

Committee on the Rights of the Child (CRC)

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**COMMENTS BY THE DANISH INSTITUTE FOR HUMAN RIGHTS
ON DENMARK'S REPLY TO THE LIST OF ISSUES IN RELATION
TO THE FIFTH PERIODIC REPORT OF DENMARK TO THE
COMMITTEE ON THE RIGHTS OF THE CHILD
(CRC/C/DNK/Q/5)**

On 8 March 2017 the UN Committee on the Rights of the Child submitted a List of Issues in relation to the fifth periodic report of Denmark to the Danish Government, and requested the Danish Government to submit written replies on the Committees List of Issues.

On 7 June 2017 the Danish Government submitted Denmark's replies to the List of Issues in relation to the fifth periodic report of Denmark.

On this background the Danish Institute for Human Rights (DIHR) hereby submits its comments on the Danish Government's replies to the List of Issues, and information on recent developments in Denmark of relevance to the Committees preparation of the plenary session on 15 September 2017 (session 76).¹

Please note, that the following comments and information on recent developments only concerns Denmark and not Greenland or Faroe Islands.

COMMENTS REGARDING PARA. 3:

- While DIHR commends the increased focus of the Government concerning the involvement of students in cases of expulsion in private schools, DIHR notes that the supplementary instruction for private schools on this issue has not been finalized and is currently going through a consultation exercise. The Institute looks forward

¹ Tentative Programme of work, 76th Session of the Committee on the Rights of the Child, Geneva, 11 - 29 September 2017: <https://reg.unog.ch/event/16989/page/1>

to receiving the finalized instruction and to monitor the implementation. Furthermore, the Institute notes that it is still not a legal obligation for private schools to hear a pupil before an expulsion.

- As a result of the school reform from 2014, human rights education has been strengthened in primary and lower secondary school. At present, the 'Common Goals' (Fælles Mål) are going through a consultation exercise. The proposed amendment of the Common Goals will have as a consequence that human rights will no longer be a binding learning goal for social science but rather a guiding learning goal.

COMMENTS REGARDING PARA. 4:

The Government writes that "according to the police computer system (POLSAS) 80 indictments of violation of Section 266 b of the Criminal Code (hate speech) have been registered from 2011 to March 2017." Furthermore, it is specified that "In the same period of time the following decisions have been registered in relation to Section 266 b: 57 convictions, 11 ticket fines issued by the police, 13 acquittals, 2 withdrawal of indictments without conditions and 107 withdrawal of charges."

DIHR would however like to draw the attention to the fact that, it is not possible to determine the total number of reported incidents of violation of Section 266 b from this answer.

COMMENTS REGARDING PARA. 8:

As mentioned on page 19 in DIHR's parallel report of November 2016 to the UN Committee on the Rights of the Child, the Danish Ministry of Employment estimated that 43.500 children under the age of 18 years old lives in families who will be effected by the so-called "cash benefit ceiling", and that 18.000 of these children will have non-Western background.

A new study, however, shows that approximately 93.000 children in Denmark has been effected by the "cash benefit ceiling" in 2016. Further, the study shows that approximately 2/3 of children with parents who receive social benefits are effected by the "225-hours rule" or the "cash benefit ceiling" or by both. The study also shows that

around 80 percentage of all single-parent families who receive social benefits are effected by the governments change in benefits.²

COMMENTS REGARDING PARA. 9:

- A number of cases concerning the so-called three-year rule are pending before the Danish courts, some including children. In May 2017, the Eastern High Court in a case concerning a man (residing in Denmark) and his wife (no children included in the case) found that the three year waiting rules was not a violation on the applicant's right to family life nor the prohibition on discrimination. The judgment has been appealed to the Supreme Court.
- DIHR has received information on a number of cases concerning children (both accompanied and unaccompanied) who are also affected by the three-year rule. E.g. a case concerning a Syrian unaccompanied child, who has received a rejection from the Danish Immigration Appeals Board. He applied for family reunification with his mother and father. He entered Denmark at the age of 16, and at the time of the refusal for family reunification, he was 17 years old. The refusal to grant the child family reunification is based on the following main points in relation to the child's situation: he left Syria with his parents accept and travelled partially alone, his parents have assessed that he is sufficient mature and independent to travel without parents, he has family who can care for him in Denmark, and due his age he is not dependent on a parental guardian or other care person to assist him in the everyday life.

It is with reference to article 3 and the Committee on the Rights of the Child's General Comment No. 14 (2013) on article 3(1) by DIHR stressed that although a number of elements regarding the child's situation has been included in the reasoning, no actual best interests of the child assessment or best interests of the child determination has been carried out, and the decision does not include any reference to a sort of assessment of the best interests of the child, nor is there any information on how the best interests of the child has been weighted against other considerations.

² The Economic Council of the Labour Movement (Arbejderbevægelsens Erhvervsråd), "2/3 af alle børn berørt af kontanthjælp rammes af loftet", 28 April 2017, available in Danish at: www.ae.dk/analyser/23-af-alle-boern-beroert-af-kontanthjaelp-rammes-af-loftet

DIHR has received a copy of the refusal by the Board and can provide additional information on the case, if the committee finds it relevant.

COMMENTS REGARDING PARA. 10:

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

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

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

COMMENTS REGARDING PARA. 11:

In relation to para. 60, DIHR would raise concerning relation to the assessment of non-refoulement and article 12 on the right to be heard. It is the impression of DIHR that accompanied children is generally not heard in the asylum procedure (exceptions might occur on a very limited basis), but parents are instead asked on their child's potential conflicts if returned. The result of this procedure is that if the child has a conflict that is unknown to the parent (e.g. if the child is homosexual and has not informed his/her parents) or the child risks inhumane treatment etc. from the parents or with the parents' consent (e.g. if the parents plan to let their girl-child be circumcised), a sufficiently thorough assessment of the child's risk of refoulement is not ensured.

It is by DIHR recommended that the committee asks the Danish Government the following question: *“What are the procedures for carrying out interviews with accompanied children in the asylum procedure, and if children can be interviewed, what safeguards are in place to ensure a child-friendly interview, and how often have accompanied children been interviewed during the last five years?”*.

COMMENTS REGARDING PARA. 12:

In regards to the Governments consideration of introducing a new system focused on crime prevention for young individuals, DIHR would like to emphasise the need for the Danish Government to focus on delinquency prevention, restorative justice and rehabilitation rather than sanctions, when considering the establishment of a new crime prevention and juvenile justice system.

DIHR welcomes that the lowering the age of criminal responsibility so far has not been communicated as a part of the reform of the juvenile justice system. DIHR recommends focusing on delinquency prevention, restorative justice and rehabilitation when introducing a new system targeted at juveniles aged between 12-17 years.

COMMENTS REGARDING PARA. 13:

In relation to the description in the state report under para. 73 on housing of underage spouses and partners in the asylum system, DIHR notes that the directions from 10 February 2016 did not include information on individual assessments, and in March 2017 the Danish Parliamentary Ombudsman found the direction of 10 February 2016 itself to be illegal due to its absolute nature. The Ministry has during the course of the case stated that it was their clear assumption that the handling of the cases should be in accordance with the law, including human rights obligations, and that this was mentioned orally to the relevant authority (no written information on these oral instructions are available). The question of individual assessments and hearing of the parties has been and is still being heavily discussed and criticized.

As a result of the directions from 10 February 2016, however, couples were forcefully separated. In a number of cases, the forceful separation lasted months before the couples were heard and it was then assessed that due to the circumstances, the couples could be re-accommodated together.

COMMENTS REGARDING PARA. 17 (A) AND (B):

In para. 100 of the report it is stated that there are currently no available data on the number of children with disabilities who live in institutions or who are abandoned by their families. However, it is subsequently stated that based on an estimate approximately 20-25 percent of the 11049 children who were placed in care by the end of 2015 had a disability.

DIHR finds it regrettable that the Danish government has not clarified this statement further; in particular in regard to which calculations and type of data the estimate is based on, and which method they use to measure when a child is considered as having a disability.

INFORMATION ON RECENT DEVELOPMENTS OF RELEVANCE:

- On 14 June 2017 the High Court of Eastern Denmark made an important and prejudicial ruling in a case concerning three sisters, who as minors was placed into care in a foster family.³ The foster father sexually abused and assaulted the three sisters over a longer period of time. The court found that the Municipality of Slagelse had violated article 3 (prohibition against torture and degrading treatment etc.) in the European Convention on Human Rights, as the municipality, due the circumstances of the case, was aware of the fact that the sisters was being abused by their foster father.

Another central question in the case was whether the three sister's claim for compensation from the municipality of Slagelse, which under Danish law was already statute-barred, was in accordance with Denmark's international obligations. The High Court of Eastern Denmark found that the three sisters' claim for compensation could not be considered statute-barred, as such a finding would not be in accordance with Denmark's international obligations, namely the right to effective remedy as ensured in article 13 in the European Convention on Human Rights.

The current Danish rules on statute-barre for compensation in cases regarding municipality's omission and passivity in cases concerning sexual or psychical abuse of children are generally viewed as very limited and therefore as an ineffective remedy for victims. Thus, the court case enjoyed a great amount of attention by many Danish politician, human rights stakeholders, children's rights groups and in

³ Decision of 14 June 2017 by the High Court of Easter Denmark, available in Danish at: <http://www.domstol.dk/oestrelandsret/nyheder/domsresumeer/Pages/Kommuned%C3%B8mttilatbetalegodtg%C3%B8relsetiltretidligereanbragtepigter.aspx>

the media. DIHR also paid great importance to the case and decided on a third party intervention in the case in order to support the sisters' claim for compensation.

On 13 June 2017, the Danish Government introduced a draft bill entailing an abolishment of all current rules regarding statute-barre in future cases concerning sexual abuse of minors, including statute-barre for compensation claims in cases involving municipality's omission and passivity. The Danish Parliament is expected to adopt the draft bill in the autumn of 2017.⁴

- On 23 November 2016 the Danish Ombudsman reported that action plans – which by Danish law is required to be in place prior to an interference – concerning children placed into care are not always conducted by the Danish municipalities and not always forwarded to relevant care institutions as required by Danish law.⁵ The report is based on several conducted supervisions in care institutions by the Danish Parliamentary Ombudsman's Children's Division in a number of municipalities. In one individual case concerning the Municipality of Kolding, the Parliamentary Ombudsman criticised the municipality for not conducting an action plan for 9 years.⁶
- In a newly study by "Borgerrådgiveren" in Copenhagen – which conducts independent examinations of concrete and general matters and supervision of the Municipality of Copenhagen – showed significant mistakes in the Municipality of Copenhagen's handling of 77 child cases. The study showed that the municipality in a significant amount of the examined child cases had acted outside their jurisdiction and sometimes even without any legal basis. The study showed e.g. that action plans in relation to children placed outside their homes lacked in 10 percent of the cases, that consultation of relevant parties was only conducted in 42 cases out of 76 child cases, that complaint instructions for parents and children over 12 years old was not conducted in 67 out of 76 child cases and that there had been no assessment made concerning the child's right to contact in every 33 percent of the cases.⁷

⁴ Draft bill of 14 June 2017 available in Danish at:
<https://hoeringsportalen.dk/Hearing/Details/60712>

⁵ The action plan contains information on e.g. the effort required in the concrete situation.

⁶ The Danish Ombudsman's statement of 23 November 2016, available in Danish at:
http://www.ombudsmanden.dk/find/nyheder/alle/anbragte_boern_mangler_handle_planer/

⁷ Study of May 2017 by "Borgerrådgiveren" available in Danish at:
<http://www.google.dk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEw>

- Recent figures by the Danish Director of Public Prosecution shows that children suspected of criminal activities in 15 cases was placed into isolation during the year 2016. Further, the numbers show that one out of the 15 cases was conducted with no legal basis in the Danish Administration of Justice Act. Additionally, nine of the 15 cases was inconsistent with the Danish Administration of Justice Act.⁸

Yours sincerely,

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⁸ Statement of the Danish Director of Public Prosecution of 1 May 2017, available in Danish at: <http://www.ft.dk/samling/20161/almde/reu/bilag/329/index.htm>