

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

HUMAN
RIGHTS IN
DENMARK

STATUS – MAY 2012
A SUMMARY

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A NEW OVERVIEW

The Danish Institute for Human Rights is Denmark's national human rights institution and has a special obligation to monitor human rights in Denmark.

For many years the Institute has published annual status reports based on the year's law amendments, hearing responses and rulings, but a broad review of the human rights situation in Denmark has not been carried out before. In other words, one could not get an impression of human rights issues and recommendations for future implementation from a single source.

The majority of people would probably consider the human rights situation in Denmark to be unproblematic, compared to that of many other countries. Although this is largely true, work with human rights is always an ongoing process and even in Denmark there are some problems and room for improvement.

Denmark's work with human rights needs to be more focused and prioritised.

Consequently, in 2011 the Institute began gathering knowledge for a new kind of status report, with recommendations for initiatives to improve conditions in a number of areas. A status report does not – and can never – give a conclusive overview, but our hope is that it can form the basis for a renewed and improved dialogue on human rights in Denmark. Initially, we have addressed 13 topics: implementation of human rights, asylum, children, data protection, imprisonment/detention, disability, gender, human trafficking, race and ethnic origin, citizenship, education, deportation/extradition and freedom of speech. These topics will be continuously expanded, on the basis of, among other things, the comments the Institute receives. In the near future the following topics will be addressed: religion, fair trial and human rights and business. Later, other topics will be included, e.g., family life, humanitarian international law and foreign policy and human rights.

HUMAN RIGHTS IN DENMARK

This publication is a summary of the 13 chapters that have been published to date. The summary introduces the individual topics and reports the most important recommendations. On the Institute's website, www.menneskeret.dk/status, the full-length review of the topics, including all recommendations, can be read.

Taking stock of human rights in Denmark is a dynamic process and, as the national human rights institution, we would like to enter into dialogue with the outside world. Therefore, we hope to receive suggestions for topics and additions that can improve the report. You can write to us at statusrapport@humanrights.dk. **Status of Human Rights in Denmark** will be published initially in conjunction with the Danish Institute for Human Rights' 25th anniversary on 5 May 2012.

We hope that the new status report will contribute to strengthening human rights in Denmark.

Jonas Christoffersen
Director, Dr.jur.

INTRODUCTION TO HUMAN RIGHTS

DENMARK'S HUMAN RIGHTS COMMITMENTS

Denmark has taken on human rights commitments both nationally and internationally. Nationally, human rights are protected by the Danish Constitution. Internationally, Denmark has entered into a large number of agreements (conventions/treaties) on the protection of human rights. These agreements fall under various institutions, in particular the United Nations, the Council of Europe and the European Union. In the following, the status report's introduction to human rights will be summarised.

TWO KINDS OF RIGHTS

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

INTERPRETATION OF HUMAN RIGHTS

International human rights are based on the principle that state intervention in rights must be legitimate and proportionate. A legality principle and a proportionality principle also apply.

The legality requirement means that any intervention in the protected rights must have a basis in national law, which must be made available and be reasonably predictable. The proportionality assessment must consider protection of human rights on one hand and, divergent interests on the other. The balancing is based on a legal assessment of the importance of the opposing interests: How important is the right? How severe is the intervention into individual rights? How important is the pursued aim/opposing interest and how important is the intervention in safeguarding it?

MONITORING OF HUMAN RIGHTS

When a convention or a treaty has been adopted by an international organisation, e.g., the United Nations, the organisation's member states must decide whether they want to be bound by the agreement, through its ratification. After this, the state is obliged to comply with the agreement's content in its national legislation and practice.

Ratification also means that the state's citizens can invoke the agreement's provisions before administrative authorities and courts of law if they believe that the agreement's provisions have been contravened.

Read the full text and all recommendations at www.menneskeret.dk/status.

The UN monitors member states' compliance with the human rights obligations they have undertaken, via committees associated with the conventions and through the Universal Periodic Review (UPR).

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

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

Denmark protects, monitors and enforces human rights on several levels. Anyone can demand that the international agreements Denmark has ratified are complied with by public authorities. Moreover, a case can be filed with the Danish courts if one or more provisions of the agreements are violated. This also applies to violation of the human rights that follow from national laws.

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

IMPLEMENTATION OF HUMAN RIGHTS

There are a number of areas in which the implementation of human rights in Denmark can be strengthened. The following summarises the status report's themes on the implementation of human rights, which concern accession of human rights documents, a human rights action plan, review of the Danish Constitution, review of the equal rights legislation as well as judicial nominations for international courts.

ACCESSION OF HUMAN RIGHTS DOCUMENTS

International law does not regulate how a convention shall be implemented in national law as long as the state faithfully complies with the convention's provisions. A convention that has been incorporated into Danish law has a stronger status than unincorporated conventions, because an act is adopted which converts the convention into Danish law

The European Convention on Human Rights (ECHR) is the only international human rights convention that Denmark has incorporated.

Of the nine UN core conventions on human rights, Denmark has not adopted the International Convention for the Protection of All Persons from Enforced Disappearance or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, nor has it adopted the optional protocols introducing individual complaint mechanisms to the Convention on

the Rights of Persons with Disabilities, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

Denmark has declined to adopt the Council of Europe's Protocol no.12 to the ECHR, which introduces a general prohibition against discrimination.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- accede Protocol 12 to The European Convention on Human Rights;
- accede the International Convention for the Protection of All Persons from Enforced Disappearance and acknowledge the competence of the Committee on Enforced Disappearances to process individual complaints;
- accede the optional protocols to the UN Convention on the Rights of Persons with Disabilities, the UN Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights regarding individual complaint mechanisms;
- implement protocols 13 and 14 to the European Convention on Human Rights in the incorporation act; and
- incorporate the United Nations human rights core conventions into Danish law.

A HUMAN RIGHTS ACTION PLAN

The World Conference on Human Rights (1993) encouraged the individual states to draw up a human rights action plan in order to strengthen national protection and development of human rights.

The work on promoting and protecting human rights in Denmark is decentralised and involves a large number of ministries and other public authorities. Central coordination, implementation and follow-up on international recommendations is not carried out. As part of the United Nations Universal Periodic Review of Denmark, in 2011 it was recommended that the country develop and implement a national human rights action plan to create the framework for a systematic and comprehensive effort in the area. The proposal was rejected by the former government as it was considered unnecessary in relation to ensuring effective human rights protection.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- prepare a national action plan for human rights;
- establish a permanent interministerial committee to coordinate the implementation of the action plan and follow up on international human rights recommendations;
- develop national human rights indicators; and
- undertake an annual parliamentary evaluation of the country's human rights situation.

REVIEW OF THE DANISH CONSTITUTION

There is no international requirement that human rights protection be included in the national constitution. However, a protection of human rights secured by the constitution

will strengthen the human rights protection in relation to other legislation.

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

The Danish Institute for Human Rights recommends that Denmark:

- revise the constitution's catalogue of human rights.

REVIEW OF THE EQUALITY LEGISLATION

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

European Union law has been of particular importance to the drawing up of the Danish equality legislation. The gradual incorporation of the EU discrimination directives has entailed that protection against discrimination in Denmark has spread across a number of laws regulating different aspects of equality. In practice this means that the Danish equal treatment legislation affords different levels of protection to different groups and thus varies from area to area. It is doubtful whether the Danish equality legislation in all instances lives up to Denmark's international obligations.

The Danish Institute for Human Rights recommends that Denmark:

- revise Danish equality legislation and prepare an overall law protecting all groups against discrimination.

JUDICIAL NOMINATIONS FOR INTERNATIONAL COURTS OF LAW

Human rights legislation does not contain rules on how the national selection of candidates for judicial positions for the European Court of Human Rights or the European Union Court should take place. The Council of Europe has, however, drawn up guidelines for the nomination of judges for the European Court of Human Rights.

In Denmark, the government appoints judges nationally on the basis of a nomination from an independent Judicial Appointments Council. In the event of the appointment of Danish judges to the European Court of Human Rights and the European Union Court, the government chooses the candidates who are nominated.

The Danish Institute for Human Rights recommends that Denmark:

- expand the remit of the Judicial Appointments Council to include the nomination of candidates to the European Court of Human Rights and the European Union Court.

Read the full text and all recommendations at www.menneskeret.dk/status.

ASYLUM

There are a number of issues in the area of asylum where Denmark can improve the work on protecting and promoting the rights of refugees and asylum seekers. The following summarises the status report's themes on asylum, which concern the return of asylum seekers to another EU country according to the Dublin Regulation, the special issues of unaccompanied minor asylum seekers, punishment for refugees who enter the country on false papers and detention of vulnerable asylum seekers.

THE DUBLIN PROCEDURE

The absolute prohibition on torture embedded in human rights law means that a country may not send an asylum seeker to countries where there is a real risk that the person could be exposed to a death penalty, torture, inhuman or degrading treatment or punishment. Moreover, it is a human right that everyone must have access to making a case on reasonably founded complaints of violation of the torture prohibition to an independent and impartial authority.

With a ruling made on 23 January 2011, the European Court of Human Rights made it clear that sending asylum seekers back to Greece was a breach of human rights due to the country's inadequate asylum system in the country. The ruling highlights the need for clarification of the Danish rules and practice on the area.

The Danish Institute for Human Rights recommends that Denmark:

- change the Danish Aliens Act so a complaint about a ruling to return an asylum seeker to another EU country according to the Dublin Regulation can add a interim measures effect;
- change the Danish Aliens Act to make it clearly apparent that Denmark will accept an asylum application if it is assumed that the asylum seeker risks being treated contrary to the prohibition on torture if he/she is sent back to another EU country; and
- consider how Denmark can remedy the violations that have taken place in cases where asylum seekers, prior to 23 January 2011, were returned to Greece according to the Dublin Regulation.

UNACCOMPANIED MINOR ASYLUM SEEKERS

The core principle of "devotion to the best interests of the child" enshrined in the United Nations Convention on the Rights of the Child guides the way states handle minors seeking asylum. Moreover, UNHCR and the United Nations Committee on the Rights of the Child have published a number of recommendations on the area.

In Denmark, unaccompanied minor asylum seekers only have their asylum application processed when they are mature enough to go through a standard asylum case process. In the

interim period, some of them will be able to get a residence permit as an unaccompanied minor. In other cases, they are in a legal vacuum. A residence permit as an unaccompanied minor lapses as a basis when the minor turns 18. Some unaccompanied minors disappear from Denmark before their cases are concluded.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

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

PUNISHMENT FOR REFUGEES WHO ENTER WITH FALSE PAPERS

According to the United Nations Refugee Convention, a refugee may not be punished for entry with false identity papers if he/she applies for asylum immediately after entry. Human rights law's prohibition of discrimination also means that states may not discriminate among citizens in relation to their rights. In recent years, questions have been raised about the

Danish practice of prosecuting asylum seekers who enter Denmark with false documents. According to the Public Prosecutor's recent guidelines, a foreigner who enters on false papers and seeks asylum cannot be prosecuted if the person is given a residence permit as a Convention refugee. But if the foreigner is given a residence permit as a refugee with protection status, prosecution takes place as the starting point. The guidelines apply to both children and adults.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- consider whether this discrimination between asylum seekers receiving residence permits as Convention refugees and those receiving residence permits as refugees with protection status is in accordance with human rights law discrimination prohibitions.

Detention of vulnerable asylum seekers

Human rights law means, among other things, that when the state detains people, it must give special consideration to vulnerable individuals and that children should only be detained as a last resort.

In Denmark, mentally and physically vulnerable asylum seekers are placed in an institution called Ellebaek (the Prison Service's closed prison for detained foreigners) in line with other asylum seekers. Asylum-seeking children have been detained in Ellebaek in a number of cases.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- try to limit the detention of children as well as mentally and physically vulnerable asylum seekers;
- introduce a compulsory health examination of the asylum seekers whom the police intend to detain and that doctors, psychologists, etc. are involved in this process; and
- monitor the practice of asylum seeker detention in Ellebaek on a regular basis and introduce registration and data gathering in the area.

Read the full text and all recommendations at www.menneskeret.dk/status.

CHILDREN

There is a need for new efforts in relation to the rights of the child. The following summarises the status report's themes on children, which concern public help and support for children and adolescents with special support needs, the conditions for children and adolescents during placement outside of the home, detention of children and adolescents due to criminality, detention outside of the criminal procedure and other uses of force on children and adolescents.

PUBLIC HELP AND SUPPORT FOR CHILDREN AND ADOLESCENTS WITH SPECIAL SUPPORT NEEDS

According to the Convention on the Rights of the Child, states must ensure that children are not unwillingly separated from their parents unless competent authorities decide, in accordance with applicable law and practice, that such separation is necessary in consideration of what is the best interest for the child.

Now and again the media publish stories about children who have been exposed to violence, sexual assault and/or neglect without the municipality of residence intervening. When municipalities have not intervened in cases where they have been informed of a child or adolescent's need for help and support, it can be because they have not found a sufficient basis, due to a lack of resources/budget in the municipality, for example.

The Danish institute for Human Rights recommends, among other things, that Denmark:

- ensure that children receive the necessary care when they have been exposed to neglect, violence, sexual assault, etc.;
- ensure that all children and adolescents of all ages have real opportunity to complain about violation of rights in the home, institution, school, childcare institutions, and other places;
- ensure that all municipalities have open and anonymous counselling available to parents, children and adolescents; and
- involve children and adolescents of all ages in children's cases when deciding on preventative measures and placement.

THE CONDITIONS FOR CHILDREN AND ADOLESCENTS DURING PLACEMENT OUTSIDE OF THE HOME

Children and adolescents who are placed outside of the home have the same rights as other children. The child's best interests must be prioritised and children and adolescents must be involved in all initiatives regarding themselves, including being heard and having weight given to their points of view.

Recent research shows that the living conditions for children placed in institutions are below the average conditions of their peers.

Statistically, children placed in institutions also experience a disproportionately high degree of exclusion and social problems in their adult lives. Ethnic minority children can experience special problems because the importance of their cultural or religious background is not considered or understood where they are placed.

The Danish institute for Human Rights recommends, among other things, that Denmark:

- inform children and adolescents of the rules and of their rights during placement, including information about their options for making complaints, all in a language that is adapted to them;
- ensure that there are sufficient specialised care institutions in which to place children with special problems; and
- ensure that there is regular, qualified and effective inspection of placed children's conditions and institutions.

DETENTION OF CHILDREN AND ADOLESCENTS DUE TO CRIMINALITY

According to the Convention of the Rights of the Child, no child may be arbitrarily confined. Arrest, detention or imprisonment of children may only be used as a last resort and for the shortest possible time. If children are confined, it is fundamental that they be kept separate from adults and have the right to maintain contact with their family through the exchange of letters and visits. Detention of children and adolescents is particularly severe because children are very receptive to influences from their surroundings. Children under 18 who are taken into custody, must primarily be taken to a surrogate prison, which is a less intrusive

alternative to confinement in a jail or prison, which are typically secured institutions.

The use of custodial imprisonment of children/ adolescents in Denmark has increased over the past five years, despite a 2008 effort to reduce the number. At the same time, more than half of the children and adolescents who held in custody are placed in prisons, rather than surrogate prisons, during some or part of their custody period.

The Danish institute for Human Rights recommends, among other things, that Denmark:

- prohibits solitary confinement of minors;
- specify the terms for the use of custodial imprisonment of youth with a view to limiting it as much as possible;
- consider introducing an absolute upper limit for the length of remand imprisonment of people under the age of 18;
- reinstate the maximum sanction for those under 18 years old in consideration of effective rehabilitation; and
- ensure that adolescents be confined in institutions suitable for them.

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

According to human rights law, detention can take place with the aim of enabling supervision of the minors' upbringing or in order to place the minor before the competent legal authority.

In Denmark, youth between the ages of 12 and 18 years can be confined under special circumstances in secured 24-hour centres. It is possible to retain a child or adolescent for up

to 14 days after placement in an open 24-hour centre or a home. During confinement, force can be used under special circumstances. Despite preventive work to ensure that the use of force is only exceptional and a last resort, the media have been able to publish stories about placed children and adolescents being exposed to exaggerated use of force or even violence.

The Danish institute for Human Rights recommends, among other things, that Denmark:

- ensure that the placement of children and adolescents at secured institutions is limited to the shortest possible time;
- ensure that the necessary inspections of care institutions are done;
- ensure that placed children and adolescents are heard in connection with the inspections and that there will be an immediate reactions to any signs of excessive use of force, or of the use of force as a pedagogical agent;
- ensure mandatory training of personnel of care institutions and children's and adolescents' institutions; and
- clarify the legislation on where the line is between reduced freedom of movement and confinement, so that children can exercise their right to a judicial review of any confinement.

Read the full text and all recommendations at www.menneskeret.dk/status.

DATA PROTECTION

Denmark faces a number of challenges in relation to citizens' rights to protection of their data and communication. The following summarises the status report's themes related to data protection, which concern telecom and internet providers' retention of communication data, citizens' data protection when using social media, authorities' control of social services as well as storing of personal information via open networks ("cloud computing").

DATA RETENTION

Human rights protect the individual's right to privacy and also set out the conditions for states to interfere with this right. For example, a state may interfere the right to privacy when it monitors a particular individual. The Danish Administrative Order on Data Retention, which implements the EU's Data Retention Directive of 2006, has been criticised for being a disproportionate interference in Danish citizens' right to privacy. The data retention order requests that telecom and internet providers store information on all citizens' communication via telephone and internet for one year. The purpose is to ensure that data are available for potential law enforcement inquiries.

The Danish Institute for Human Rights recommends that Denmark:

- conduct an independent evaluation and analysis of the Data Retention Order's utilisation

and effect compared to the comprehensive interference in the right to privacy which data retention represents.

SOCIAL MEDIA

Human rights protection of the right to privacy is implemented in the EU Data Protection Directive, which places demands on how public institutions and private companies gather and process information on individual EU citizens. The use of social media in Denmark has increased considerably in recent years and raises a number of problems related to companies' comprehensive and inscrutable processing of personal information. For example, Danish users of Facebook are directed to complain about Facebook's use of personal information via the Irish Data Protection Agency, since Facebook's European division is located in Ireland.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- initiate an investigation into the consequences that the use of social media may have for freedom of expression and freedom of information and the right to respect for privacy; and
- investigate how the Danish supervision of social media's storage and exchange of personal information may be strengthened, including mapping how other EU countries enforce national legislation on social media.

CONTROL OF PUBLIC SERVICES

Protection of the right to respect for privacy under human rights law entails, among other things, that any intervention be based on law and that the legislation invoked must fulfill certain qualitative requirements. These requirements include that rules be sufficiently clear, precise and predictable.

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

The Danish Institute for Human Rights recommends that Denmark:

- establish objective and impartial criteria for the selection of people to examine for misuse of social benefits in order to ensure that the selection is clearly defined and based on specific data;
- establish explicit rules for complaint mechanisms and oversight of the control interventions carried out; and
- monitor the utilisation of control interventions in order to determine the number of unsuccessful and thus specifically unreasoned control interventions.

CLOUD COMPUTING

When public authorities use personal information, they must take into consideration protection of the right to privacy under human rights law as well as the EU's Data Protection Directive, which sets requirements regarding data protection for the affected citizens. Cloud computing is a relatively new means of data storage that raises some fundamental issues in relation to the treatment and protection of personal data. For example, it is unclear how different types of personal data should be treated by the cloud computing services and which security requirements need to be upheld. In many cases, cloud computing services will place data outside of Denmark and thus be subject to foreign legislation. Cloud computing underscores the need to determine the privacy implications of a given IT solution before it is implemented. At the same time, this is one of many examples of the challenges new IT solutions bring about in relation to privacy and data protection.

The Danish Institute for Human Rights recommends that Denmark:

- demand that public authorities conduct privacy impact assessments prior to the implementation of IT solutions that process personal information, including cloud computing; and
- strengthen independent analysis and advice in relation to privacy and data protection in relation to the many public digitisation projects being implemented at present.

Read the full text and all recommendations at www.menneskeret.dk/status.

DEPRIVATION OF LIBERTY

There are a number of areas where Denmark could make improvements in relation to the way deprivation of liberty is practiced and regulated. The following summarises the status report's themes in relation to the deprivation of liberty, including remand custody, overcrowding in the Prison Service's institutions, the use of solitary confinement in prisons, preventative detention, detention of mentally ill criminals, women in prisons and children of prisoners.

REMAND CUSTODY

Human rights law states that everyone who is confined must be treated with humanity and with respect for the inherent dignity of the human person. Confinement, including remand custody, may only occur if other measures are found to be inadequate. Denmark uses remand imprisonment significantly more than Norway and Sweden, for example. Consequently the Danish police and courts use of remand imprisonment has been criticized on several occasions.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- organise initiatives to significantly reduce the use and length of remand custody; and
- determine the cause of the significant differences in the police districts' use

of remand custody in order to support development of "best practice".

OVERCROWDING IN THE DANISH PRISON AND PROBATION SERVICE INSTITUTIONS

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

In recent years, overcrowding has become a problem in the Danish Prison and Probation Service. Prisons and jails experience periodic occupancy rates which surpass their maximum capacity.

The Danish Institute for Human Rights recommends that Denmark:

- take the initiative to reduce occupancy significantly in the Danish Prison and Probation Service's institutions; and
- follow the Council of Europe's recommendations regarding overcrowding in prisons.

SOLITARY CONFINEMENT

Solitary confinement of prisoners can lead to seriously harmful impact. A number of human rights recommendations therefore aim towards either abolishing or significantly reducing various forms of solitary confinement.

The use of solitary confinement in Danish prisons and jails has previously been exposed to strong criticism from human rights monitoring mechanisms, especially in the case of solitary confinement during remand custody. Other critical areas are, for example, the use of punitive isolation cells (solitary confinement as disciplinary punishment), administrative isolation as well as so-called “voluntary solitary confinement”.

The Danish Institute for Human Rights recommends that Denmark:

- reduce the use of solitary confinement in Danish prisons, in particular the use of solitary confinement as disciplinary punishment as well as administrative isolation; and
- ensure that prisoners in all forms of solitary confinement have access to sufficient meaningful social contact.

PREVENTATIVE CONFINEMENT UNDER THE POLICE ACT

Human rights law, as point of departure, does not permit preventative confinement in order to prevent potential disturbance of public order or public security. The European Court of Human Rights has, however, made it clear that confinement can occur in special situations, e.g., concerning the mentally ill, alcoholics and drug addicts. In all other cases, people can be confined if it takes place with a view to bringing charges against them for violation of national law. During the COP15 demonstrations in Copenhagen, more than 1900 demonstrators were preventatively detained. Many subsequently filed court cases on the legality of these detentions. The court found in favour of the majority of the plaintiffs, whom it said had

been subjected to illegal confinement. The court found that the conditions during some of the interventions had been demeaning and in conflict with human rights, including freedom of expression, freedom of assembly, personal freedom and protection against demeaning treatment.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- revise the rules of the Police Act on preventative confinement in order to limit the scope and duration of the confinement.

CONFINEMENT OF MENTALLY ILL CRIMINALS

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

According to the Convention on the Rights of Persons with Disabilities, people with disabilities have equal rights to freedom and personal security as others and they may not be arbitrarily deprived of their freedom. When people with disabilities are confined they have the right to be treated according to the human rights standards, just as others do.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- ensure that those who have committed crimes or are suspected of doing so and who display peculiar behavior that could be an expression of mental illness are examined with a view to identifying a possible mental illness; and
- seek to place the mentally ill who have committed crimes or are suspected of doing so, in special institutions that can provide them with the best possible treatment in relation to the mental disorder they might suffer from.

WOMEN IN PRISON

Human rights law emphasizes that special consideration should be given to women in prisons. The general recommendation is that men and women should be separated during confinement.

For many years, Denmark has allowed men and women to serve their sentences together contrary to normal practice in most prison systems abroad. In 2011, a Danish committee looking at imprisoned women's conditions recommended that female prisoners should no longer serve their sentence with men and that a new women's prison should be constructed.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- integrate a gender perspective in relation to both remand custody practice and imprisonment of women serving a sentence; and
- prioritize the relationship between imprisoned mothers and their children, both in terms of choosing a suitable form of sanction and sentence, but also in terms of choosing a

suitable place of confinement when mothers are imprisoned.

CHILDREN OF PRISONERS

Children of prisoners have the same rights as other children and the principle of the child's best interest applies. Studies show that children of prisoners and their families often struggle with a large number of problems such as financial hardship and stigmatisation. Children of prisoners are also at greater risk than other children of experiencing adverse life outcomes and committing crimes later in their lives.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- implement the 27 recommendations in the book **When the innocent are punished – children of prisoners in Denmark**, including the introduction of systematic registration of prisoners' parental status and ensuring better counselling and support for children of prisoners and the families affected by imprisonment; and
- implement a children's officer programme in all institutions in the Danish Prison and Probation Service.

Read the full text and all recommendations at www.menneskeret.dk/status.

DISABILITY

In a number of areas, Denmark can do better in relation to protecting and promoting the rights of persons with disabilities. The following summarises the status report themes concerning people with disabilities, including the need for a national action plan, increased legal protection against violation of rights under the Convention on the Rights of Persons with Disabilities, the definition of disability in Danish legislation, adjustments in the guardianship area and less use of coercion in psychiatry.

NATIONAL ACTION PLAN

Human rights law generally protects persons with disabilities similarly to other people. In addition, the Convention on the Rights of Persons with Disabilities provides that they be ensured full and effective participation in society and be respected and accepted as part of human diversity. A complete implementation of the Convention on the Rights of Persons with Disabilities requires that that the state have an overview of whether Danish legislation and practice is in accordance with the Convention and that the state make a plan for how it will implement the Convention.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- prepare an overview of whether Danish legislation and practice is in accord with the Convention of the Rights of Persons with Disabilities; and

- prepare an action plan for the implementation and promotion of the Convention on the Rights of Persons with Disabilities in Denmark.

INCREASED LEGAL PROTECTION AGAINST VIOLATIONS OF RIGHTS UNDER THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

In contrast to Danish law, the Convention on the Rights of Persons with Disabilities is built on a rights-based approach. This means that the Convention encourages and in some cases binds Denmark to adopt legislation in order to ensure an effective protection of the individual's rights.

Danish legislation does not provide for a general prohibition against discrimination and protection against discrimination due to disability only exists on the labour market.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- introduce a legal act to ensure protection against discrimination on the grounds of disability outside the labour market; and
- ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities on individual complaints to the UN Committee on the Rights of Persons with Disabilities. This is likewise recommended in the chapter on the implementation of human rights.

DEFINITION OF DISABILITY

According to the UN Convention on the Rights of Persons with Disabilities, disabilities include "long-term physical, mental, intellectual or sensory impairments which in interaction

with various barriers may hinder their full and effective participation in society on an equal basis with others.” This means that a disability may result from the correlation between an impairment and social barriers. There are examples under Danish law, where the term “disability” is defined too narrowly, which may lead to violations of the Convention.

The Danish Institute for Human Rights recommends that Denmark:

- interpret the term “disability” in the Act on prohibition against differential treatment on the labour market according to the UN Convention on the Rights of Persons with Disabilities; and
- perform a general review of Danish legislation to ensure that the definition of “disability” is in accordance with that in the Convention.

GUARDIANSHIP

The UN Convention on the Rights of Persons with Disabilities has strong focus on the right to self-determination and legal capacity. Making decisions on behalf of a person with a disability must be the last resort. One must try various forms of support before such a solution is warranted. If a guardian is appointed without the person’s full and informed consent, more stringent requirements apply to supervision, reassessments, monitoring, etc.

A new study by the Danish Institute for Human Rights shows that there are situations where guardianship is experienced as problematic. For example, when the guardians do not involve the person or have too much focus on retaining possible assets. In addition, subjecting a person to guardianship has enormous impact when it takes place against the person’s will as it is effectively disempowering.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- limit the use of § 6 guardianship (limitation of legal capacity) and consider in more detail how support for decision-making and legal capacity can be specifically promoted, e.g., through increased use of curatorship;
- strengthen the regulations of the Guardianship Act on consultation and co-decision in order to ensure that they live up to the UN Convention on the Rights of Persons with Disabilities’ requirement of respect for the person’s own rights, will and preferences; and
- amend the Guardianship Act so all § 6 guardianships are either time-limited or regularly reassessed and so the Act clearly states that guardianship must be of the shortest possible duration.

COERCION IN PSYCHIATRY

The UN Convention of the Rights of Persons with Disabilities states they have the right to decide over their own bodies and live on equal terms with other people. Within the psychiatric system, lack of self-determination has serious consequences for people with disabilities. In Denmark, the use of compulsory treatment (immobilization by belt) is so widespread that it has given rise to criticism from international monitoring bodies.

The Danish Institute for Human Rights recommends that Denmark:

- take steps to reduce the use of force in psychiatry in Denmark.

Read the full text and all recommendations at www.menneskeret.dk/status.

GENDER

Denmark faces a number of significant challenges in the gender equality area. The following summarises the status report's gender themes, which concern enforcement of the equal pay principle, single-gender education, boys and girls without upper secondary education and gender mainstreaming.

BARRIERS TO THE IMPLEMENTATION OF THE EQUAL PAY PRINCIPLE

The EU legislation prohibiting sex discrimination, including the equal pay principle, is newer and more comprehensive than the other human rights regulation of protection against sex discrimination. The equal pay principle means that for the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated

Calculations from Statistics Denmark show that on average women earn 15% less than men and that this difference has basically remained unchanged for the past ten years. The number of lawsuits over equal pay is low, in both Europe as a whole and in Denmark. EU strategies as well as international monitoring bodies have, in this regard, pointed out the need for the social partners to improve wage transparency in the labour market, monitor

wage differences between women and men and develop gender-neutral job evaluation systems.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- oblige the social partners responsible for pay standards in the collective labour agreements on the labour market to improve wage transparency; and
- encourage employers and employee organisations in the state, regions and municipalities to follow the Wage Commission's request to monitor collective agreements, collective negotiation structures, informal routines, etc. in relation to equal pay.

SINGLE-GENDER EDUCATION

It follows from the human rights prohibition of discrimination that men and women must have equal access to participate in society, including equal access to education. The prohibition against direct or indirect discriminatory treatment according to the EU Directive on equal opportunities and equal treatment of men and women in matters of employment and occupation includes all types and levels of vocational training. According to the Convention on the Elimination of All Forms of Discrimination against Women, states must also work to eliminate stereotyping of roles for men

and women in all areas of society, including the educational system.

Gender division in the Danish educational system manifests itself by female dominance of areas within care, health, office work and the humanities, while males dominate within trades, technology, IT and natural sciences. Educational and vocational guidance should be aware of whether their counselling is subject to gender stereotypes. Bias in public programmes and services can comprise subjective discriminatory treatment in relation to equal integration, influence and opportunities for men and women.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- ensure that institutions responsible for the educational and vocational guidance of youngsters, present them with educational opportunities that are not limited by gender-stereotyped conceptions of education and work;
- ensure that work with gender mainstreaming is given greater priority in such institutions; and
- ensure that a study of gender norms and gender stereotypes in educational and vocational guidance is undertaken to provide a basis for initiatives.

BOYS AND GIRLS WITHOUT UPPER SECONDARY EDUCATION

It follows from the human rights prohibition of discrimination that boys and girls must have equal access to participate in society, including equal access to education. The prohibition

against direct or indirect discriminatory treatment according to the EU Directive on equal opportunities and equal treatment of men and women in matters of employment and occupation includes all types and levels of vocational training. The majority of youngsters in Denmark commence an upper secondary education, but a large part do not complete it. An increasing proportion of this group consists of young men, and four out of ten 26-year-old men of immigrant background have not finished an upper secondary education.

The Danish Institute for Human Rights recommends that Denmark:

- promote equal educational opportunities with a special focus on boys, including those of ethnic minorities;
- gather knowledge on specific efforts and initiatives shown to successfully retain more youngsters in an upper secondary education; and
- initiate studies of exclusion mechanisms in vocational training programmes with a special focus on gender, ethnicity and socio-economic background.

GENDER MAINSTREAMING

The term “gender mainstreaming” has been a part of the United Nations’ equality strategy since 1995. In the EU legal framework, the mainstreaming principle is confirmed by the TFEU treaty and written into a number of equality directives. Gender mainstreaming means incorporating consideration of equality between women and men throughout all functions in society to create equal opportunities and equal rights for women and men. Since 2000, gender mainstreaming

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

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- strengthen the implementation of the gender mainstreaming strategy in the state, regions and municipalities;
- establish a national competence unit/ working group for gender mainstreaming, to make knowledge and analysis of gender equality available to the state, regions and municipalities; and
- establish a Nordic or Danish working group for gender mainstreaming, consisting of both researchers and practitioners.

Read the full text and all recommendations (in Danish) at www.menneskeret.dk/status.

HUMAN TRAFFICKING

Denmark can improve its efforts with respect to human trafficking. The chapter is limited to the theme “identification of victims of human trafficking”, including the framework for the identification process.

IDENTIFICATION OF VICTIMS OF HUMAN TRAFFICKING

Human trafficking is a serious violation of human rights, especially of a person's dignity and integrity. States must ensure effective protection of people who are victims of human trafficking by building up legal and effective protection against it.

In recent years Denmark has given greater priority to the work towards fighting human trafficking. One of the areas that can still be strengthened is the identification process. It is important, but often difficult, to identify victims of human trafficking. Identification is important in order for the victim to be entitled to protection and support. If not, the victim risks being sent out of Denmark immediately.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- ensure that authorities, especially including the police throughout the country and immigration authorities have the necessary

qualifications to identify victims of human trafficking through regular training.

- adopt a rights-based approach to protection against human trafficking so potential victims are not detained, but are allowed to stay in a “safe house” while the identification process is ongoing; and
- perform a legal study of the articles in the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others with a view to its ratification.

Read the full text and all recommendations at www.menneskeret.dk/status.

RACE AND ETHNIC ORIGIN

Denmark has a number of challenges in implementing the principle of equal treatment and non-discrimination regardless of race or ethnic origin. The following summarises the status report themes in relation to race and ethnicity, concerning access to the labour market, education and health services, equal treatment of Greenlanders, hate crimes and access to information and interpreting services.

THE LABOUR MARKET

The European Union's Directive on ethnic equal treatment protects against direct and indirect discrimination in employment and occupation due to race or ethnic origin. With a view to ensuring full equality in practice, the directive gives the Member States the possibility to adopt specific measures to prevent or compensate for disadvantages linked to race or ethnic origin.

Ethnic minorities have a weaker participation rate in the labour market than the rest of society, even though in recent years the ethnic minority employment rate has increased, until the financial crisis set in. At the same time, studies have shown that the Danish labour market is segregated, with ethnic minorities strongly over-represented in positions that do not require higher education and under-represented in senior management and middle- and high-level white-collar positions.

The Danish Institute for Human Rights recommends that Denmark:

- consider changing the law on the prohibition against differential treatment on the labour market, so public and private employers will be obligated to promote equal treatment regardless of race or ethnic origin; and
- map possible discriminatory institutional barriers for ethnic minorities on the labour market.

ETHNIC MINORITY PUPILS IN STATE SCHOOLS, INCLUDING ROMA CHILDREN

According to the Convention on the Rights of the Child, all children have the right to education. This right must be enjoyed without subjective or disproportionate differential treatment due to race or ethnic origin, etc. Studies show that pupils with origins other than Danish (bilingual children) do worse than ethnic Danish pupils in public schools. There is a particular lack of knowledge of the conditions for children with a Roma background in the educational system and their general living conditions. It is a fact that minority pupils, to a significantly higher degree than ethnic Danish pupils, lack the necessary scholastic skills to commence and/or complete vocational training programmes. There are indicators that the present primary school education does not sufficiently ensure that minority pupils – especially ethnic minority boys – get the benefits from their schooling that

should be ensured by the right to education. In addition, there are a number of studies indicating that the lack of success may be due to institutional discrimination – partly because of race and ethnic origin, partly because of the intersection of gender and ethnicity.

The Danish Institute for Human Rights recommends, that Denmark:

- initiate a study of whether the Public School Act involves unintended indirect discrimination due to race or ethnic origin;
- initiate a comparative study of intersectional discrimination in order to determine whether ethnic minority boys' poorer performance and drop-out rate is due to having another ethnic background than Danish;
- consider specific strategies for the inclusion of children with a Roma background in the education system in connection with Denmark's National Strategy for Inclusion of Roma People and that related municipal strategies are focused accordingly; and
- undertake an analysis of the conditions for Roma people in Denmark, especially the children's access to education and the scope and character of any possible discriminatory treatment of children with a Roma background in the educational system so that it can be assessed whether, as in other countries, there is a need for further initiatives in the area.

HEALTH SERVICES FOR REFUGEES AND IMMIGRANTS IN DENMARK

Human rights principles state that that everyone has the right to health, including access to health services. This right must be enjoyed without subjective or disproportionate differential treatment due to race, ethnic origin, etc. In

practice, according to health professionals, two particular ethnic minority groups do not have the same possibilities as others to exercise their right to health in Denmark: quota refugees and family reunified persons. Upon arrival in Denmark they are not systematically offered a health check even though health professionals deem it especially necessary to detect people requiring treatment and/or suffering from infectious diseases. Moreover, they lack knowledge of their rights and of the possibilities for prevention and treatment offered by the Danish healthcare system. In cases of especially complex needs – which can only be handled with difficulty in the mainstream system – there is a lack of targeted programmes to match the needs of these two particular groups.

The Danish Institute for Human Rights recommends, that Denmark:

- systematically offer refugees and family reunified persons a health check upon arrival in Denmark with a view to detecting infectious and/or life-threatening diseases and ensuring that the children are offered the Danish vaccination programme;
- systematically offer refugees and family reunified persons an introduction to the Danish healthcare system; and
- establish programmes like the Migrant Medical Clinic (IMK) in Odense in all regions of Denmark.

PSYCHIATRIC TREATMENT OF ETHNIC MINORITIES

Human rights principles state that everyone has the right to health, including access to health services. One must be able to exercise this right irrespective of race or ethnic origin, etc.

A recent Danish study points out conditions indicating possible problems related to equal treatment of ethnic minorities in psychiatry, namely their more frequent involuntary admission to institutions compared to ethnic Danish patients. This impacts refugee men and women reunified with their families in particular. The study also points out that patients of ethnic minority background are more often exposed to compulsory treatment and the use of physical force during psychiatric admission than ethnic Danish patients.

The Danish Institute for Human Rights recommends that Denmark:

- conduct a studies of the psychiatric treatment of ethnic minorities.

EQUAL TREATMENT OF GREENLANDERS IN DENMARK

According to the human rights principle of non-discrimination everyone has the right to exercise their rights without subjective or disproportionate differential treatment due to race or ethnic origin, etc.

Many Greenlanders are socially, culturally and family-wise well integrated into Danish society. Despite this, many of them experience discrimination, primarily in relation to contact with social authorities, access to work and education as well as the right to family life. Moreover, there are language barriers to communication with various public authorities and lack of access to interpreting assistance. Greenlanders with special needs, in particular, find that the social services, are to a great extent directed at “the negative image of Greenlanders” rather than at the specific person. Due to the absence of a high-security ward in Greenland,

criminals sentenced to indefinite detention, serve their sentences in Denmark. This is considered to be stressful for the Greenland prisoners due to separation from their families. In addition, the location of the prison makes resocialising into the Greenland society rather difficult.

The Danish Institute for Human Rights recommends that Denmark:

- investigate resident Greenlanders’ access to education, health, social services, housing and the labour market in Denmark, with a view to strengthening the knowledge base in the area; and
- find a solution for imprisoned Greenlanders who are serving indefinite sentences in Denmark.

HATE CRIMES

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

A study of hate crimes in Denmark shows that there is a lack of knowledge of the subject, including a lack of training in the police on hate crimes and human rights issues, insufficient registration and lack of investigation of hate crimes by the police.

The Danish Institute for Human Rights recommends that Denmark:

- draft a national action plan against hate crimes;
- initiate a broad effort to promote victims’ courage, willingness and ability to report hate crimes; and
- enhance prosecutors’ investigations into hate

crime cases, i.e., by a greater focus on the existing guidelines for cases in application of Criminal Code § 81, item 6.

ACCESS TO INFORMATION, INCLUDING INTERPRETING SERVICES

According to human rights principles, everyone has the right to publicly available information. This right must be exercised without subjective or disproportionate differential treatment due to race or ethnic origin, etc.

Studies show that in practice, ethnic minorities often do not have equal access to information and thus to the necessary knowledge of their rights and obligations in Danish society. This concerns access to news (which requires a relatively high mastery of the Danish language), access to information from the municipality (often exclusively in Danish), and insufficient use of trained interpreters and translators in the social and health care sectors as well as in courts of law, for example.

The Danish Institute for Human Rights recommends that Denmark:

- ensure that public authorities and public service media take linguistic diversity into consideration by providing news in easily understandable Danish and ensuring that information of particular importance is available in languages other than Danish;
- ensure that all citizens, regardless of race or ethnic origin have access to information about their rights and obligations; and
- establish a diploma or certification programme for interpreters.

Read the full text and all recommendations at www.menneskeret.dk/status.

CITIZENSHIP

Denmark can strengthen the effort in relation to non-citizens with close links to Denmark. The following summarises the citizenship themes in the status report, which concerns among others groups with a special need to acquire Danish citizenship because they do not have another country they can consider as theirs. This includes persons who are born in Denmark, children who grow up here and immigrants, particularly refugees and stateless persons. In addition, rules on dispensation from the standard requirements and the procedures for granting citizenship are addressed.

APPOINTMENT OF A CITIZENSHIP COMMISSION

According to the 2011 government platform, amendments to legislation were to take place in several areas concerning citizenship. These amendments were intended to bring the citizenship legislation more in line with human rights obligations.

However, the Danish Institute for Human Rights is of the opinion that there is a need for a more comprehensive review of the citizenship legislation to ensure that as whole, it lives up to Denmark's international obligations with respect to citizenship rights.

The Danish Institute for Human Rights recommends that Denmark:

- appoints a law reform commission to make recommendations for a citizenship law reform on the basis of, among other things, the recommendations mentioned below .

PROTECTION AGAINST STATELESSNESS FROM BIRTH

The United Nations Universal Declaration of Human Rights establishes the principle that everyone has a right to citizenship. The UN has also adopted several conventions that protect stateless persons and seek to prevent and reduce statelessness, most significantly the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness Also the Convention of the Rights of the Child states that children have the right to obtain a citizenship from birth.

According to the 1961 convention, Denmark is bound to give Danish citizenship to persons who are born on Danish territory and who would otherwise be stateless. Citizenship can be given at birth pursuant to the law or later following an application.

Currently, the awarding of Danish citizenship requires registration in the Central Civil Registration System (CPR) which presumes either a residence permit or an entry clearance.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- amends its conditions for granting citizenship to stateless persons born in Denmark in accordance with the 1961 convention by introducing a requirement of habitual residence instead of legal residence; and
- amends the Nationality Act so stateless children born in Denmark acquire Danish citizenship automatically at birth.

CHILDREN'S RIGHT TO CITIZENSHIP

It is not a human rights requirement that a country shall grant its citizenship to foreign children who are not born stateless in the country. However, many countries have given foreign children the right to acquire their citizenship independently. With the exception of statelessness situations, Denmark does not use the principle that being born in the country gives the right to citizenship (the *ius soli* principle). The fundamental acquisition principle of the Danish Nationality Act is that children acquire Danish citizenship at birth to a Danish mother or father (the *ius sanguinis* principle). Children born abroad out of wedlock acquire Danish citizenship at birth if the mother is Danish. Adopted alien children under 12 years of age acquire Danish citizenship by the adoption, while older adopted children and adopted step-children need to apply for Danish citizenship.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- amend the Nationality Act so every child acquires Danish citizenship at birth if the

father or the mother is Danish, regardless of whether the parents are married or not and of whether the child is born in Denmark or abroad;

- amend the Nationality Act so adopted children over the age of 12 and adopted step-children are given equal status to adopted children under the age of 12 so they no longer have to apply for citizenship (on certain conditions);
- amend the Nationality Act so children with unknown/undisclosed citizenship are treated as foundlings, i.e., are considered Danish in the absence of evidence to the contrary; and
- amend the Nationality Act so refugees' children born in the country are given the same right to Danish citizenship as stateless children born in Denmark.

CITIZENSHIP FOR IMMIGRANTS, INCLUDING REFUGEES AND STATELESS PERSONS

The Convention Relating to the Status of Refugees and the Convention Relating to the Status of Stateless Persons stipulate that the contracting states shall as far as possible facilitate refugees' and stateless persons' inclusion into society and access to citizenship.

Currently, there are rather strict requirements for acquisition of Danish citizenship and thus for becoming fully integrated into Denmark. These limitations can exclude vulnerable groups, including refugees and stateless persons, from obtaining citizenship.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- amends the Nationality Act so language and knowledge requirements do not exclude

vulnerable groups, including refugees and stateless persons, from obtaining citizenship.

RULES ON DISPENSATION FROM THE REQUIREMENTS FOR OBTAINING CITIZENSHIP

Human rights principles establish that all persons are equal before the law and entitled to the law's equal protection without discriminatory treatment. The Council of Europe's Convention on Nationality stipulates that the contracting states must ensure that negative rulings on citizenship contain written arguments.

Danish legislation regarding citizenship only contains one explicit rule on dispensation, which concerns the language and knowledge requirement and stipulates that under special circumstances questions of dispensation may be presented to the Parliament's Naturalisation Committee. Following the ratification of the United Nations Convention of the Rights of Persons with Disabilities, Denmark is obliged to ensure that its legislation provides for dispensation from language requirements, for example, if they cannot be fulfilled due to the applicant's disability.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- amend the Nationality Act so dispensation regulations specify the necessary conditions for a dispensation to be accorded and so more rights-assuring procedures are provided for in the processing of dispensation cases, including justification of negative rulings.

PROCEDURES FOR AWARDING CITIZENSHIP

Human rights law does not have requirements for the way in which citizenship is awarded, but it presupposes that discrimination does not occur, that the rulings are not arbitrary, that the proportionality principle is complied with and that there are possibilities of redress in the event of violations.

The 2011 government platform states that applicants' due process must be strengthened and that the requirements for obtaining citizenship must be adopted by statute rather than by changing political agreements.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- amends the Nationality Act, so the competence to award citizenship is delegated from the legislature, as far as possible, to administrative authorities and that in this regard, clear conditions for achieving Danish citizenship be adopted.

Read the full text and all recommendations at www.menneskeret.dk/status

EDUCATION

In the area of education, Denmark can increase the effort to ensure access to education and to ensure that school pupils receive and participate in human rights education. The following summarises the status report's educational themes, which concern the need for work on inclusion and accessibility for children with disabilities as well as the inclusion of human rights in primary and secondary schools.

INCLUSION

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

Denmark's first report to the Committee on the Rights of Persons with Disabilities, states that the aim of creating an inclusive school system has not yet been achieved. Children with disabilities are often referred to special classes or special schools and get a poorer education than children without disabilities. If a pupil receives fewer than 12 hours of support per week, there are no complaint options, which weakens the assurance that children get the right care and support.

The Danish institute for Human Rights recommends, among other things, that Denmark:

- promote inclusion in state schools;
- introduce a general prohibition against discrimination in education due to disability;
- amend the Public School Act to clearly state the objective of inclusion; and
- introduce an effective avenue for complaint to an independent agency where it can be decided whether a child is receiving the required care and support.

LACK OF ACCESSIBILITY

The Convention of the Rights of Persons with Disabilities establishes that the state is obliged to promote access for people with disabilities to schools and other educational institutions, physical surroundings, transport options and information, communication and other publically accessible facilities.

Currently there is no overview of the level of accessibility to the Danish educational institutions nor an action plan on how accessibility can be improved. It is documented that pupils with non-cognitive disabilities manage less well than other pupils in state schools.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- promote accessibility to educational institutions;

- determine that insufficient accessibility to educational institutions can amount to discrimination due to disability; and
- adopt an action plan with objectives for how Danish society, including educational institutions, can be made accessible.

- strengthen human rights education and education in children's rights in teacher education programmes.

Read the full text and all recommendations at www.menneskeret.dk/status.

IMPLEMENTATION OF HUMAN RIGHTS EDUCATION IN PRIMARY AND SECONDARY SCHOOLS

In 2011, the United Nations General Assembly has reaffirmed the fundamental importance of human rights education in contributing to the promotion, protection and effective realization of human rights, including in primary and secondary schools. The UN recommends that states develop strategies and policies to ensure the integration of human rights education into school and training curricula. Human rights monitoring agencies have recommended that Denmark strengthen children's knowledge of the Convention on the Rights of the Child in the schools and that Denmark develop systematic and ongoing educational programmes on human rights, including children's rights, for all people who work for and with children.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- implement human rights education and teaching in children's rights into study plans and curricula of primary and secondary schools at all levels and subjects where relevant and prepare a national strategy for human rights education, including for implementation of human rights education in primary and secondary schools; and

DEPORTATION AND EXTRADITION

Deportation and extradition of persons from Denmark is an area with well-known human rights challenges. The following summarises the themes the status report deals with in relation to deportation and extradition. These themes are about the deportation of foreigners due to criminality, deportation of foreigners due to suspicions of terrorism, extradition of persons to other states on the basis of so-called diplomatic guarantees as well as the conditions for foreigners who are in Denmark under 'tolerated residence'.

DEPORTATION DUE TO CRIMINALITY

The human rights establish that states may not deport a person, including a foreigner, to another state where the person may be assumed to be exposed to torture or inhumane or degrading treatment. In addition, the right to respect for privacy and family life means; for example, that a deportation must be proportionate in relation to the purpose of the deportation. In this assessment, the foreigner's links to the country of residence and to the home country is included as well as the type of criminality, the severity, etc.

In 2011, Denmark intensified the rules on deportation so today it is the main rule that foreigners who are sentenced to imprisonment for a committed crime must be deported. Deportation can only be omitted if this is in conflict with Denmark's international obligations. If deportation can be omitted,

the foreigner must always be sentenced to suspended deportation.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- changes the Danish Aliens Act's regulations on deportation due to criminality so they explicitly reflect Denmark's international obligations to a higher degree.
- not – as is the case with suspended deportation – lays down in legislation automatic sanctions without specific consequence.

DEPORTATION OF FOREIGNERS SUSPECTED OF TERRORISM

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

In Denmark, a special court trial of administrative rulings exists on the deportation of foreigners suspected of terrorism. The court trial is split into an open and a closed part. As established by the High Court as well, it can give rise to human rights problems. If the evidence that is submitted in the open material cannot make it possible for the accused to give effective instructions to his or her lawyer, it is not possible to have a real and fair process.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- gathers and submits statistical information on the use of the special court procedure in chapter 7b of the Danish Aliens Act.

THE USE OF DIPLOMATIC GUARANTEES FOR EXTRADITION

As mentioned above, human rights' prohibition of torture means that states may not send or extradite a person to another state if it can be assumed that the person will be exposed to torture or inhumane or degrading treatment in the receiving state.

In recent years, many states have entered into diplomatic guarantees with receiving states that the person extradited will not be exposed to torture, etc. in the receiving country. In a case regarding the extradition of a Danish citizen for legal proceedings for a charge of terrorism in India, Denmark received a diplomatic guarantee from India that the person would not be exposed to torture, etc. The Eastern High court subsequently overruled that the person could be extradited on the basis of the diplomatic guarantee because there was a real risk that the person would be exposed to treatment in conflict with the human rights' torture prohibition.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- displays great caution in using diplomatic guarantees.

FOREIGNERS UNDER 'TOLERATED RESIDENCE'

According to human rights law, anyone who is legally in a state's area has, as a basis, the right to move freely in this area and to freely choose his place of residence. The human rights' discrimination prohibition also means that states may not exercise direct or indirect unfair or disproportionate differential treatment between persons in comparable situations.

Foreigners who cannot be deported by Denmark because they risk torture or similar assault in the receiving country, reside in the country under so-called 'tolerated residence'. Persons on tolerated residence must, as a rule, reside in the asylum centre, Center Sandholm, as well as regularly report to the police. Persons on tolerated residence also have limited rights in another way.

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- subjects the legal position for foreigners here on tolerated residence to more detailed regulation.
- considers whether guidelines should be determined for access to impose residence in and/or reporting obligation to Centre Sandholm on a foreigner on tolerated residence, including which criteria should be included in the assessment as well as whether a maximum time limit for the duration of the interventions should be determined that can be differentiated depending on the circumstances.

Read the full text and all recommendations at www.menneskeret.dk/status.

FREEDOM OF EXPRESSION

Denmark has a number of challenges associated with freedom of expression. The following summarises the status report's themes on freedom of expression, which include journalists' working methods, public employees' freedom of expression, the prosecution of hate speech and the abolishment of the prohibition against blasphemy in the Danish Criminal Code.

JOURNALISTS' WORKING METHODS

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

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

The Danish Institute for Human Rights recommends, among other things, that Denmark:

- clarifies the balance between freedom of expression and punitive regulations in connection to perpetration of criminal actions, as a necessary part of discovery and publication of information of significant social interest; and
- consider whether courts of law and other judicial authorities, more fully can elaborate the application of international obligations in criminal cases involving freedom of expression and information.

PUBLIC EMPLOYEES' FREEDOM OF EXPRESSION

According to human rights, public employees have a basic right to freedom of expression. More recent studies show that many public employees are reticent in expressing themselves concerning conditions at their workplace and/or do not have knowledge of the applicable rules, including the limits of the "loyalty obligation".

The Danish Institute for Human Rights recommends that Denmark:

- implement initiatives to disseminate knowledge of the rules for public employees' freedom of expression; and
- describes the rules for public employees' notification obligations and the limits of the loyalty obligation in such a way that public employees and managers will have simple and understandable access to the rules.

HATE SPEECH PROSECUTION

It follows from the human rights obligations that the state is obliged to criminalise and effectively investigate hateful expressions against groups, based on race, skin colour, religion, descent or national or ethnic origin.

In Denmark, hateful expressions are criminalised in the Criminal Code. Violations of its § 266b are subject to public prosecution. Complaints about prosecutorial statements and appeals of the public prosecutor's rejection i.e. further investigation can be submitted by anyone who is entitled to complain. However, expressions, covered by § 266b will often be of such a general character that individuals are not entitled to complain. Today, there are no public statistics available on how many cases are rejected and on which grounds.

The Danish Institute for Human Rights recommends that Denmark:

- publish (in anonymous form) final rulings on reports, investigations, charges and rulings in cases regarding § 266b, so that the public can gain greater insight into the scope of the complaints on hate speech and an understanding of the assessment underlying a decision to initiate or not to initiate proceedings; and
- consider whether the complaint options in the area can be strengthened.

ABOLISHMENT OF THE PROHIBITION AGAINST BLASPHEMY IN THE DANISH CRIMINAL CODE

Human rights law do not protect against mocking of a religion. On the other hand, they do protect against public incitement to violence or hate directed towards people on

the basis of their religious affiliation. Human rights allow a certain degree of discretion over whether states retain existing blasphemy prohibitions or choose to repeal them.

The UN Human Rights Committee's general recommendation on the interpretation of the right to freedom of expression indicates a still more limited acceptance of the prohibition against blasphemy compared to earlier practice. Based on the Director of Public Prosecution's latest ruling, it cannot be excluded that the blasphemy prohibition in Denmark would be enforced by interpretation of religious texts, which makes it difficult to meet the requirement of predictability in a state based on the rule of law. Likewise, there are questions as to whether religious prohibitions can be enforced uniformly among different religions. Many European countries are currently phasing out or have already phased out the prohibition.

The Danish Institute for Human Rights recommends that Denmark:

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

Read the full text (in Danish) and all recommendations at www.menneskeret.dk/status.

This publication is a summary of the Danish Institute for Human Rights' status report, May 2012.

The report in full is available on the Institute website
www.menneskeret.dk

The report will be regularly expanded and the Institute welcomes comments at statusreport@menneskeret.dk