

THE DANISH
INSTITUTE FOR
HUMAN RIGHTS

PARALLEL
REPORT TO
CESCR (2013)

5TH EXAMINATION
OF DENMARK

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5TH EXAMINATION OF DENMARK**

Danish Institute for Human Rights

Parallel report to the UN Committee on Economic, Social and Cultural Rights on the 5th periodic report by the Government of Denmark.

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ABBREVIATIONS

CESCR	Committee on Economic, Social and Cultural Rights
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
DIHR	Danish Institute for Human Rights
ECHR	European Convention on Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UNHCR	The United Nations High Commissioner for Refugees
UPR	The Universal Periodic Review

CHAPTER 1

1 PREFACE

This parallel report to the UN Committee on Economic, Social and Cultural Rights (CESCR) on the committee's 5th examination of the Government of Denmark is compiled by the Danish Institute for Human Rights (DIHR). The report contains recommendations to the Government of Denmark on the strengthening of the national human rights protection within the scope of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Each issue in this report contains a brief description of the human rights regulation, an explanation of the situation in Denmark and one or more specific recommendations to the Government of Denmark.

The selection of issues included in this report is based on recommendations to the Government of Denmark from various international bodies such as UN treaty bodies, UN Special procedures, The Universal Periodic Review of Denmark. Furthermore the selection of issues is based on relevant human rights debates in Denmark, legislative developments, previous recommendations given by the DIHR or civil society through legal briefs, thematic reports etc.

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 ICESCR.

DIHR is the national human rights institution of Denmark, established and functioning in accordance with the UN Paris Principles. DIHR is the principal organization in Denmark for monitoring and advising on human rights. On the website of DIHR (www.menneskeret.dk or www.humanrights.dk) an overview on the human rights situation in Denmark is provided. The website provides the public with news and comments on national day by day development on the human rights situation in Denmark. In 2012 DIHR published a new status report concerning the human rights situation in Denmark within several different areas. A summary of the report is available in English at www.humanrights.dk.

2 STRUCTURAL ISSUES

2.1 INCORPORATION

The European Convention on Human Rights (ECHR) is the only international human rights convention incorporated into Danish law thus making it a part of Danish legislation. None of the core UN human rights conventions are incorporated into Danish law. During the Universal Periodic Review (UPR) of Denmark in May 2011, the Government of Denmark was recommended to incorporate into domestic law international human rights conventions to which Denmark is party.¹

In its fifth periodic report to CESCR Denmark stated that ICESCR is a relevant source of law in Denmark which is applied by the Danish courts and other law-applying authorities. Although the Covenant has not been incorporated into Danish law, Denmark thus fully respects the provisions of the Convention. Danish case law however shows reluctance by courts 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 often refers solely to the ECHR. UN human rights treaties are rarely applied by Danish courts or individual parties to a case. Furthermore the Danish Supreme Court has stated that non-incorporated treaties such as ICESCR do not have full effect in Danish Law.

In 2013 the Danish Government established an expert committee on incorporation etc. within the human rights field. The members of the committee include a wide range of legal experts from Danish universities, judges, ministry representatives, DIHR, NGO-representatives etc. By the end of September 2013 the expert committee shall complete a report containing an analysis and recommendations whether or not Denmark should:

- Incorporate further human rights instruments in Danish law,
- Accept the right of individual communications through ratification of further optional protocols, and
- Ratify protocol 12 to the European Convention on Human Rights

In 2001 a previous expert committee on incorporation issued a report in which the committee recommended that Denmark incorporated the International Covenant on Civil and Political Rights, The Convention Against Torture and the International Convention on the Elimination of All Forms of Racial Discrimination. The expert committee however advised against the incorporation of further UN human rights conventions, including ICESCR.² The expert committee emphasized that ICESCR contained several articles which were impossible to apply by courts

and other authorities when settling legal disputes. Furthermore the expert committee emphasized the lack of possibility of individual complaints under ICESCR and the limited number of sources of interpretation through general comments.

- **DIHR recommends** that Denmark incorporates into Danish law the core UN human rights conventions ratified by Denmark.

2.2 RATIFICATION OF HUMAN RIGHTS INSTRUMENTS

Denmark has not accepted the right of individual communications in respect of:

- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities,
- The third Optional Protocol to the Convention on the Rights of the Child, and
- Protocol to the European Convention on Human Rights concerning the general prohibition of discrimination.

During the UPR of Denmark in May 2011, the Government of Denmark was recommended to sign and ratify the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of Persons with Disabilities. Furthermore Denmark was recommended to ratify protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the general prohibition of discrimination.³ 19 December 2011, the UN General Assembly approved a third optional protocol to the Convention on the Rights of the Child (CRC) on a Communications Procedure, which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols.

As a response to the recommendations from the UPR of Denmark the Government of Denmark stated that a large part of the provisions of ICESCR are of a vague and imprecise nature. By accepting individual communications the CESCR may be forced to define the more specific content of these provisions and thus act as legislator and assess the state distribution of welfare resources. In the opinion of Government of Denmark, such questions should be dealt with by the Government and the legislative power of the individual state.⁴

Furthermore the Government of Denmark stated that the Convention on the Rights of Persons with Disabilities includes various economic, social and cultural

rights which the parties to the Convention must implement gradually within the resources available. These economic, social and cultural rights build on open formulations in the text of the Convention, and they are difficult to define accurately and are therefore interpreted more or less extensively. The reason is that economic, social and cultural rights are subject to the principle of gradual implementation, rendering the parties' obligations difficult to define. To this should be added that they will often be of a distribution political nature and therefore unsuitable to be assessed in relation to individual cases.

In 2013 the Government of Denmark established an expert committee on incorporation etc. within the human rights field. The members of the committee include a wide range of legal experts from Danish universities, judges, ministry representatives, DIHR, NGO-representatives etc.

By the end of September 2013 the expert committee shall complete a report containing an analysis and recommendations whether or not Denmark should:

- incorporate further human rights instruments in Danish law,
- accept the right of individual communications through ratification of further optional protocols, and
- Ratify protocol 12 to the European Convention on Human Rights.

DIHR recommends that Denmark:

- Ratifies The Optional Protocols to the International Covenant on Economic, Social and Cultural Rights and to the Convention on the Rights of Persons with Disabilities, the third optional protocol to the Convention on the Rights of the Child and Protocol 12 to the European Convention on Human Rights.

2.3 RESERVATIONS TO ICESCR

At the adoption of ICESCR the Government of Denmark made a reservation concerning ICESCR article 7 (d) concerning the right to remuneration for public holidays. Denmark stated that for the time being Denmark was unable to comply entirely with the provision.

During the UPR of Denmark in May 2011 the Government of Denmark was recommended to review its reservations to a number of international human rights instruments with a view to withdrawing them completely.⁵ The Government of Denmark replied that Denmark attaches great importance to promoting a high level of human rights protection in all areas of society. Denmark has therefore ratified the key human rights instruments and reservations to these instruments have been subject to a thorough assessment before adoption.⁶

To the knowledge of DIHR there has not in recent years been carried out a public evaluation of the Danish reservations to core UN human rights conventions. It is therefore unclear whether or not there is still a need for a continued reservation to ICESCR.

DIHR recommends that Denmark:

- Reviews the reservation to ICESCR article 7 (d) with a view to withdrawing the reservation.

2.4 NHRI MANDATE IN GREENLAND AND THE FAROE ISLANDS

ICESCR article 2, paragraph 1 obligates state parties to take steps with a view to achieving progressively the full realization of the rights in the covenant. In General Comment No. 10 (1998) – The role of national human rights institutions in the protection of economic, social and cultural rights – CESCR emphasizes that the work of national human rights institutions can be an important step to ensure the realisation of human rights.⁷

DIHR is established as the National Human Rights Institution (NHRI) in Denmark. 1 January 2013 a new act governing DIHR entered into force.⁸ The new act strengthens the independence of DIHR and emphasised the status of DIHR as Denmark's national human rights institution. The purpose of DIHR is to promote and protect human rights in accordance with the UN Paris Principles relating to the status of national institutions.

The former mandate (up to 1. January 2013) covered Greenland (since 2005). An amendment for the mandate of DIHR to cover Greenland is in process of being adopted by the Danish Parliament. The Greenland Council on Human Rights was in 2012 established by Inatsisartut (the Greenlandic Parliament).⁹

One of the tasks of this new Council is to assist in the independent monitoring and reporting of the implementation of human rights in Greenland. Another task is to appoint a member to the Board of the DIHR. The DIHR can participate in the Greenland Council meetings but cannot vote. DIHR look forward to provide technical assistance and human rights expertise to the Council.

Currently there are no plans to broaden the mandate of DIHR to also cover the Faroe Islands.

DIHR recommends that Denmark:

- Ensures that the entire jurisdiction of the Danish realm is covered by a functioning National Human Rights Institution.

2.5 NATIONAL HUMAN RIGHTS ACTION PLAN AND FOLLOW UP ON RECOMMENDATIONS

ICESCR article 2, paragraph 1 obligates states to take steps to progressively achieve the full realization of the rights in the Covenant by all appropriate means. In General Comment No. 1 – Reporting by States parties – CESCR notes that article 2, paragraph 1 implies that states should work out and adopt a detailed plan of action for the progressive implementation of each of the rights contained in the Covenant. In 1993 the World Conference on Human Rights also recommended that states consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.¹⁰

Denmark has adopted several action plans concerning various human rights issues. For instance Denmark has adopted action plans to combat human trafficking, to combat domestic violence and to promote ethnic equal treatment and respect for the individual. Denmark has however never adopted a comprehensive action plan for human rights to ensure a proper identification of relevant human rights problems and implementation of human rights standards. Even though Denmark maintains a high level of human rights protection the promotion and protection of human rights is not carried out in a systematic and strategic manner.

Furthermore Denmark lacks a systematic approach to implementation of human rights recommendations. 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. Denmark also lacks a ministerial focal point to ensure a systematic follow up on recommendations. The Danish efforts to promote and protect human rights nationally could be strengthened by a systematic follow up on recommendations at a cross-ministerial level.

DIHR recommends that Denmark:

- Adopts a comprehensive human rights action plan;
- Establishes a cross-ministerial working group to carry out a systematic evaluation and implementation of relevant human rights recommendations;
- Establishes a clear procedure for drafting periodic reports and follow up on treaty body recommendations through cooperation with civil society.

3 MATERIAL ISSUES

3.1 ARTICLE 2 – NON-DISCRIMINATION

ICESCR article 2, paragraph 2 obliges each State party to guarantee that the rights enunciated in the covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In CESCR General Comment No. 20 (2009) the committee encourages state parties to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating formal and substantive discrimination, attribute obligations to public and private actors and cover the prohibited grounds. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of rights in the Covenant.

The Danish legislation prohibiting discrimination is influenced by legislation from the European Union and consists of several acts that afford different levels of protection to different groups and thus varies from area to area. The result is insufficient protection against discrimination targeted at certain groups, an unequal approach to combating discrimination in Danish society, a complex legal basis for practitioners of law to apply and lack of legal predictability for citizens. For instance discrimination within the labour market is prohibited for all grounds of discrimination. Outside the labour market Danish law protects against discrimination based on gender and race or ethnic origin while there is a lack of protection against discrimination based on disability or sexual orientation.

DIHR recommends that Denmark:

- Revises the Danish equal treatment legislation and adopts a comprehensive equal treatment act protecting all groups against discrimination in all parts of Danish society.

3.2 ARTICLE 3 – MIGRANT VICTIMS OF DOMESTIC VIOLENCE

In CESCR General Comment No. 16 – the equal right of men and women to the enjoyment of all economic, social and cultural rights – the committee emphasises that State parties when implementing ICESCR article 3 and 10 inter alia shall provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage. CESCR notes that gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and

cultural rights, on a basis of equality. States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.

In its concluding observations from 2004 to the fourth periodic report of the Government of Denmark CESCR recommended that effective measures be taken to ensure that victims of domestic violence receive appropriate care and support for their rehabilitation. Furthermore appropriate mechanisms should be enforced so victims are not prevented from seeking assistance for fear of deportation or expulsion from Denmark. The committee also expressed concern of a high number of cases of domestic violence particularly against migrant women, which remained unreported for reasons of economic dependency and fear of deportation.

In its fifth periodic report (2010) the Government of Denmark estimated that annually approximately 28,000 women aged 16-64 are exposed to physical violence from a present or former partner. Approximately 2,000 women move into shelters every year. The reports does not inform how many of the victims are migrants.¹¹

30 January 2013 the Government of Denmark presented bill L129 which amends the Danish legislation concerning residence permits for foreign spouses or partners who are victims of domestic violence.

According to the current section 19, subsection 1, number 1 of the Danish Aliens Act a temporary residence permit may be revoked, if the grounds for the residence permit no longer apply. For persons, who have been granted a residence permit on the grounds of family reunification, this means that a residence permit may be revoked, if that person is no longer living with his or her spouse or partner. Section 19, subsection 7 of the Danish Aliens Act states, that special considerations must be given if the spouses or partner is the victim of domestic violence, mistreatment or any other form of abuse, including serious psychological abuse.

When considering revoking a residence permit, the duration of stay in Denmark is taken into consideration. In practice a person, who has lived with a spouse or partner for two years or more and has made an effort to be integrated into Danish society will be granted an exception. If the person has lived with the spouse or partner for less than two years an exception will only be granted, if there are extenuating circumstances.¹²

In bill L129 proposed by the Government of Denmark the victims obligation to prove, that he or she is the victim of domestic violence, mistreatment or any other form of abuse, including serious psychological abuse, is maintained.¹³

When interviewing victims of domestic violence the police and immigration authorities will make an interpreter available. Furthermore the spouse or partner will not be present during an interview. The Health Act also entitles patients to have an interpreter made available if necessary. Visitors or relatives can also be restricted access during medical treatment if the patient so wishes.¹⁴

Bill L129 proposes that the duration of a person's residence in Denmark should no longer be taken into account. Instead the person's will and ability to integrate should be taken into account. A person who has shown a will and ability to integrate already after a short residence in Denmark, can be entitled to maintain a residence permit. It will, as today, be taken into account if the person's integration has been hindered by the spouse or partner, for example through a prohibition to integrate or confinement.¹⁵

DIHR finds that in some cases the victim of domestic violence will be unable to communicate his or her requests to the authorities or health staff, for instance if a victim of domestic violence is accompanied by an abusive spouse, partner or other relatives who also functions as an interpreter. The victim could thus be afraid of exposing his or her situation, or the abusive spouse, partner or other relative might choose not to interpret the victim's statement.

DIHR is concerned that some victims of domestic violence, including those who fear deportation, even with the current possibilities of having an interpreter present, will not get the possibility to seek assistance, because the person cannot express to the authorities, that he or she is a victim of domestic violence.

In relation to those victims that risk having their residence permit revoked and therefore may continue to live in a violent marriage or partnership, DIHR is concerned, that a person, who has been the victim of domestic violence, mistreatment or any other form of abuse, including serious psychological abuse, will not be able to demonstrate a will and ability to integrate during living with his or her spouse or partner, even though the spouse or partner has not definitely made the integration difficult for example through a prohibition or confinement.

DIHR recommends that Denmark:

- Ensures that an interpreter is made available in all situations where there is reason to believe that a person can be a victim of domestic violence.

- Ensures that a person's will and desire to integrate after leaving an abusive spouse or partner is also taken into consideration when considering to revoke a residence permit.

3.3 ARTICLE 6 – RIGHT TO WORK FOR PERSONS WITH DISABILITIES

ICESCR article 6 protects the right to work and according to CESCR General Comment no. 18 on the right to work, states parties should take measures enabling persons with disabilities to secure and retain appropriate employment and to progress in their occupational field, thus facilitating their integration or reintegration into society.

In Denmark, persons with disabilities continue to be underrepresented in the labour market and new research shows that the participation of persons with disabilities in the labour market is declining. Thus, according to a new survey, less than 44% of persons with disabilities were employed in 2012 while 51% were employed in 2002.¹⁶

In Denmark, the *flexicurity model* governing the labour market means that the State is reluctant to regulate the labour market and to impose duties on employers. No general protection against unfair dismissals exists in Denmark and legislation concerning working environment does not impose duties on employers to make adjustments for the needs of employees with disabilities and reduced working capacity. A prohibition against discrimination on the grounds of disabilities exists, but the effect of the legislation could be strengthened if the duties to provide reasonable accommodation were mainstreamed into general labour market legislation.

A reform of the supported employment scheme in the labour market in 2012 entails that employment promotion offices will have set the wages of the employees based on an individual assessment of the value of the work of employees in supported employment. Such an assessment is very difficult to make and there is a risk that persons with disabilities will in fact receive lower wages than the value of their work would warrant.

DIHR recommends that Denmark:

- Adopts legislation to promote the creation of an inclusive labour market for persons with disabilities.
- Ensures that the new scheme for employment support does not lead to wage discrimination on the grounds of disabilities.

3.4 ARTICLE 12 – RIGHT TO PHYSICAL AND MENTAL HEALTH

In ICESCR General Comment No. 14 (2000) concerning the right to the highest attainable standard of health, the committee underlined that states should refrain from applying coercive medical treatments, unless on an exceptional basis for the treatment of mental illness. Such exceptional cases should be subject to specific and restrictive conditions, respecting best practices and applicable international standards.

The Convention on the Rights of Persons with Disabilities offers the most comprehensive set of standards on the rights of persons with disabilities. The Committee on the Rights of Persons with Disabilities has called for the prohibition of disability-based detention, i.e. civil commitment and compulsory institutionalization or confinement based on disability. The exact scope of these remarks in health care are currently unknown, but the topic is likely to be developed further by the committee. This includes questions such as whether deprivation of liberty based on the existence of any disability, including mental or intellectual, is considered discriminatory, and considering provisions authorizing care and treatment of persons with disabilities without their free and informed consent.

Statistical information indicates a tendency towards an increased use of coercive treatment in psychiatric treatment in Denmark. Statistics from the Danish Health and Medicines Authority show that in 2010 coercive treatment was applied towards 21 % of the 25.000 persons who were hospitalized in psychiatric wards. Approximately 12 % were subjected to immobilisation and physical restraint. The statistical information from 2010 also shows that more than 350 persons experienced immobilisation lasting more than 3 days.¹⁷

In the 2002 visit report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stressed that applying instruments of physical restraint to psychiatric patients for days on end could not have any medical justification and amounted, in the Committee's view, to ill-treatment. The Danish authorities acknowledged the need for addressing the issue of long-term immobilisation, and introduced certain amendments to the act on deprivation of liberty and use of force in psychiatry (in force since 1 January 2007) with a view to strengthening the protection of patients subjected to immobilisation and reducing the use of physical restraints.

In the 2008 CPT visit report the committee stressed that the wording of the Danish act on the deprivation of liberty and use of force in psychiatry allowed for abuse of patients in danger of placing oneself or others at risk, harassing or seriously verbally abusing other patients, or causing significant material damage.

In particular, the act did not stipulate that the application of physical immobilisation should end as soon as the danger of causing harm had ceased to exist and did not set limits on the duration of the measure. Furthermore, no provision was made for another independent assessment of the need to keep a patient immobilised beyond the one envisaged at the expiry of the first 48 hours.¹⁸

CPT called upon the Danish authorities to review the legislation and practice of immobilising psychiatric patients as a matter of urgency. As a consequence of this, an amendment to the law was put into force on 1 October 2010 that ensured new independent assessments after the one envisaged at the expiry of the first 48 hours. The effect of this is not yet known.

The Government of Denmark works to reduce the use of force in psychiatry and to ensure high quality patient care. As a part of this special funds have been made available for new projects with the aim to reduce the use of force in psychiatry. Furthermore the Government of Denmark has established a committee to analyse the organization of the psychiatric field in Denmark. One of the tasks of the committee is to assess how the use of force can be reduced.

DIHR recommends that Denmark:

- Continues to take steps towards reducing the use of force in psychiatry.
- Continually develops aligns its national health care legislation and standards with the evolving understanding of the health care obligations by the Committee on the Rights of persons with Disabilities.

3.5 ARTICLE 12 – THE RIGHT TO HEALTH FOR ASYLUM SEEKERS AND ETHNIC MINORITIES

In CESCR General Comment No. 14 (2000) – the right to the highest attainable standard of health – the committee underlined that states have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities, and to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health.

Furthermore it stated, that health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

3.5.1 ETHNIC MINORITY GROUPS

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 examination even though health professionals deem it 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 programs to match the needs of these two particular groups.¹⁹

A recent Danish study indicates potential problems related to equal treatment of ethnic minorities in psychiatry, namely their more frequent involuntary admission to institutions compared to ethnic Danish patients. This especially concerns male refugees and family reunified women. The study also points out that patients with ethnic minority background compared to patients with ethnic Danish background are more often exposed to compulsory treatment and the use of physical force during psychiatric admission.²⁰

Furthermore studies show that in practice, ethnic minorities often, due to insufficient fluency in Danish, lack equal access to information and the necessary knowledge of their rights and obligations in Danish society. This also concerns insufficient use of trained and authorized interpreters and translators in the social and health care sectors.

DIHR recommends that Denmark:

- Systematically offers quota 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 program.
- Systematically offers refugees and family reunified persons an introduction to the Danish healthcare system, and establishes programs like the Migrant Medical Clinic (IMK) in Odense in all regions of Denmark.
- Ensures that all citizens, regardless of race or ethnic origin, have access to information concerning their rights and obligations, and that public authorities ensure that information of particular importance is available in languages other than Danish.

3.5.2 DETAINED ASYLUM SEEKERS

In its Detention Guidelines (2012) The United Nations High Commissioner for Refugees (UNHCR) stated, that initial and periodic assessment of detainee's physical and mental state, carried out by qualified medical practitioners, are required when detaining asylum seekers, who are victims of trauma or torture. Furthermore medical reports should be presented at periodic reviews of the detention.²¹

In Denmark adult asylum seekers are not covered by the Danish national health service, but the Danish Immigration Service covers expenses for healthcare, that are necessary, urgent and pain-relieving. An asylum seeker can furthermore be referred to several types of treatment by the health staff at the accommodation centre, for example initial consultations with psychologists.²²

The National Commission of the Danish Police has stated, that the police at the time of detention hands out a form with instructions explaining that if a detainee suffers from any illness that requires treatment, he or she should inform the police of such illnesses as soon as possible. Apart from medical conditions informed by detainee the police will not at the time of the detention have access to information regarding the health of an asylum seeker.²³

Based on studies of asylum seekers in the detention facility, Ellebæk, in Denmark the Danish Medical Group of Amnesty International have found indications that the current legislation and guidelines do not prevent particularly vulnerable groups of asylum seekers from being detained. The purpose of the studies was to uncover the physical and mental health of the detainees in the detention facility. The studies do not reveal which effect the detention have had on the health of the detainees.²⁴

To the knowledge of DIHR there exists no official statistical numbers on detention of physical and mental vulnerable asylum seekers.

The Red Cross in Denmark is responsible for the accommodation of asylum seekers in Denmark and for instance runs the asylum centre, Kongelunden, which is a centre for asylum seekers that for physical or mental reasons are considered particularly vulnerable. September 2011 The Red Cross in Denmark stated that asylum seekers, who are accommodated at Kongelunden, are being detained along the lines with asylum seekers living in ordinary asylum centres.²⁵

DIHR recommends that Denmark:

- Introduces a prior mandatory medical examination of all the asylum seekers detained by the police. Qualified medical practitioners, such as doctors,

psychologists and others, should be involved and make a statement on which effect the detention is expected to have on health of the asylum seeker, especially for detention of longer duration.

- Systematically registers information concerning whether or not health examinations of detained asylum seekers are carried out, the specific reasons behind a detention, the reason why less intrusive measures are considered insufficient and the duration of detentions.

3.5.3 UNACCOMPANIED MINORS

In Denmark a special procedure applies for unaccompanied minors applying for asylum. Unaccompanied minors, who are not mature enough to undergo an asylum procedure, and unaccompanied minors, who are mature enough to undergo an asylum procedure, but whose asylum request has been denied, can be granted a residence permit according to section 9 c, subsection 3 of the Danish Aliens Act. Such a residence permit requires that the asylum seekers will be in an actual emergency (reel nødsituation) if returned to the country of origin or a former country of residence. This residence permit can only be granted or extended until the asylum seeker turns 18. A new residence permit can only be granted after the 18th year in extenuating circumstances, for example if he or she has had a residence permit since early childhood, if he or she has strong ties to Denmark and weak ties to his or her country of origin, or if he or she is well integrated into Danish society.²⁶

In November 2010 UNHCR submitted a written contribution to the UPR of Denmark in May 2011 expressing concern about the further tightening of the Aliens Act for a vulnerable group of minors. Since the UNHCR submission the above mentioned legislation has been adopted by the Danish Parliament on 16 December 2010. UNHCR stated that the limitation of the residence permit up to the age of 18 would be likely to negatively impact on the development and well-being of the child. UNHCR furthermore stated, that this group of minors would be put in a less favourable situation than those who were found to be mature enough to undergo asylum procedures, as the group, that would not undergo the asylum procedure, would be in a waiting period, perhaps for several years. The uncertainty could hamper their local integration prospects as well as personal development. UNHCR therefore recommended that the legislation was not tightened.²⁷

DIHR recommends that Denmark:

- Reviews the consequences for the development and well-being of the unaccompanied minors when granted a residence permit that as a general rule will terminate when the unaccompanied minor turns 18.

- Considers, based on the review, amending the rules regarding the duration of residence permits for unaccompanied minors.

3.6 ARTICLE 13 – RIGHT TO EDUCATION FOR ETHNIC MINORITIES

In its list of issues in connection with the consideration of the fifth periodic report of Denmark the CESCR requested that Denmark provide information on measures taken to facilitate access to education by children of immigrants, and Roma children.

Studies show that pupils, with other ethnic origin than Danish, do not fare as well as ethnic Danish pupils in public schools. Furthermore there is a particular lack of knowledge of the conditions for children with Roma background in the Danish educational system as well as the general living conditions of Roma children. A significantly higher percentage of minority pupils compared to ethnic Danish pupils, lack the necessary scholastic skills to commence and/or complete vocational training programs.

There are indications that the Danish primary school education does not sufficiently ensure that minority pupils – especially ethnic minority boys – receive the benefits from their schooling that should be ensured through the right to education. In addition a number of studies indicate that lack of success in schools may be caused by institutional discrimination based on race and ethnic origin or the intersection of gender and ethnicity.²⁸

DIHR recommends that Denmark:

- Carries out a thorough examination of the current legislation and administration of public schools to shed light on possible indirect or institutional discrimination on the ground of race and ethnic origin and possible intersectionality between the grounds of gender and ethnicity.
- Considers 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.
- Undertakes an analysis of the conditions for Roma people in Denmark, especially Roma 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 in order to assess whether there is a need for further initiatives in the area.

3.7 ARTICLE 13 – RIGHT TO EDUCATION FOR CHILDREN WITH DISABILITIES

In CESCR General Comment No. 5 – persons with disabilities – the committee notes that many countries today recognize that persons with disabilities can best be educated within the general education system. Therefore states should ensure that teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are made available to bring persons with disabilities up to the same level of education as their non-disabled peers.

There are no statistics in Denmark concerning inclusion of persons with disabilities in the educational system. A new research indicates that approximately 6 % of children in the elementary school are educated segregated from ordinary education and approximately 4 % receive education at special schools.²⁹

The Government of Denmark has developed a policy to ensure that a greater part of children with disabilities are educated within the general education system. In accordance with this policy multiple efforts are underway. Recent research however shows that many challenges remain. For example, a study from 2009 suggests that children with disabilities (cognitive disabilities not included) are much less likely than children without disabilities to take final exams after 10 years compulsory primary and secondary education. If they do take exams, they achieve lesser exam results compared to children without disabilities.³⁰

DIHR recommends that Denmark:

- Prohibits discrimination because of disability in the educational system. Failure to make a reasonable accommodation should be regarded as discrimination.
- Reviews the legislation on education and ensure that the target of inclusion is clearly stated in the legislation.
- Establishes an effective right of appeal to decide whether a child receives the necessary support in an environment that promotes inclusion. Today, the right of appeal to The Board of Special Education is limited to education at special schools, segregated education and support in the general education system that exceeds 9 hours weekly.
- Adopts national standards defining inclusive schools and a long-term national plan for implementing the standards in all Danish schools.
- Strengthens the individual right of children with disabilities to teaching adapted to their pre-requisites, possibilities and needs.

END NOTES

¹ Human Rights Council Working Group on the Universal Periodic Review (May 2011), Draft report of the Working Group on the Universal Periodic Review of Denmark.

² Inkorporeringsudvalget, *Betænkning 1407/2001 om inkorporering af menneskerettighedskonventioner i dansk lovgivning*.

³ Human Rights Council Working Group on the Universal Periodic Review (May 2011), *Draft report of the Working Group on the Universal Periodic Review of Denmark*.

⁴ Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Denmark, 13 September 2011, A/HRC/18/4/Add.1.

⁵ Human Rights Council Working Group on the Universal Periodic Review (May 2011), Draft report of the Working Group on the Universal Periodic Review of Denmark.

⁶ Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, Denmark, 13 September 2011, A/HRC/18/4/Add.1.

⁷ UN Committee on Economic, Social and Cultural Rights, *General comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights*, 10 December 1998, E/C.12/1998/25.

⁸ Act no. 553 of 18 June 2012 on the Danish Institute for Human Rights – Denmark's national human rights institution, available in Danish at: www.retsinformation.dk/Forms/R0900.aspx?s21=institut+for+menneskerettigheder&s22=%7c10%7c&s113=0.

⁹ Inatsisartut (Greenland Parliament) Law no. 23, adopted December 3, 2012.

¹⁰ World conference on human rights (1993), *Vienna declaration and programme of action*, para 71.

¹¹ Fifth periodic reports submitted by States parties under articles 16 and 17 of the Covenant, Denmark, 25 January 2010, E/C.12/DNK/5, para 176.

¹² Bill no. L 129, Danish Parliament 2012-13, proposed 30 January 2013, section 4.1.

¹³ Bill no. L 129, Danish Parliament 2012-13, proposed 30 January 2013, section 4.3.

¹⁴ Bill no. L 129, Danish Parliament 2012-13, proposed 30 January 2013, section, *Kommenteret høringsoversigt om forslag til lov om ændring af udlændingeloven*

(*Bedre beskyttelse af ofre for menneskehandel og ret til fortsat ophold for voldsramte ægtefællesammenførte*), section 2.4.4.

¹⁵ Bill no. L 129, Danish Parliament 2012-13, proposed 30 January 2013, section 4.3.

¹⁶ Marie Møller Kjeldsen, Helle Sophie Houlberg & Jan Høgelund, *Handicap og Beskæftigelse*, DFI 13:01.

¹⁷ *Sundhedsstyrelsens opgørelse af tvang i psykiatrien 2010*, http://www.sst.dk/publ/publ2011/DAF/Psykiatrien/Tvang_i_psyk.pdf.

¹⁸ <http://www.cpt.coe.int/documents/dnk/2008-26-inf-eng.htm>

¹⁹ Nørredam, M. og Krasnik, A. (2009), *Ingen velkomst til det danske sundhedsvæsen*, *Kronik, Ugeskrift for Læger*, 171/25. 15 June 2009.

²⁰ Nørredam, M., Garvia-Lopez, A., Keiding, N. og Krasnik, A. (2010), *Excess use of coercive measures in psychiatry among migrants compared with native Danes*. *Acta Psychiatrica Scandinavica*, 2010:121, s. 43-151.

²¹ UNHCR, *Detention Guidelines, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, p. 33.

²² www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm.

²³ Danish Parliament, Udvalget for Udlændinge- og Integrationspolitik, Ministeren for flygtninge, indvandrere og integrations besvarelse af spørgsmål nr.221, alm. del. Spørgsmålet er stillet efter ønske fra Marianne Jelved (RV). 21. marts 2011, J.nr. 11/13623.

²⁴ Amnesty Internationals Danske Lægegruppe, *Frihedsberøvede asylansøgere i ellebæk, Traumatiseringsgrad og helbredstilstand blandt frihedsberøvede asylansøgere i Institutionen Ellebæk*, 2013, pages 9 and 17.

²⁵ Dansk Røde Kors, *En forskel for asylansøgere siden 1984 – anbefalinger til et bedre asylsystem*, September 2011, page 14.

²⁶ Bill no. L37, Danish Parliament, proposed 28 October 2010, amending the Aliens Act and the Integration Act (ændring af udlændingeloven og integrationslovens (Revision af reglerne om uledsagede mindreårige udlændinge m.v.)).

²⁷ Submission by the United Nations High Commissioner for Refugees to the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Denmark, November 2010.

²⁸ Christian Helms Jørgensen, *Frafald i de danske ungdomsuddannelser*". I: Eifred Markussen (red.): *Frafald i utdanning for 16-20 åringer i Norden*, Nordic Council of Ministers, TemaNord, 2010.

²⁹ Deloitte: *Analyse af specialundervisning i folkeskolen*, June 2010

³⁰ Capacent, *Uddannelsesresultater og -mønstre for børn og unge med handicap*, December 2009.

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