

Council of Europe contribution for the 24th UPR session regarding Denmark

Prevention of torture

2012 ad hoc visit

On 22 January 2013, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit from 25 to 27 September 2012 to Greenland, the semi-autonomous entity within the Kingdom of Denmark.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.¹ The CPT report as well as the Danish Government's response made public on 3 July 2013 are attached below.



Denmark-Greenland
report 2012.pdf



Denmark-Greenland
response 2012.pdf

2014 periodic visit

On 17 September 2014, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Denmark from 4 to 13 February 2014.²

In the course of the visit, the CPT's delegation focused on the treatment of inmates in several prison establishments, as well as of young persons held in two secure institutions for juveniles. In addition, three psychiatric establishments were visited, with a particular focus on the use of coercive measures on patients. The delegation also visited several police stations and the Ellebæk immigration detention centre.

In relation to prison matters, no allegations of deliberate physical ill-treatment by prison staff were received and the report notes positively the downward trend in the resort to solitary confinement of remand prisoners by court order. That said, the CPT reiterates its recommendation to reinforce the safeguards surrounding the application of judicial restrictions on remand prisoners' contacts with the outside world. There is also a need to ensure that all inmates are properly interviewed and physically examined by health-care staff within 24 hours of their admission to prison. The CPT is again critical of the application of the measure of immobilisation in prisons and recommends that steps be taken to ensure that the principles and minimum safeguards set out by the Committee are applied rigorously. The report further refers to cultural and linguistic communication problems between foreign national prisoners and staff which could easily deteriorate into conflictual behaviour and result in the application of force by staff; the CPT recommends enhanced training of prison officers, particularly as regards inter-personal communication skills. At Ringe State Prison, the CPT was concerned about inter-prisoner violence, intimidation and sexual exploitation and recommends inter alia that a comprehensive anti-bullying strategy be put in place.

In respect of Grenen and Sølager Secure Institutions for Juveniles, the report comments favourably on the wide range of structured activities offered, the supportive pedagogical approach and the accommodation of juveniles in well-staffed small living units. Nevertheless, the

¹ pp. 29-34.

² A summary of the report appears on pp. 6-8.

Committee remains concerned that the majority of juveniles on remand had judicial restrictions placed on their contacts with the outside world, often for extensive periods. The report is also critical of the practice found at Grenen, where juveniles were usually confined to their rooms upon admission to the institution for up to a week or longer before being permitted to take outdoor exercise and to associate with the rest of the group.

As regards psychiatry, the report notes positively the constructive attitude and the overall acknowledgement, both by the central authorities and the staff in the hospitals visited, of the need to reduce the resort to physical immobilisation of patients to a bed (fiksering) in psychiatric hospitals. However, the CPT remains seriously concerned that resort to immobilisation, and notably immobilisation lasting longer than 48 hours, had reached all-time peaks in 2012 and 2013. It considers that this and other shortcomings found in the three psychiatric hospitals visited are at least partly due to low staffing levels and recommends reinforcing notably the number of nurses. The Committee further examined the special coercive measure of "walking-restraint" at the Secure Department of Nykøbing Sjælland Psychiatric Hospital and its relationship to the use of mechanical restraint and isolation measures.

The report also makes a number of recommendations in relation to police matters and Ellebæk immigration detention centre and comments on the recently established Police Complaints Authority.

The CPT report as well as the Danish Government's response made public on 3 March 2015 are attached below.



Denmark report
2014.pdf



Denmark response
2014.pdf

Council of Europe Commissioner for Human Rights

On 24 March 2014, the Commissioner for Human Rights, Nils Muižnieks released the report on his visit to Denmark from 19 to 21 November 2013.³

The Commissioner's report focuses on following major human rights issues:

- asylum-seekers and immigrants⁴
- persons with disabilities⁵

Upon releasing his report, Nils Muižnieks said that "The best interests of the child are not always upheld in the context of asylum and immigration in Denmark. The Danish authorities should improve the protection they provide to migrant children, by ensuring full respect of their rights"

In spite of positive changes introduced in 2012, further progress is needed, in particular to ensure that family reunification proceedings involving children are dealt with in a positive and humane manner. "This includes extending the right to family reunification to children older than 14, so as to comply with the definition of a child provided in the UN Convention on the Rights of the Child". The Commissioner also stressed that the best interests of the child should prevail over their integration potential, or the integration potential of their parents.

The Commissioner is also alarmed by the impact that life in asylum centres for indefinite periods of time has on children belonging to families of rejected asylum-seekers whose deportation order cannot be implemented. "Even though the material living conditions are adequate, many of these

³ A summary of the report appears on pp. 2-4.

⁴ paras. 6-104.

⁵ paras. 105-149.

children suffer from psycho-social disorders and other developmental problems due to long-term uncertainty. This situation can hardly be reconciled with the right to a standard of living adequate for the child's development". The Commissioner also calls for effective investigation into the fate of unaccompanied minor migrants who have disappeared from reception centres and for measures to protect children victims of trafficking and to prevent further disappearances.

While noting a more selective approach regarding migrant detention, the Commissioner considers that improvements are still needed. "Detention of migrants and asylum-seekers must be a measure of last resort and for the shortest possible period and it should never be applied to vulnerable persons, such as children, persons with disabilities and victims of trafficking in human beings. Regrettably, this is not yet the case in Denmark".

Welcoming the guidance provided by the Director of Public Prosecutions on the implementation of criminal law provisions against hate speech and hate crime, the Commissioner encourages the Danish authorities to step up their efforts to combat hate speech, and in particular islamophobia, which continues to be widespread in public and political debate. "The Danish authorities should firmly condemn all instances of racist and xenophobic speech in political discourse and further raise awareness about the limits of freedom of expression in accordance with international standards".

The Commissioner welcomes Denmark's policies promoting autonomy of persons with disabilities, but is concerned about the trend among local authorities to accommodate them in residences with 20 to 80 housing units. "This approach does not favour the independent living and inclusion in the community of persons with disabilities, a right guaranteed under the UN Convention on the Rights of Persons with Disabilities. Local authorities should be provided with guidance on the building of housing facilities which are more compliant with the principles contained in this Convention".

Progress is also required to replace substituted decision-making with supported decision-making for persons considered incapable of managing their own matters due to psycho-social or intellectual disabilities. "As a first step to this end, full incapacitation and plenary guardianship should be abolished. Measures must also be taken to ensure that persons with disabilities can enjoy their right to vote." The Commissioner also calls on the authorities to consider expanding protection against discrimination on the ground of disability to cover all areas of life, not only employment.

Lastly, the Commissioner calls on the Danish authorities to improve legislation and practices regarding coercion in psychiatry, including forced hospitalisation, forced treatment and the use of physical restraints. While welcoming the current plans of the Danish authorities to act in these fields, the Commissioner stresses the urgent need to reduce involuntary placement and treatment and to drastically limit the use of coercion. "The authorities should also strengthen guarantees against arbitrary or disproportionate decisions regarding forced placement, ensure respect for the consent of the patient and prevent further violations of the right of patients to physical integrity from occurring."

The Commissioner's report on his 2013 visit to Denmark as well as the response of the Danish authorities, appear below.



CommHR DK.pdf



Comments DK.pdf

Fight against racism and intolerance

On 22 May 2012, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Denmark.⁶ ECRI's Chair, Mr Jenö Kaltenbach, welcomed positive developments, but regretted that a number of concerns persisted. For example, discrimination in employment, education and housing remained and the already strict rules for spousal reunification had become even stricter.

In 2008, Denmark created the Board of Equal Treatment. This body is empowered to receive complaints of discrimination on the grounds of gender and/or race or ethnic origin concerning cases outside the labour market. In relation to the labour market, the Board is empowered to receive complaints of discrimination on the grounds of, inter alia, race, ethnic origin, colour, religion or belief, nationality and gender. The Danish authorities have also adopted a number of measures to integrate immigrants into the labour market.

However, the criteria for obtaining Danish citizenship, spousal reunification, permanent residence or for children to be reunited with their family are very difficult for non-ethnic Danes to meet. The negative political discourse on immigrants, including Muslims, has had a disproportionately adverse effect on these groups in a number of important areas of policy.

The report contains findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions⁷
- Discrimination in various fields including education, employment, housing, health, administration of justice and access to public places⁸
- Racist violence⁹
- Racism in public discourse¹⁰
- Vulnerable/target groups including Muslim communities, Jewish community, Roma, migrants, refugees and asylum seekers¹¹
- Reception and status of non-citizens¹²
- Conduct of law enforcement officials¹³
- Education and awareness-raising¹⁴
- Monitoring racism and racial discrimination¹⁵

The following three recommendations were selected for priority implementation to be revisited two years later:

- Ensure sufficient funding for civil society actors working on issues relating to groups of concern to ECRI and strengthen their cooperation with the authorities;
- Review the spousal reunification rules in order to remove any elements which amount to discrimination against non-ethnic Danes;
- Intensify efforts in recruiting members of ethnic minorities to the police.

Subsequently, on 19 March 2015, ECRI adopted conclusions on the implementation of these recommendations for which priority follow-up was requested.

ECRI's report on Denmark and the conclusions on the implementation of the recommendations subject to interim follow-up are attached below.

⁶ A summary of the report can be found on pp. 7-9.

⁷ paras. 1-50.

⁸ paras. 51-80.

⁹ paras. 81-82.

¹⁰ paras. 83- 88.

¹¹ paras. 89-123.

¹² paras. 124-143.

¹³ paras. 144-151.

¹⁴ paras. 152-153.

¹⁵ paras. 154-156.



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Protection of minorities

Framework Convention for the Protection of National Minorities

On 20 January 2015, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities published its fourth Opinion on Denmark¹⁶, together with the Government's comments. In addition to the measures to be taken to implement the detailed recommendations contained in Sections I¹⁷ and II¹⁸ of the Opinion, the Advisory Committee identified the following issues:

Issues for immediate action¹⁹

- introduce additional and targeted initiatives and policies to combat all manifestations of intolerance, racism and xenophobia, in particular by addressing systematically racist manifestations in the media and the political sphere;
- ensure that persons belonging to the German minority continue to be able to communicate fully using the German language with all bodies of administration, including electronically;
- intensify dialogue with representatives of different groups, in order to analyse the existing needs and find appropriate solutions allowing all interested to receive teaching in or of their language.

Further recommendations²⁰

- intensify dialogue with the individuals and groups that express interest in or might benefit from the protection offered by the Framework Convention; consider applying provisions of the Framework Convention to interested groups, on an article-by-article basis, without necessarily formally recognising them as belonging to a national minority;
- review the implementation of the Danish Institute for Human Rights – Denmark's National Human Rights Institution Act with the view of ensuring that the resources put at its disposal correspond to its expanded mandate;
- increase public awareness about the work of the Board of Equal Treatment, in particular among persons with an ethnic background other than Danish;
- develop further the programmes and policies for promoting integration, diversity and tolerance in Danish society and monitor them on a regular basis; promote knowledge and awareness of minorities especially in the educational system;
- seek solutions, including with regard to cultural heritage recognition, which would allow the display of bilingual topographical indications and signs in places of particular interest to the German national minority.

The Advisory Committee's Opinion on Denmark and the Government's comments are attached below. However, these documents have not yet been examined by the Committee of Ministers who, after having examined the documents, will adopt a resolution on the protection of national minorities in Denmark. The Committee of Ministers' resolution will be based on the concluding remarks, contained in Section III²¹ of the Advisory Committee's Opinion.

¹⁶ A summary of the report can be found on pp. 1-2.

¹⁷ paras. 1-15.

¹⁸ paras. 16-93.

¹⁹ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

²⁰ *Idem*.

²¹ paras. 99-100.



4th Opinion DK.pdf



Comments DK.pdf

European Charter for Regional or Minority Languages

On 24 October 2014, the Committee of Ministers made public the fourth report on the application of the European Charter for Regional or Minority Languages by Denmark. The report drawn up by the Committee of Independent Experts, which monitors the application of the Charter, is contained in the attachment below.

On the basis of this report, the Committee of Ministers in its Recommendation on the application of the European Charter for Regional or Minority Languages by Denmark recommends the authorities to:

- apply a structured approach for the implementation of the undertakings chosen under the Charter, in co-operation with the German speakers;
- increase the level of radio broadcasting and provide television broadcasts in German, in co-operation with the German speakers;
- take measures to increase awareness and appreciation of German as a minority language of Denmark.



DenmarkECRML4_en.pdf

Action against trafficking in human beings

On 20 December 2011, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Denmark²², together with the final comments of the Danish Government.

In its report, GRETA noted the important steps taken by the Danish authorities to combat trafficking in human beings, including the setting up of the Danish Centre against Human Trafficking, the establishment of an Inter-Ministerial Working Group on Human Trafficking, and the adoption of multiannual national anti-trafficking action plans, the latest covering the period 2011-2014.

That said, GRETA considered that the Danish authorities should step up efforts to develop preventive measures and raise awareness about trafficking for the purpose of labour exploitation, in particular in the agriculture, construction and cleaning sectors.

GRETA was concerned that the identification of victims of trafficking had an illegal immigration focus. It urged the Danish authorities to ensure that potential victims of trafficking are treated in the first place as persons who have been exposed to human rights violations, rather than as offenders. In particular, GRETA called for measures to ensure that potential victims of trafficking are not punished for their illegal entry or residence in Denmark while the identification procedure is pending.

In addition, more should be done to provide victims of trafficking with an adequate recovery and reflection period, rather than a time-limit to prepare their departure from the country. GRETA also considers that the Danish authorities should review the system for granting residence permits to victims of trafficking as well as the framework for their return and repatriation, in order to avoid re-victimisation and prevent re-trafficking.

²² A summary of the report can be found on pp. 7-8.

On the basis of GRETA's report²³, the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings adopted, on 30 January 2012, the following recommendations addressed to the Government of Denmark:

- developing preventive measures to address trafficking for the purpose of labour exploitation, as well as stepping up proactive detection through co-operation between the police, labour inspectorates, employers' organisations and trade unions;
- improving the procedure for identification of victims of trafficking to ensure that the human rights-based approach underpinning the Convention is fully reflected;
- providing victims of trafficking with an adequate recovery and reflection period;
- ensuring that all victims of trafficking are provided with adequate support and assistance, including access to education, vocational training and the labour market, during their stay in Denmark and in preparation for their reintegration and rehabilitation upon return to their countries of origin;
- reviewing the current institutional and procedural framework for the return and repatriation of victims of trafficking, having regard to their safety, protection and dignity and in order to avoid re-victimisation;
- reviewing the system for granting residence permits to victims of trafficking, with a view to ensuring that the victim-centred approach underpinning the Convention is applied and in order to prevent re-trafficking;
- providing for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so.

GRETA's report on Denmark as well as the Committee of the Parties' recommendations to the Danish authorities are attached below.



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Preventing and combating violence against women and domestic violence

Denmark has ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It will be covered by the monitoring procedure to be put in place following the entry into force of the Convention on 1 August 2014.

Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2014, there was 1 "repetitive case" against Denmark pending before the Committee of Ministers for supervision of their execution.

As of 1 June 2015, there are no cases or groups of cases against Denmark under enhanced supervision.

The document attached presents the latest statistical data regarding Denmark.



Status execution
judgments DK.doc

²³Appendix I provides a complete list of GRETA's proposals to the Danish authorities.

Social and economic rights

Denmark ratified the European Social Charter on 03/03/1965. It ratified the Additional Protocol on 27/08/1996. It has accepted 45 of the 72 paragraphs of the Charter and all 4 Articles of the Protocol.

Denmark has signed, but not yet ratified the Revised Charter and the Additional Protocol providing for a system of collective complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

► Article 10§4 – Right to vocational training - Encouragement for the full utilisation of available facilities

Nationals of other states party to the Charter and the Revised Charter residing or working lawfully in Denmark are not treated on an equal basis with Danish nationals with regard to financial assistance for education and training.

(Conclusions XX-1 (2012))

► Article 15§1 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement - Education and training for persons with disabilities

There is no legislation explicitly protecting persons with disabilities from discrimination in the field of education.

(Conclusions XX-1 (2012))

Thematic Group 2 "Health, social security and social protection"

► Article 12§4 - Right to social security - Social security of persons moving between states

The principle of equal treatment for nationals of other States Parties is not guaranteed in matters of social security:

- the residence requirement imposed on nationals of states not covered by Community regulations or bound by bilateral agreement with Denmark for entitlement to an early retirement pension for persons with disabilities or to ordinary old-age pensions is excessive;
- the retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Denmark is not guaranteed;
- nationals of States Parties not covered by Community regulations or bound by agreements with the Denmark are not provided with the possibility of accumulating periods of insurance or employment completed in other countries.

(Conclusions XX-2 (2013))

► Article 13§1 – Right to social and medical assistance - Adequate assistance for every person in need

The level of the ordinary social assistance allowance (kontanthjælp) paid to persons under 25 years of age is not adequate, the level of starting allowance (starthjælp) paid to persons both under and over 25 years of age was not adequate during the reference period; and nationals of other States Parties not bound by the European Economic Area agreement or not covered by agreements concluded by Denmark may have their residence permit withdrawn on the sole ground of being in receipt of social assistance for more than six months, unless they have resided in Denmark for more than seven years.

(Conclusions XX-2 (2013))

► Article 4 of the Additional Protocol – Right of the elderly to social protection
It has not been established that there is an adequate legal framework to combat age discrimination outside employment.
(Conclusions XX-2 (2013))

Thematic Group 3 “Labour rights”

► Article 5 - Right to organise
Legislation on the International Ships Register provides that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.
(Conclusions XX-3 (2014))

► Article 6§2 - Right to bargain collectively - Negotiation procedures
The right to collective bargaining of non-resident seafarers engaged on vessels entered in the International Shipping Register is restricted.
(Conclusions XX-3 (2014))

► Article 6§4 - Right to bargain collectively - Collective action
Civil servants employed under the Civil Service Act are denied the right to strike;
The workers who are not members of a trade union having called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.
(Conclusions XX-3 (2014))

Thematic Group 4 “Children, families, migrants”

► Article 16 – Right of the family to social, legal and economic protection
The length of residence requirements for ordinary and special child allowances are excessive.
(Conclusions XIX-4 (2011))

► Article 17 – Right of mothers and children to social and economic protection
1. The prison sentence for minors may be up to 20 years, which is excessive
2. Minors can be subject to 8 months of pre-trial detention which may be further extended, which is excessive;
3. Solitary confinement of minors may last 4 weeks, which is excessive
(Conclusions XIX-4 (2011))

Please find attached below Conclusions XIX-4 (2011), XX-1 (2012), XX-2 (2013), XX-3 (2014) regarding Denmark as well as the country fact sheet.



DenmarkXIX4_en.pdf



DenmarkXX1_en.pdf



Denmark XX2_en.pdf



Denmark XX3_en.pdf



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