

The Human Rights Committee (CCPR)

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DOC. NO. 17/01621-2

21 AUGUST 2017

**SUBMISSION OF FOLLOW-UP DOCUMENT TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE IN RELATION TO THE CONCLUDING OBSERVATIONS ON THE SIXTH PERIODIC REPORT OF DENMARK (CCPR/C/DNK/CO/6)**

On 15 August 2017, the UN Human Rights Committee requested Denmark in its concluding observations to provide the Committee within one year with follow-up information in response to the Committee's recommendations relating to paragraphs 20 (domestic violence), 24 (solitary confinement) and 32 (rights of aliens, including migrants, refugees and asylum seekers).

Denmark provided the Committee with a report containing follow-up information on the above-mentioned recommendations on 19 July 2017.

On this background, the Danish Institute for Human Rights – Denmark's National Human Rights Institution (DIHR) hereby submits the following comments on the follow-up information provided by Denmark on 19 July 2017.

Please be advised, that the following comments should be read in conjunction with the follow-up report submitted by Denmark.

**COMMENTS REGARDING RECOMMENDATION 20:**

**Psychological violence**

Regarding Denmark's efforts to effectively combat domestic violence, DIHR would like to emphasise that the UN CEDAW Committee in its concluding observations on Denmark's eight periodic report (2015)<sup>i</sup> repeated its concern that Denmark has no explicit provisions to ensure the protection of women from psychological violence. On this basis, the Committee recommended that Denmark should adopt a legislative framework that explicitly provides for the protection of women from

psychological violence, in line with article 33 of the Istanbul Convention<sup>ii</sup>. However, the Danish Ministry of Justice states in a state report to the Group of Experts on Action against Violence against Women and Domestic Violence (2017)<sup>iii</sup> that article 33 of the Istanbul Convention on psychological violence does not require change of legislation as it is already criminalized in sections 245(2)<sup>iv</sup>, 260<sup>v</sup> and 266<sup>vi</sup> of the Danish Criminal Code<sup>vii</sup>. Thus, the exercise of psychological violence is still not recognised as a separate criminal offense in the Danish Criminal Code and no concrete definitions of psychological violence have been developed.

DIHR would like to accentuate that the present state of play concerning Danish case law shows that psychological violence despite the legal possibility to apply the above sections is not recognized as a crime by the judiciaries. Studies of case law (2012-2013)<sup>viii</sup> on sections 245(2) and 260 of the Danish Criminal Code shows that neither sections have been applied in judgements to state psychological violence against a current partner. Nor have the scant judgements passed on section 266 of the Danish Criminal Code against a former partner referred to the offense as psychological violence. Further, DIHR would like to draw the Committee's attention to a recent Danish study (2016)<sup>ix</sup> that indicates a specific link between psychological violence and killings of women by their intimate partners in Denmark.

In relation to para. 3 in Denmark's follow-up report, it follows that the Director of Public Prosecution has issued binding guidelines for the police and the prosecutors on handling of criminal cases, including cases on domestic violence (guidelines on Interrelational Violent Crimes updated on 1 July 2016<sup>x</sup>). In that connection, DIHR would like to note that these guidelines do not entail information or relevant case law regarding threats and other forms of psychological violence.

Further, it follows from para. 6 in Denmark's follow-up report that the Director of Public Prosecution has developed binding guidelines on how the police and prosecution service must handle cases concerning restraining orders, exclusion- and expulsion orders.<sup>xi</sup> DIHR, however, notes that these guidelines do not refer to psychological violence.

#### **COMMENTS REGARDING RECOMMENDATION 24:**

##### **Children placed in isolation**

In relation to the numbers concerning children placed in isolation, DIHR would like to draw the Committee's attention to the fact that recent figures by the Danish Director of Public Prosecution shows, that children suspected of criminal activities in 15 cases was placed into isolation during the year 2016.

Further, the numbers show that one out of the 15 cases was conducted with no legal basis in the Danish Administration of Justice Act. Additionally, nine of the 15 cases was inconsistent with the Danish Administration of Justice Act.<sup>xii</sup>

The Danish Director of Public Prosecution stated in April 2017 that he found the use of isolation in the cases unfortunate, and requested the local police in question to follow up on the cases. Furthermore, he stated that he intended to closely monitor the area during 2017.

## **COMMENTS REGARDING RECOMMENDATION 32:**

### **Non-refoulement in cases concerning children**

In relation to Denmark's assessment of non-refoulement in cases concerning children DIHR would like to inform the Committee of the following practice that has come to the attention of DIHR:

According to information received by DIHR accompanied children is generally not heard individually in the asylum procedure (exceptions might occur on a very limited basis), but parents are instead asked about their child's potential conflicts if returned.

The result of this procedure is that if the child has experienced a conflict relevant for the asylum case, but unknown to the parent (e.g. if the child is homosexual and has not informed his/her parents) or the child risks inhumane treatment etc. from the parents or with the parents' consent (e.g. if the parents plan to allow their girl-child be circumcised), a sufficiently thorough assessment of the child's risk of refoulement is not properly ensured.

### **Immature unaccompanied minors**

It follows from para. 45 in Denmark's follow-up report, that all unaccompanied minors, who are assessed to be mature enough for the asylum proceedings, have access to an individual asylum procedure.

In this connection DIHR would like to emphasise that in accordance with Danish Aliens Act (section 9 c (3)(1)), children who are deemed immature to undergo an asylum procedure will not have their asylum claim processed until a later stage where they are deemed sufficiently mature. They can be granted a residence permit as an unaccompanied child, if they will be in an emergency situation upon return to their country of origin. But if they e.g. have contact to family relations at their country of origin, they cannot be granted this residence permit. They can however also not be returned, as their asylum claim has not yet been processed.

NGO's have reported to DIHR that they have become aware of examples of children in the asylum process, who are not granted a temporary residence permit under the special regulation for unaccompanied children, e.g. because they have family in the country of origin. They therefore remain in the asylum centres until they are sufficiently mature to undergo an asylum process. The NGO's report that this is an amendment in practice, as the children previously were allowed to live with relatives or be part of normal society, whereas the authorities state that no amendment has taken place.

Regardless, the consequence is that the children will remain as unaccompanied in the asylum facilities for children, awaiting being mature enough to have their case handled by authorities. The group reportedly concerns some 26 children as young as 9/10 years old.

Yours sincerely,

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<sup>i</sup> United Nations, Committee on the Elimination of Discrimination against Women, Concluding observations on the 8<sup>th</sup> periodic report of Denmark, 11 March 2015, available in English at:

<http://repository.un.org/handle/11176/310409>

<sup>ii</sup> The Council of Europe, The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (The Istanbul Convention), 1 August 2014, available in English at:

<http://www.coe.int/en/web/istanbul-convention/text-of-the-convention>

<sup>iii</sup> The Kingdom of Denmark, Report submitted by Denmark pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report), 18 January 2017, available in English at: <https://rm.coe.int/16806dd217>

<sup>iv</sup> Pursuant to section 245(2) of the Criminal Code, any person who harms the body or health of another person is liable for imprisonment for a term not exceeding six years.

<sup>v</sup> Pursuant to section 260 of the Criminal Code, any person who coerces someone to do, accept or fail to do something through the use of violence or threats of violence, of considerable damage to property, of deprivation of liberty, of making an incorrect allegation of a criminal or defamatory act, or of disclosing private details; or any person who coerces someone to do, accept or fail to do something through threats of reporting or disclosing a criminal act, or of making true defamatory accusations, and such coercion is considered not to be properly justified by the underlying cause of the threat, is liable for a fine or imprisonment for a term not exceeding two years.

<sup>vi</sup> Pursuant to section 266 of the Criminal Code, any person who threatens to commit a criminal act in a manner suited to create a serious fear in another person for his or her own or other people's life, health or welfare is liable for a fine or imprisonment for a term not exceeding two years.

<sup>vii</sup> The Kingdom of Denmark, Report submitted by Denmark pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report), 18 January 2017, available in English at: <https://rm.coe.int/16806dd217>

<sup>viii</sup> Rasmussen N. and The Danish Institute for Human Rights, The Right to a Life Without Violence (Ret til et liv uden vold), 2014, available in Danish at:

<https://menneskeret.dk/udgivelser/ret-liv-uden-vold>

<sup>ix</sup> Rasmussen N., Nørregård-Nielsen E. and Westermann-Brændgaard N., The Prevention of Homicide and Violence Resulting in Death within the Family/Domestic Unit (Forebyggelse af drab og dødelig vold i nære relationer), 2016, available in Danish at: <http://rso.dk/portfolio/forebyggelse-af-drab-og-doedelig-vold-i-naere-relationer/>

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<sup>x</sup> The Director of Public Prosecution, Interrelational Violent Crimes (Samlevsrelaterede personfarlige forbrydelser), updated on 1 July 2016, available in Danish at:

[https://vidensbasen.anklagemyndigheden.dk/api/portals\(6e302527-f0b3-4a5e-889a-668aa67e5491\)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/a3a56704-cac9-462e-be3f-87831b846dca](https://vidensbasen.anklagemyndigheden.dk/api/portals(6e302527-f0b3-4a5e-889a-668aa67e5491)/Print/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/a3a56704-cac9-462e-be3f-87831b846dca)

<sup>xi</sup> The Director of Public Prosecution, Restraining orders, Exclusion- and Expulsion Orders (Tilhold, opholdsforbud og bortvisning), updated on 1 January 2017, available in Danish at:

<https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/61c6c46a-54b0-42fe-acb4-cce6572421ba>

<sup>xii</sup> Statement of the Danish Director of Public Prosecution of 1 May 2017, available in Danish at:

<http://www.ft.dk/samling/20161/almdel/reu/bilag/329/index.htm>