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**SELECTED INPUT AUGUST 2011**  
**TO THE UN HUMAN RIGHTS**  
**COMMITTEE**

ON RELEVANT TOPICS FOR THE  
LIST OF ISSUES PRIOR TO  
REPORTING (LOIPR) (DENMARK)

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THE DANISH INSTITUTE  
FOR HUMAN RIGHTS

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## I. GENERAL OBSERVATIONS

### Preface

1. This report is compiled by the Danish Institute for Human Rights (DIHR), and contains selected input to the UN Human Rights Committee on relevant topics concerning Denmark for the list of issues prior to reporting.
2. The selection of issues included in this report is based on recommendations to the government of Denmark from various international organs such as UN treaty bodies, UN Special procedures, The Universal Periodic Review of Denmark, Judgments from the European Court of Human Rights (ECtHR) and the Council of Europe's Commissioner for Human Rights. Furthermore the selection of issues is based on relevant human rights debates in Denmark, previous recommendations given by the Danish Institute for Human Rights through legal briefs, thematic reports etc.
3. This report consists of two main sections. The first section is focused on structural challenges in Denmark concerning human rights protection. The second section concerns material issues which are sorted according to the relevant articles in the International Covenant on Civil and Political Rights (ICCPR). Each issue selected for this report contains a recommendation which can be added to the list of issues.

### The Danish Institute for Human Rights

4. The Danish Institute for Human Rights (DIHR) is the national human rights institution of Denmark, established and functioning in accordance with the UN Paris Principles<sup>1</sup>. DIHR is the principal organization in Denmark for monitoring and advising on human rights. DIHR was in 2007 re-accredited as an (A) National Human Rights Institution (NHRI) by ICC. On the website of DIHR ([www.humanrights.dk](http://www.humanrights.dk)) an overview on the human rights situation in Denmark is provided. Thus, country reports, concluding observations, individual decisions and judgments from regional and international monitoring bodies are made accessible for a broader audience. The website provides the public with news and comments on national day by day development on the human rights situation in Denmark.

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<sup>1</sup> Act No. 411 of 06.06.2002 on the Establishment of the Danish Centre for International Studies and Human Rights

## II. STRUCTURAL ISSUES

### Ratification of human rights instruments

5. Denmark has not ratified the following international human rights conventions and protocols:
  - The International Convention for the Protection of All Persons from Enforced Disappearance
  - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
  - Protocol no. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which concerns a general prohibition against discrimination
6. Furthermore, Denmark has not accepted the right of individual communications in respect of:
  - The Optional Protocol to the Convention on the Rights of Persons with Disabilities
  - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

**DIHR recommends** that Denmark provide information on the current plans to ratify the above mentioned conventions and protocols, specifying which articles are preventing Denmark from ratifying each convention or protocol.

### Reservations

7. Denmark has made reservations to the following articles of the International Covenant on Civil and Political Rights:
  - Article 10, paragraph 3, second sentence (segregation of juvenile offenders from adults)
  - Article 14, paragraph 1 (exclusion of the press and the public from trials)
  - Article 14, paragraphs 5 and 7 (review of criminal cases by a higher tribunal and resumption of criminal cases)
  - Article 20, paragraph 1 (the prohibition against propaganda for war)
8. Denmark has furthermore made reservations to the following article in the Optional Protocol to the International Covenant on Civil and Political Rights:

- Article 5, paragraph 2 (a) (competence of the Committee to consider a communication from an individual if the matter has already been considered under other procedures of international investigation)

**DIHR recommends** that Denmark provide further information on the reasoning behind each reservation and consider whether the reservations are still relevant to uphold.

### **Incorporation**

9. The European Convention on Human Rights (ECHR) is the only international human rights convention incorporated into Danish law. International human rights instruments ratified by Denmark are enforceable at national courts. The Danish Supreme Court, however, has stated that non-incorporated treaties do not have full effect in Danish Law. Furthermore, case law shows a reluctance to include human rights instruments in Danish judgments even if a case party bases an argument on human rights. In cases where human rights are taken into account, the court most often refers to the ECHR. UN human rights treaties are rarely applied by Danish courts or individual parties to a case.

**DIHR recommends** that Denmark submit a list of case law where ECHR or core UN human rights conventions have been applied by Danish courts. Furthermore, Denmark should provide information on plans to incorporate additional human rights conventions into Danish legislation.

### **NHRI mandate for Greenland and the Faroe Islands**

10. DIHR is appointed as National Human Rights Institution in Denmark. In 2005 the mandate of DIHR was broadened to also cover Greenland<sup>2</sup>. DIHR did however not receive additional funding to carry out the obligations of a National Human Rights Institution for Greenland. The mandate of DIHR does not cover the Faroe Islands.

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<sup>2</sup> Royal decree No. 414 of 30.05.2005

**DIHR recommends** that Denmark explain what measures are being taken by Denmark, the self-rule-government of Greenland and the home-rule government of Faroe Islands to ensure that the entire jurisdiction of the Danish realm is covered by a functioning National Human Rights Institution.

### **National Action Plan on the implementation of human rights standards**

11. No systematic and public evaluation is carried out when Denmark receives concluding observations from UN treaty bodies, recommendations from special procedures or recommendations through individual communications. There is no ministerial focal point to ensure a systematic follow up. Implementation of recommendations is therefore the responsibility of individual ministries.
12. Denmark has several action plans concerning various human rights issues but currently lacks a comprehensive and complete action plan for human rights to ensure a proper identification of relevant human rights problems and implementation of human rights standards.

**DIHR recommends** that Denmark provide information on what measures are carried out to ensure a systematic and comprehensive follow up on international recommendations and implementation of human rights standards, including whether Denmark will consider developing a complete human rights action plan on the basis of a broad and participatory process involving civil society and relevant stakeholders.

### III. MATERIAL ISSUES

#### Pre-trial detention (art. 7, 9 and 10)

13. In 2008 Denmark adopted an amendment to the Danish Administration of Justice Act<sup>3</sup> with the aim of restricting the number of people held in pre-trial detention for extended periods of time, i.e. pre-trial detention of duration of more than three months. Thus, limits have been introduced for the duration of pre-trial detention, and these can only be exceeded in particular circumstances.
14. Young people under the age of 18 can be held in pre-trial detention for up to eight months and this limit is subject to further extension in cases which the State considers to be exceptional circumstances. However, the number of cases of extended pre-trial detention in 2009 has increased compared to 2008. In May 2011 the Working Group on the Universal Periodic Review (United Kingdom) recommended that Denmark limits the use of long periods of pre-trial detention.

**DIHR recommends** that Denmark provide information on the use of pre-trial detention, including information on whether Denmark will take new initiatives to reduce the use of pre-trial detention.

#### Solitary confinement (art. 7, 9 and 10)

15. Denmark has reduced the use of solitary confinement during the last years. Thus, the numbers of solitary confinement from 2005-2009 were as follows: 2005: 532, 2006: 475, 2007: 273, 2008: 327 and 2009: 210. According to section 770 c in the Danish Administration of Justice Act<sup>4</sup> general restrictions on the length of time spent in solitary confinement is laid down. However, under certain circumstances it is possible to deviate from these restrictions. As to persons under the age of 18, solitary confinement may be initiated or continued if exceptional circumstances require it and for a maximum of four weeks, unless the charge concerns offences against the security of the State, terrorism etc.

<sup>3</sup> Amendment Act No. 493 of 17.06.2008

<sup>4</sup> Consolidated Act No. 1237 of 26.10.2010

16. In February 2011 the Committee on the Rights of the Child urged Denmark to prohibit the placement of persons under the age of 18 in solitary confinement. In May 2011 the Working Group on the Universal Periodic Review (Belgium) recommended Denmark to prohibit solitary confinement of minors.

**DIHR recommends** that Denmark provide information on the use of solitary confinement and information on whether Denmark will take new initiatives to further reduce the use of solitary confinement, including research into other measures that might replace solitary confinement – especially in relation to persons under the age of 18.

#### **Diplomatic assurances (art. 7, 9 and 14)**

17. The Danish government has taken the position not to rule out the possibility of extraditing individuals – aliens and Danish citizens – suspected of terrorism-related activities to states on the basis of diplomatic assurances, despite the risk of torture and ill-treatment they might face when extradited for trial abroad. In the explanatory comments to Bill No. L 209 of 28 April 2009 (introducing certain amendments to the Aliens Act) the model for using diplomatic assurances is described. Diplomatic assurances have been used recently in Denmark.
18. On 30 June 2011<sup>5</sup> a panel of five judges in The Eastern Court unanimously upheld the decision from the court of first instance that a Danish citizen – without regard to a diplomatic assurance established between Denmark and India – cannot be extradited to India on charges of delivering weapons to Bengali separatists in 2005. The decision concluded that the Dane faced a real risk of mistreatment if extradited to India despite the diplomatic assurance received from India.

**DIHR recommends** that Denmark provide information on how to ensure that the use of diplomatic assurances will not constitute a violation of Denmark's international obligations and how it will be prevented that reliance on diplomatic assurances does not lead to human rights violations.

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<sup>5</sup> Case No S-3321-10

**The use of evidence that may have been obtained by torture, inhumane or degrading treatment (art. 7, 9 and 14)**

19. The Danish Security and Intelligence Service (PET) and the Danish police are – at least from 2007 when the question rose publicly – in their investigations allowed to use information obtained or possibly obtained under torture by agents of another country. Torture information is not to be presented in Danish courtrooms according to UN Convention Against Torture (CAT) article 15.
20. In a judgment from 24 June 2011 the Supreme Court in Denmark dealt with a case where evidence provided from abroad might have been produced by the application of torture. In the specific case the Supreme Court found it unnecessary to take a position on this issue.<sup>6</sup> However, in a previous court order of 26 May 2011 the Supreme Court concluded that there was a *risk* that the said information was provided by the use of torture, but it could not firmly be established to be the situation. On this background the Court did not rule out *per se* that the tainted information could be used in court proceedings. The case against the two terrorist suspects was handled accordingly to the specific rules in section 7 b of the Aliens Act implying an open and a closed part.

**DIHR recommends** that Denmark provide information on which safe-guards are taken against the risk of using evidence obtained by torture in Danish courts in administrative bodies.

**Evaluation of counter-terrorism measures (art. 7, 9 and 14)**

21. The Danish Government has since 9/11 2001 introduced a number of changes in legislation and practice in order to prevent and counter terrorism attacks in Denmark, including a system inspired by the UK with special and regular advocates in court cases concerning expulsion of aliens considered a threat to national security; aliens considered a threat to national security – who cannot be send out of Denmark due to risk of torture etc. in their home country – can for an indefinite time-period be ordered to stay in (during nights) and daily report to a refugee camp (“Sandholm-lejren”) in the outskirts of Copenhagen etc.

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<sup>6</sup> Supreme Court judgment of 24.06.2011, case no. 365/2010 and no. 17/2011

22. The Danish Ministry of Justice undertook in 2010 an evaluation of the Danish counter-terror initiatives on the basis of information provided by the Danish prosecution service, the police and the intelligence service (PET)<sup>7</sup>. It is the general conclusion of the evaluation that introduced counter-terrorism measures are effective and useful and should be upheld. The assessment is, however, solely based on information from Danish law-enforcement agencies involved in countering terrorism. The evaluation does not include possible wider implications of Danish counter-terrorism measures including possible negative human rights implications.

**DIHR recommends** that a broader independent evaluation of Danish counter-terrorism measures be undertaken. The evaluation should be based on a factual assessment of how introduced counter-terrorism measures are implemented in practice and the possible negative human rights implications. The evaluation team should include or involve independent representatives from defence lawyers involved in terror cases, universities, civil society, DIHR etc.

#### **Use of coercion by the Police (art. 7, 9 and 10)**

23. Danish Police – when carrying out their jobs - are legally<sup>8</sup> entitled to use appropriate means, including force, e.g. when they deal with a dangerous – or unpredictable – situation if the use of force is necessary, reasonable and proportionate. These means include among other things the use of weapons, pepper-spray (in order to reduce the use of lethal force e.g. for riot, crowd-control and in prisons), TARP-Leg lock (which caused a young mans death in a Danish prison lately) but also detention of a person posing a threat to public order or the safety of individuals (administratively detain). The use of coercion by the Police has been criticized in several cases.

24. End November 2009 the government introduced the so-called ‘hooligan law-package’ in order to deal especially with the challenges the COP 15 Climate Summit in Copenhagen in December 2009 might rise. “The package” increases sanctions for e.g. demonstrators who refuse to obey police instructions and allows the police to pre-empt rioting by carrying out mass arrests, allowing the

<sup>7</sup> ”Justitsministeriet, *Redegørelse om erfaringerne med lovgivning indført i forbindelse med anti-terrorpakke I fra 2002 og anti-terrorpakke II fra 2006, 9 September 2010*”

<sup>8</sup> Police Activities Act No. 444 of 09.06.2004 with later amendments

police to keep people in custody for up to 12 hours, earlier a maximum of six hours. During the COP 15 more than 1900 individuals were detained administratively. The City Court of Copenhagen found several of the detentions illegal and also stated that they constituted a violation of human rights. An appeal is made to the High Court of Eastern Denmark.

**DIHR recommends** that Denmark provide information on how to ensure that coercion used by the Police fully respects Denmark's international obligations and how it will be prevented that it does not lead to human rights violations, including whether the legislation which greatly extends police powers provides sufficient checks and controls of the use of coercion in practice.

#### **Use of coercion against psychiatric patients (art. 7 and 9)**

25. In spite of amendments to the Danish Act on the Use of Coercion in Psychiatry in 2007, the use of coercion continues to be excessive. Since 2002, around 20 per cent of all persons who are treated in psychiatric hospitals are subject to coercive treatment, including physical force and immobilisations with belts.
26. Statistics are not sufficiently precise, but it would seem that the use of longer-lasting immobilisations with belts are also unaltered in spite of serious and repeated criticism by the European Committee on Prevention of Torture (CPT, Report on visit in February 2008). In 2009, more than 400 immobilisations with belts lasted more than 72 hours, but no information is provided on how long these immobilisations lasted.

**DIHR recommends** that Denmark provide more precise statistics on the use of coercive treatments in psychiatry. In addition, DIHR recommends that Denmark provide information on how the use of coercive treatments in psychiatry will be reduced.

### Trafficking (art. 8)

27. Human trafficking is a severe violation of human rights and must be combated. In order to do so it is important to focus particular on prosecution as well as on identification of victims and on support to victims.

**DIHR recommends** that Denmark provide information on what measures are being taken by Denmark in order to ensure that crimes of trafficking are investigated and that traffickers are prosecuted. Further, it is recommended that information is provided on what measures is being taken in order to ensure a consistent cooperation on an international level with police forces from other countries, EU and UN organisations etc.

28. The process surrounding identification of victims is extremely important both to ensure that traffickers are prosecuted and to ensure that victims are given the support they are entitled to. The process must therefore not be rushed or be subjected to a deadline.

**DIHR recommends** that Denmark provide information on what measures are being taken by Denmark in order to ensure that no potential victims of trafficking are returned to their country of origin before a proper identification process has taken place.

29. The Danish Aliens Act gives the police authority to administratively detain a person who is an illegal immigrant for up to 72 hours and since a number of victims of trafficking have entered and/or are staying in Denmark illegally, there is a risk that these victims are detained by the police. However, a victim of trafficking should first and foremost be seen as a victim of a human rights violation and not as an illegal immigrant and should as such not be detained.

**DIHR recommends** that Denmark provide information on what measures are being taken by Denmark in order to ensure that victims of trafficking are not imprisoned because of their residence status.

30. It follows from the national action plan on combating human trafficking 2011-2014 that the National Commission of the Danish Police's guidance on the area will be amended in order to ensure knowledge of the possibility provided for by the Aliens Act to place women who are potential victims of trafficking at a shelter.

**DIHR recommends** that Denmark provide information on this amendment as well as information on the number of women who have been placed at a shelter and the period of time they can stay at the shelter. Furthermore, DIHR recommends that Denmark provide information on whether this possibility also applies to men and if so where they will be placed.

#### **Prohibition of disproportionate expulsion of aliens (art. 13 and 17)**

31. According to the Danish Aliens Act<sup>9</sup> aliens who have committed crime of a certain character must be expelled from the country unless an expulsion of the alien in question for certain will constitute a violation of Denmark's international obligations. However, it is not sufficiently specified how judges and other authorities shall carry out this assessment. Furthermore, an alien who has committed crime but cannot be expelled must always be conditionally expelled.

**DIHR recommends** that Denmark provide information on the Danish legislation concerning expulsion of criminal aliens etc., including information on how to assess whether expulsion of a criminal alien with certainty will not constitute a violation of international obligations and how it will be prevented that the amended rules on expulsion will not result in judgments contrary to the international obligations of Denmark.

#### **Requirements for permanent residence permit and family reunification (art. 2, 12, 17 and 26)**

32. According to the Danish Aliens Act<sup>10</sup> it normally must be made a condition for a permanent residence permit that the alien obtains a certain amount of points in a point system based on a number of criteria, including residence of four years in Denmark, Danish language qualifications on a high level, employment of longer duration and/or education of a certain level.

<sup>9</sup> Amendment Act No. 758 of 29.06.2011

<sup>10</sup> Amendment Act No. 572 of 31.05.2010

33. Furthermore, according to the Danish Aliens Act<sup>11</sup> it normally must be made a condition (among several conditions) for family reunification with a spouse/partner that the person residing in Denmark – if the person is an alien and has not been granted permanent residence permit after current legislation – fulfils the current requirements for permanent residence permit, i.e. Danish language qualifications on a high level, employment of longer duration and/or education of a certain level etc.
34. Persons of a strong academic background may be capable of fulfilling the requirements for permanent residence permit. It must however be expected that it will be difficult for many refugees, especially those with specific protection needs, to fulfil the requirements. Exemption from the requirements can only be obtained based on the Convention on the Rights of Persons with Disabilities (CRPD) or with reference to Denmark’s international obligations in general.

**DIHR recommends** that Denmark provide information on the Danish legislation concerning the above mentioned requirements for permanent residence permit and family reunification, including specific information on whether the requirements – especially in relation to refugees, who due to age, trauma or other vulnerabilities, cannot be expected to meet the requirements – are justified in an objective, relevant and reasonable way.

35. According to the Danish Aliens Act<sup>12</sup> and legal notice no. 780 of 29 June 2011, it normally must be made a condition (among several conditions) for family reunification with a spouse/partner that the alien passes a Danish language test and a test in knowledge about the Danish society (the immigration test). Nevertheless, aliens from Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Korea and USA are not met with this condition. This differential treatment of aliens on the basis of nationality is said to be justified based on the fact that these specific countries have a high level of development, are members of OECD and are covered by EU’s rules on visa-exemption.

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<sup>11</sup> Amendment Act No. 601 of 14.06.2011

<sup>12</sup> Amendment Act No. 601 of 14.06.2011

**DIHR recommends** that Denmark provide information on the Danish legislation concerning the immigration test, including specific information on whether this mentioned exception from the immigration-test is justified in an objective, relevant and reasonable way.

### **Danish citizenship (art. 2, 17 and 26)**

36. Persons applying for Danish citizenship must pass a Danish language test and a test in knowledge about the Danish society. Until recently, persons who suffered from posttraumatic stress disorder could not be exempted from passing this test in spite of the fact their illness or disability made it impossible for them to acquire sufficient language skills and knowledge about Danish society. It is unclear whether this practice which has been criticised as constituting discrimination on the grounds of disability continues.

**DIHR recommends** that Denmark provide information on whether persons with posttraumatic stress disorder may be exempted from the Danish language test and test in knowledge on the Danish society which must be passed in order to qualify for Danish citizenship, in order to ensure that they are not subject to discrimination on the grounds of disability.

### **Public officials displaying religious affiliation (art. 18)**

37. According to the Administration of Justice Act<sup>13</sup> judges must not dress in a way, which can appear as a manifestation of religious or political affiliation, e.g. wearing a crucifix or a Muslim headscarf. Furthermore, Police officers are prohibited from wearing a Muslim headscarf on duty, and officials in the Danish military or the Home Guard (in Danish: *Hjemmeværnet*) are not allowed to wear a Muslim headscarf while wearing a uniform. It has been discussed whether schoolteachers also should be prohibited from wearing a Muslim headscarf.

**DIHR recommends** that Denmark provide concrete information on regulation and whether existing prohibitions of displaying other religious symbols are in place in relation to public servants within

<sup>13</sup> Amendment Act No. 495 of 12.06.2009

various fields of work. Especially, focus should be put on the legitimate aim used to justify such limitations.

### **Hate crimes (art. 20)**

38. In the Danish Penal Code hate crimes are treated as aggravating factors. When determining the sanction for a committed crime it is thus considered an aggravating factor that the criminal deed was motivated by the ethnic origin, belief or sexual orientation of others. Furthermore it is considered an aggravating factor if a criminal deed is motivated by a victim's use of the freedom of expression in the public debate.
39. In 2011 DIHR published a study analysing how hate crimes are handled in Denmark and assessing whether the procedures that have been developed by the police, the prosecution and the courts ensure effective protection against hate crimes.<sup>14</sup> The study shows that legal protection against hate crimes in Denmark is not effective. Data reveal a large discrepancy between the extent of hate crimes experienced by individuals, and the actual number of reported hate crimes. Some of the most central recommendations in the study are:
- To provide information on hate crimes through a systematic collection of data from police, prosecutors and courts as well as through research.
  - To promote reporting of hate crimes to police through a nationwide effort to raise knowledge of hate crimes, rights and remedies.
  - Reinforcement of the efforts of the police through the undertaking of systematic efforts in all police districts.
  - Improvement of the registration of cases by the courts.
  - Establishment of a permanent incident reporting scheme.
  - Identification of initiatives for crime prevention. Among others implementation of information campaigns on respect for fundamental rights.

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<sup>14</sup> Institut for Menneskerettigheder (2011) Udredning nr. 8, *Hadforbrydelser i Danmark – vejen til en effektiv beskyttelse*

**DIHR recommends** that Denmark provide information on measures taken to prevent and effectively prosecute crimes motivated by a person's ethnic origin, belief, sexual orientation or public remarks.

### **The right of a child to acquire a nationality (art. 24 (3))**

40. According to the Danish Circular Letter on Naturalization<sup>15</sup>, children may only be naturalized independently if they have no possibility of being granted naturalization together with one of the parents. Such possibility of being granted nationality as a dependent exists where one of the parents who are not Danish national shares parental authority and is resident in Denmark. As the rule is interpreted, children of foreign parents who may in principle apply for Danish nationality, but who are in practice not able to pass the restrictive Danish requirements for naturalization, have no independent right to acquire Danish nationality (unless they belong to certain groups of children who are exempted from the rule, among others children who are borne stateless in Denmark).

**DIHR recommends** that Denmark provide information on the Danish legislation concerning children's possibility of being granted Danish nationality, including the fact that as a rule, children permanently residing in Denmark have no independent right to acquire Danish nationality, including children who are stateless either *de jure* or *de facto* (but not born in Denmark).

### **Limitation in political participation (art. 25)**

41. Insufficient studies have been made of representation of persons with disabilities in political representative bodies. Moreover, persons with disabilities do not enjoy the right to vote on equal terms with others. Persons with disabilities whose legal capacity has been limited do not have the right to vote.<sup>16</sup> Persons with disabilities have difficulties in obtaining sufficient information on political parties and candidates prior to elections due to a lack in accessible materials and televised debates. Moreover, both the voting booths and ballot papers are not sufficiently accessible to ensure that persons with physical disabilities or persons who are blind or dyslectic may cast secret ballots on equal terms with others.

<sup>15</sup> Circular Letter No. 61 of 22.09.2008

<sup>16</sup> Cf. section 1 of Consolidated Act No. 107 of 8.02.2011 on Elections for the Danish Parliament

**DIHR recommends** that studies be made of representation of persons with disabilities in political representative bodies. DIHR recommends that Denmark take action to ensure that persons with disabilities enjoy an equal right to vote.

42. In 2010 an amendment to the legislation on local and regional elections entailed that third country nationals to Denmark – who previously could vote and get elected after three years of uninterrupted residence – can now vote and get elected for local and regional elections after four years of uninterrupted residence. Even though Denmark has strong democratic traditions for political participation that also include third country nationals, the change from three to four years implies an unfavourable tendency to curb third country nationals democratic participation which has otherwise been seen as necessary in order to promote integration of this group of people in the Danish society and to ensure fair representation and democratic citizenship.

**DIHR recommends** that Denmark provide information on which legitimate aims are used to justify the mentioned limitation.

### **Protection against discrimination (art. 26)**

43. The Danish legislation prohibiting discrimination consists of several acts which offer different degrees of protection depending on the discrimination ground in question. The result is insufficient protection against discrimination targeted at certain groups, an unequal approach to combating discrimination, a complex legal basis for practitioners of law to apply and lack of predictability for ordinary citizens.

44. For example, it is both illegal and criminalised for restaurants to refuse admittance based on the ethnic origin of a person. It is however not a violation of Danish law to refuse admittance because of a person's disability or age since these two discrimination grounds are not protected outside the labour market. Furthermore, discrimination of homosexuals within commercial or non-profit services is criminalised, but homosexuals are unable to bring such a complaint to the Board of Equal Treatment which is an administrative organ dealing with discrimination cases.

45. In addition, in the recent years there has been increasing focus on the situation of individuals who are members of so-called independent trade unions, who are not part of any trade union confederation in Denmark. Members of the independent trade unions occasionally experience discrimination and/or harassment because of their trade union membership.

**DIHR recommends** that Denmark provide information on the level of protection against discrimination for each ground of discrimination and how legal protection against discrimination in all areas of societal life and on the basis of all grounds of discrimination will be ensured.

### **Ethnic profiling (art. 9 and 26)**

46. In 2011 DIHR carried out a legal study concerning ethnic profiling by the Danish police and existing legal safeguards to prevent ethnic profiling.<sup>17</sup> The report generally concludes that there is a lack of focus on ethnic profiling in Danish law and thus weak legal safeguards against ethnic profiling. For instance the prohibition against police discrimination is based on an unwritten principle in Danish law and Danish legislation thus lacks a specific written prohibition against police discrimination. For instance DIHR recommends:

- Adoption of national guidelines on the prevention of ethnic profiling when carrying out general police measures, border control, anti-terrorism etc.
- Increased police training concerning discrimination and ethnic profiling.
- Adoption of a specific and written prohibition against police discrimination.
- Systematic registration of persons who come into contact with the police in order to statistically detect patterns of disproportionate measures towards specific groups and to monitor the effectiveness of police actions.

47. One particular area where the risk of ethnic profiling is increased is the police access to carry out random stop and searches of individuals. The Danish police can carry out random stop and searches of individuals in relation to border control, traffic controls and identity checks. Furthermore section 6 of the Police Activities Act<sup>18</sup> enables the Danish police to establish stop and search zones within

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<sup>17</sup> Danish Institute for Human Rights (2011), *Ethnic profiling in Denmark – legal safeguards within the field of work of the police*

<sup>18</sup> Act No. 444 of 09.06.2004 on Police Activities

which the police can search anyone to determine whether a person is carrying illegal weapons. A recent ruling by the European Court of Human Rights finding that a similar system in the United Kingdom was in violation of the right to personal liberty led to debate concerning the Danish legislation but has not resulted in any legal amendments.<sup>19</sup>

**DIHR recommends** that Denmark provide information on police access to carry out random stop and searches of individuals and what measures are carried out to prevent ethnic profiling by police officers.

### **Human rights and business**

48. In June 2011, Denmark supported the Human Rights Council's unanimous Resolution A/HRC/17/L.17/Rev.1 endorsing the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, as annexed to the Report of the Special Representative of the Secretary General on human rights and transnational corporations and other business enterprises. The Guiding Principles are based on the framework previously approved by the Human Rights Council comprising the state duty to protect against corporate human rights abuses; the corporate responsibility to respect human rights; and the rights of victims to remedy for abuses occurring within the private sector. Denmark also adheres to the OECD's Guidelines for Multinational Enterprises which, in May 2011, were revised to include a human rights chapter which recognises the duty of states to protect human rights, and the responsibility of enterprises to respect human rights, in line with the UN Guiding Principles on Business and Human Rights.

**DIHR recommends** that Denmark provide information on existing measures and plans for future actions by Denmark to secure effective implementation of its international obligations under the Covenant vis a vis the activities of corporate actors, including with reference to the UN "Protect, Respect, Remedy" framework and UN Guiding Principles on Business and Human Rights.

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<sup>19</sup> Gillan and Quinton v. The United Kingdom, application no. 4158/05, judgment of 12 January 2010