cover cases relating to religion in employment matters.

## NEW CHALLENGES

- On 31 May 2016, the former Government under Denmark's Liberal Party as well as the Social Democrats, the Danish People's Party and the Conservatives entered into a political agreement on initiatives "aimed at religious preachers who seek to undermine Danish laws and values and who support parallel conceptions of law". The agreement resulted in five Bills; all of which, except one, were adopted in December 2016:
  1. Bill for an Act to amend the Marriage and Dissolution of Marriage Act (Decorum requirement and mandatory course in Danish family law, freedom and democracy).<sup>193</sup>
  2. Bill to amend the Criminal Code (Criminalisation of explicit approval of certain criminal acts in the context of religious training).<sup>194</sup>
  3. Bill to amend the Act on Non-formal Education and Democratic Voluntary Activity and the Tax Assessment Act (Measures against associations counteracting or undermining democracy or fundamental freedoms and human rights).<sup>195</sup>
  4. Bill to amend the Aliens Act (Introduction of a public sanction list of foreign religious preachers, etc., who may be denied entry into Denmark).<sup>196</sup>
  5. Bill to amend the Aliens Act (Mandatory course in Danish family law, freedom and democracy for religious preachers etc., and

promissory declaration of compliance with Danish legislation).<sup>197</sup>

In legal briefs and in the public debate, the institute and a number of organisations and religious communities criticised the outcome of the agreement, either in its entirety or parts of the individual Bills. One aspect that has been met with criticism is the criminalisation of statements of approval of certain criminal acts in the context of religious training. In addition, a series of organisations and religious communities have indicated that the Bills casts suspicion on the religious communities and their preachers.<sup>198</sup>

### **DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016**

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). A number of recommendations made to Denmark relate to religious freedom and not least the protection of religious minorities. A number of states recommend that Denmark redouble its efforts to prevent discrimination against religious minorities. A number of states recommend that Denmark intensify its efforts to prevent hate crime on grounds of religion.<sup>199</sup> A further recommendation is that Denmark refrain from banning the cultural practice of circumcision of boys or indeed

place an age limit on it. This recommendation is primarily relevant in Denmark with regard to circumcision of boys for religious reasons.

- In March 2016, the UN Special Rapporteur on freedom of religion or belief reviewed freedom of religion in Denmark. At a press conference, he presented his preliminary conclusions based on his visit.<sup>200</sup> He stressed the need for the Government to take a leading role in developing an inclusive society in which members of different religious communities as well as more secular-oriented people can feel at home. He particularly pointed out that a more inclusive understanding of Danish identity has to be created to avoid exclusion based on belonging to a particular religious faith, e.g. Islam. He also stressed the need to develop greater understanding between different social groups, along with a truly inclusive debate on issues of importance to religious minorities, such as circumcision of boys. The Special Rapporteur commended the positive initiatives of the Evangelical Lutheran Church in promoting dialogue between different religions. At the same time, he made it clear that Denmark needs to consider the special position of the Evangelical Lutheran Church in Danish society, which can create a sense of inequality among both non-believers and religious minorities. He emphasised the importance of interpreting religious freedom on the basis of European and international human rights standards as opposed to

the Danish Constitution alone. According to the Special Rapporteur, this is relevant to a number of issues, such as whether a religious community can have its recognition revoked, discussions about restrictions on freedom of expression and indeed the very understanding of the concept of religion. On the basis of his visit, the UN Special Rapporteur will present his final report with recommendations to the UN Human Rights Council in March 2017.<sup>201</sup>

In 2016, the European Union Agency for Fundamental Rights (FRA) focussed on the conditions and rights of religious minorities:

- In 2016, FRA published a report on antisemitism in which the agency collected data on anti-Semitic incidents in 28 EU Member States – including Denmark – from 2005-2015. The survey shows that the number of anti-Semitic incidents has been increasing in recent years.<sup>202</sup>
- FRA also published a report on incitement to discrimination, hatred or violence against specific groups both in media content as well as in political discourse in EU Member States, including Denmark. FRA examined incitement to hatred against religious minorities, for example. The report concludes that the media and the political discourse – online as well as offline – have a tendency to incite to discrimination, hatred or violence against various groups.<sup>203</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- in connection with any future proposal of a law on the regulation of religious communities outside the Evangelical Lutheran Church, take steps to revise the acts that have already been adopted as a result of the political agreement on initiatives aimed at religious preachers who seek to undermine Danish laws and values and who support parallel judicial systems.
- continue to ensure systematic involvement of leaders of relevant religious communities prior to introducing specific measures, including regulation of religious customs and traditions as well as measures against radicalisation and extremism.

## CHAPTER 14

# FAIR TRIAL

### THE RIGHT TO A FAIR TRIAL

The right to a fair trial is a fundamental right in all states governed by law and is a classical human right.<sup>204</sup> This right includes that everyone is equal before the law and before the courts, both as parties in civil actions and as suspects or defendants in criminal cases. The right also means that legal cases must be decided within a reasonable length of time and by a public trial before a competent, independent and impartial court established by law. Furthermore, a number of minimum guarantees apply for people who are suspects or defendants in criminal cases.<sup>205</sup> The thematic report on the 'Right to a Fair Trial' (in Danish) from the institute's Status Report 2015-16 contains more about the right to a fair trial.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

The Ministry of Justice has published a report about security and attitudes to the police and the justice system in Denmark and in other European countries (Tryghed og holdning til politi og retssystem – Danmark i forhold til andre europæiske lande). The report builds on data from 2014 and shows that, for the seventh time, Denmark is at the very top of countries

whose population has the greatest confidence in the judicial system.<sup>206</sup>

In August 2016, the Court Administration and the Supreme Court arranged a conference on how to maintain this high level of confidence in the courts. Several points were identified, including that the courts should avoid long case-processing times and that they should have an increased focus on court users with fewer resources, and on the parts of the population with least confidence in the courts: injured parties, people from marginalised social groups and ethnic minorities.<sup>207</sup>

District courts hear more than 95 percent of all cases heard by Courts of Denmark.<sup>208</sup> In the first six months of 2016, district courts received almost 98,000 new criminal cases<sup>209</sup> and almost 24,000 new civil cases.<sup>210</sup> This corresponds to around one-half of the total number of new criminal cases and civil cases for all of 2015.

One of the primary goals of Courts of Denmark is short processing times, and targets have been set for district courts and high courts.<sup>211</sup> Targets are set politically with regard to cases

involving assault, rape and illegal possession of weapons in public places, while targets for other cases are set by the board of the Courts of Denmark.<sup>212</sup> Case-processing times for cases of assault, rape and possession of weapons rose in 2015, both for the prosecuting authority and for the courts. The Ministry of Justice considered that this situation was “clearly unsatisfactory”.<sup>213</sup> In autumn 2016, a Bill was submitted to reduce case-processing times for criminal cases, including on the possibility to serve documents digitally in people’s electronic post boxes, the possibility for greater use of judgements by default, and authority to use digital communication in criminal procedures.<sup>214</sup>

One of the other focus areas for 2016 was digitising civil cases, including the option for digital communication in civil cases with external parties via the Minretssag.dk digital portal, which was launched in October 2016 as pilot projects at the District Court of Horsens and the Western High Court. Following these projects, the portal is planned to be implemented in the other courts during 2017.

In December 2016, a working group set up by the Association of Danish Law Firms and the Danish Bar and Law Society issued its report on legal aid to the boards of the two organisations.<sup>215</sup> The report deals with on-call lawyers and public legal aid from lawyers. The working group was set up following a drop in use of legal aid from lawyers, a service which had previously been a pivotal part of the overall Danish legal aid services. There

has also been a drop in the number of on-call lawyers, while there has been an increase in the number of approved legal aid institutions and appropriations to these legal aid institutions have also increased. The report highlights a number of issues in the current scheme and lists a number of principles on which a future legal aid system should be based. The report contains a series of recommendations for how the current system could be improved, with one overall recommendation that the Ministry of Justice, with all relevant players, should make a thorough analysis of the legal aid scheme in order to clarify the extent to which the legal aid scheme should be changed in order to secure genuine and nationwide access to legal aid for all citizens. The institute took part in the work of the working group.

A working group under the Ministry of Justice has examined how best to ensure that lay-judges selected by municipalities represent the population in terms of gender, age, ethnicity, etc. Among other things, the working group recommends introducing age groups and selecting lay-judges corresponding to the age distribution in the municipality selecting lay-judges.

## HUMAN RIGHTS IMPROVEMENTS

- The regulations on video-recorded interviews of children have been expanded from 1 April 2016 so that, in cases of sex crimes or assault committed within the family, video-recorded interviews can always be used for children of 13-14 years.<sup>216</sup>
- In December 2016, the Minister for Justice launched a proposal entitled 'Justice for victims'. The proposal includes abolishing the limitation period in cases of child abuse and extended access to compensation.<sup>217</sup>

## NEW CHALLENGES

- Increased digitisation, including the use of digital communication at courts, entails a risk that due process for less advantaged users will be compromised unless special measures are taken for these groups.
- In December 2016, the Government submitted a Bill to extend access to deliver judgements in the absence of accused and to repeal the unconditional access to have a judgement rendered in absence of the accused reheard that was hitherto in force.<sup>218</sup> In its consultation response, the institute criticised the extended access to deliver a judgement in the absence of the accused.<sup>219</sup>

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In December 2016, the European Court of Human Rights delivered its decision in the Jensen v. Denmark case regarding lack of access to appeal against a court order to pay legal costs after the end of the time limit for appeals, even though the time limit ran from a date on which the plaintiff was not aware of the amount of the legal costs. Referring to the fact that the plaintiff had been present when the decision was delivered, and that, during the entire process, he had been assisted by a lawyer and therefore was, or could have been, familiar with the issue of legal costs (but not the amount), the European Court of Human Rights acquitted Denmark and dismissed the plaintiff's claim. The district court had also ordered the plaintiff to pay legal costs.<sup>220</sup>
- In October 2016, the European Commission for the Efficiency of Justice (a commission under the Council of Europe) issued a report comparing judicial systems across the 47 member states of the Council of Europe. The report showed that the average case-processing time of 47 days for criminal cases in Danish courts is three-times faster than the average for the other member states. In civil cases, the average Danish case-processing time of 177 days is on a par with Norway and Sweden.<sup>221</sup> The report is based on data from 2014.

- In November 2016, the European Union Agency for Fundamental Rights issued a report on the access of suspected or accused persons to translation, interpretation and information across the EU Member States.<sup>222</sup> Among other things, the report focuses on use by the Danish police of unregistered interpreters and translators. The report points out that Denmark is one of the countries allowing the widest access to derogate from the right to access to the materials of the case of the accused and defence counsels, as it is possible to derogate from the right, not only if this is required for reasons of national security, but also to take into consideration “the interests of foreign powers”.

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Ministry of Justice:

- conduct an overall analysis of the field of legal aid in order to clarify the extent to which the legal aid scheme should be modified so as to ensure all citizens have proper access to the legal system.

We also recommend that the government:

- present a Bill to amend the provisions of the Administration of Justice Act on legal costs in criminal cases based on the recommendations of report 1547/2014 published by the Committee for Prevention and Re-socialisation.

## CHAPTER 15

# THE RIGHT TO HOUSING

### THE RIGHT TO HOUSING

The right to housing concerns the individual's possibilities to live a safe and dignified life. Housing forms a natural framework around private and family life and therefore enjoys a special human rights protection. The right to adequate housing is covered by a number of international human rights conventions. The thematic report on the 'Right to Housing' (in Danish) from the institute's Status Report 2015-16 contains more about the right to housing.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

Reference is seldom made directly to economic and social human rights in Danish legislation, regulatory decisions or case law. This also applies to the right to housing. On the other hand, both legislation and decisions by the authorities and courts often have an impact on how the right to housing is upheld in Denmark. Many different factors influence this area. Society's general level of prosperity, changes in welfare state regulation and trends in housing prices can all have an impact on the number of people able to manage their housing situation, as well as the kind of instruments the state can use to help those who are unable to access adequate housing.

In recent years there has been focus on the relationship between housing affordability and the level of social security benefits. There has been a drop in the amount of cheap rented housing in Denmark over many years, especially around large towns and cities.<sup>223</sup> Recent years welfare benefits reforms (e.g. the cash benefits reform, the introduction of integration benefits, requirements to be available for the labour market, and a ceiling on social security benefits) have led to a reduction in the level of benefits for a large group of people. In combination with the drop in the number of small, cheap homes, this has an impact on the possibilities for people on social security benefits to find adequate housing. The development also means that a number of municipalities, especially around larger towns and cities, only have limited opportunities to solve social housing problems through assigning housing.

The most severe challenge in 2016 remained the large number of homeless people. In recent years there has been a significant increase in the number of homeless people, including the number of young homeless and people sleeping on the streets. This is primarily a serious human rights issue for the homeless themselves, but it may also be seen as an



indicator of structural problems on the housing market and in social intervention.

Homelessness is a complex issue that not only involves a lack of housing, but is also often linked with social problems, poverty and mental illness.<sup>224</sup> Homelessness therefore demands broad intervention aimed at both the housing situation of the individual and other social issues.

For many homeless people, a large number of ordinary human activities take place in the public space; e.g. eating and sleeping. Since homelessness is closely linked to poverty, substance abuse and mental illness, the homeless can present a problem for public order and thereby become the subject of police work. The homeless are considered a public order issue in many places, particularly in large towns, and many countries have criminalised activities related to homelessness and poverty. In recent years there have been several proposals to toughen penalties for begging. For example, there have been proposals to raise the ordinary penalty for street begging to 14 days' unconditional imprisonment for first-time offenders.<sup>225</sup> The political agreement on the 2017 Finance Bill only states, however, that the parties to the agreement agree to take action against organised begging.

In December 2016, the Ministry of Justice submitted a proposed amending executive order for public consultation. The amendment was to criminalise staying in camps via the Public Order Executive Order. The amendment

was drafted on the basis of the political agreement on the Finance Act that aimed to prevent foreign homeless people from establishing camps in the public space. The institute – and several other participants in the consultation process – criticised the fact that the prohibition was only vaguely defined and warned against criminalising homelessness.<sup>226</sup> The institute considers that it is important to avoid criminalising activities that directly relate to homelessness and poverty, as such criminalisation could affect groups which are already vulnerable and marginalised.

## HUMAN RIGHTS IMPROVEMENTS

- As part of the political agreement on revising the adult provisions in the Social Services Act, the government and the majority of the parties in the Danish Parliament have agreed to reintroduce the right of appeal against decisions on admission and expulsion at crisis centres for women and homeless shelters.<sup>227</sup> Like many other organisations, the institute has recommended this.
- The Government coalition agreement states that the Government will submit a proposed action plan to combat homelessness, building on experience from the strategy for homeless people.<sup>228</sup>
- The Court Administration's overview of eviction cases and executed evictions (i.e.

evictions carried out by the Bailiff's Office) shows that the number of eviction cases and executed evictions of tenants continues to fall. The number of eviction cases fell to 14,267 in 2015 from an historical high of 21,338 in 2011. The number of executed evictions fell from 4,405 in 2011 to 2,551 in 2015.<sup>229</sup>

- In March 2016, the Government and Local Government Denmark signed an agreement to make it easier for municipalities to find housing for refugees, among other groups. This involved earmarking DKK 150 million to establish temporary housing and DKK 640 million to establish small social housing units that would be available at affordable prices.<sup>230</sup>
- The Government Coalition Agreement states that there remains a need to make social housing cheaper and that, in connection with negotiations on municipal budgets for 2018, the Government will discuss specific initiatives to promote the establishment of small, affordable housing units.
- In 2016, in two decisions of principle, the National Social Appeals Board established greater clarity on the access to help to cover reasonable housing expenses while serving a prison sentence, including the obligations of municipalities to conduct specific and genuine investigations into whether the housing needs of inmates when released can be covered in some other way, including after long sentences.<sup>231</sup>

## NEW CHALLENGES

- Surveys from the National Centre for Social Research (SFI) show that the number of homeless rose by 1,140 from 2009 to 2015. SFI estimate that 15,000 people were homeless at some time during 2015. Youth homelessness has nearly doubled, and the number of "street sleepers" has also increased.
- In a memorandum to Members of the Public Accounts Committee issued in January 2016, the Danish National Audit Office followed up on its report of 2014 on action on the homeless. One of the criticisms expressed by the Danish National Audit Office was that the Ministry of Social Affairs has not taken initiative to identify the causes of the increase in the durations of stays in shelters, to address the mismatch between the number of places at shelters and the number of homeless people, or to ensure there are alternative places of accommodation for young homeless people.
- As a result of the increase in the number of refugees in 2015, at the end of 2015 and in spring 2016, the Government and the Danish Parliament relaxed the requirements on municipalities' obligations regarding temporary accommodation and permanent assignment of housing for refugees.<sup>232</sup>

- In March 2016, Parliament passed a Bill introducing a ceiling on social security benefits and requirements with regard to the duty of benefit recipients to be available for work, as well as on extending integration benefit to include all those who have not resided in Denmark for seven of the last eight years.<sup>233234</sup> The lower benefits and the drop in the number of affordable rental housing, combined with the number of refugees to whom housing must be allocated, can affect the chances for those on the lowest social security benefits to obtain or retain affordable housing. Many of those involved in the consultation process fear that low benefits could result in increased homelessness and more evictions.<sup>235</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- within a short time after adoption of the provisions on integration benefits, a ceiling on social security benefits and requirements to be available for the labour market, undertake an evaluation of the impact of the changed legislation, including its impact on the number of evictions and number of homeless people, plus any unintended consequences, such as for children who are brought up in families affected.

- take steps to decriminalise begging in the Criminal Code, so that acts of begging may only be prosecuted when begging is detrimental to maintaining public order in a specific situation.

We also recommend that:

- the Ministry of Transport, Building and Housing, in collaboration with the Ministry of Children and Social Affairs, monitor and set a specific goal for developments in the supply of housing that people with the lowest incomes can afford.
- the Minister for Equal Opportunities take steps to ensure that landlords in the private sector do not discriminate against ethnic minorities, particularly men from ethnic minorities.
- the Ministry of Children and Social Affairs determine the requirements the municipalities can impose on homeless people, including documentation of residence in the municipality, so that the right of the homeless to public assistance, enshrined in the Constitution, is not unlawfully denied them.

## CHAPTER 16

# CITIZENSHIP

### HUMAN RIGHTS AND CITIZENSHIP

The population of a state is composed of its own nationals and resident foreign nationals. Usually, only nationals enjoy full and equal rights in the state. It is, and always has been, normal for states to reserve certain rights for their own nationals. It is also recognised in human rights standards that, to a certain degree, states may treat non-nationals differently compared with nationals, without this being considered as discrimination. The most important rights that may be exclusively for nationals are the right to vote and stand for election in parliamentary elections, access to certain senior positions within the state administration, access to diplomatic protection, and an unconditional right to be/remain in the state and return to the state at any time. EU law also allows nationals of Member States special rights, including the right to travel freely to all Member States and reside in their territory.

With regard to refugees, immigrants and their descendants, the possibility to become a national of the host state is therefore very important. This is the only way they can obtain full rights in the state. The thematic report on 'Citizenship' (in Danish) from the institute's Status Report 2015-16 contains more about obtaining and losing Danish citizenship.

### DEVELOPMENTS IN HUMAN RIGHTS IN 2016

In Denmark, foreign nationals can only obtain citizenship by an Act of Parliament. This follows from the Danish Constitution. Such an Act can be either general (as Acts usually are) or specific such that foreign nationals are listed by name in a Bill and awarded citizenship when the Act is adopted.

The thematic report on 'Citizenship' (in Danish) from the institute's Status Report 2015-2016 includes a description of the three specific Bills on citizenship that were submitted and adopted during the 2015-2016 parliamentary year, and which primarily included applicants who were listed because they fulfilled the tighter requirements for citizenship in the circular on naturalisation dated 13 October 2015.<sup>236</sup> The first of the two Bills on naturalisation to be submitted in the 2016-17 parliamentary year was passed in December 2016. This Bill included 2,381 applicants and 763 children. This means that fewer applicants were included in the Bill on naturalisation in 2016 than in 2015. However, there were still more in 2016 than in any of the other years in the period 2006-2014.

In February 2016, the Aliens Act was amended to tighten requirements for permanent residence permits. Among other requirements, applicants must now have had ordinary full-time employment for 2.5 of the past three years.<sup>237</sup> According to the agreement of the 2017 Finance Act, this will be further tightened so that an unlimited residence permit will require ordinary full-time employment for 3.5 of the past four years.<sup>238</sup> The employment requirement may hinder young people in education from obtaining a permanent residence permit and if so, they will be unable to obtain Danish citizenship, even though they may be born and/or raised in Denmark and otherwise fulfil the conditions for citizenship.

On 1 April 2016, the Act on mandatory online self-service for applications for citizenship through naturalisation entered into force.<sup>239</sup>

The new citizenship test from 2015 was used for the first time in June 2016.<sup>240</sup> The test is more demanding than the previous citizenship test as it contains questions on Danish society, Danish culture and history; it requires a higher level of Danish language skills and it contains more questions to be answered correctly (32 out of 40 questions within 45 minutes). In June 2016, only 31.2 percent of the total 2,359 people taking the test passed.<sup>241</sup> In December 2016, however, the pass rate was more than double at 67.5 percent. An analysis by the Danish Agency for International Recruitment and Integration showed that this test focused more on knowledge about Danish society than

on precise dates, and that answer options were so close to each other.<sup>242</sup>

On 6 October 2016, the former Minister for Immigration, Integration and Housing presented a Bill to amend the provisions in the Danish Nationality Act that a child can obtain Danish citizenship as a subordinate party when parents obtained naturalisation.<sup>243</sup> This implied a codification of two conditions which had already been imposed in practice. Firstly, that the second parent should consent to the child obtaining citizenship, and, secondly, that if the child had reached 15 years of age, the child should meet the requirement of not having been charged or sentenced for an offence (good-character requirement). Having the requirements codified by law means that they are clearer, and this is a positive development. However, it is problematic that the amendment may mean that children do not obtain Danish citizenship even if this is in their best interest, see Article 3 of the UN Convention on the Rights of the Child. This situation may arise if a parent with custody, perhaps as harassment, prevents a child from becoming a Danish citizen, even though the child wants to become a Danish citizen and even though the child continuously will live in Denmark. Furthermore, the general, very strict good-character requirement may exclude children from obtaining citizenship with a parent, even when a charge for an offence is later dismissed or the child is later acquitted by the court. The amendment was adopted on 6 December 2016.<sup>244</sup>

On 29 November 2016, the Supreme Court made a principle decision on withdrawal of Danish citizenship because of fraud. According to a provision inserted in the Nationality Act in 2002, citizenship could be withdrawn with retrospective effect. The Supreme Court considered that this was in accordance with Denmark's international obligations. The case concerned an asylum seeker from Syria who came to Denmark in 1991 and was granted asylum after having said that he came from Iraq. This information was determinative for the individual being granted asylum and for him then obtaining citizenship in 2000. The Supreme Court decided the issue of withdrawal after examining the proportionality of the matter. On the one hand, the fraudulent behaviour was considered as particularly serious. However, on the other hand the individual had close attachment to Denmark. A withdrawal would not, however, automatically mean that he would have to leave Denmark. He could seek asylum because of the current situation in Syria, or apply for a residence permit as the spouse of an EU citizen living in Denmark. On the basis of these considerations, the Supreme Court upheld the High-Court decision to withdraw Danish citizenship from the man.

On 21 December 2016, the Eastern Division of the Danish High Court passed a judgement in a case brought by 17 Danish-born stateless persons against the Ministry of Immigration and Integration because their applications for citizenship had been processed in contravention of Denmark's obligations under

certain conventions (the UN Convention on the Rights of the Child and the UN Convention on the Reduction of Statelessness). The High Court awarded damages in tort to seven applicants of DKK 20,000 each. The applicants had obtained Danish citizenship after the illegal treatment had been recognised, but the delay and nuisance caused by the illegal treatment justified the damages in tort.

## HUMAN RIGHTS IMPROVEMENTS

- The Danish Nationality Act has been amended so that when a person obtains Danish citizenship by declaration in accordance with the Act on Multiple Nationalities, that person's children also obtain citizenship.

## NEW CHALLENGES

- The provision in the Danish Nationality Act, that applicants who are born and raised in Denmark are entitled to Danish citizenship under certain conditions if they make a declaration to this effect before the Regional State Administration, has been repealed.
- The stricter requirements in the Aliens Act for a permanent residence permit may exclude young people in education from obtaining Danish citizenship.

- The 2015 citizenship test that was held for the first time in June 2016 was so demanding that more than two-thirds failed the test; 67.5 percentage passed the test in December 2016, however).
- An amendment to the Danish Nationality Act stipulates that children may only acquire Danish citizenship by the naturalisation of a parent, if the other parent consents. This implies that they may be excluded from obtaining Danish citizenship, even if this is against their best interests. The same may happen if they do not fulfil very strict good-character requirements.
- New requirements for documentation of blood relationships and the authenticity of family-law documents from other countries etc. in citizenship cases have led to very long case-processing times in cases on acquisition of citizenship certificates, retention of citizenship and re-establishment of citizenship. The delays are due to new practice for cases brought before the National Social Appeals Board and possible consultation with embassies and consulates.

#### **DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016**

- On 25 May 2016 the European Court of Human Rights (ECHR) decided the Biao case and confirmed that Denmark had discriminated against Danish nationals in

family reunification cases. The background to the case was that people born as Danish nationals could be exempted from the attachment requirement when they turned 26, whereas applicants who had become Danish nationals later in life could not be exempted from the requirement until later in life (for more details, see chapter 7 on 'Family life').

- On 6 September 2016, the ECHR decided the Khalil Nazari v. Denmark case following an appeal to the Court dated 14 October 2011.<sup>245</sup> The plaintiff (Khalil Nazari) stated that the Danish authorities' rejection of his citizenship application was arbitrary and that no grounds were given. He also said that the authorities had informed him that he could not appeal the decision. The plaintiff alleged that the rejection was in breach of Article 8 of the European Convention on Human Rights on the right to privacy and family life, Article 14 on the prohibition of discrimination (in conjunction with Article 8) and Article 13 on the right to an effective remedy. The ECHR rejected the first part of the allegation on the ground that the plaintiff had not yet exhausted all domestic legal remedies. The second part of the allegation was - for the same reason - rejected as 'manifestly ill-founded'. The reason the ECHR gave for its rejection was that, in its judgment of 13 September 2013, the Danish Supreme Court had concluded that a plaintiff who had not been included in a naturalisation Bill can request the domestic courts to review whether obligations under international law have been breached and whether the

person in question therefore has a claim for damages or compensation. The ECtHR stated that this judicial review is a remedy which is sufficiently certain not only in theory but also in practice, and that this remedy was available to the plaintiff at the time when the case was filed with the Court. In this context, the court noted that if the plaintiff had brought his case before the domestic courts, the courts would have had jurisdiction to assess whether the refusal by Danish authorities to include him in a naturalisation Bill without providing any reasons amounted to a breach of Denmark's obligations under international law. In this case, the plaintiff would have been able to receive remediation in the form of damages or compensation. The Court noted that a ruling in favour of the plaintiff would be binding on the authorities, including the Ministry, if the plaintiff submitted a new request for naturalization. It is important to note that in the Nazari-case, the ECHR referred to the right to judicial review under section 63 of the Danish Constitution, even though the provision, according to the Danish Supreme Court, is not applicable in naturalisation cases, as these cases do not relate to exercising administrative authority.

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that the Government:

- in cooperation with the Parliamentary Naturalization Committee amend legislation and practice on naturalisation so refusal of exemption from the general requirements and rejection of an application on the basis of a security assessment are accompanied by a reasoning.
- take steps to protect the right to Danish citizenship for stateless persons born in Denmark, as a minimum by introducing an individual information scheme on the legal right to naturalisation so that parents are informed at the birth of a stateless child and that stateless persons born in Denmark receive information regarding their legal rights on reaching their 18th birthday.
- in cooperation with Parliamentary committees amend legislation on naturalisation, so that the requirements for naturalisation, including those relating to self-sufficiency, language and knowledge, and good character, do not exclude vulnerable groups including children, stateless persons and refugees from acquiring citizenship.
- take steps to amend legislation on naturalisation so that the acquisition of citizenship is made easier for all applicants who are either born in Denmark and/or have had stable and legal residence in Denmark during a specified period before their 18th birthday.
- set up a commission to prepare proposals for citizenship law reform.



## CHAPTER 17

# EDUCATION

### **HUMAN RIGHTS AND EDUCATION**

The right to education is one of the most important and most clearly defined social and economic human rights.

The right to education is stated both in the Danish Constitution and in a number of human rights conventions, and requires that the Government make basic education free and compulsory for all. The Danish Constitution states that all children of school age are entitled to free instruction in municipal primary and lower secondary school. It follows from both the Danish Constitution and international human rights law that parents are also free to make their own arrangements regarding the type of instruction that their children receive. The UN International Covenant on Economic, Social and Cultural Rights requires that instruction corresponding to the Danish technical, vocational and upper secondary levels must be accessible to all. Furthermore, states must ensure equal access to medium-cycle and long-cycle education programmes on the basis of capacity. The principle of non-discrimination applies to the right to education, and the Convention on the Rights of Persons with Disabilities sets particular requirements for

access to the education system for persons with disabilities based on principles of accessibility and inclusion.

The relevant knowledge, skills and attitudes related to human rights is crucial for the effective protection of human rights. It is important that citizens are able to claim their rights and to respect and uphold the rights of others, but it is also important that civil servants such as teachers, social workers and the police are familiar with human rights and can apply them in their daily work. A large number of resolutions, recommendations and general comments from the UN, the Council of Europe and international human rights bodies emphasise that human rights education is a prerequisite for realising human rights.<sup>246</sup>

The thematic report on 'Education' (in Danish) from the institute's Status Report 2015-16 contains more information on the right to education and human rights education.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Denmark continues to face a number of challenges when it comes to ensuring equal

opportunities and access to education. For example, it is crucial that persons with disabilities can enjoy accessible and inclusive schools and educational institutions.

The right to education covers both access to receiving instruction and that the instruction and learning environment otherwise lives up to human rights norms and principles.

Human rights education is important in order for children, young people and adults to understand and act on their rights and obligations. It is also important to ensure support for human rights amongst the population, politicians and civil servants who carry out essential educational and authority tasks on behalf of state, regions and municipalities. Good knowledge of human rights, for example among police, teachers, social workers and preschool teachers, can have a significant effect on promoting and protecting human rights within administrative practice.

A working group set up by the then Minister for Children, Education, and Gender Equality has prepared a report with recommendations on a new, improved pedagogical curriculum for daycare facilities. As something new, the working group has described the pedagogical foundation and framework for daycare facilities, wherein the UN Convention on the Rights of the Child plays a prominent role.

The 2014 school reform for primary and lower secondary as well as efforts to increase

inclusion are positive developments, but the changes have also posed several practical challenges. There is still considerable room for improvement with regard to ensuring the inclusion of pupils with disabilities in primary and lower secondary schools. A survey carried out by the Disabled Peoples Organisations Denmark shows there are still challenges with regard to social inclusion of pupils and that many children do not receive sufficient support.<sup>247</sup>

In November 2016 a political agreement was reached by Denmark's Liberal Party, the Social Democratic Party, the Danish People's Party, the Social-Liberal Party, the Socialist People's Party and the Conservatives on improving legislation against bullying at schools and educational institutions. Among other things, the parties plan on introducing the possibility for children and young people to file a complaint about their school if it fails to sufficiently intervene in cases of bullying. In November, the former Ministry for Children, Education and Gender Equality submitted a Bill for consultation, see below.

As part of the agreement reached in March 2016 between the Government and Local Government Denmark, the Danish Parliament passed a Bill in June 2016 which makes it possible for municipalities to establish special teaching programmes for refugee children outside the normal framework of municipal primary and lower secondary schools.<sup>248</sup> These special municipal offers will not be subject

to the same quality assurance requirements and due process as apply for other school pupils in Denmark. The institute was critical of the Bill and emphasised in its consultation response that the Danish Constitution requires teaching programmes to be comparable to what is provided within the context of municipal primary and lower secondary schools and warned that this legislation could lead to discrimination.

In 2016, the Danish Parliamentary Ombudsman expressed concern about the difficulties faced by primary and lower secondary schools with regard to legal authority to manage interventions against pupils. The Ombudsman stated that the rights of primary and lower secondary school pupils are often forgotten in serious cases where the school needs to resort to extreme action such as suspension or transfer to another school. The Ombudsman described that he often saw examples of schools failing to comply with important rules such as the duty to record, the hearing of parties and the requirement to provide justification to pupils and parents or guardians. The Ombudsman has contacted the Ministry in order to find a solution.<sup>249</sup>

In December 2016, Danish Parliament passed a Bill which aggregates the three Acts on upper secondary schools into one single Act. The Acts concern the higher commercial examination programme (hcx) and the higher technical examination programme (htx), gymnasium (stx) and the higher preparatory examination (hf). The change also gave these

upper secondary school programmes the same objects clause, wherein human rights play a central role. The objects clause states that teaching and activities at educational institutions must promote pupils' knowledge and respect of fundamental freedoms and human rights.<sup>250</sup>

It was revealed in September 2016 that Langkaer Gymnasium upper secondary school near Aarhus had decided to divide pupils into classes based on their ethnicity. It was subsequently discussed whether ethnicity had been a criterion in connection with the division or whether emphasis had solely been placed on academic and pedagogical considerations. The institute has decided to bring the matter before the Board of Equal Treatment since there is a need to clarify which criteria were actually involved in the division into classes and clarify when it is permissible for schools and upper secondary schools to make such a division. See also chapter 6 on 'Ethnic origin', regarding ethnic minorities and access to education.

Of all professional education programmes, police training programmes attracted most attention in 2016. Starting in January 2016, the police training and education programme was shortened to a two years programme. It is still not known whether and to what extent teaching of human rights will be part of the new basic training programme. A new six-month police cadet programme raises a number of fundamental questions regarding competence levels with regard to respecting the fundamental human rights of citizens.

## HUMAN RIGHTS IMPROVEMENTS

- In December 2016, fundamental freedoms and human rights were incorporated into the objectives of upper secondary schools. This means that statute now emphasises that all upper secondary school programmes, general, commercial and technical examination programmes, as well as the higher preparatory examination must extend and improve knowledge of and respect for human rights.<sup>251</sup>
- On 18 August 2016, the then Ministry of Children, Education and Gender Equality published a common action plan to prevent and combat bullying among children. It was prepared in cooperation with Save the Children Denmark, Danish Children's Welfare (Børns Vilkår) and the National Council for Children.
- In November 2016 the then Ministry of Children, Education and Gender Equality submitted a Bill for consultation which contained a proposal to establish a complaints body which children and parents can contact if their schools fail to sufficiently intervene in cases of bullying.<sup>252</sup> The draft also contains a proposal to extend protection against bullying so that it also applies to the most marginalised children and young people outside of municipal primary and lower secondary schools. This includes, children and young people in special needs schools, in day treatment services and child placement facilities, etc.

## NEW CHALLENGES

- In June 2016 the municipalities were given the option of establishing special teaching programmes for certain foreign children outside the framework of municipal primary and lower secondary schools. The special schooling options are targeted at refugee children.<sup>253</sup> These special municipal options will not be subject to the same requirements for quality assurance and due process as apply for other schools Denmark.
- In June 2016 the requirements for reception classes in municipal primary and lower secondary schools were weakened. This means that class sizes may increase and that the age range in reception classes can be extended from three to five grades.<sup>254</sup>
- From January 2016, police initial training was shortened to a two-year basic training course. It is still not known whether and to what extent teaching of human rights will be part of the new basic training course or police continuing and further education and training programmes.<sup>255</sup>
- In November 2016 it was decided that a six-month police cadet education programme would be established in March 2017. Police cadets will have some police authority and authority to use force and will wear a police uniform,<sup>256</sup> but the competence level the police cadets will have with regard to fundamental freedoms and human rights is unclear.

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). The review resulted in a number of recommendations in the area of education, including that Denmark:

- take greater steps to prevent and deal with bullying at schools and consider the introduction of appropriate monitoring of anti-bullying strategies in schools.<sup>257</sup>
- deal with inequality in the legal status of different minority languages and take steps to ensure that all children, regardless of their legal status, have access to the same quality of teaching as children in Danish municipal primary and lower secondary schools.<sup>258</sup>
- provide teaching in human rights for children in primary and lower secondary education and upper secondary education<sup>259</sup> and include teaching on diversity in the curricula for basic schools.<sup>260</sup>

## RECOMMENDATIONS

Among other things, the Danish Institute for Human Rights recommends that:

- the Ministry of Justice and the Danish National Police ensure that instruction in human rights is part of relevant themes in the new two-year police basic training programme and the new police cadet programme.
- professional education programmes improve instruction in human rights for professions that carry out essential caretaking, educational- and authority tasks, including teachers, social workers and pedagogical staff working with children, youth and disabled adults.<sup>261</sup>
- the Danish Ministry of Education ensure that the stronger focus on teaching human rights that has been incorporated in the common goals of municipal primary and lower secondary schools and in the objectives of upper secondary schools is followed up by teaching materials and competence development for teachers.

## CHAPTER 18

# EXPULSION AND EXTRADITION

### **HUMAN RIGHTS, EXPULSION AND EXTRADITION**

As a general rule, any state has the right to control entry into the state, and presence in the state, of aliens, including refugees. A foreigner who has a residence permit in Denmark may have that residence permit revoked if the person in question commits a crime or is considered a threat to the security of the state, etc. Foreign nationals may be expelled and extradited from Denmark provided doing so is not in violation of Denmark's human rights obligations. In contrast, Danish citizens have an inalienable right to live in Denmark. A Danish citizen cannot be expelled from Denmark.

Expelling a foreign national from Denmark to another country is a contravention of human rights if there is a real risk of him/her being exposed to torture, inhumane or degrading treatment or if the person risks the death penalty. In addition to the risk of such grave violations of human rights in the receiving country, an expulsion from Denmark also raises questions regarding Article 8 of the European Convention on Human Rights on the right to respect for private and family life in Denmark. You can read more about expulsion and extradition in the thematic report on 'Expulsion

and Extradition' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

In 2016 there was debate concerning the possibility of expelling foreign nationals who had committed crimes. The debate arose particularly due to the Supreme Court decision in May 2016 in the so-called Levakovic case, in which the Supreme Court confirmed that it would be a disproportionate infringement of Levakovic's right to private and family life pursuant to Article 8 of the ECHR to expel him to Croatia, the country of his citizenship.<sup>262</sup> Levakovic had been in Denmark since he was three years old, and had a total of 27 criminal convictions amounting to a 10-year prison sentence. He had never been employed or otherwise connected to the Danish labour market. His mother, some siblings and his four children lived in Denmark. He had sole custody of two minor children who had no contact with their mother. He had never been to Croatia and did not speak Croatian.

In its proportionality assessment, the Supreme Court took into account that his two minor children in Denmark with no contact with

their mother would have significantly more difficulty maintaining contact with their father after expulsion. The Supreme Court also took into account that he had very limited connection with Croatia (a country he had never visited), that his mother, some siblings and his four children lived in Denmark and that the prosecution service had not tried to have him expelled from Denmark previously.

In December 2016, the European Court of Human Rights (ECHR) delivered its ruling in a similar case. In the so-called FezFez case (Salem v. Denmark), the ECHR found that Denmark's expulsion of a criminal foreigner to Lebanon was not in violation of the right to family life, in spite of his strong personal and family-related connection to Denmark.<sup>263</sup> The case concerned Salem, a 47-year-old stateless Palestinian born in Lebanon. He arrived in Denmark at age 23 and was granted a residence permit due to his marriage to a Danish citizen of Lebanese origin. The couple had eight children (in 2010 they were aged 14, 13, 12, 10, 9, 7, 6 and 4). Salem had never been employed in either Denmark or Lebanon and was granted a disability pension in 2004. He spoke and understood Danish (and Arabic) but could neither write nor read Danish. He had no other family in Denmark, apart from his spouse and children, and his mother and sister lived in Lebanon. Salem and his spouse had been on holiday for extended periods of time in Lebanon on several occasions and had regular contact by telephone to family and acquaintances in Lebanon. He was member of a gang and had several convictions for violence and disturbance of the public order.

In 2010, the High Court of Eastern Denmark sentenced him to five years in prison for drug trafficking, violence and threats, blackmail, theft and possession of a weapon, etc. He was also conditionally expelled from Denmark. In 2011, the Danish Supreme Court decided to unconditionally expel Salem from Denmark permanently. The Supreme Court took into account that he had a central and leading role in exercising continuous, organised and gross drug crime, and that consideration for his spouse and children residing in Denmark did not call for any other result. The European Court of Human Rights acquitted Denmark. The Court noted that the Danish Supreme Court had diligently considered the contradicting views of the case and had included practice from the ECHR. The infringement of Salem's right to family life was supported by relevant and sufficient grounds.

The cases regarding FezFez and Levakovic illustrate that it is possible to expel criminal foreign nationals from Denmark, even though they have a very strong personal and family-related connection to Denmark, including minor children. The most important differences between the two cases were that Levakovic - who could not be expelled due to the right to family life in Article 8 - had not previously faced expulsion and had no personal or family-related connection to Croatia, his country of origin; a country he had never visited and whose language he could not speak.

The decision by the Supreme Court in the Levakovic case led to several political initiatives in the area of expulsion.

Firstly, the Aliens Act was amended in 2016 so the words “with certainty” were once again added to section 26(2) of the Aliens Act. This means that the immigration authorities and the judiciary have to expel criminal foreign nationals unless it can be said “with certainty” that the expulsion will be in violation of Denmark’s international obligations.

Secondly, the Government coalition agreement of 27 November 2016 stresses that the Government will intensify efforts to have expelled criminal foreign nationals and rejected asylum-seekers returned. Among other things, this will be achieved when, as a part of its Chairmanship of the Council of Europe in 2017, the Government will take a critical approach to the European Court of Human Rights’ dynamic style of interpretation which extends the scope of parts of the European Convention on Human Rights.

Thirdly, the Government coalition agreement states that the Government will look into the option of using diplomatic guarantees in connection with the expulsion of foreign nationals on tolerated stay (leave to remain on humanitarian grounds). A diplomatic guarantee is an agreement with the receiving country that the foreigner being expelled will not be subjected to torture or other inhuman treatment. The guarantee often contains an agreement to allow representatives from the embassy or consulate representing the expelling country to have regular access to the expelled person in the receiving country to ensure that the person in question has not been harmed.

Another important issue in 2016 was conditions for foreign nationals under tolerated stay (leave to remain on humanitarian grounds) who had residence and reporting obligations at Kærshovedgård departure centre. In November 2016, the Government submitted a Bill to amend the Aliens Act in order to strengthen supervision of foreign nationals under tolerated stay and expelled criminals. The Bill proposes the introduction of a new reporting obligation, as well as the tightening of sanctions for breaches of the imposed obligations, and the establishment of the right to serve a prison sentence with an electronic ankle tag or special access to pre-trial detention. The Bill is expected to undergo a second reading in February 2017.

In 2016, two court proceedings were commenced regarding foreign nationals under tolerated stay at Kærshovedgård departure centre. It is among other things claimed that the persons in question are being detained in violation of Article 5 of the European Convention on Human Rights.

## NEW CHALLENGES

- The proposed amendment to the Aliens Act suggests further restrictions on the terms and conditions for foreign nationals under tolerated stay with residence and reporting obligations. The institute believes that there is significant risk that the proposed restrictions, in combination with earlier restrictions, could develop into a violation of Denmark’s human



rights obligations. This applies to the right to personal liberty, the right to the freedom of movement, the right to privacy and the right to not be subjected to inhuman or degrading treatment.

- The Government will explore the option of using diplomatic guarantees. A state may not expel a person to another state if there is a real risk that the person will be subjected to torture, inhuman or degrading treatment in the receiving state. International human rights bodies have therefore responded very critically to the use of such guarantees in circumstances where there are considerable reasons to assume that the person will be subjected to torture in the receiving state.

#### **DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016**

- In the so-called FezFez case (Salem v. Denmark) the European Court of Human Rights - just as the Danish Supreme Court - on 1 December 2016 found that Denmark's expulsion of a criminal foreign national to Lebanon was not in violation of Article 8 of the European Convention on Human Rights, despite his strong personal and family-related connection to Denmark.<sup>264</sup>

#### **RECOMMENDATIONS**

Among other things, the Danish Institute for Human Rights recommends that the Government:

- continue to show a high level of prudence with regard to using diplomatic guarantees and, if such guarantees are exercised, carefully include and assess the criteria for use of such guarantees stipulated by the European Court of Human Rights.
- reconsider the regulations governing residence and reporting obligations for foreign nationals on tolerated stay, including the Bill introduced in November 2016 which contains stricter requirements for these individuals. This should be done in order to ensure that conditions for these foreign nationals are in accordance with Denmark's human rights obligations.

We also recommend that Danish authorities:

- regularly make decisions based on the specifics of a case as to whether continuing to impose residence and reporting obligations on a foreigner under tolerated stay would be contrary to the prohibition on inhuman and degrading treatment and the right to a private life stipulated in the European Convention on Human Rights.

# UNREGISTERED MIGRANTS

### **HUMAN RIGHTS OF UNREGISTERED MIGRANTS**

Unregistered migrants are foreign nationals who are staying in Denmark without the knowledge or acceptance of the Danish authorities. In terms of human rights, this is an area in which different general legal principles collide – on the one hand the principle of universal and inalienable human rights of the individual and on the other hand, the international law principle allowing a state the sovereign prerogative to regulate the presence of foreign nationals in its territory.

This chapter relates to human rights issues that arise when unregistered migrants stay in Denmark, regardless of whether or not they have the right to reside. You can read more about the rights of unregistered migrants in the thematic report on 'Unregistered migrants' (in Danish) from the institute's 2015-16 status report and in the institute's report from 2016 on the health rights of unregistered migrants.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

Unregistered migrants are not known or registered by the authorities and therefore no

one knows how many unregistered migrants are living in Denmark. Figures from 2014 estimate that between 20,000 and 50,000 people live in Denmark as unregistered migrants.<sup>265</sup>

Unregistered migrants can have very different grounds for residence. Some are entitled to stay in Denmark for a shorter or longer period, while others have no legal right to reside in Denmark at all. However, common for them all is that their residency status only provides them with limited rights under Danish legislation and/or limited possibilities to invoke these rights because of the risk of registration, detention and deportation. The weak legal position of unregistered migrants makes them vulnerable with regard to securing their basic economic and social rights and needs, as well as vulnerable to exploitation and abuse, including human trafficking etc.

In 2016, the institute published a survey on the health rights of unregistered migrants in Denmark. Based on this survey, the institute concludes that the current practice regarding access to health services for unregistered pregnant women and children is not in accordance with Denmark's human rights

obligation, particular the Convention of the Rights of the Child. However, the Government rejected the need to amend health legislation in Denmark. The Government referred to a 2014 analysis by the former Ministry of Health and Prevention, which concluded that current legislation and practice was in accordance with Denmark's international obligations.<sup>266</sup> The institute does not agree with this assessment.

In 2016, the debate on unregistered migrants centred on questions regarding the number of unregistered migrants traveling to and residing in Europe and Denmark as a consequence of the refugee crisis and on the presence of poor and homeless foreign nationals with a right of residence under EU law.

On the latter, focus has centred on the disruption to public order that can be caused by the presence of homeless foreign nationals with a right of residence under EU law. During the summer of 2016, several media outlets reported on problems that camps of homeless foreign nationals in public spaces caused insecurity and disorder. The camps were referred to as "Roma camps". Based on a court decision from 2014, the police claimed that they were not authorised to clear camps on public streets, they could only clear camps in green areas. In September, the police said that they had cleared a total of 40 camps in 2016.<sup>267</sup> The political parties behind the Finance Act decided to criminalise such camps and introduce the option of a zone ban in connection with repeated offences. In December, the Ministry

of Justice submitted a proposed amending executive order for public consultation. The amendment would criminalise staying in the camps via the Public Order Executive Order. The institute – and several other participants in the consultation process – criticised that the prohibition was only vaguely defined and warned against criminalising homelessness.<sup>268</sup> The institute also criticised the use of the term "Roma camps", which associates a certain conduct with a specific ethnic group, and warned that prohibition against a certain ethnic group may lead to discrimination and further stigmatisation.

## HUMAN RIGHTS IMPROVEMENTS

- In 2015, the City of Copenhagen, in cooperation with volunteer organisations, launched a special 'transit programme' to ensure measures to help particularly vulnerable migrants. The 2016 budget agreement for the City of Copenhagen allocated DKK 2.7 million to the project annually for four years. The volunteer organisations participating in the programme will offer counselling and guidance, care, drop-in centres, medical services and shelters for vulnerable migrants.

## NEW CHALLENGES

- In December 2016, the Ministry of Justice submitted a draft proposal to consultation on amending the Public Order Executive Order. The amendment would criminalise establishing and staying in camps and extend the option of issuing zone bans.

## SURVEYS BY INTERNATIONAL BODIES

- In 2016, the European Union Agency for Fundamental Rights published a study on the severe exploitation of workers who migrate within or to the European Union. The Agency made a number of recommendations to prohibit and combat the exploitation of workers and to protect victims of severe exploitation of labour.<sup>269</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government take steps to:

- prepare an overall policy in relation to unregistered migrants in accordance with human rights standards.
- stipulate regulations to ensure that unregistered women are entitled to examination and treatment during pregnancy, childbirth and maternity as well as access to abortion.
- specify in health regulation that unregistered children are entitled to the same health services as other children in Denmark, including the right to child health examinations and immunization programmes, etc.
- ensure emergency accommodation for homeless unregistered migrants all year round.

We also recommend that the Ministry of Justice and the National Police:

- cease the practice of issuing 'on-the-spot fines' to foreign nationals.

## CHAPTER 20

# ARMED CONFLICT

### **HUMAN RIGHTS AND ARMED CONFLICT**

Armed conflict is primarily regulated by the four Geneva Conventions from 1949 and the so-called Hague Conventions. The Geneva Conventions contain regulations on the protection of wartime prisoners and civilians. The Hague Conventions regulate the weapons, resources and methods which may be legally used during armed conflict. In 1977, two additional protocols were added to the Geneva Conventions. The protocols specified and expanded protections during armed conflict. These regulations are known as humanitarian international law.

In addition to these regulations, human rights also apply during armed conflict. This has been established by a number of international courts and committees and recognised by most states. Human rights often provide a better protection of individuals than regulation in humanitarian international law, for example with regard to the right to life and the right to freedom. You can read more about the application of human rights during armed conflict in the thematic report on 'Armed conflict' (in Danish) from the institute's Status Report 2015-16.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

In recent years, Denmark has, to considerable extent, participated in international military operations - both in UN controlled operations and operations authorised by the UN, which included situations of armed conflict.

During spring 2016, a majority in Danish Parliament decided to deploy Danish special forces and F16-combat aircraft against Islamic State in Syria and Iraq. Denmark's active security and foreign policy is also reflected in the government coalition agreement from November 2016. It states that:

"The threats we are facing today are significantly different to the threats we were facing a few years ago. From terrorism to fragile states and a Russia which is creating renewed insecurity in Europe. At the same time, Denmark is facing significant challenges in the area of cyber security and in the Arctic. Based on this, the Government will take the substantial step of allocating more resources to Defence Command Denmark in the defence agreement which will cover the period after 2017. (...) Denmark must continue to actively

contribute to international military operations and stabilisation tasks in order to be a part of increasing security and maximising the effectiveness of Defence Command Denmark and its ability to work with our allies.”<sup>270</sup>

In September 2016, the Ministry of Defence and Defence Command Denmark published the first Danish military manual on international law for Danish armed forces participating in international military operations.<sup>271</sup> The more than 600 page long manual was completed after long-term efforts by people both inside and outside Defence Command Denmark, including with input from the Danish Institute for Human Rights. The manual describes the overall framework of international law applicable in armed conflict and it will provide the planning framework for Defence Command Denmark’s participation in international operations and will function as a textbook for, in particular, Defence Command Denmark’s planning staff, managers and military lawyers.

In May 2016, the Government and a majority of parties in Parliament decided to launch an impartial historic investigation into the basis and political reasons for Denmark’s military participation in Kosovo, Iraq and Afghanistan.<sup>272</sup> However, compared to the previous Iraq commission, the investigation will not clarify the international law questions that arose during the Danish military operations, including questions regarding the treatment and transfer of prisoners.

On 22 August 2016, the Eastern High Court of Denmark decided that the case brought against the Ministry of Defence by 23 Iraqis was not covered by statutes of limitations and could be examined by the court. The 23 Iraqis claimed that in 2004 they were subjected to offensive and illegal treatment while being detained by Danish forces in Iraq and when being handed over to Iraqi police forces, who allegedly tortured them and subjected them to other inhuman or degrading treatment. The case is expected to start in November 2017.

## HUMAN RIGHTS IMPROVEMENTS

- The new Danish Military Manual is a significant improvement. The manual addresses and clarifies several international law questions which have arisen over the past few years in connection with Denmark’s active international military efforts, including regarding Denmark’s human rights obligations during armed conflicts as well as concerning detention and transfer of prisoners. It is very positive that such legal clarification has been achieved.

## NEW CHALLENGES

- The completion of the new Danish military manual has clarified the international law obligations of the Danish forces. The question

now is how to ensure compliance with the manual's regulations in practice. This includes whether the existing mechanisms currently in place can ensure effective compliance with the military manual. In 2015, Defence Command Denmark had 9 permanent military legal advisors who are organisationally attached to the Military Prosecution Service. A military legal advisor who is deployed alongside Danish force contributions and during concrete military operations, shall advise the military commanders on Denmark's international law obligations. The Danish Defence's Legal Advisory Services have been in place since 1997. Military legal advisors play a key role in ensuring that Denmark complies with its international law obligations in practice. That international law is converted into concrete action.

- During international military operations, it is normal for Danish forces to work together with forces from other countries, including coalition forces and forces from the host country. This is the case in Iraq where Danish forces have trained and carried out joint operations with both British and Iraqi forces. It is still unclear what obligations Denmark is under during such joint operations, and how to best ensure that forces that Denmark trains or cooperates with comply with international law.

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that Defence Command Denmark:

- carries out an evaluation of the Danish Defence's Legal Advisory Services in order to ensure that the individual military legal advisor has the required framework and working conditions to ensure an effective implementation of and compliance with the new Danish military manual.
- devise a due diligence policy for use when providing aid to and collaborating with the armed forces of other countries. Inspiration can be drawn from the UN's 'Human Rights Due Diligence Policy on United Nations support to non-United Nations security forces' and the EU's forthcoming 'Due Diligence Policy'. A policy which states under which conditions Danish forces can support or cooperate with another state's forces, and how the said cooperation should be monitored and possibly discontinued if necessary.

## CHAPTER 21

# FREEDOM OF EXPRESSION AND ASSEMBLY

### **FREEDOM OF EXPRESSION AND ASSEMBLY**

The rights to freedom of expression and assembly are two fundamental civil and political rights in any democratic society.

These rights are crucial for the individual as they secure individuals and groups in society the right to express their opinions and receive information from others. These rights are also vital for the fundamental development and self-expression of all individuals.

The rights to freedom of expression and assembly are also of great importance to society. Knowledge and information are not only important for the individuals who receive the information but also for society as a whole. The democratic process requires free political debate on relevant societal issues which allows citizens to freely choose their political standpoint. Freedom of expression and information ensures that all citizens, including politicians, public employees etc., have freedom of expression and it also accords the media an important role with regard to communicating information and opinions, etc. Freedom of assembly is closely related

to both freedom of expression and freedom of association as it ensures that like-minded citizens can gather in order to influence the political process, including the way in which society is organised.

However, freedom of expression and assembly are not absolute rights and may be restricted in order to accommodate other significant matters of public interest or the rights of others. For example, violent assemblies, incitement to violence, hate and racist speech are not protected.

Rights to freedom of expression and assembly are protected by a number of international human rights conventions, including the European Convention on Human Rights, the UN International Covenant on Civil and Political Rights and sections 77 and 79 in the Danish Constitution. You can read more about the freedom of expression and assembly in the thematic report on 'Freedom of expression and assembly' (in Danish) from the institute's Status Report 2015-16.



## DEVELOPMENTS IN HUMAN RIGHTS IN 2016

The TV2 programme series 'Moskeerne bag sløret' (the mosques behind the veil) presumed to give insight into how some Muslim religious preachers spread propaganda about values and rules that are in direct contradiction to Danish values and laws. In May, the TV programme resulted in the Government, the Social Democrats, the Danish People's Party and the Conservatives, entering into a political agreement on initiatives aimed at religious preachers who seek to undermine Danish laws and values and who support parallel conceptions of law. In the basis of this agreement, the Danish Parliament adopted a number of Bills in December 2016, including two Bills that, among other things, will restrict freedom of expression.

One of the Bills makes it a criminal offense to express approval of certain criminal acts in religious teaching.<sup>273</sup> This Bill means that, in the future, it will be a criminal offense to explicitly condone terror, murder, rape, acts of violence, incest, paedophilia, deprivation of liberty, coercion and polygamy in connection with religious teaching. This criminalisation applies regardless of whether the statements are made in private or in public and applies to both religious preachers and others who make statements in the context of religious teaching.<sup>274</sup> In its legal brief to the draft Bill, the institute expressed a number of concerns regarding the Bill.

The second Bill amends the Danish Aliens Act, and it gives Danish authorities the authority to

register foreign nationals in a national sanction list if the foreign national has behaved in a manner (including in actions or statements) which gives reason to believe that the person in question might pose a threat to public order in Denmark.<sup>275</sup> The Bill only applies to religious preachers and others who propagate a religion or faith. The statements or actions will be covered by the provision, regardless of whether they are made in private or public.<sup>276</sup> The institute also expressed a number of concerns regarding this Bill in its legal brief.

A case regarding a glossy Danish magazine (the so-called 'SE og HØR case') has led to debate regarding the line between media coverage and privacy. As a consequence of the case, the November 2016 Government coalition agreement announced a tougher stance towards media that violate the right to privacy or make defamatory accusations etc.<sup>277</sup>

In October 2016, following a general investigation, the Danish Parliamentary Ombudsman concluded that the introduction of the so-called servicing of the minister rule in the Access to Public Administration Files Act has in practice led to significant restrictions on the right of access to case materials. Furthermore, in practice access is often only given to documents and information that are unlikely to be of any particular interest to the public.<sup>278</sup> The November 2016 Government coalition agreement states that the Government will relax the servicing of the minister rule when the Access to Public Administration Files Act is evaluated in 2017.

In September 2015, the Independent Police Complaints Authority launched an investigation into the so-called Tibet-case, after the High Court of Eastern Denmark issued a ruling regarding the detention of a number of demonstrators by the police during a Chinese state visit in 2012. The decision to launch an investigation of the case was based on a complaint filed by the Copenhagen Police Commissioner regarding the issue of whether or not Copenhagen Police personnel might have committed criminal offences, including providing incorrect information during the trial. The Independent Police Complaints Authority then received a complaint from the lawyer representing the injured parties in the case that two police officers had given false depositions while the case was being heard by Copenhagen City Court. In October 2016, the investigation of the case by the Independent Police Complaints Authority led to the questioning and charging of the two police officers who are under suspicion of giving false testimony in court when they appeared as witnesses during the Tibet case.<sup>279</sup> In October 2015, the uncertainty regarding the possible role of other public authorities in the planning of the measures carried out by the police compelled the then Minister for Justice to establish a commission to investigate the case. In November 2016, the Tibet Commission began questioning police personnel and, since then, Ministers and civil servants from several ministries have also been issued statements to the Commission.<sup>280</sup> One of the tasks of the Commission is to investigate the reason for the actions of the police in connection with the Chinese state visit to Copenhagen in 2012

and during two subsequent Chinese visits to Copenhagen in 2013 and 2014.

During 2016, a number of cases have led to debate on how to ensure the freedom of expression for public employees. For example, it was revealed during 2016 that, during a presentation to employees at a Defence Command Denmark barrack, the Chief of Defence said that he would dismiss employees who made disloyal statements regarding Defence Command Denmark on social media. The Ombudsman stated that the statements made by the Chief of Defence was not an accurate description of the statutory rights of employees under current regulations and the principles regarding the freedom of expression for public employees. Most importantly, there is a serious risk that the statements could make employees uncertain of their right to make critical statements in their own name about Defence Command Denmark.<sup>281</sup>

In another case in December 2015, an upper secondary school teacher sent an email to members of the Finance Committee of the Danish Parliament criticising the management at his workplace for financial arrangements in connection with a construction project. This critique of the school led to the dismissal of the teacher due to 'intentionally disloyal conduct'. The case received substantial media coverage. This resulted in the management sending a letter to all employees at the school in which the management stated that, if teachers expressed their disagreement with the school's financial arrangements in public, this could

be in contravention of the employees' duty of loyalty to the school. The Ombudsman found that the upper secondary school teacher was within his rights to criticize his employer in the email to members of the Finance Committee of the Danish Parliament. The Ombudsman also found that the information letter sent by the management was not correct.

In May 2016, the High Court of Eastern Denmark reached a principal decision on the scope for application of the so-called racism provision of Section 266b of the Criminal Code. The Danish High Court confirmed that the provision did not cover insulting, jibing, etc. a group of people because of their ideology.<sup>282</sup> The Danish High Court based its decision on the fact that the statements under examination in the case were directed at Islamic ideology and Islamists but not at Muslims in general.

## HUMAN RIGHTS IMPROVEMENTS

- During autumn 2016, the Government decided to enhance information measures on the freedom of expression for public employees. The decision was based on the 2015 committee report on the freedom of expression of public employees and the whistleblower schemes.<sup>283</sup> Among other things, the committee report resulted in the Ministry of Justice publishing in 2016 a revised version of the previous 2006 Ministry guidelines on the freedom of expression for public employees.<sup>284</sup> The purpose of the guidelines is to make both public employees and their managers more aware of their right to voice their opinions. The Ministry of Justice has also initiated cooperation with the Modernization Agency to prepare an e-learning course in 2017 for all public employees.<sup>285</sup>
- The Government coalition agreement from November 2016 states that the Government will establish a commission to assess the framework and general conditions of freedom of expression in Denmark. Furthermore, the Government coalition agreement states that freedom of expression is a fundamental prerequisite for a well-functioning democracy and for the development of society and individuals. It also states that freedom of expression is fundamental to a democratic form of Government where voters can make their choice based on free political debate in which ideas and opinions can be voiced and argued. The commission has not yet been set up.
- The Government coalition agreement states that when the Access to Public Administration Files Act is evaluated in 2017, the Government will relax the protection of the internal and political decision-making process under the servicing of the minister rule.<sup>286</sup>
- During September 2016, the Ministry of Defence announced that it would consider initiatives to promote freedom of expression

for employees at Defence Command Denmark. At the same time, the Ministry of Defence announced that work was underway to prepare guidelines for employees working for the Ministry of Defence.<sup>287</sup>

## NEW CHALLENGES

- An analysis from 2016, prepared by the think-tank 'Justitia', shows that there has generally been a pronounced increase in the annual number of detentions under the authority of the Police Act, including in connection with demonstrations and gatherings. Based on the analysis, among other things Justitia concluded that the Police Act does not provide the necessary protection of freedoms for citizens, including freedom of expression and the freedom of assembly.<sup>288</sup>
- In 2016, the Danish Parliament adopted two Bills limiting freedom of expression, as part of its measures against religious preachers who seek to undermine Danish laws and values and who support parallel conceptions of law.
- During 2016, a number of cases from Government and municipal institutions have showed the need to clarify regulations regarding public employees' freedom of expression, including the scope of an employee's duty of loyalty to their employer.

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). Denmark was recommended to decriminalise libel and slander and allow such cases to be treated solely as a civil law matter.

In several publications in 2016, the European Union Agency for Fundamental Rights (FRA) has focused on freedom of expression and its limits:

- In November 2016, FRA published a report on incitement to discrimination, hatred or violence against specific groups both in media content as well as in political discourse.<sup>289</sup> Denmark is mentioned as one of the countries in which, during the period from 1 January 2014 to 1 September 2016, there were cases on incitement to hatred against Muslim, Jewish and Christian communities. The report specifically refers to the Danish High Court's 2015 decision wherein a former Member of Parliament, Mogens Camre, was found guilty of violating the racism provision in Section 266b of the Criminal Code.
- FRA published another report in November 2016 on threats and violence against journalists and other media actors in EU Member States. The report contains a section about the violent or threatening behaviour

or reprisals that journalists may experience when carrying out their work. In connection with this, the report refers to the Danish case regarding a photographer for the newspaper Politiken who, in September 2015, was arrested by police after disobeying their orders to leave the motorway and instead continuing to photograph refugees walking along the motorway.<sup>290</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- launch additional initiatives with the specific aim of raising awareness of regulation on freedom of expression for public employees, including in particular the scope of and limits on an employee's duty of loyalty.
- take steps to legislate on shared burden of proof and increased compensation in the event of unfair dismissal in cases regarding freedom of expression for public employees.
- consider testing whistleblower schemes in selected areas.

We also recommend that the Ministry of Justice and the National Police:

- ensure greater safeguards on freedom of expression and assembly in connection with political statements and public gatherings.

## CHAPTER 22

# THE ELDERLY

### **HUMAN RIGHTS OF THE ELDERLY**

Human rights protect every individual and this, of course, includes the elderly. Most human rights conventions have a non-discrimination provision regarding those who are covered by the rights in the convention. However, age is rarely specifically mentioned as grounds for discrimination. Under the European Union, however, age discrimination is specifically prohibited. The UN has established a working group to explore developing a convention on the rights of the elderly. However, work is progressing slowly.

In 2014, the Council of Europe adopted a recommendation to Member States, which included a number of principles and goals for the well-being and care of the elderly.<sup>291</sup>

Many elderly live active and independent lives. The UN's Convention on the Rights of Persons with Disabilities, however, is an important instrument for the elderly who suffer from physical or psychological disabilities. The Convention defines its target group as persons with long-term physical, mental, sensory or motoric impairments. This definition includes elderly people who suffer from dementia, for example.

### **DEVELOPMENTS IN HUMAN RIGHTS IN 2016**

In February 2016, the Danish Parliament agreed to increase its requirement that all municipalities prepare a 'dignity policy' for elderly care. This means that municipal councils must hereafter adopt a dignity policy for municipal elderly care during the first year of each election period. Municipal senior citizens councils must be involved in preparation of the policy. The dignity policy should describe how elderly care will support quality of life, self-determination and the quality of work with the elderly.<sup>292</sup>

The former Liberal Party government and the three other parties behind the 2016 Finance Act (the Danish People's Party, Liberal Alliance and the Conservative People's Party) entered into an agreement in June regarding the allocation of DKK 1.2 billion in the period 2016 - 2019 to implement a national action plan to support elderly medical patients. The first step will be to immediately increase efforts to reduce overcrowding at hospitals so fewer patients risk having to lie in their beds in hallways. The second step will improve efforts before and after hospital admission and strengthen coordination between the hospital and home

nursing services, rehabilitation, general practitioners, etc.<sup>293</sup>

DKK 2 billion was allocated to elderly care in the subsequent Finance Act over the following four years 2017-2020. Of this amount, DKK 380 million annually, approximately DKK 1.5 billion in total, will be allocated to a scheme in which the elderly in nursing homes will be given half an hour extra help each week and they can choose to use this help as they wish. Furthermore, DKK 450 million has been earmarked to renovate, establish or re-establish kitchens in nursing homes.<sup>294</sup>

The Government, Local Government Denmark, Danish Regions and the Danish Medical Association have entered into an agreement offering residents at nursing homes the option to register with a physician who is permanently attached to the individual nursing home. Funding has been allocated from the 2015 public pool of funds. DKK 100 million has been earmarked for the period 2016-2019. The agreement now needs to be implemented locally.<sup>295</sup>

Approximately 90,000 people in Denmark have some type of dementia,<sup>296</sup> and dementia has been one of the major focus areas for the Government in 2016. The Government and the parties behind the public pool of funds have allocated DKK 470 million over four years for initiatives in a new national action plan for dementia and DKK 50 million to make existing care homes more suitable for dementia care.

In December 2016, an agreement on a national action plan on dementia up to 2025 was entered into by almost all parties in the Danish Parliament.<sup>297</sup> The agreement allocates the DKK 470 million to specific initiatives within the following focus areas:

1. Early discovery and quality of diagnosis and treatment.
2. Improved quality of care and rehabilitation.
3. Support for persons suffering from dementia and their relatives.
4. Dementia-friendly housing and -communities.
5. Improved knowledge and competences.

The Danish Health Authority has published a draft national action plan 2025: 'Livet med demens – styrket kvalitet i indsatsen' (Living with dementia – strengthened quality of measures).<sup>298</sup>

Reducing the use of antipsychotic medication among people with dementia is a focal point in the draft national action plan. According to the action plan, the use of antipsychotic medication should be reduced by 50 percent by 2025.<sup>299</sup> In December 2016, the Government and the parties behind the public pool of funds agreed to launch initiatives to monitor the use of antipsychotic medication.<sup>300</sup>

Furthermore, the Danish Health Authority has launched a project which will run until 2018, to test a new model for residential care for people suffering from dementia. The model is to increase the quality of life for residents.<sup>301</sup>

The Ministry for Children and Social Affairs is revising its guidelines on the use of force and other interferences in the right of self-determination of adults. In connection with this, focus is on making the guidelines clearer and easier to work with for case officers and staff at care facilities.<sup>302</sup>

On 19 December 2016, the National Board of Social Services published new and simplified forms for registering and reporting the use of force on adults. The forms will replace the previous templates, which were difficult to use in practice. The aim of the new forms is, among other things, to reduce the use of force.

In 2016, the institute prepared a report on treatment for permanently legally incapable patients with somatic diseases. So far, it has not been allowed to give medical treatment to permanently legally incapacitated patients who refuse the treatment. This means that some patients do not receive the necessary medical treatment or are given such treatment in violation of the legislation. The report *Behandling med tvang? 'Somatisk sygdom hos behandlingsafvisende inhabile'* examines practices and provides recommendations on how Denmark can promote the human rights of the group of patients concerned.<sup>303</sup>

The Minister of Health has, 30 March 2017, presented a Bill in parliament on the use of force in the treatment of permanently incapable patients with somatic diseases.<sup>304</sup>

The Government, regions and municipalities published a new public-sector digital strategy for 2016-20. It has three overall objectives: The objective of digitisation is to improve services for citizens, increase growth and ensure confidence and trust between citizens and the public sector. In connection with the latter objective, the strategy places emphasis on Denmark being “an inclusive society in which everyone can participate, both those who are digitally ready and those who cannot use the digital solutions or who do not have access to them”.<sup>305</sup>

Compared to the population in general, a disproportionate number of citizens over the age of 65 still do not have internet access at home. While 93 percent of all citizens between the ages of 16 and 89 have access to the internet at home, that number falls to 79 percent for people between 65 and 89. This is a 20 percent increase on five years ago, so digitisation is progressing rapidly, even among older citizens. Statistics Denmark confirms that there are still around 215,000 people between the ages of 65 and 89 without access to the internet.<sup>306</sup>

## HUMAN RIGHTS IMPROVEMENTS

- The Danish Parliament has agreed that the municipalities will prepare a “dignity policy” for elderly care; a policy that builds on principles which are in accordance with international recommendations, including those from the Council of Europe.



- The Danish Parliament, the Government and relevant ministries and agencies are all focusing on making Denmark a more dementia-friendly society and significant funds have been allocated for this purpose.
- The Digital Strategy 2016-2020 will work towards ensuring that citizens may grant digital power of attorney to another trusted party if they themselves are unable to use digital solutions.

## NEW CHALLENGES

- There is focus on revising the Ministry of Children and Social Affairs' guidelines to municipalities on the use of force and other interferences in the right of self-determination of adults. However, focus has not been on studying whether the more fundamental rules in the Social Services Act on use of force sufficiently ensure the human rights of people who suffer from dementia.
- The Digital Strategy 2016-2020 entails compulsory online self-service for all citizens in a wide number of areas. Generally, exemption may be sought separately for each area covered by mandatory digital contact, and it remains with the authorities to decide who may be exempted from this regulation.

## DANISH ISSUES EXAMINED BY INTERNATIONAL BODIES IN 2016

- In January 2016, Denmark was reviewed by the UN Human Rights Council as part of the Universal Periodic Review (UPR). It was recommended that Denmark join the anti-discrimination treaty Protocol no. 12 of the European Convention on Human Rights. The Government rejected this recommendation on the grounds that such a general prohibition would shift power from the Danish Parliament to the judiciary.<sup>307</sup>
- In June 2016, Denmark was reviewed by the UN Human Rights Committee, which monitors implementation by State parties of the UN International Covenant on Civil and Political Rights. Among other things, the committee recommended that Denmark broaden its anti-discrimination legislation to cover all areas of life.<sup>308</sup>

## RECOMMENDATIONS

The Danish Institute for Human Rights recommends that the Government:

- take the initiative to amend the Social Services Act to ensure that care staff do not encounter situations in which they have to choose between, on the one hand, failing to provide persons suffering from dementia and others with severe long-term incapacity the necessary care and, on the other, providing such care without the proper legal basis.
- ensure that application of the regulations in the Social Services Act on duty of care, alarm systems etc. and detention at a nursing home is adequate to ensure the right to personal health and safety for persons with dementia.
- enable a general exemption from digital communication for vulnerable elderly people.

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