Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination

Submitted by: The Danish Institute for Human Rights

June 2006

©The Danish Institute for Human Rights
Strandgade 56, 1401 Copenhagen K, Denmark
Tel: + 45 32 69 88 88
Fax: + 45 32 69 88 00
www.humanrights.dk

Prepared and edited by:
Mandana Zarrehparvar
Birgitte Kofod Olsen, responsible

Contributions from:
Christoffer Ulrik Badse
Maria Ventegodt Lisberg
Eva Ersbøll
Eddie O.R. Khawaja

THE DANISH INSTITUTE FOR HUMAN RIGHTS

Summary of issues

This report is a commentary on the status of the International convention on the Elimination of all Forms of Racial Discrimination in Denmark. The report is submitted by the Danish Institute for Human Rights (DIHR) and entails the following articles:

Article 2: General measures to eliminate racial discrimination
Article 3: Prohibition against racial segregation
Article 4: Promotion or incitement to acts of racial discrimination
Article 5: Political, economic, social and cultural rights
Article 6: Effective protection and remedies against acts of racial discrimination

DIHR's main list of concerns:

Re: Article 2: Incorporation of ICERD into national legislation: a lack of incorporation of ICERD limits the application of the convention by the courts and administrative decision making organs. As a consequence, the overall practical implementation and the effective protection of the individual against racial discrimination are weakened. Furthermore, the choice of non-incorporation has a negative impact on the general awareness rising of human rights in Denmark and a counterproductive effect on the promotion of ethnic equality.

Re: Article 2: Effective measures: judges, lawyers and other staff in administrative decision making organs are not sufficiently empowered to meet the challenge of assessing cases on indirect discrimination. The assessments made in recent cases show a tendency of stressing and accepting a majority perspective vis-à-vis ethnic minorities, to the detriment of the active participation of persons with another ethnic background than Danish in the labour market.

Re: Article 4: Promotion or incitement to acts of racial discrimination: the continuous increase in reported race motivated crimes. Moreover, the requirements set up for accepting complaints to be reviewed by the courts may constitute an impediment to the access to an effective remedy in cases on racial discrimination.

Re: Article 5 (c): Political representation of ethnic minorities at local government level: the low representation of persons belonging to ethnic minorities may have a negative impact on the overall active political participation in the Danish society, especially on the municipal level, of persons with another ethnic background than Danish.

Re: Article 5 (d) (iii) The right to nationality: the new nationality acquiring regulations will not only have far reaching consequences for residing ethnic minorities' opportunity to acquire Danish nationality, but will also entail worrying human rights implications which raise the question as to whether Denmark is living up to its international obligations.

Re: Article 5 (d) (iv) The right to marriage and choice of spouse: the person residing in Denmark must have had 28 years of citizenship to be suspended from the aggregated requirement that leads to discrimination on the grounds of length of citizenship in violation of ICCPR Art. 26. The Danish citizens who are naturalized later than at birth are ethnic minorities in Denmark, and thus the 28-year rule also leads to discrimination on the grounds of ethnic background. In addition, the DIHR is concerned that the restrictive interpretation of the right to family life will lead to violations of this right as it is understood under ICCPR Art. 17 and ECHR Art. 8.

Re: Article 5 (e) (i) The right to work: even though there exists legislation that prohibits discrimination on the grounds of race and ethnic origin in the labour market, the recognition of how individuals perceive being racially discriminated against is not being taken seriously by the authorities, and effort is not being made to initiate awareness raising programmes and campaigns against racial discrimination. Disregarding

individuals' experiences and perceptions of discrimination, undermines the efforts made to integrate ethnic minorities in the work place.

Re: Article 5 (e) (iv) The right to social security: lawful residents in Denmark of ethnic minority origin are subject to indirect discrimination, as the residence requirement in practice restricts the access of persons with a non-Danish nationality (except EU/EEA nationals) to assistance, to a much larger extent than Danish citizens. See also the conclusions from the European Committee on Social Rights, where the Committee considered that the residence requirement in practice restricted access to foreign nationals to assistance to a much larger extent, which amounted to indirect discrimination and hence was not in conformity with the Charter.

Re: Article 5 (e) (v) The right to education: the spreading of ethnic minority pupils is an initiative which may constitute racial discrimination. The DIHR is concerned about the discriminatory effect of the spreading procedure, since ethnic Danish pupils are not automatically language tested, as ethnic minority pupils are and because ethnic minorities do not have the same right as ethnic Danes to freely choose which public school they want their children to attend.

Re: Article 5 (e) (v) The right to education: the abolishment of receiving free mother tongue education generally risks affecting bilingual children's linguistic consciousness and social skills. Research in minority pupils' second language acquirement show clearly that there is a connection between having a solid knowledge of ones mother tongue and acquisition of the second language. Furthermore research shows clearly that a pupil's cognitive and academic development as well as acquiring Danish as second language is very much dependent on the pupils' mother tongue skills.

Re: Article 5 (e) (v) The right to education: mother tongue classes is only provided for nationals coming from EU, EEC, individuals from Greenland and the Faeroe Islands or the German speaking minority in Southern Denmark. Therefore persons not originating from the mentioned areas do not have equal opportunity and equal access to mother tongue education.

Re: Article 5 (f) The right of access to any place or service intended for use by the general public: It is a fact that no adequate level of compensation is present at the time. This partly undermines any possible preventive nature of the Act on Prohibition against discrimination on the basis of race in these cases. The DIHR is moreover concerned with the fact that the level of compensation that could be rewarded under the Act on Ethnic Equal Treatment, will be directly influenced by the level that has been set out under the Act on Prohibition against discrimination on the basis of race.

DIHR is furthermore concerned with the level of vigilance that is present by the police when receiving complaints from victims that have been refused access to for instance restaurants or discotheques. In this regard there has been instances in the media describing episodes where for instance the Copenhagen Police has rejected to receive complaints filed, depriving victims the possibility to have the case adequately assessed and investigated. DIHR is finally concerned with the fact that no general statistical information is available of all complaints filed to the public prosecution relating to the Act on the Prohibitions against Discrimination on the grounds of race etc., and that no information on the number and content of court cases is available on a national level.

Re: Article 6: Effective protection and remedies: the Complaints Committee has not been provided with adequate powers to fully fulfil its role to combat discrimination and investigate complaints over discrimination in an effective manner. The DIHR is especially concerned with the fact that the Complaints Committee cannot suggest that free legal aid is granted to possible victims of discrimination in cases where an assessment before the courts is desirable, but where the committee cannot reach the conclusion that discrimination has occurred through its own investigation of the case.

1. Introduction

This supplementary report to the Sixteenth and Seventeenth Periodic Report of Denmark concerning the International Convention on the Elimination of all Forms of Racial Discrimination submitted by Denmark June 2005 is compiled by the Danish Institute for Human Rights (DIHR).

DIHR established by statute of 6 June 2002 is a National Human Rights Institution in accordance with the UN Paris Principles. The institute carries on the mandate vested in the Danish Centre for Human Rights in 1987. The work of the institute includes research, monitoring, information, education, documentation and international programmes. DIHR is designated as a body for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin as set out in Article 13 of the EU Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin. Further information on DHIR is available on www.humanrights.dk.

Concerning the dissemination of Concluding Observations and Individual Views from the UN Committee System, DIHR would like to inform on the establishment of the collection of the relevant documents on the website of the institute. The page contains international judgments and views, along with official and supplementary reports and observations concerning Denmark. All documents are in English.

DHIR has chosen to focus on the status of implementation of the following articles of ICERD:

Article 2: General measures to eliminate racial discrimination
Article 3: Prohibition against racial segregation
Article 4: Promotion or incitement to acts of racial discrimination
Article 5: Political, economic, social and cultural rights
Article 6: Effective protection and remedies against acts of racial discrimination

2. Article 2: General measures to eliminate racial discrimination

Incorporation of the convention into national legislation

The Incorporation Committee (Inkorporeringsudvalget), which was set up by the Ministry of Justice in 1999, completed its Report on Incorporation of Human Rights Conventions into Danish Law in 2001 (Report No.1407/2001). In its report, the Committee recommends the incorporation of ICCPR, ICERD and ICAT into Danish legislation.

The report describes how international conventions are implemented into Danish legislation and what status they have in Danish law. It is emphasized that conventions can be invoked before the Danish courts and other law-applying authorities from the time of entry into force after ratification. Ratified, but non-incorporated conventions are therefore relevant sources for the interpretation of Danish law. As it is pointed out the only incorporated convention, The European Convention on Human Rights (ECHR) is invoked and applied much more often than any of the non-incorporated UN conventions. From 1992 – 2001 only 12 published judgments and decisions related to other human rights conventions than ECHR, while 158 decisions dealt with the ECHR.

The committee concluded, however, that the incorporation of human rights conventions into national legislation will create a statutory basis for the application of conventions and will result in increased attention and greater consciousness about the incorporated conventions.

During a parliamentary debate in spring 2004 the Minister of Justice, Ms. Lene Espersen, commented a proposal put forward by an opposition party.[1] The Minister stated that the present Government has chosen *not* to follow the recommendations made by the committee in report No. 1407, which recommended the incorporation of ICCPR, ICERD, ICAT and thereby making the three conventions part of the domestic legislation.

[1] The question of incorporation was later debated on the basis of a Proposal for Parliamentary Decision (no. B 134), moved on 25 February 2004 by the opposition, in which incorporation of four UN human rights Conventions, i.e. ICCPR, ICESCR, ICERD and ICAT, was proposed. The proposal was rejected.

According to the parliamentary debates the Government is of the opinion that Denmark is committed to following the Conventions through the ratification and that incorporation consequently is legally needless and could be politically inappropriate.[2]

DHIR was a member of the Incorporation Committee and recommended the incorporation of ICCPR, ICERD and ICAT into Danish law. Unincorporated conventions are relevant sources of law within the Danish Realm, but in practical terms the administration and courts often concentrate their analysis of human rights issues in relation to the ECHR. Although the ECHR contains a non-discrimination clause (Article 14) it is not a general and free-standing prohibition against discrimination. Furthermore, Denmark is hesitant to ratify Protocol No. 12 to ECHR[3], which introduces a general and free-standing prohibition against discrimination. Finally, it seems the reluctance also is based on concerns on whether the decisions are legally binding. One argument has been:"<a> committee of experts monitor whether the States Parties to the Covenant comply with it, and this committee of experts expresses opinions that are not legally binding. These opinions are not particularly judicial, neither in their form, nor in their content, whereas the European Court of Human Rights delivers legally binding judgments and decisions."[4]

Thus, incorporation of ICERD in national legislation will serve two purposes: firstly, it will ensure a more effective protection of individuals against racial discrimination; secondly, an incorporation of the convention will raise a greater awareness among attorneys and the judiciary and presumably lead to an increased applicability of the ICERD in the courts.

---

[2] Declarations of the Government in connection with proposal for a parliamentary decision B134 on incorporation of the UN human rights conventions.

[3] One of the Government's arguments was: "The Danish Government is very concerned by the increasing transferral of legislative powers from the national parliaments to international non-legislative bodies which cannot be seen as democratically elected organs. Upon ratification, the European Court of Human Rights would be granted final jurisdiction in matters concerning whether Danish legislation is in compliance with Protocol No. 12. The Protocol grasps very delicate issues such as which criteria the states may use in the distribution of public financial means in areas concerning for instance social affairs. One could argue that such a task is better taken care of by our national parliament than by an international court.
Prohibition of Discrimination in the Nordic Countries: The Complicated Fate of Protocol No. 12 to the European Convention on Human Rights, page 107 available at:
http://www.humanrights.dk/upload/application/0e60f30e/prot_12.pdf

[4] Ibid. page 107.

A register on invoked and/or applied human rights conventions by Danish courts gives a clear picture of the impact of incorporation. In the period from 2001 – 2005, the ECHR was invoked 139 times in all by Danish courts while in the same period the UN International Convention on the Rights of the Child (ICRC) was invoked twice; the UN International Convention on Elimination of all Forms of Discrimination against Women (ICEDAW) was invoked once; ICERD was invoked twice[5]; ICCPR was invoked four times; ICESCR was invoked once and ICAT was invoked once[6].

Furthermore, a judgment from the Danish Supreme Court from 5 December 2005, concluded that ILO-conventions cannot be directly applied in a way as to disregard national legislation. [7]

DIHR is concerned that a lack of incorporation of ICERD limits the application of the convention by the courts and administrative decision making organs. As a consequence, the overall practical implementation and the effective protection of the individual against racial discrimination is weakened. Furthermore, the choice of non-incorporation has a negative impact on the general awareness raising of human rights in Denmark and a counterproductive effect on the promotion of ethnic equality.

Effective Measures

Several decisions reached by the Danish Courts and administrative bodies indicate that the principles of direct and indirect discrimination are to some extent not fully being applied or being applied incorrectly.

[5] Danish Weekly Law Report U 2002 1789 H (Supreme court) and 2003 1428 Ø (High Court)
[6] *Oversigt over trykte afgørelser afsagt af danske domstole, hvor internationale konventioner om menneskerettigheder er blevet påberåbt eller anvendt.*(2005) Opdatering af bilag 1 til betænkning 1407, 2001. (perioden fra og med U*f*R hæfte 26/2001 til og med 15/8 2005) Af Kristina Ravn, Afdeling for Retslære, Aarhus Universitet. Page 120-121. See Annex 1 to this report.
[7] Danish Weekly Law Report U.2006.770H: " Hertil kommer, at ILO-konventionerne som anført af landsretten ikke er direkte anvendelige i dansk ret i den forstand, at de kunne føre til tilsidesættelse af aktivlovens bestemmelser om aktivering."

The Danish Supreme Court in January 2005[11] concluded that a company's dismissal of a Muslim woman who wanted to wear a religious scarf at work was justifiable. This was based on the conclusion that the statement that the company wished to represent itself to its customers as a non religious and political neutral company was justifiable, under the proportionality test of the Danish Act on the Prohibition against Differential Treatment on the Labour Market etc. The company argued that the wish to represent itself to its costumers as a non religious and politically neutral company was motivated mainly by the need not to provoke costumers who might take offence of employees explicitly expressing their religious belief. The court did not assess whether the wearing of religious scarf did indeed provoke the customers, but accepted this general motivation for limiting the use of religious symbols as justifiable.

From DIHR's point of view, this application of the proportionality test for indirect discrimination and the conclusion reached both under the Danish Act and under EC-law is questionable, and indicate a tendency to accept a general reasoning for the justifiability of indirect discrimination. This seems not to be in accordance with the Danish Act which requires the employer to pursue a real objective aim. The aim pursued has to be reasoned and legitimate, and the means invoked have to be suitable and necessary to reach the aim pursued. It is questionable whether the Supreme Court's decision meets the requirements of the test.

In another decision by the Copenhagen City Court on 29 November 2005, the court concluded that a polytechnic school did not violate the prohibition against direct discrimination on the grounds of race or ethnic origin. The case involved a teacher at the school, who had made a written note that a company seeking trainees did not want pupils of "non Danish ethnic origin". The court found that this note did not indicate that the teacher had been willing to fulfil discriminatory demands made by the specific company or other employers.

[1] **U.2005.1265H**

It follows from the decision that the court has stressed that the note was written as a result of the teacher's awareness that there had been incidents earlier, where pupils who had been trainees with this particular employer had suffered from problems due to their ethnic origin. In the court's reasoning, it is unclear whether the court has included this information as a basis to not find a specific instance of discrimination, and therefore based its decision on the fact that the teacher wanted to "protect" the pupil against discriminatory violations. If this is the case, this reasoning would not be in compliance with the prohibition against discrimination in the Act on Ethnic Equal Treatment, where "motive" is irrelevant.

Other decisions indicate that inter alia administrative bodies are not fully aware of the concepts of direct and indirect discrimination when handling and deciding cases, for instance within social legislation.

In a decision reached by the Complaints Committee for Ethnic Equal Treatment the Committee concluded that a municipality's rejection of testing the working capabilities of a woman of Turkish ethnic origin amounted to indirect discrimination on the grounds of ethnic origin.[12]

The municipality found that the woman's language skills in Danish were insufficient to enable a thorough testing of her capability to work following an industrial injury. The municipality concluded that the woman needed to follow a Danish language course for 1,5 years. The Committee found that such a requirement did not meet the proportionality test in the Act on Ethnic Equal Treatment, and therefore amounted to indirect discrimination. In this case neither the municipality nor the Social Complaints Board assessing an appeal made by the woman identified, included or assessed the question of indirect discrimination on the grounds of ethnic origin.[13]

DIHR is concerned that Danish judges, lawyers and other staff in administrative decision making organs are not sufficiently empowered to meet the challenge of assessing cases on indirect discrimination. The assessments made in recent cases show a

[12] Decision of 5 December 2005 (710.16)
[13] Also refer to Chapter 3, on this issue.

tendency of stressing and accepting a majority perspective vis-à-vis ethnic minorities, to the detriment of the active participation of persons with another ethnic background than Danish in the labour market.

Initial follow-up of Communication No. 34/2004

The Communication No. 34/2004 of 15 March 2006 submitted by Mohammed Hassan Gelle against Denmark, resulted in the committee finding that the facts before it disclosed violations of article 2, paragraph 1 (d), article 4 and article 6 of the Convention, since Denmark had failed to carry out an effective investigation. Regarding the initial follow up on the opinion, the decision has been received with quite some scepticism. The Minister of Justice expressed her surprise by the opinion, since the remarks in question were made in a public letter to the editor in a daily newspaper, hence the content of the letter was not to debate and it was only a matter of an assessment of the legality of the remarks by the police and the Regional Public Prosecutor. Therefore, in her opinion, there was no reason for the police to make further investigation[14].

3. Article 3: Prohibition against racial segregation

In December 2005 the Complaints Committee for Ethnic Equal Treatment concluded that a municipality had subjected a pupil of Roma origin to direct discrimination on the ground of ethnic origin, as the municipality had placed the pupil in a special class for pupils who did not attend school regularly, and therefore had a high level of absence. During the investigation the committee concluded that the pupil had been placed in the class because of her Roma origin, inter alia as it was not documented that her level of absence had a level that justified the placement.[15] The Complaints Committee further conducted a general investigation of the municipality's establishing of special classes for pupils with a high level of absence, as these classes were shown only to have pupils of Roma origin attending. Before the committee initiated its investigation, The State County Prefect for Copenhagen County in a decision dated the 13 September 2004 inter alia concluded that the municipality's establishing and running of these classes did not constitute discrimination. The committee concluded in its decision[16] that the classes in

[14] Newspaper article: Jyllandsposten 25 March 2006, "Racismeanklage: Minister undrer sig over FN".
[15] Decision of 5 December 2005 (730.7)
[16] Decision of 5 December 2005 (780.10)

general constituted indirect discrimination on the grounds of ethnic origin. The State County Prefect did not assess whether indirect discrimination did occur and whether it could be justified.

The classes have now been given up by the municipality.

4. Article 4: Promotion or incitement to acts of racial discrimination

In Paragraph 10 of its concluding observations concerning Denmark's fifteenth periodic report (CERD/C/60/Misc.33/Rev.4), the Committee expressed awareness of an increase in hate speech in Denmark. As the following examples will indicate, there is still reason to express concern as to this development in Denmark with regard to promotion and incitement to acts of racial discrimination.

The Danish Security Intelligence Service, reported to a Danish newspaper, *Kristeligt Dagblad*[17] that the number of incidents regarding racially motivated harassment, vandalism and violence has increased from 23 cases in 2004 to 48 cases in 2005.

According to the annual statistics of the National Commissioner of Police, 27 cases of violation of the Criminal Code section 266b and 266c (hate speech) were reported in 2004, among which charges were initiated in 15 cases. In 2005 (1 January - September 2005), 41 cases of violations of the Criminal Code 266b and 266c were reported. In 15 cases a charge was initiated[18].

In several recent high profile cases, however, the Public Prosecutor has refused to initiate court proceedings deeming the complaints as unfounded. One case covers the mainstream Danish newspaper, *Jyllands Posten's* twelve cartoons of the Muslim prophet Mohammed printed on 30 September 2005. According to *Jyllands Posten*, the aim was to raise debate about a growing self-censorship in Denmark and abroad, which, according to the newspaper, threatens the freedom of expression. The publication of the drawings was perceived offensive by the Danish Muslim community and has occasioned response, not

[17] Kristeligt Dagblad *Flere tilfælde af racistisk chikane*, Ritzau, 6 September 2005
[18] The statistics were provided by the Danish Police Commissioners office in a letter to DIHR on 10 November 2005.

only in Denmark among Muslims but also in the rest of the world. The newspaper was reported to the district attorney for having violated provisions in the Criminal Code 266b regarding hate speech and provision 140 regarding blasphemy. However, the Director of Public Prosecutions concluded on 15 March 2006 that there was no basis for instituting criminal proceedings and therefore rejected the complaints[19]. The rationale in relation to the prohibition against hate speech being that

"The text section of the article does not refer to Muslims in general, but mentions expressly "some" Muslims, i.e. Muslims who reject the modern, secular society and demand a special position in relation to their own religious feelings. The latter group of people must be considered to be comprised by the expression "a group of people" as mentioned in section 266 b, but the text in the article cannot be considered to be scornful or degrading towards this group – even if seen in the context of the drawings.
(…) [A]ccording to the heading, the drawings in the article depict Mohammed. The drawings that must be assumed to be pictures of Mohammed depict a religious figure, and none of them can be considered to be meant to refer to Muslims in general. Furthermore, there is no basis for assuming that the intention of drawing 2 [The face of a grim-looking bearded man with a turban shaped like an ignited bomb] was to depict Muslims in general as perpetrators of violence or even as terrorists.
The drawings depicting persons other than Mohammed do not contain any general references to Muslims. Furthermore, the depiction of Muslims in these drawings is not scornful or degrading. Not even when the drawings are seen together with the text section of the article is there any basis to assume that the drawings make statements referring to Muslims in general. Accordingly, the Director of Public Prosecutions does not find that in the case of the article "The Face of Mohammed" there has been any violation of section 266 b of the Danish Criminal Code. Based on this the Director of Public Prosecutions also concurs in the decision to discontinue the investigation with regard to violation of section 266 b of the Danish Criminal Code."[21]

Another case rejected by the Public Prosecutor as unsubstantiated, was a case concerning the personal website of a member of Parliament, where very derogatory remarks regarding Muslims and Islam was put forward. The MP in question excused herself by proclaiming that it was not she who had written the articles, but her webmaster. Among the articles, which were subsequently removed from the website, one could read that the

[19] Decision on possible proceedings in the case of Jyllands-Posten's article "The face of Mohammed" available at: http://www.rigsadvokaten.dk
[21] Extract from the English version of the Decision on Possible criminal proceedings in the case of Jyllands-Posten's Article "The Face of Muhammed", page 9

MP believed that young misled Muslim men thought it to be their right to rape Danish women and beat Danish citizens for food. Furthermore, the author compared Muslims with cancer cells that could be cured either by laser or by discarding operations[22].

DIHR is concerned by the continuous increase in race motivated crimes. Moreover, the requirements set up for accepting complaints to be reviewed by the courts, may constitute an impediment to the access to an effective remedy in cases on race discrimination.

5. Article 5: Political, economic, social and cultural rights

Article 5 (c) Political representation of ethnic minorities at local government level

In Denmark, all citizens (nationals as well as non-nationals) who have lived legally in the country for three years have the right to participate in municipal elections. Citizens from EU Member States and the Nordic countries have the right to participate already from the first day of stay in the country. Prerequisite to vote at national elections or to become a member of Parliament is Danish nationality.

From 1 January 2007, as a result of reforms in the municipal and regional government structures and tasks, the number of municipalities is reduced from 271 to 98. This reduction was already reflected at the last municipal elections that took place in November 2005. Municipal and regional elections take place every four years.

The Danish newspaper, Jyllands Posten, in February 2006[23] carried out a survey to map the composition (gender, ethnic origin, education and occupation) of the 2522 members of the new 98 municipalities. The survey showed that only 1,8 percent of the total number of politicians in the new municipalities had an ethnic minority or non-western[24] background, while this group of persons comprise 6 percent of the total population. The survey concludes that the ethnic minorities are underrepresented by a ratio of 1:3.

[22] www.dr.dk/Nyheder/Politik *Frevert meldt til politiet* 30 September 2005
[23] Jyllands-Posten. Section 1. "Kun få indvandrer i nye byråd" by Henrik Vinther Olesen and Axel Pihl-Andersen. Monday 13 February 2006.
[24] The term non-western is used by the journalists to indicate persons originating from countries outside of Europe, North America, Australia and New Zealand.

Ethnic minorities' participation and representation in Danish politics and Danish political institutions has, in recent years, become a subject of research for universities in Denmark[25]. The research has in particular focused on power relations between the majority and minorities. Research points out that while the ethnic minorities participate actively in the municipal elections, there is a clear underrepresentation of this group in the local municipal councils.

The research suggests several reasons for the underrepresentation of ethnic minorities: The length of residence in Denmark, lack of network, lack of knowledge of the political system and contact to Danish political organisations and lastly because of unemployment. Apart from the given reasons, the research also identifies ethnic minorities' lack of identification and feeling of affiliation to Denmark (sense of belonging), perceived discrimination and institutional barriers as other main grounds for ethnic minorities' under representation. Furthermore, some researchers point out that the reduction of the number of municipalities from 271 to 98 has in general a negative impact on the participation and representation of marginal groups in the society, among whom the ethnic minorities are to be found.

DIHR is concerned that the low representation of persons belonging to ethnic minorities may have a negative impact on the overall active political participation in the Danish society, especially on the municipal level, of persons with another ethnic background than Danish.

Article 5(d) (iii) The right to nationality

The Act on Danish nationality (Act No. 252 of 27 May 1950)

New rules on naturalisation were introduced in a circular, No. 55 of 12 June 2002. As a new condition for naturalisation, the applicants must sign a declaration on faithfulness and loyalty to Denmark. The residence requirements were increased by two years (nine years for aliens with no special status, eight years for refugees and stateless persons and from six to eight years for spouses of nationals – depending on the length of their marriage). The rules on conduct were strengthened, i.e. a sentence to imprisonment

[25] In particular Professor Lise Togeby and researcher Birthe Siim's reaserch in the field can be mentioned.

between one and two years implied a waiting period of eighteen years, and a sentence of more than two years excluded naturalisation forever. Also overdue debt to the state precludes naturalisation. Lastly, an examination certificate was required as documentation of the applicants' knowledge of the Danish language, society, culture and history, and furthermore, the former exception for persons over the age of 65 was repealed.

By Act No. 311 of 5 May 2004, the Nationality Act's section 3 was changed. Since then, only second-generation immigrant descendants from the Nordic countries have a right to nationality by declaration. The ground given for the amendment was that the actual composition of the Danish population no longer affords the necessary certainty as to the requisite integration of persons from non-Nordic countries falling under the declaration rule (sect. 3). The former article 3 aimed at fulfilment of Denmark's obligations resulting from the UN Convention of 30 August 1961 on the Reduction of Statelessness as to persons born in the realm without a nationality; after its limitation persons covered by the 1961 Convention will be included in a bill on naturalisation. In the institute's opinion this right to nationality should explicitly be stated in the Act on nationality in order to secure an effective implementation of the principle that statelessness must be avoided or reduced.
Other persons (second and third generation of immigrant origin) who had so far been comprised by the declaration-rule are now treated in accordance with the normal rules for naturalisation. In the institute's opinion this change runs counter to the European Convention on Nationality's article 6(4) (e) and (f) requiring that states shall facilitate the acquisition of nationality for persons who are born in, or as children have moved to, their territory and reside there lawfully and habitually.

Another change was a new provision (sect. 8 B) on deprivation of nationality due to certain crimes against the state included in the Criminal Code's Parts 12 and 13.
On 8 December 2005, a new agreement on naturalisation was concluded. It entered into force 12 December 2005 and has been transformed to a new circular on naturalisation, No. 9 of 12 January 2006. It stipulates that applicants for nationality must declare that they have not committed any crimes dealt with in the Criminal Code's Parts 12 and 13

(sect. 19 (1)). The rules on conduct have been further strengthened, i.e. a sentence to a term of imprisonment of more than 60 days for violations of the Criminal Code's Parts 12 and 13, as well as a sentence to a term of imprisonment of more than eighteen months, now exclude naturalisation forever (sect. 19(2)). (There are other intensifications, i.e. any fine for violation of the Criminal Act's chapters 12 and 13 incur a waiting period of 6 years.)

As a new condition, the applicants must be self-supporting in the sense that they must not have received social benefits according to the social assistance law or the integration law for more than one out of the last five years (sect. 23). Another novelty is a nationality test by which the applicants shall demonstrate their knowledge of Danish culture, history and society (28 out of 40 questions shall be answered correctly); the test will be made on the basis of a textbook. In addition, the Danish language skill requirements have been raised considerably from "Test in Danish 2" to Test in Danish 3".

While the target group of Danish Education 2 are persons with relatively short term school attendance, the target group of Danish Education 3 are persons with an average or long term school attendance, i.e. a vocational education, upper-secondary school or a long term higher education. The language schools have reported that on a national basis only around 25-30 per cent of all participants are referred to Danish Education 3. Exemption from the new language requirements is possible only under very special circumstances, such as documented very severe physical or psychological disease resulting in the applicant not being able to fulfil the language requirements.

The Ministry of Integration is presumed to submit the cases for exemption to the Parliamentary Committee on Nationality where the applicant has a severe physical handicap (such as mongolism), is brain-injured, blind or deaf, or has severe psychological diseases such as (paranoid) schizophrenia, a psychosis or a severe depression. A note to the exemption rule adds that the Ministry is presumed to refuse applications for exemption from persons suffering from PTSD (Posttraumatic stress disorder) – 'even if the condition is chronic and this is documented by a medical declaration'.

The new agreement will prevent many foreigners from acquiring Danish nationality, and it seems to runs counter to the CERD General Recommendation No. 30, section IV and the CoE recommendation 1500 (2001) (urging states to review their nationality legislation with a view to make it more flexible and adequate to the needs of immigrants and foreign residents, giving particular attention to the criteria for granting citizenship).

The new rules may constitute a specific problem for stateless persons and refugees whose naturalisation should be facilitated according to the UN Conventions from 1951 and 1954. Especially severely traumatised persons with chronic PTSD will not be able to fulfil the new language requirements as they are lacking the ability to learn a new language and many will not be able to hold a job; to exclude them from seeking exemption seems discriminatory. The agreement has therefore given rise to severe criticism from different organisations and institutions, language-teachers, doctors and private persons. In April 2006 some politicians among the agreement parties ventilated a proposal to change the specific rule for persons suffering from PTSD, but so far it stands.

The DIHR is concerned that the new nationality acquiring regulations will have far reaching consequences for residing ethnic minorities and their opportunity to acquire Danish nationality, and give rise to questioning whether Danish legislation in this field is in compliance with international standards, especially the prohibition against discrimination.

Article 5 (d) (iv) The right to marriage and choice of spouse

The Immigration Act was amended in 2002 with the aim of reducing the number of family reunifications in Denmark, promoting integration of ethnic minorities in Denmark and reducing the number of forced marriages.

The Immigration Act sets up an elaborate list of requirements for family reunification in Denmark. Couples wishing to obtain family reunification in Denmark must *inter alia* be over 24 years of age and have stronger aggregate ties to Denmark than to any other country. When the person residing in Denmark has had Danish citizenship for 28 years or

has resided in Denmark for 28 years without significant interruptions, the couple is suspended from fulfilling the aggregate-ties requirement.

The immigration authorities will allow family reunification in Denmark, where a rejection of an application would result in a violation of the human right to family life. For example, the authorities allow family reunification in Denmark where insurmountable obstacles stand in the way of family reunification in another country than Denmark, typically the country of residence of the applicant. The authorities interpret this exception from the ordinary requirements in a restrictive manner. Thus, the authorities are reluctant to take into account other obstacles, such as the fact that living in the country of origin of the applicant would not enable the Danish resident to obtain an education, or the fact that the country of origin of the applicant is geographically and culturally very distant from Denmark.

In practice, a number of couples who are denied family reunification in Denmark migrate to Sweden or Germany under the EU rules on freedom of movement. Some continue to work in Denmark. The fact that the majority of couples find an alternative to living apart means that there are currently no cases of violations of the right to family life being tried before the Danish courts.

DIHR is concerned with the fact that the person residing in Denmark must have had 28 years of citizenship in order to be suspended from the aggregate-ties requirement, leads to discrimination on the grounds of length of citizenship in violation of ICCPR Art. 26. The Danish citizens who are naturalised later than at birth are ethnic minorities in Denmark and thus the 28-year rule also leads to discrimination on the grounds of ethnic background.
In addition, the DIHR is concerned that the restrictive interpretation of the right to family life leads to violations of this right as it is understood under ICCPR Article 17 and ECHR Article 8.

The DIHR is moreover concerned that the aggregate-ties requirement combined with the 28-year rule could imply a violation of the prohibition against indirect discrimination

under the ICERD Article 1 (1). It follows in this regard from the preparatory works of the aggregate-ties requirement and the 28-year rule that the aggregate-ties rule was introduced to mainly affect "residents in Denmark who are foreigners or Danish citizens with different ethnic origin [than Danish]".[26] An assumption that the intent was to discriminate on the ground of ethnic origin, when introducing the changes, could on this basis possibly be derived from the preparatory works.

Article 5 (e) (i)The right to work

The Danish Government, in acknowledgment of the relatively high unemployment rate among eligible ethnic minorities in Denmark, has initiated a range of employment measures and legislation amendments to improve ethnic minorities' participation in both the public and private labour market. In Denmark's sixteenth and seventeenth periodic reports (paragraph 132) concerning the International Convention on the Elimination of all Forms of Racial Discrimination, the Government argues that the reasons for ethnic minorities' unemployment are due to their "lack of educational skills, lack of working experience as well as to some extent lack of incentive to seek employment."

However, it seems that the Government does not fully recognize that racial discrimination in the labour market may form a substantial reason for unemployment for aperson with ethnic minority origin. A recent survey[27] points out that 75 percent of the unemployed ethnic minorities, perceive employers' unwillingness to employ persons with foreign names as one of the main reasons for their unemployment. Some 50 percent of the respondents mentioned that a lack of professional and Danish language skills are reasons for them not to get employed.

In another newly published research report[28], conducted by the Danish National Institute of Social Research the interviewed persons point out that ethnic minorities' employment situation gets worse, because employers prefer ethnic Danes as employees rather than

[26] Section 7.2 in bill on changes to the Alien Act and the Act on Marriage etc. proposed on the 28 February 2002 (2001/2 LSF 152).
[27] The survey is conducted by the survey bureau Catinet Research on behalf of the Weekly news letter A4 and published 24 April 2006.
www.ugebreveta4.dk/smcms/Ugebrevet/10046/10813/10821/10822/Index.htm
[28] Møller, Simon Skovgaard and Andres Rosdahl (2006). "Indvandrere I Job" Social Forsknings Instituttet. 06:07

ethnic minorities. Most of the interviewed pointed out that migrants with education had problems getting jobs within the field of their education, because their qualifications were not recognised in Denmark.

Even though the survey and the research report diverge on the issue of a lack of incentive to seek employment (21 percent for the interviewed in the survey and most of the interviewed in the research report felt that the ethnic minorities lacked incentive to seek work), the very fact that most of the unemployed ethnic minorities interviewed perceive their unemployment situation to be caused by racial discrimination, could in itself have a negative consequence for their motivation to seek employment or to further educate themselves to better their chances for employment. This problem has already been subject of earlier research, which has underscored the importance of taking individuals' perception of their situation seriously.

DIHR is concerned that even though there exists legislation that prohibits discrimination on grounds of race and ethnic origin in the labour market, recognition of individuals perception of being racially discriminated against is not being taken seriously by the authorities, and effort is not being made to initiate awareness raising programmes and campaigns against racial discrimination. Disregarding individuals' experiences and perceptions of discrimination, undermine the efforts made to integrate ethnic minorities in the work place.

Article 5 (e) (iv)The right to social security

The Act on an Active Social Policy and the Act on Integration were amended in 2002, whereby the Government introduced new principles for the entitlement to cash benefit allowances. Thereafter, only persons who have resided lawfully in Denmark for at least seven out of the preceding eight years are entitled to the full amount of cash benefits. Persons who do not meet the residence requirement, but otherwise satisfy the conditions laid down by the regulations, will be entitled to a starting allowance benefit which is significantly lower cash benefit allowance than the ordinary cash benefit allowance. All

persons coming to Denmark are subject to the new regulations. This applies to both Danes and non-Danes, irrespective of the persons' race, national or ethnic origin.

The Government argued that such a regulation was necessary in order to serve the purpose of increasing employment within the group of persons on social cash benefit allowances. "In this way the rules will promote the labour market integration of foreigners and thus their general integration in the Danish Society."[29] Furthermore, as stated in the Government's policy paper,[30] the amendment served as a deterring measure towards foreigners wanting to come to Denmark.

The amendment has now been in force for three years. Recent surveys and reports from the academia working in the area show that the critics of the amendment were right in their fears. The amendment had, during the consultation period, been criticized by the Danish Institute for Human Rights as well as a long range of NGO's and academia. It was pointed out that the new regulation would cause social marginalization, poverty and a greater dependence on the social welfare system than before the enforcement of the regulation. They pointed out that the regulation could constitute an indirect discrimination of ethnic minorities since the regulation in particular has an impact mainly on foreigners coming to Denmark.[31]

The ordinary cash benefit allowance for persons older than 25 years is 11.174 DKK per month, while the start help benefits for persons older than 25 years only comprises 4.493 DKK per month.

According to the Centre for Alternative Analysis (CASA)[32], start help benefit allowance consists of between 45 and 64 percent of the ordinary cash allowance benefit rates.[33] In the 4th quarter of 2003 the total number of persons receiving starting allowances was

[29] Denmark's 4th Periodic report submitted to the Committee on Economic, Social and Cultural Rights. Ministry of Foreign Affairs. March 2003. Page 45.
[30] The Danish Governments Policy Paper "A New policy for Foreigners" 17 January 2002.
[31] Article in Lov og Ret. Starthjælpen og Den Europæiske Menneskerettighedskonvention. Cand. jur,. Ph.D, Senior researcher Ida Elisabeth Koch. Danish Institute for Human Rights.
[32] Center for Alternative Analysis (CASA) is an independent and interdisciplinary center for social policy research. More information on CASA on www.casa-analyse.dk
[33] Social Årsrapport 2003. "Efter to år med borgerlig regering". CASA og Socialpolitisk Forening. 2003. pp.108-113.

1.017; 152 persons were Danish nationals, 120 persons were nationals from developed countries (EU-Member States, Norway, Iceland, Switzerland and North America) and 740 persons were nationals from underdeveloped countries (all states outside of EU, Island, Norway, Switzerland and North America).[34]

Newly arrived families with refugee status in Denmark have since July 2002 been receiving starting allowance. This group of persons is particularly vulnerable a.o. due to Posttraumatic Disorder Symptoms and therefore has a need for adequate support. But they have to start building their new lives on a lower cash allowance, which do not enable them to meet the requirements of having a decent living condition in Denmark. Families receiving the starting allowance have at their disposal only between 56 and 73 percent of the amount of money deemed necessary to live on a discount budget in Denmark.[35]

The consequence for the refugees of having less money at their disposal is greater dependence on the social welfare system than otherwise necessary. They have to ask a social worker at the municipality for extra subsidies for such expenses as dentist bills, winter clothing for the children, fees for the children's out-of -school activities and transportation. This entails that they are dependent on the social workers evaluation for extra subsidies. The lack of control of the individual's life situation may create a feeling of frustration.

CASA's latest evaluation of the start help benefit, from April 2004, concludes that persons receiving start help benefits in accordance with the Integration Act have very weak possibilities of getting jobs and becoming self providing. Furthermore, these individuals find it difficult to start an education.[36]

---

[34] Hansen, Finn Kenneth og Henning Hansen. "Starthjælp og Introduktionsydelse – Hvordan virker Ydelserne?" CASA. April 2004. The numbers indicated are a sum of two tables which can be found in pages 14 and 16 of the report.

[35] According to budget indexes from the Bureau of Information for Consumers – Forbrugerinformationen. Forbrugerinformation is an administration under the jurisdiction of the Ministry for Family and Consumer Matters. www.forbruger.dk

[36] Hansen, Finn Kenneth and Hansen, Henning "Starthjælp og introduktionsydelse - Hvordan virker ydelserne?" CASA April 2004.

In a report published in April 2005, a governmental working group states that 36 percent of the persons receiving the starting allowance had left the system after two years while only 27 percent of the recipients of the normal social benefits had done so. On the basis of these numbers the working group concludes that the starting allowance is more effective in getting individuals economically independent from the system that the normal social benefit allowance[37]. However, what the report fails to mention is whether the individuals who have left the allowance system have actually come into the regular labour market and further more the report does not generate knowledge as to which individuals it is who have left the system. According to CASA the individuals who continue in the system are predominantly persons with refugee status.

Over the last three years, critics of the start help benefits have made attempts at bringing a case before the courts in order to get the Government to remove the regulation, but that has proved to be very difficult.

DIHR is concerned that lawful residents in Denmark of ethnic minority origin are subject to indirect discrimination, as the residence requirement in practice restricts the access of persons with a non-Danish nationality (except EU/EEA nationals) to assistance to a much larger extent than Danish citizens. See also the conclusions from the European Committee on Social Rights, where the Committee considered the residence requirement in practice, restricted access to foreign nationals to assistance to a much larger extent, which amounted to indirect discrimination and hence was not in conformity with the Charter. [38]

Article 5 (e) (v)The right to education

General Comments

The number of so called bilingual pupils (also called ethnic minority pupils), originating from countries outside of Europe and North America has since the 1970's grown from some 2000 pupils to approximately 60.000. Statistics show that bilingual children on

[37] Afrapportering fra arbejdsgruppen om indsamling af oplysninger om virkning af introduktionsydelse på starthjælpsniveau/ starthjælp. http://www.inm.dk/publikationer/Rapport_starthjaelp.pdf
[38] European Social Charter, European Committee on Social Rights Conclusions XVII-1 (Denmark) 2004.
[40] Årbog om Udlændinge i Danmark 2005. Integrationsministeriet.

average do not do as well as ethnic Danish pupils and many do not take their final exams and therefore do not finish primary school[40].

The field of education of bilingual students in Danish public schools has been subject to a large and broad number of scientific studies and research. Despite this, the effect of having bilingual pupils and the result from the studies and research has been more or less minimal, if not non existent, in the Act on the Folkeskole (the municipal primary and lower secondary schools which are public schools) and other regulative concerning education in the primary school sector.

According to a PhD dissertation[41], contrary to the development in the field, legislation and other regulative tools regarding public schools still maintain that the Danish public school is a one-language and mono-cultural institution. The consequences are that the education policies do not recognise that the educational development of children of ethnic minority origin can get enhanced by making their language and cultural conditions a starting point for their learning processes.

The Act of the Folkeskole states that "the school must make the pupils familiar with Danish culture and contribute to their knowledge of other cultures." The act hereby presents Danish culture as monolithic and gives it priority over other cultures, e.g. ethnic minority students' cultures of origin. In schools, the pupils have to familiarize themselves with the Danish culture, while they only need to have knowledge of other non-specified cultures. The disciplining of pupils at schools therefore seems to be linked to their societal integration as subjects in a Danish mono-cultural national setting[42]. Researchers have documented how schools that emphasize the Danish mono-cultural approach, view ethnic minority pupils and their cultural backgrounds as a hindrance for practicing Danish norms and values[43]. Ethnic minority pupils are in some schools regarded as a problem

[41] Kristjansdottir, Bergthora S. (2006) "Evas Skjulte Børn – Diskurser om tosprogede elever i det danske nationalcurriculum". Danmarks Pædagogiske Universitetet. Copenhagen.
[42] Andreassen, Rikke(2005). "*The Mass Media's Construction of Gender, Race, Sexuality and Nationality*." Department of History. University of Toronto. P 238
[43] Ibid

rather than regarding their cultural, ethnic and religious diversity as an asset and an added value[44].

Legalizing the spreading of ethnic minority pupils

The Danish Parliament adopted Act No. 594 of 24 June 2005 (Bill No. 135) amending the Act on the Folkeskole (regarding an increased effort in teaching Danish as a second language)

The amendment implies for the right to extend the access of the municipalities to voluntarily spread pupils, who need support in Danish as their second language, to another school than the district school. The referral will be done when it is assessed to be a pedagogical requirement according to an individual assessment of the language skills of the child. This assessment is made by testing children of ethnic minority origin.

According to an earlier memorandum by the Ministry of Education the spreading of ethnic minority students was not in conformity with the Act on the Folkeskole. But by the amendment, the act has been changed and thereby legalizing the model.

DIHR is concerned that the spreading of ethnic minority pupils is an initiative which may result in racial discrimination. The DIHR is concerned about the discriminatory effect of the spreading procedure, since ethnic Danish pupils are not automatically language tested, as ethnic minority pupils are and because citizens with ethnic minority background do not have the same right as ethnic Danes to freely choose which public school they want their children to attend.

Mother tongue education

The opportunity to obtain free mother tongue training for individuals from third countries was abolished in 2002, when the Parliament adopted an act amending the Act on the Folkeskole and the Act on private schools (Bill 142, Act nr 412 of 6 June 2002 Forslag til lov om ændring af lov om folkeskolen og lov om friskoler og private grundskoler m.v. (Modersmålsundervisning og sprogstimulering).

[44] Staunæs, Dorthe (2004). "*Køn, etnicitet og skoleliv*". Samfundslitteratur. P 305.

The amendments partially remove the obligation for the municipalities to offer free mother tongue training for bilinguals. Partially, because the municipality can provide mother tongue education if it so wishes to. But moreover because there still persists an obligation to offer free language courses according to the EU Directive 77/486/EEC for individuals from EU countries, EEC countries, along with individuals from Greenland and the Faeroe Islands.

Interestingly, the Ministry of Integration's "Think tank on challenges for integration endeavours in Denmark" in a report points out that pupils, who are not born in Denmark, do better in average than pupils born and raised in Denmark[45]. This could indicate that pupils who are not born in the country may have better mother tongue skills and therefore could better develop their cognitive and academic competences in subjects taught in majority language. However the think tank and the Government do not seem to see a correlation between good and solid mother tongue skills and development of language and academic skills.

DIHR would like to raise concerns that the abolishment of free mother tongue training generally risks to affect the children's linguistic consciousness and social skills. Research in minority pupils' second language acquirement; show clearly that there is a connection between having a solid knowledge of ones mother tongue, and acquisition of the second language. Furthermore, research shows that a pupil's cognitive and academic development as well as acquiring Danish as second language is very much dependent on the pupils' mother tongue skills.

DIHR would like to raise concerns on the issue of indirect racial discrimination of ethnic minorities who originate from so called third world countries, because mother tongues education is only provided for third country nationals coming from EU and EEC, and for individuals from Greenland and the Faeroe Islands or the German speaking minority in Southern Denmark, but not for ethnic minorities who come from for example Turkey, Pakistan, Somalia, etc.

[45] Årbog om Udlændinge i Danmark 2005. Integrationsministeriet.

Article 5 (f) The right of access to any place or service intended for use by general public

In 2003, the passing of the Act on Ethnic Equal Treatment created additional protection for victims who have been refused access to goods or services, because of race or ethnic origin. The act is providing civil protection against discrimination in opposition to the existing Act on Prohibition against Discrimination on the basis of Race.

The Act on Ethnic Equal Treatment does however only provide protection on the grounds of race or ethnic origin and on this basis has a narrower scope than the penal act. The act does however introduce several new elements that could become relevant for the protection against discrimination in connection with the right of access to any place or service. Firstly, it introduces direct civil access to the courts for victims of discrimination. Secondly, the act directly introduces monetary compensation for victims of discrimination without any requirement of economic loss. Thirdly, it introduces a new burden of proof that has to be applied in cases under the act.

It should be noted that the level of compensation that has been granted victims of discrimination who have been refused access to for instance restaurants or discotheques under the Act on the Prohibition against Discrimination on the Grounds of Race etc., amounts to an inadequate level. Illustrative to this point is a judgement from the Eastern High Court of 14 November 2003 (U.2004.641V) where the court rejected to compensate the victims who had been denied access with DKK 100.

It should be noted that no case relating to the question of access to any place or service has yet been brought before the courts under the Act on Ethnic Equal Treatment. It is therefore not yet clear what level of compensation will be awarded to victims of discrimination under the new act.

The DIHR notes that the State Party in the State Report[46] fails to provide the total number of cases on a national level in which convictions have been obtained under the Act on the

[46] Refer State Report p. 29.

Prohibition against Discrimination on the Grounds of Race etc. The State Party moreover does not provide information on the total number of complaints filed under the Act. A thorough assessment of the effectiveness of the Danish legislation against discrimination in the view of the DIHR requires that statistical information of complaints filed and convictions obtained on a national level is provided or made available. Such information is not available yet.

DIHR is concerned with the level of compensation that has been granted victims of discrimination who has been refused access to for instance restaurants or discotheques. In a judgement from the Eastern High Court of 14 November 2003 (U.2004.641V) the court rejected to compensate the victims with DKK 100.

DIHR is concerned with the fact that no adequate level of compensation is present at this time. This partly undermines any possible preventive nature of the Act on Prohibition against discrimination on the basis of race in these cases. **The DIHR is moreover concerned** with the fact that the level of compensation that could be rewarded under the Act on Ethnic Equal Treatment will be directly influenced by the level that has been set out under the Act on Prohibition against discrimination on the basis of Race.

DIHR is furthermore concerned with the level of vigilance which the police represents when receiving complaints from victims that have been refused access to for instance restaurants or discotheques. In this regard there has been instances in the media describing episodes where for instance the Copenhagen Police has rejected to receive complaints filed, depriving victims the possibility to have their case adequately assessed and investigated.

DIHR is finally concerned with the fact that no general statistical information is available of all complaints filed to the public prosecution relating to the Act on the Prohibitions against Discrimination on the grounds of race etc., and that no information on the number and content of court cases is available on a national level.

6. Article 6: Effective protection and remedies

The Complaints Committee for Ethnic Equal Treatment

The Complaints Committee for Ethnic Equal Treatment (The Complaints Committee) was established in October 2003 through the passing of the Act on Ethnic Equal Treatment. This act was a direct result of the implementation of the European Council Directive 43 of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Complaints Committee was established and given mandate to handle individual complaints in the field of discrimination on the grounds of race and ethnic origin. In 2004, the mandate was expanded to cover discrimination on the labour market, through amendments made to the Act on the Prohibition of Differential Treatment on the Labour Market[47]. The Complaints Committee consists of a chairman and two members appointed by the board of DIHR. Two members must have a legal background. It must be an aim that both sexes are represented in the Complaints Committee and that a least one member has an ethnic background other than Danish.

The Complaints Committee operates through a secretariat that conducts the daily activities of the Committee. This includes receiving complaints, investigating cases, informing of the Complaints Committee's work and so forth. The secretariat has power to dismiss complaints that, according to the secretariat, cannot be treated by the Complaints Committee. This could be the case if the complaint is assessed to be better dealt with in another forum, for example by the Danish Parliamentary Ombudsman, or if it is obvious that the compliant is manifestly unfounded. The secretariats decision to discuss a complainant can be appealed to the Complaints Committee. Generally the Complaints Committee assemble every other month, where the members decide the outcome of the cases on basis of the secretariat's recommendations. Decisions are based on majority and the premises of the decisions must be stated in the decisions. If one member disagrees with the majority, his or her premises are also to be stated. The Complaints Committee's mandate is outlined in the Act on Ethnic Equal Treatment and in the Act of Differential Treatment on the Labour Market. The Complaints Committee reviews complaints of

[47] Consolidated Act on the Prohibition of Differential Treatment on the Labour Market No. 756 of 30 June 2004

violation of the prohibition against discrimination on grounds of race or ethnic origin within and outside the labour market.

The Complaints Committee can handle cases in the following areas:
Within the labour market:

- Employment
- Dismissal
- Transfer
- Promotion
- Pay
- Working conditions
- Vocational out -of–school education

Outside the labour market:

- Health care
- Social advantages
- Housing
- Education
- Supply of goods and services

However, the Complaints Committee cannot review complaints being redressed by the labour tribunals. Accordingly, the Complaints Committee can review complaints of discrimination in the labour market from a member of a trade union, *only* if the member does not receive assistance from his or her trade union. If a person is not a member of a trade union he or she can complain directly to the Complaints Committee. Moreover the mandate is limited in as much as it only applies to discrimination on grounds of race or ethnic origin.

Filing complaints to the Complaints Committee is free of charge. The intention is to provide individuals easy access to complain about discrimination on grounds of race and ethnic origin. When a case has been critically examined, the Complaints Committee decides whether the complainant has been exposed to racial discrimination. If it is

possible on grounds of the evidence in the case to conclude that discrimination has taken place, the Complaints Committee may give a general statement. The decisions of the Complaints Committee are sent directly to the parties in question and published anonymously on the Complaints Committees homepage: www.klagekomite.dk

The Complaints Committee has since it was established and has until April 2006 handled 213 complaints. 29 of these are ex officio investigations. 13 % of all cases relate to issues concerning the labour market, 32 % concerning social protection including security, 3 % concerning health care, 8 % concerning education, 5 % concerning housing, 9 % concerning goods and services, and 8 % concerning other issues.

60 complaints have been dismissed. The Complaints Committee has reached 34 decisions and has found a violation of the prohibition against discrimination in 7 decisions.

The establishment of the Complaints Committee is a step in the right direction of providing remedies for the protection of individuals against discrimination on grounds of race and ethnic origin. However the work and effectiveness of the Complaints Committee to redress complaints suffers from the following limitations:

Limitations in the investigation of cases:
The Complaints Committees handling of cases is subject to the ordinary administrative inquisitorial principle. Hence, the Complaints Committee has to fully disclose all factual circumstances relevant to a case before concluding whether discrimination has occurred. This procedure is, however, difficult to apply because neither the Act on Ethnic Equal Treatment nor the Act on the Prohibition of Differential Treatment on the Labour Market provide the Complaints Committee with powers to enforce the disclosure of material facts of a case. The Complaints Committee cannot demand either the complainant or the respondent to give their opinion or reveal factual circumstances of a case. Moreover, the Complaints Committee cannot demand the parties to produce documents or other material to further elucidate a case.

By not having the power to enforce upon the parties or others any duty of disclosures, the Complaints Committee is in practice not able to effectively handle cases where factual circumstances are disputed, and no physical evidence is presented by the complainant. Such cases can only be handled by the courts which in effect undermines the whole purpose of having a complaints mechanism such as the Complaints Committee.

Limitations in the range of discrimination grounds:
The Act on Ethnic Equal Treatment covers the minimum requirement of the European Council Directive 43 of 29 June 2000 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. However both national and European jurisprudence as well as the general development in the society show that nationality, religion and belief are also grounds where ethnic minorities experience discrimination. The limitations applied to the Complaints Committee's handling of complaints have the effect that direct discrimination on the grounds of nationality, religion and belief are not covered, unless the Complaints Committee perceive it as indirect discrimination on the grounds of race and ethnic origin.

Limitations in the right to suggest free legal aid:
The Complaints Committee can suggest that victims of discrimination are granted free legal aid in cases where the victim has been subject to discrimination, and where the committee has reached this conclusion. The committee can however not suggest that free legal aid is granted to victims in cases, where discrimination has not been fully disclosed or where the committee's investigation due to the above mentioned limitation cannot lead to a conclusion on whether discrimination has occurred or not.

This results in possible cases of discrimination, where evidential problems exist that require clarifications through statements by witnesses or parties not being brought before the courts. This is unsatisfying, especially as such cases are suited for judicial review at the courts.

The DIHR is concerned with the fact that the Complaints Committee cannot suggest that free legal aid is granted to possible victims of discrimination in cases where an assessment before the courts is desirable, but where the committee cannot reach the conclusion that discrimination has occurred through its own investigation of the case.

The DIHR is especially concerned that the Complaints Committee has not been provided with adequate powers to fully fulfil its role to combat discrimination and investigate complaints over discrimination in an effective manner.