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**REPORT BY**

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**ON HIS VISIT TO DENMARK**

**13<sup>th</sup> – 16<sup>th</sup> APRIL 2004**

for the attention of the Committee of Ministers and the Parliamentary Assembly

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## INTRODUCTION

*In accordance with Article 3 (e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Dr Per Stig Møller, Minister for Foreign Affairs of Denmark, to pay an official visit to Denmark on 13 to 16 April 2004. I would like to thank the Minister for his invitation and for the resources he placed at my disposal throughout the visit, as well Mr. Niels-Jørgen Nehring, the Permanent Representative of Denmark to the Council of Europe and other personnel of the Permanent Representation, as well as Ms Jane Jørgensen and other personnel of the Ministry for Foreign Affairs for their valuable cooperation and assistance in arranging this visit. I am also grateful for the support of the Danish Institute for Human Rights who provided valuable assistance in organising the meeting with non-governmental organisations. During my visit, I was accompanied by Ms. Satu Suikkari and Mr. John Dalhuisen, members of the Commissioner's Office.*

*During the visit, I had meetings with Dr Per Stig Møller, Minister for Foreign Affairs; Mr. Bertel Haarder, Minister for Refugees, Immigration and Integration Affairs; Mr Michael Lunn, Permanent Secretary of the Ministry of Justice; Mr. Thomas Børner, Permanent Secretary of the Ministry of Social Affairs; Mr Ib Valsborg, Permanent Secretary of the Ministry of the Interior and Health; Ms Hanne Severinsen, Chairman of the Danish Delegation to the Parliamentary Assembly, Ms Anne Baastrup, Chairperson of the Legal Affairs Committee as wells as other members of the Delegation and of Committee; Mr Tryggvi Johansen, Head of the Representation of the Faeroes in Denmark; Mr. Einar Lemche, Head of the Greenland Home Rule Government Representation in Denmark, and Mr William Rentzmann, Director General of the Prison and Probation Service. I also met with Professor Hans Gammeltoft-Hansen, Parliamentary Ombudsman; Ms Birgit Lindnæs, Deputy Director General of the Danish Institute for Human Rights and other personnel of the Institute; Mr. Sükrü Ertosun, Chairman of the Council of Ethnic Minorities and several non-governmental organisations and scholars. I had the opportunity to visit the Refugee Centre at Sandholm and the Nyborg State Prison.*

*I would like to thank all those with whom I met for their excellent cooperation and the frankness of our discussions on the human rights situation in the country.*

### General remarks

1. One of the ten founding members of the Council of Europe, Denmark was among the first countries to ratify the European Convention on Human Rights in 1953. Since then, Denmark has ratified most of the Council of Europe human rights instruments and has made continuous efforts to guarantee a high level of respect for human rights. Moreover, Denmark has long played an active role in the promotion of higher human rights standards in international fora. It also has a long tradition in providing an institutional framework for the protection and promotion of human rights at the national level. The Parliamentary Ombudsman, whose mandate was established in 1953, and the Danish Institute for Human Rights, first established in 1987 as the Danish Centre for Human Rights, have made a commendable contribution to the effective enjoyment of human rights by individuals in Denmark, and have provided inspiration for the creation of similar institutions in other countries.

2. Set against this traditionally high level of human rights protection in Denmark, there have been both positive and less encouraging trends in recent years. On the positive side, I would like to mention in particular the adoption of measures to fight against trafficking in human beings and to prevent domestic violence and the strengthening of the legislative and institutional framework in the field of non-discrimination. On the other hand, in certain fields, most notably relating to the rights of foreigners and ethnic minorities, there has been a noticeable shift in policy and legislation towards a more restrictive regime, bringing with it a number of risks for the full respect of human rights.

3. Welcome efforts have been undertaken in recent years to strengthen the application of the rights guaranteed by the European Convention for Human Rights in the autonomous regions of Greenland and the Faeroe Islands, in particular through the incorporation of the Convention and its additional protocols to the Faroese legislation in 2000 and in Greenland in 2001. Both Greenland and Faeroe Islands have their own Parliamentary Ombudsman with the mandate to deal with citizen's complaints, established in 2001 and 1995 respectively. Having travelled to neither, I am unfortunately not in a position to comment on the effective respect of human rights in these autonomous regions.

## **I. THE SITUATION OF ETHNIC MINORITIES, IMMIGRANTS, REFUGEES AND ASYLUM-SEEKERS**

4. The situation of ethnic minorities has been the subject of considerable public debate in Denmark for some time. On the one hand, this debate has focused on the need to strengthen the integration of the ethnic minority groups already residing in Denmark, and on the other hand, on the perceived need to limit the number of new arrivals. Both of these goals are reflected in the Government strategy on integration which states that "by limiting the influx of new foreigners, time and resources are released for the improvement of efforts aimed at ethnic minority groups already residing in Denmark".<sup>1</sup> This debate featured prominently in the 2001 Parliamentary elections, which were characterised by a strong polarization of views on these matters. Since then, a number of legislative and policy initiatives have been undertaken. Whilst these initiatives include positive elements, such as those aimed at promoting an inclusive society and fighting against discrimination, the majority of the legislative amendments relating to immigrants, refugees and asylum-seekers are of restrictive nature that risk polarizing this issue still further and, in certain cases, running counter to efforts to promote greater integration.

5. A comprehensive reform of the Aliens Act was undertaken in 2002, since when numerous amendments have been made. The new act and the subsequent amendments have been criticised for the many restrictions introduced in particular for refugees and asylum-seekers and regarding the rules relating to family reunification. They include the following:

- changes in and increased use of the manifestly unfounded procedure<sup>2</sup>;

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<sup>1</sup> *The Government's Vision and Strategies for Improved Integration*, the Danish Government, June 2003.

<sup>2</sup> The current criteria, notably regarding the lack of credibility and the incoherence of the applicant's statement with the general background information on the country concerned, go beyond the UNHCR Executive Committee Conclusion No. 30, 1983.

- the scope of subsidiary protection was restricted through the replacement of the de facto refugee status with the new protection status;<sup>3</sup>
- the reduced composition of the Refugee Board;
- the removal of the possibility of applying for asylum from Danish embassies abroad;
- restrictions for asylum-seekers on the right to marry in Denmark;
- restrictions in family reunion regulations;
- an extension of the qualifying period for permanent residence permit from three to five or seven years;<sup>4</sup>
- the reduction of social allowances for refugees and foreigners;
- rejected asylum-seekers no longer benefit from a 15-day period to leave the country voluntarily, but must depart as soon as the final negative decision on their application is rendered;
- the grounds on which asylum-seekers can be detained were widened;

6. It is not within the scope of this report to provide a detailed analysis of all of these provisions. Whilst some are examined below, a number of general points are worth making. It is evidently, indeed, openly, the intention of the Danish Government to restrict the number of foreign arrivals through the tightening of asylum procedures and a series of measures dissuading economic migration<sup>5</sup>. Whilst States have a legitimate interest in preserving the integrity of asylum procedures, an interest shared by bona fide applicants, and in controlling the entry of economic migrants, they must be sure that measures taken to this end neither limit fundamental rights of asylum seekers and ordinary migrants, nor prejudice their subsequent integration.

7. Moreover, the lack of clarity of the Aliens Act, and the frequency of the amendments, risk jeopardising the principle of legal certainty, and make it difficult for the persons concerned to make sustainable plans for their future. Some of the provisions analysed below may, moreover, prejudice the effective enjoyment of certain rights guaranteed in the European Convention of Human Rights and other international treaties. This possibility was in fact explicitly recognised in respect of the regulations on family reunion in the explanatory notes to the original Bill presented by the Government.<sup>6</sup> The final Act provides for the application of an exceptional clause in such circumstances, in accordance with occasionally detailed, generally vague, considerations adverted to in the Government Bills, which are binding on the Act's interpretation. The protection of human rights is too important, however, to be largely left to the discretion of the authorities when deciding upon individual cases and ought to be ensured by clear statutory provisions.

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<sup>3</sup> The new status is limited to those who risk the death penalty or torture or inhuman or degrading treatment. The previous de facto status was broader, providing protection for persons not falling under the 1951 Convention on the Status of Refugees, but who, for reasons similar to those listed in the Convention, or other weighty reasons resulting in well-founded fear of persecution or similar outrages, ought not to be required to return.

<sup>4</sup> Automatic qualification for legal residents is obtained after 7 years. This period may be shortened to 5 on the fulfilment of a number of conditions. See Section 11(4) of the Aliens (Consolidation) Act of 24 July 2003.

<sup>5</sup> *The Government's Vision and Strategies for Improved Integration*, the Danish Government, June 2003. The Government states as guiding principles for its policy in this area that the number of foreigners coming to Denmark should be restricted, that stricter requirements concerning their duty to maintain themselves should be introduced, and that the refugees and immigrants already living in Denmark should be better integrated.

<sup>6</sup> See the Government bill of 28<sup>th</sup> February 2002 on the Aliens Act, pp. 42 – 43.

## Family reunification

8. According to the bill prepared for the 2002 Aliens Act, the Government is of the opinion that the number of unemployed aliens will only increase if the quantity of resident permits awarded for the purposes of family reunification permits continues at the same rate<sup>7</sup>. It was also noted that the rules applicable till then for family reunification had been based on modern West-European standards for family establishment and have regrettably been exploited for immigration purposes through marriages of convenience and arranged marriages with tragic consequences for young families. As a result, the legal right of family reunification was withdrawn, and replaced with a provision regulating the right to a residence permit in Denmark for the purpose of family reunification with a person living in Denmark. A number of requirements were introduced for obtaining the residence permit under the 2002 reform, and they have been added to in subsequent amendments<sup>8</sup>.

9. According to the 2002 Aliens Act, a residence permit will only be granted to a foreign spouse on the basis of marriage or cohabitation if both parties are over 24 years of age. Until they have both reached this age, and even if one of them is a Danish citizen, they can only hope for family reunion in Denmark under exceptional circumstances<sup>9</sup>. There are also a number of economic requirements for the reunification of spouses,<sup>10</sup> and a requirement that the spouses' or cohabitants' aggregate ties with Denmark are stronger than their aggregate ties with another country. In the face of objections to these provisions, an amendment was introduced in 2003 according to which the aggregate ties requirement is lifted in situations in which the person residing in Denmark has held Danish citizenship for at least 28 years<sup>11</sup>. According to the Ministry, non-nationals or subsequently naturalised citizens born in Denmark or having arrived there as a small child may also be exempted from the aggregate ties condition if they have had 28 years substantially continuous residence in Denmark. This exception entails, for instance, that a Danish citizen, who arrived in Denmark as a child of 8, may, indeed, freely secure the family reunion of a foreign spouse at the age of 36, if, indeed, the other criteria are also met. For non-national residents who arrived in Denmark at a greater age, the aggregate ties requirement applies irrespective of the amount of time they have spent in Denmark.

10. The requirement that the spouses' aggregate ties with Denmark are stronger than those with another country, hits immigrants and second-generation immigrants particularly hard, including those who have lived in Denmark for most of their lives and have become well integrated in society. I was for instance informed of a case of a 26-year old woman who arrived in Denmark as a child, lived there continuously ever since, spoke Danish as a native, had concluded her university studies in Denmark, but who could not bring to Denmark her

<sup>7</sup> The bill refers to a report predicting a rise in the number of unemployed 25-64 year old immigrants and descendants from third countries from 77,369 in 2000 to 194,500 in 2021, if the present employment rate in this population group does not change, and if the present immigration rate continues.

<sup>8</sup> Some of these amendments have, however, eased or clarified requirements introduced in 2002.

<sup>9</sup> The possibility for a foreign spouse to obtain a residence permit under such circumstances is only referred to in the Government Bill.

<sup>10</sup> In addition to the ability to financially maintain the spouse in Denmark, the Act requires that the person living in Denmark has not received social assistance for a period of one year prior to the application, possesses a dwelling of a reasonable size and provides a financial security of DKK 50.000 to cover any future public expenses for any social assistance granted to applicant

<sup>11</sup> See Law No. 1204 of 27 December 2003.

husband originating from the country where she was born, since it was regarded that the aggregate ties of the couple were stronger with that country than with Denmark. I am also concerned that in this respect, the legislation treats in a different manner Danish citizens depending on the period during which the person has held citizenship. If a person obtained the citizenship at birth, the aggregate ties requirement will not be considered if the person is at least 28 years old. However, it continues to be applied in relation to a person who was later naturalised, until the 28 years of citizenship is achieved, unless he or she was born in Denmark or arrived as a child, in which case the length of citizenship requirement is substituted by an equally long residence requirement. These provisions do not in my view guarantee the principle of equality before the law.

11. I was also informed of cases where the application of the law resulted in differentiated treatment depending on the economic situation of the persons concerned, which again raises serious concerns in terms of equality before the law and, in particular, regarding the respect for Article 14 of the Convention, which prohibits discrimination on grounds such as property. For instance, any person who has received assistance under the Act on an Active Social Policy or the Integration Act during the past year is, as a main rule, excluded from the possibility of bringing his or her spouse to the country. The requirement of a bank guarantee of 50.000 DKK - which is only released after seven years and insofar as it has not been used for possible social assistance for the couple - can be very difficult to obtain for persons with low incomes and few possessions. Moreover, the requirements are re-assessed every two years, and if the person residing in Denmark has in the meantime become unemployed or had to move to a smaller apartment, the residence permit of his or her spouse can be discontinued. Being under a constant threat of separation from one's spouse or having to move abroad in order to continue family life, inevitably creates a significant strain and anxiety for the persons concerned. Such restrictive criteria risk conspiring against the efforts to encourage greater integration.

12. Article 8 of the European Convention of Human Rights guarantees the right to family life and private life. Whilst the European Court for Human Rights has stated that Article 8 does not extend a general obligation on the state to accept the non-national spouses for settlement in the country,<sup>12</sup> the Court has considered it essential for the effective enjoyment of this right that the couple could live together in another country. On the basis of this jurisprudence, it can be inferred that if the couple could not live in another country, family reunification must be granted in the contracting state concerned. This is obviously often the case for refugee couples who do not have the possibility of enjoying their right to family life in a country other than the country of asylum. In such circumstances, family reunion ought to be granted automatically. It is explained in the Bill presented by the Government that a residence permit may, indeed, be given to the spouse of the refugee in Denmark – but, in general, only if they got married before the refugee left his or her country of origin – without fulfilling all the conditions usually imposed and which refugees are generally unlikely to meet. The articles governing the different criteria do generally provide for their dispensation, if exceptional reasons make it appropriate. If necessary Section 9(c) may also be applied. This section provides for a catch-all exemption, stating that “upon application, a residence permit may be issued to an alien if exceptional reasons make it appropriate...”, which is intended to cover cases in which the strict application of the rules contained in the Act would be contrary to

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<sup>12</sup> See, *Abdulaziz, Cabales and Balkandali v. UK*, Judgment of 28 May 1985, Appl. Nos. 9214/80; 9273/8&, 9479/81, Series A No. 94, para. 67

Denmark's obligations under international instruments. The Government bill also mentions other examples where requirements might be lifted, if the application of the law would otherwise lead to a violation of a treaty obligation. Whilst it is positive that such exceptions are mentioned in the Bill, and Bills are binding in the interpretation of Danish Acts, I do not consider that this provides sufficient safeguards for ensuring the right to family life. As a minimum, the law itself should provide a non-exhaustive list of such cases where residence permit must be granted without the requirements necessarily being filled. Cases have indeed been reported of refugees in Denmark being unable to secure reunification with their spouses since the adoption of the new law.

13. The Minister for Refugees, Immigration and Integration Affairs explained to me that the 24 year age requirement is meant to protect young adults from forced marriages, since it was felt that the older a person is the greater their capacity for resistance. The prevention of forced marriages is indeed an important aim and I welcome many of the initiatives that have been undertaken on the basis of the Government's Action Plan on Forced, Quasi-forced and Arranged Marriages, such as the initiatives to provide counselling and mediation for young persons who are being pressured by their parents to get married, the focus on ensuring that girls and young women complete their education, and efforts to enhance the knowledge about the relevant Danish legislation. I am convinced that strong investment into such initiatives could bring very positive results, without having to resort to such restrictions as are now provided by a law, whose scope extends far beyond their target<sup>13</sup> and which seriously limit the right of persons of marriageable age to marry and to found a family in Denmark.

14. Until 2002, parents of over 60 years of age could be reunited with their families in Denmark. This right was abolished under the reform, since the "the Government finds it necessary to restrict and control access to Denmark in order to ensure the necessary peace and free the necessary resources for a far better integration of the aliens already living in Denmark."<sup>14</sup>

15. The eligibility conditions for family reunification were further restricted with a 2004 amendment reducing the age limit allowing for family reunification of children from under-18 to under-15. According to the Government, the purpose was to prevent so-called "re-education journeys" to countries of origin, and to prevent parents from applying for family reunification for their children only just before the child turns 18, since it was felt that such practices were harmful for the integration prospects of the children in Denmark. The Government bill did not, however, provide any estimation as to how common such practices are, and the Council of Ethnic minorities claimed that they are fairly unusual. It is regrettable that all children with non-Danish parents over the age of 14 are being punished by the law for the perceived mis-conduct of a fairly limited number of parents. Whilst I concur that for

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<sup>13</sup> A number of human rights organisations reported that these provisions have had very negative consequences in situations other than those targeted by the law. A significant number of Danish couples have reportedly moved to neighbouring countries, from which many continue to commute to Denmark, in order to be able to live together with their spouses.

<sup>14</sup> Bill amending the Aliens Act, the Marriage Act and other Act, 28<sup>th</sup> February 2002, p. 41.

integration purposes, it is better if the child comes to the new country of residence at an early age, it is likely that this provision will have negative consequences in situations other than those targeted by the law, and it raises some concern regarding the enjoyment of certain rights guaranteed in international human rights treaties, as will be discussed below.

16. The Convention on the Rights of the Child defines a child as any human being below the age of eighteen years and states that the best interests of the child shall be a primary consideration in all matters affecting the child.<sup>15</sup> The Convention further recognises that the child should grow up in a family environment, and requires that State Parties deal with applications by a child for family reunification in a positive, humane and expeditious manner (Article 10). Whilst this Article does not explicitly spell out an automatic right of a child to be reunited in the parent's country of residence, it clearly assumes that a possibility to apply for family reunification be given to a child.

17. The Minister for Integration insisted that such a possibility did exist for children over 14 in virtue of the general exception provided in article 9(c) of the Aliens Act. This provision may well formally permit the granting of a residence permit for the purposes of family reunion to minors over 14 years old on the basis of the best interest of the child, as is required under the Convention on the Rights of the Child; indeed, the Government bill stresses that their best interest is to be respected in all decision involving them. It might reasonably be assumed, however, that family reunion will in fact be in the best interest of the child in the great majority of cases. It is rather incongruous therefore, and certainly dissuasive, to establish a general rule presuming the contrary and to leave the expression of the exceptional grounds for awarding family reunification to minors over 14 (under a catch-all clause) to the explanatory notes of a Government bill. Such a situation fails to secure the legal certainty that ought to surround the determination of fundamental rights.

18. During the preparatory process, the Council of Ethnic Minorities and a number of non-governmental organisations opposed the lowering of the age limit, and had proposed alternative solutions to tackle the problems that may be created for effective integration by such journeys, while underlying that they are not always harmful for the child's integration perspectives. It is regrettable that these alternatives were not given greater consideration.

19. In conclusion, I strongly encourage the Government and the Parliament to reconsider the provisions relating to family reunification in light of the above comments and those made by national human rights actors and the UNHCR on various occasions.

### **The Composition of the Refugee Board**

20. Unless subjected to an accelerated procedure, applications rejected at 1<sup>st</sup> instance by the Immigration Service are automatically appealed to the Refugee Board, a quasi-judicial body, the members of which are appointed by the Minister for Refugees, Integration and Immigration. In the 2002 Aliens Act reform, the membership of this Board was reduced, with representatives of the Danish Refugee Council and the Ministry for Foreign Affairs being

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<sup>15</sup> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

removed. Currently, the composition of the Board is as follows: one judge acting as a chairman, nominated by the Ministry of Justice, one member appointed directly by the Minister of Refugees, Immigration and Integration, and one member nominated by the Council of the Danish Bar and Law Association.

21. The Minister for Integration, Immigration and Refugees informed me that the Danish Refugee Council had been removed from the composition owing to the perceived inappropriateness of its multiple functions in connection with the processing of cases at both first and second instance in addition to its role in providing assistance to asylum seekers and their lawyers. It was suggested that this weakened the confidence that Board members nominated by the Danish Refugee Council functioned independently without accepting directions from the organisation. The members appointed by Ministry for Foreign Affairs, were then removed in order to maintain the balance of the Board's composition.

22. This change was, however, regretted by the human rights organisations with whom I met, since it was felt that it reduced important country of origin related expertise from the Board, and, with the removal of the civil society representative specialised in refugee protection issues, also reduced the independence of the Board. Indeed, the Danish Refugee Council's inclusion on the Board had previously been promoted by the UNHCR as a model of best practice.

23. It is to be recalled, in this context, that the Minister for Integration also directly appoints a member of Board even though a directorate within the Ministry, namely the Immigration Service, is itself responsible for first instance decisions. This multiple involvement in the asylum procedure is, indeed, not dissimilar to that previously enjoyed by the DRC. Article 53(2) of the Aliens Act does, however, clearly state that "the members of the board are independent and cannot accept or seek directions from the appointing or nominating authority or organisation". Just as I heard no suggestions that the Board members appointed by the Ministry for Refugees Immigration and Integration Affairs acted without the requisite independence, the same was widely acknowledged to apply to the members appointed by the DRC.<sup>16</sup>

24. For my part, I cannot but consider that decisions so intimately affecting the enjoyment of fundamental human rights, and with potentially irreversible consequences, should be subject to appeal before ordinary courts, which ought in all cases to be the final arbiter and guarantor of the respect for human rights<sup>17</sup>. Decisions taken by the Board can, indeed, be appealed to ordinary courts on points of law. However, in most cases, and always as far as the merits are concerned, the Board provides the final decision. The guarantees of independence,

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<sup>16</sup> See UNHCR's comments on the Draft Bill on amending the Aliens Act, the Marriage Act and other Acts, in which UNHCR, expressing its concern about the motivation for removing the DRC from the Refugee Board, noted that the DRC's presence brought much experience and expertise to the deliberations of the board. It noted that, under the previous composition, the Board almost always took unanimous decisions – an indication of a well-functioning decision-making body. Comments available at [www.flyktning.dk](http://www.flyktning.dk)

<sup>17</sup> According to a Supreme Court decision of 26 January 2001 "judicial review of decision issued by the Refugee Board is limited to a review of judicial issues, including defects in the basis of the decision, procedural errors, and unlawful exercise of discretion". The decisions of the Refugee Board are otherwise final.

impartiality and expertise must, therefore, be very sure indeed. The inclusion of a member appointed by the Danish Refugee Council provided the Board with far greater guarantees in these areas than can currently be said to obtain. It would be most desirable therefore, indeed a minimum, for the Board's original composition to be re-established.

### *Visit to Sandholm Refugee Centre*

25. I was able to visit the Sandholm refugee centre during my visit. The centre houses the newly arrived, who remain on average for up to two weeks as well as persons awaiting the enforcement of an expulsion order. Persons are free to leave the centre at will but are required to present themselves for all relevant administrative acts. The centre also has a separate closed zone for third country nationals deprived of their liberty, which is run by the police and which I did not visit. Asylum seekers may not work outside the centre, but may earn a minimal wage through contributing to the maintenance of the centre. Education and health care is provided, by all accounts, and in the estimation of the asylum speakers spoken to, to an adequate standard. Indeed, the conditions observed were, in all respects, commendable.

26. During my discussions with the management of the centre, I was presented with asylum and immigration statistics, which reveal the extent of the restriction of new arrivals. The number of asylum applications decreased from 12,512 in 2001 to 4,593 in 2003; the recognition rate has decreased from 53% to 22% over the same period. Tellingly, the number of applicants for family reunion has decreased by 60% over this period, from 15,370 in 2001 to 6,520, with permits being granted in 10,950 cases and 4,791 respectively.

## **II THE FIGHT AGAINST DISCRIMINATION, RACISM AND EXCLUSION**

27. An emphasis has been placed in recent years by both civil society and the Government on the need to strengthen the fight against discrimination and racism. In 2003, the Government adopted an Action Plan to promote equal treatment and diversity and combat racism<sup>18</sup>, and a document outlining the Government's vision and strategies for improved integration. These action plans include a number of important initiatives in such vital areas as the access to education and employment, language training and the interaction between ethnic minorities and the majority population. I also welcome the focus given to gender equality in the integration efforts. Whilst the Action Plan stresses the need to promote an open and inclusive society and to promote a better understanding of different values and cultural traditions, a number of human rights organisations felt that the integration efforts occasionally blurred the distinction between assimilation and integration. Indeed, greater emphasis could be given to the positive aspects of the preservation of minority cultures.

28. Anti-discrimination legislation was strengthened with the adoption in June 2003 of an Act on Equal Treatment Irrespective of Ethnic Origin, which contains a prohibition against direct and indirect discrimination on the grounds of race or ethnic origin and a prohibition against harassment and instructions to discriminate. The act contains provisions concerning the

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<sup>18</sup> 2,5 million Krona have been allocated towards the implementation of the Action Plan in 2004 and a further 2,6 million for 2005.

shared burden of proof and a prohibition against reprisals. Violations of this law, which covers situations outside the labour market, are punishable by a claim for compensation for non-pecuniary damages. Employment cases are covered by a separate Act on the Prohibition of Differential Treatment in the Labour Market.

29. The Danish Institute for Human Rights was entrusted with the task of considering complaints of differential treatment based on racial or ethnic origin. The Institute can render its opinion as to whether individual acts complained about constitute a violation, and can recommend that free legal aid be granted for judicial proceedings. The Institute cannot itself order any sanctions or other remedies.

30. The Integration Act requires each municipality to establish an integration council if more than 50 persons express a request in writing. They may also establish councils on their own initiative. Each integration council nominates a member to the Danish Representantskabet for Ethnic Minorities, which in turn appoints 14 members of the Council of Ethnic Minorities. The Council of Ethnic Minorities' main task is to advise to the Minister for Integration, Immigration and Refugees on issues relating to refugees and immigrants. Whilst I welcome the creation and important work of this structure, the Representatives of the Council noted that the funds available are insufficient for it to carry out effectively all the activities within its mandate. In the light of my discussions with the Council's chairman and the positive views expressed by related NGOs, I can only encourage that greater attention and resources be given be paid to this useful institution.

31. There has, as stated, been much recent debate in Denmark on the place and integration of ethnic minorities in its society, with an extremely broad variety of views being expressed. Whilst the majority of Danish citizens would appear to display perfectly tolerant attitudes<sup>19</sup>, and Denmark has traditionally been a welcoming society, it cannot be escaped that a small, but vocal, minority that has succeeded in pushing an anti-immigration agenda that can barely be distinguished from an anti-immigrant agenda, to the forefront of political debate.

32. One can only be concerned, indeed, by the frequent expressions of strong anti-immigrant statements by certain politicians. I was informed that in 2003, ten out of fifteen convictions concerning the violation of the provision prohibiting the public expression of racist views concerned persons representing two political parties.<sup>20</sup> Whilst such prosecutions are a welcome indicator of a willingness to combat such speech, its prevalence in political discourse cannot fail to be of concern. According to media reports some of the party members have since proposed that the hate-speech provision of the Criminal Code be abolished, for being damaging to an open debate. As was emphasised by the Government in its action plan, in order to avoid greater social polarization it is important to stimulate public debate based on

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<sup>19</sup> According to a study brought to my attention by the Minister for Refugees, Immigration and Integration, Denmark is a polarised country as regards attitudes towards minority groups. It has a large percentage of intolerant people (20 percent) as well as the highest percentage of actively tolerant in the EU (33 percent, on par with Sweden). *See Attitudes towards minority groups in the European Union. A special analysis on the Eurobarometer 2000 survey on behalf of the European Monitoring Centre on Racism and Xenophobia by Sora, Austria, March 2001.*

<sup>20</sup> The Danish People's Party and the Progress Party.

a detailed picture of people from all sectors of society, and that politicians, opinion-makers, professional groups and other social commentators have a particular responsibility in this area. I was repeatedly informed that the multicultural nature of the today's society is not properly reflected in the public debate and in the media, which frequently portray a distorted and distrustful image of ethnic minorities in Denmark.

33. Such problems are by no means unique to Denmark and serve to illustrate the extent of the challenge faced across Europe. They show that tolerant societies are never definitively acquired, but require constant effort and vigilance. Greater investment in this area is currently necessary in Denmark, a point to which the Minister for Refugees, Immigration and Integration Affairs was certainly sensitive. Just as it is right to discuss openly the challenges and difficulties that immigration and the integration of immigrant communities present, so it is necessary to continually guard against xenophobic reactions masquerading as social concern.

34. I was, lastly, concerned to note during my visit that there was some debate over the advantages of segregating immigrant children in special classes and even in separate schools. I was surprised to hear on my return of a recent decision to establish a school only for bilingual children, i.e. children of immigrant families in Hoje Taastrup. Already now, 98 percent of the pupils in this school are bilingual, but according to the decision, classes 0 – 6 will only host bilingual children from autumn 2005. According to media reports, the high level of immigrant children in this school is partly due to the reluctance of parents of other children to send their children to this school. Whilst the reason for this decision was to enhance the language skills of bilingual children, one cannot but be concerned at the negative impacts that this change is likely to have for the integration of these children. Such segregated education denies both the ethnically Danish and the immigrant children the chance to know each other and to learn to live as equal citizens. It risks excluding immigrant children from the mainstream society at the very outset, increasing the risks of marginalisation later in their lives. Additional language assistance and greater, not less, exposure to native speakers at an early age would appear to be a far more appropriate response to such genuine challenges. Attention should be directed not at formalising an existing de facto segregation, but, quite on contrary, to countering it.

### **The situation of the Roma**

35. While the authorities have estimated the number of Roma living in Denmark at around one thousand, other estimations place this number far higher. In addition to the Roma who have traditionally lived in Denmark (with the first Roma arriving in the 16<sup>th</sup> century), many have arrived more recently.<sup>21</sup> Many of the indigenous Roma have, however, lost their mother tongue, but I was informed that there has been a renewed eagerness to maintain and rejuvenate the Roma culture, language and traditions.

36. I heard a number of reports of discrimination against Roma regarding access to employment, housing and education, suggesting that further efforts are required to ensure the equal enjoyment of all rights by the Roma in Denmark. Whilst this is primarily a matter of

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<sup>21</sup> Reportedly, several Roma arrived in the 1950's from other Nordic countries, in late-1960's to early 1970's, there were Roma arriving from Banat (in the Romanian/Serbian border areas) and Macedonia, and 1990's there were Roma who fled Kosovo.

enforcing existing legislation, raising awareness and targeting assistance, I welcome the current dialogue entered into by the Government concerning the application of provisions of the Framework Convention for the Protection of National Minorities to the Roma. Such protection would greatly increase the confidence of the Roma that they are considered, with their own culture and traditions, a valued group in society.

37. I was particularly concerned during my visit to hear of difficulties faced by Roma children in accessing education. My attention was drawn in particular to the situation in Elsinore Municipality, where there are reportedly special Roma-classes, which are defined in the municipality's report<sup>22</sup> as classes for 'Roma pupils who cannot be in a normal class or in a special class'. On the basis of requests from a number of Roma parents, the Roma organisation Romano made a complaint to the Supervisory Council for Frederiksborg County regarding these schools. According to the complaint, 30 children are enrolled in so-called Romi classes, which, whilst not officially described as classes for special education, offer education that corresponds to that of classes for special education rather than regular classes. The pupils in the classes are not of the same age, but from all class levels in the public school system. Reportedly, practically none of the Roma children ever make it back to normal classes again. No proper pedagogical-psychological counselling and assessment takes place prior to a placement of a child to a Romi class.<sup>23</sup> Instead, the decision is taken on the basis of the assessment of the teachers alone. It was noted that the children in Romi classes have widely differing problems, some of which could be better addressed in special classes with other children with similar problems.<sup>24</sup>

38. Such classes give rise to three problems. Firstly, I find it difficult to understand, why those Roma children, who are in need of special education, cannot be placed in the regular classes offering special education referred to above, and receive an education better tailored to their needs. Such segregated classes give rise to serious doubts as to the equality of access to quality education. It is, secondly, of evident concern, that part of the criteria for the placement of children in such classes is their ethnic background. Such segregation may lead to Roma children with no special needs having to attend these classes, with a curriculum inferior to regular classes, with inevitably detrimental effects for their prospects for future education and employment. Thirdly, such a policy is very likely to increase the exclusion of the Roma children from the mainstream society. I therefore strongly encourage that alternative solutions be considered.

### **III. CRIMINAL JUSTICE, THE POLICE AND THE PRISON SYTEM**

39. It is evident that the administration of justice in Denmark generally provides for a high level of human rights protection. There remain, however, a number of anachronisms and specific problems, which are analysed below.

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<sup>22</sup> See the report "Børn med særlige behov, Fokus på specialområdet" (Children with special needs, Focus on the special classes area), Helsingør Kommune, Børne- og Ungeforvaltningen, June 2001.

<sup>23</sup> Such an assessment is always needed for the placement in a class for special education, but since Romi classes are not defined as such, there is no equivalent assessment.

<sup>24</sup> The regular special classes are of different types, for instance for dyslectics, observation classes, classes for children with learning difficulties, in which the measures are tailored to the individual requirements of the pupil.

### **The use of isolation in prisons and pre-trial detention**

40. The use of isolation for remand prisoners had attracted significant criticism in previous years both from national and international actors. Concerns were particularly expressed over the severe psychological consequences of prolonged isolation, the fact that there was no maximum time limit for isolation and the excessively frequent use of restrictions.

41. I discussed this matter with the Permanent Secretary of the Ministry of Justice, who informed me that following the visits by the European Committee against Torture (CPT), the use of isolation for remand detainees has been significantly reduced, with new rules that came into effect four years ago. He informed me that these rules are much stricter and do not allow for use of isolation as a form of pressure to obtain information from the detainees. Other restrictions, such as those relating to contacts with the outside world have been reduced. The authorisation of isolation is made by a judge, in a separately motivated decision, on the request of the prosecution. Limits on the duration of solitary confinement have been introduced in proportion to the seriousness of the offence with which the detainee is charged<sup>25</sup>. Strict criteria regarding the necessity and proportionality of pre-trial isolation have also been introduced. The result has, indeed, been a significant reduction in the number of pre-trial detainees held in isolation – by 51% between 1998 and 2002.

42. Sentenced prisoners considered to be particularly dangerous or liable to escape may also be detained in isolation for extended periods by decision of the prison governor. During my visit to Nyborg Prison, I met one such, in a wing devoted entirely to such prisoners who had been there many months already. I heard also of cases of prisoners who had spent years in such isolation for 23 hours a day, with one hour's solitary exercise. Disciplinary punishments in the form of isolation of more than 7 days can be appealed to the court. I was pleased to hear from the Ombudsman that the use of isolation as a disciplinary measure has also been reduced. From my discussions with the prison authorities, it would nonetheless appear to remain part of the prison culture in Denmark.

#### ***Visit to the Nyborg state prison***

43. The Nyborg prison, which was founded in 1913, and has a total capacity of 231 places, 45 of which are reserved for pre-trial detainees. The prisoners are serving sentences between six months and life imprisonment. The three last months of a sentence can be served in a halfway house to pave the way for reintegration into society. Approximately 60 – 70 percent of the inmates have alcohol or drug problems, and the prison offers treatment on a voluntary basis for substance abuse. The material conditions in the prison are entirely adequate.

44. Over the past few years, there have, however, been a number of violent incidents against staff or premises in the Nyborg prison, and attacks have also been targeted against personnel outside the prison premises.<sup>26</sup> The situation culminated in a riot on 15 February 2004

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<sup>25</sup> Up to 4 weeks for offences punishable by 4 years in prison, 8 weeks for offences punishable by between 4 and 6 years and 3 months for offences punishable by in excess of 6 years detention. In exceptional cases this three month period may be prolonged (4 in 2002).

<sup>26</sup> In 2002 the then prison governor was attacked near his home, in 2003 another leading member of the prison staff was attacked on his way to work, and in early 2004 one of the prison officers was nearly by a car after leaving work. Following these incidents, the prison received threats that other staff members could expect to be assaulted and their cars would be set on fire, that a workshop in the prison would be vandalised.

involving 110 prisoners. The inmates vandalised the staff facilities and set one office on fire. No persons were hurt during the incident, but it caused substantial material damage. The spark for this riot would appear to have been the removal of heavy weights from the prison gym. Such an uprising cannot be presumed, however, to result from this circumstance alone; relations between inmates and the prison administration have, in any case, been fraught for some time.

45. During my visit I met with a spokesman of the prisoners whose grievances I discussed with the prison management. Foremost amongst them was the sentiment of a collective punishment for the approximately fifty inmates of two the wings that were vandalised during the riots. The five ring-leaders had been identified and removed to a different prison, whilst the remaining prisoners were being detained in their cells with one hours exercise a day, without being able to work. It was explained by the prison management that the restrictions were due in part to continuing security fears, but also to the fact that the wings were still being refurbished. Prisoners in the wings in question were therefore allowed to meet in each other's cells, but not in the corridors and shared kitchen area, as was normally the case. I was assured that the prison management had every interest in restoring the situation to normality, but that they wished to remain cautious. I was informed at the time that the right to work would be restored shortly and that ordinary conditions would be resumed by the beginning of May. Under the circumstances, I could only encourage the normalisation of conditions as soon possible; it would, indeed, be unfortunate were an excess of disciplinary zeal to provoke lingering resentments and future unrest.

46. I have been informed that the situation has since been normalised, albeit with some delay in relation to the original timescale. Efforts have also been undertaken, through a spokesperson scheme, to restore the dialogue between inmates and the prison management. This would indeed appear central to avoiding future incidents of this nature.

### **Security detention of indeterminate duration**

47. Under Danish law, a criminal may receive a prison sentence of indeterminate duration in the form of a security detention ('safe custody'), if it is determined through medical evaluation that the person may pose a significant danger for the community or himself. It was explained to me that the purpose of such sentences is not only to provide a punishment, but also to provide cure through appropriate treatment. The Permanent Secretary of the Ministry of Justice informed me that there were at the time 22 persons in safe custody, who are all detained in the Herstedvester Prison. Whilst there is no maximum time limit for such sentences, I was informed that in most cases, the duration is less than 14 years. The duration can, however, be significantly longer, and I was informed about a case where the person had been held in safe custody for 30 years.

48. The very notion of an entirely indeterminate sentence rather confounds the principle of legal certainty. Indeed, it would appear that the boundary between punishment and treatment is somewhat blurred in such cases, in so far as they are merged from the very outset. Due to the indeterminate duration of such a sentence, and the fact that it is based on a medical assessment of the person's harmfulness, which can of course change, it is of paramount importance that a judicial review against such a sentence is available continuously and at reasonable intervals from the very outset. Under Article 72 of the Danish Penal Code, the Prosecuting Authority is responsible for ensuring that safe custody is not maintained for a

longer period than necessary. The management of the institution, the Prison Service, a coadjutor<sup>27</sup> appointed to ensure that the measures last no longer than are necessary, and the offender may all apply to the court for the termination of safe custody through the Prosecuting Authority. The Prosecuting Authority is obliged to bring such requests before the court as soon as possible; new applications can be made 6 months from the pronouncement of the court sentence.

49. I was informed during my discussions with the Director of the Prison Service of the use of medical castration in the treatment of sex offenders held in safe custody. I am no expert on this matter but believe a number of general points to be worth making. I was informed that the treatment was administered on a voluntary basis and that its purpose was not to render the patient impotent. At the same time, the treatment is almost always a precondition for release on parole, which in the context of an indeterminate sentence amounts to a significant pressure to accept it. I am not in position to rule out the potential benefits of such a system, but believe it to be essential that the detainees are able to make an informed and free decision on the treatment and that its long-term side-effects are carefully studied. I have been assured that this is the case in Denmark. I welcome the fact that the Council of Europe's Committee on Crime Problems is currently examining the use of medical castration for sex offenders and look forward to its conclusions.

### **The situation of Greenlanders detained in Denmark**

50. Whilst there are several open prisons in Greenland, there is no institution capable of hosting those prisoners who have committed very serious offences and who are in need of psychological treatment under the 'safe custody' regime. As a result such criminals serve their sentences in Denmark, in the Herstedvester Prison, which at present holds 18 Greenlanders. Many of my interlocutors felt that this situation leads to a double punishment, since in addition to the deprivation of their liberty, these persons are uprooted from their home environment, and practically lose contact with their families, frequently leading to additional psychological disturbances and reduced chances of successful reintegration on completion of the sentence. The situation is further aggravated by the fact that all these prisoners are serving an indeterminate sentence with no maximum time limit. Some have reportedly stayed there for decades. The Parliamentary Ombudsman has paid particular attention to the situation of these prisoners through regular monitoring, and has been urging the authorities to establish an institution in Greenland capable of offering appropriate treatment to such prisoners nearer to their homes.

51. From my discussions with the authorities, including the Permanent Secretary of the Ministry of Justice and the Director General of the Prison and Probation Service, it became clear that the authorities fully acknowledge the problems inherent in this system, and are seriously seeking solutions. The Director General informed me of several measures that have been introduced in the Institution in order to respond to adverse affects of their placement in Denmark.<sup>28</sup>

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<sup>27</sup> "Preferably a family member", Article 71, Penal Code.

<sup>28</sup> For instance, each Greenlander must be appointed a guardian; there is one full time interpreter available, and soon another will be appointed; the social worker and two prison officers in the concerned unit are Greenlanders; travel visits are arranged so that the inmates have opportunities for visiting their relatives or receiving visits from Greenland; the prison school offers education in the Greenland culture and social conditions; the library has Greenland books and newspapers and the inmates are allowed to make a telephone call to Greenland free of

52. Both the Ministry of Justice and the Prison and Probation Service felt that these measures were, indeed, insufficient and that it would be preferable to establish an institution offering appropriate treatment in Greenland. A report from the Commissioner on Greenland's Judicial System will be published this summer, including its expected proposal to build new institutions in Greenland. The authorities noted that several challenges remain, including the lack of personnel in Greenland with the necessary expertise and qualifications for the treatment of such prisoners and that it is very difficult to attract personnel from Denmark to work in such a remote location. I welcome the plans to establish a highly specialised institution in Greenland, and would urge that sufficient resources are provided for the purposes of educating personnel to work in such an institution.

### **Investigations into allegations of improper behaviour by the police**

53. There has been some debate in recent years over the independence and effectiveness of the procedures for dealing with complaints against the police. The current system was overhauled in the mid-90's. Complaints are now dealt with by Regional Public Prosecutors, who may also investigate cases on their own initiative. The Regional Public Prosecutors may examine cases concerning improper conduct by law enforcement officials, as well as initiate criminal proceedings. The procedural reforms introduced regional Police Complaints Boards, consisting of 2 lay men and one lawyer, the former nominated by municipal authorities and the latter by the General Council of Lawyers, and all appointed by the Ministry of Justice (which in Denmark is responsible for both law enforcement and the administration of justice). The Complaints Boards must be informed of all complaints and reviews the activity of the Regional Public Prosecutors at all stages of the investigation and proceedings. The Boards deliver non-binding opinions to the Regional Public Prosecutors on how it believes the case should be handled. The Regional Public Prosecutors may refuse to follow these opinions, though their refusal may be appealed to the Director of Public Prosecutions.

54. An examination of the statistics<sup>29</sup> since the reforms reveals a commendable activity. In 2002, for instance, the last year for which such statistics were available at the time of writing, 400 conduct cases were heard and a further 476 criminal investigations launched. Whilst very few conduct cases resulted in admonishment, in fact a mere 7 (the rest, with the exception of 73 minor cases, being withdrawn or dismissed), 96 of the criminal investigations resulted in dismissals and a further 79 in a variety of other measures. A number of NGOs insisted, however, that few of the cases involved an abuse of authority directed against civilians, whose complaints are very rarely upheld.

55. Concerns over the impartiality and effectiveness of the complaints procedure have focused on the responses to the relatively high number of firearm incidents and deaths in police custody. Indeed, very few cases have concluded with admonishment or criminal charges under 1020 a(2) of the Danish Administration of Justice Act, which obliges The Regional Public Prosecutor to initiate an investigation if a person has died or been seriously injured due to police interference, or during police custody. Between 1996 and 2002, 78

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charge once a week.

<sup>29</sup> English Summary of the annual report to the Danish Parliament and the Ministry of Justice about Police Complaints Board cases, 2002. <http://rigsadvokaten.dk>

such cases were investigated, including 6 fatal shootings, 11 deaths in police custody and 27 cases of firearm injuries. In 61 of these cases the charges were dismissed by the Regional Public Prosecutor, criticism without charges were made in respect of 5 and systems criticisms were raised in another 5. Only 4 cases, and these concerning traffic related manslaughter, resulted in charges.

56. The effective processing of police complaints is a complicated and difficult issue. It is vital, however, for the confidence of citizens in the behaviour of the police and essential to combating impunity and maintaining standards. Given the close ties between the Prosecution service and the Police in Denmark<sup>30</sup> the independence and role of the Police Complaints Board is vital. Whilst its current involvement is welcome, consideration should be given to awarding it greater influence over the activity of the Prosecution service in investigating and deciding on police complaints.

#### **IV. TRAFFICKING IN HUMAN BEINGS**

57. The Danish Government has shown a strong commitment to fighting trafficking in human beings in recent years. Most of the victims in Denmark are women or girls trafficked from Eastern European and Asian countries who often end up in prostitution or other forms of sexual exploitation. No exact figures are available on the extent of trafficking, but it is estimated that a considerable number of the approximately two to three thousand women of foreign origin engaged in prostitution are victims of trafficking, and that the past ten years have seen a more than tenfold increase in the proportion of foreign women in prostitution.<sup>31</sup> Many of the women are lured to Denmark by organised criminal networks promising a job as a waitress, but end up being forced into prostitution under deplorable conditions in order to repay the transport and other costs. A significant number of women arrive in Denmark through marriages of convenience, arranged by individuals operating in this milieu, or for marriages where the husband brings a wife to Denmark and subsequently works as her pimp.<sup>32</sup>

58. Denmark has addressed these questions both through strengthening the criminal legislation in this field, and through measures aimed at preventing trafficking and protecting the victims. A provision on human trafficking was included in the Danish Penal Code (art 262a), which provides for a penalty of up to eight years of imprisonment for trafficking in human beings in 2002. Denmark ratified the Palermo Protocol<sup>33</sup> in 2003. In 2002 Denmark adopted an action plan against trafficking in women. Particular emphasis has been placed in recent years on raising the awareness of trafficking in human beings within the police and border officials, which has led to a more pro-active response to trafficking. Consequently, the police do not wait for citizens to report illegal activities, but use their own information to investigate the groups of individuals who are likely to be the ringleaders of the organised

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<sup>30</sup> At the local level, Chief Constables represent both the police and the prosecution. Regional Prosecutors are the superiors of the Chief Constables in the capacity as local prosecutors only.

<sup>31</sup> In 2000, the office of the Danish Public Prosecutor published a report assessing the extent of trafficking in women. This report suggested that the 'unknown' number of such case could, in fact, be substantial and that there may be reason to assume that the extent of the problem would increase over the coming years.

<sup>32</sup> Government action plan against trafficking.

<sup>33</sup> Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organised crime.

crime involving trafficking in women. I was also informed that close cooperation between the judicial authorities in the Baltic region has already produced good results.

59. Many positive initiatives have been undertaken on the basis of the Action Plan aimed at increasing the public awareness about the realities surrounding trafficking in human beings. There have been innovative information campaigns addressed to the victims, potential customers and the general public. These deliberately provocative advertisements generated a welcome public debate in Denmark. A telephone hotline has been established through which victims of trafficking can obtain information on the possibilities for support. Teams of cultural mediators have been established to do outreach work among the victims of trafficking

60. Specific emphasis has been placed on facilitating a safe return of the victims in their countries of origin, through networks of Danish and foreign NGOs, and through the development of embassy networks in the countries of origin. Once a victim of trafficking has been identified, the Danish Aliens Act allows a 15-day legal stay for trafficking victims prior to their repatriation in order to provide services to victims and ensure their safe return. They are provided medical assistance, counselling and safe housing. In very rare instances, the person can stay a longer period in cases where the abuse inflicted on a woman is considered so grave as to justify police investigation aimed at bringing charges against trafficking in human beings, and where the personal circumstances of the individual women generally warrant such action.

61. There have been impressive measures aimed at ensuring the safe return of victims and the launching of reintegration programs in cooperation with organisations and authorities in the countries of origin. In addition to assisting the victims to restart their lives in their home countries, such programmes are likely to diminish the risks of victims falling once again into the hands of trafficking networks. Further consideration should be given, however, to broadening the grounds on which the victims are allowed to stay in Denmark, and the length of such stay. Permission to stay in Denmark for at least the duration of the criminal proceedings should be given to witnesses automatically irrespective of whether they legally or illegally in the country, rather than leaving such decisions to the discretion of the immigration authorities. Consideration should also be given to extending the right to stay beyond the criminal proceedings, as the threat of a quick deportation may make the victims more reluctant to inform on traffickers and to act as witnesses. A victim who is legally in Denmark, but has been forced into prostitution should not be deported on the grounds of having worked illegally. Further consideration should also be given to the specific protection needs of child victims of trafficking, for whom no particular measures are foreseen in the Action Plan.

## **V. THE USE OF IMMOBILIZATION IN PSYCHIATRIC ESTABLISHMENTS**

62. In my discussions with the Minister for Interior and Health, I raised the issue of the immobilization of patients in psychiatric establishments, which has in recent years been criticized by the CPT and national human rights actors. In its latest report on Denmark, the CPT questioned the use of immobilization and emphasized that long periods of restraint have no medical justification, and consequently amount to ill-treatment. The Minister confirmed that physical immobilisation has traditionally been used as an alternative to forced medication for those who might be dangerous to themselves or to others, and that the legislation stipulates

no maximum time for the use of immobilisation, although the need for its continuation is regularly monitored. According to statistics provided by the Ministry, immobilisation was employed 17,546 times in 2002 on a total of 3,132 persons.<sup>34</sup> The decision on the use of immobilisation is made by the head doctor, and can be appealed to a complaints board. The Minister informed me that this issue will be considered in the context of the revision of the Danish Psychiatry Act in 2005-2006, which will address the use of restraining measures in psychiatric establishments generally. While welcoming the appearance of this issue on the legislative agenda, I join the Danish Institute for Human Rights in its call to the Ministry to introduce alternatives to the use of long periods of immobilization without delay.

## VI. VIOLENCE AGAINST WOMEN

63. The Danish Government has shown an impressive commitment to combating violence against women in recent years. According to the Minister for Gender Equality, every year 65,000 women are exposed to violence or threats of violence, in most cases by their current or former partners. Every year 29,000 children witness such violence. About 2000 women and as many children received assistance and accommodation in shelters in 2002.

64. In 2002, the Government adopted an action plan to prevent violence against women, on the basis of which a number of initiatives have been launched to help women and children exposed to violence, to introduce proactive measures to break the cycle of violence and to treat abusers. Priority has also been given to encouraging a public debate to break the taboo surrounding domestic violence. I also welcome the current discussions on the introduction of legislative provisions empowering the police to temporarily expel the assailant from the family home<sup>35</sup>. With the appropriate judicial supervision, such an outcome is clearly preferable to situations in which it is the victim who is obliged to seek alternative accommodation.

65. Targeted measures have been undertaken with regard to foreign women who are victims of violence. Statistics indicate that the share of foreign women in shelters for battered women is high, and that many of them have come to Denmark through marriage with a Danish man.<sup>36</sup> These women are in a particularly vulnerable situation, since the violent men frequently abuse their fear of being returned to their countries of origin in the event of the marriage or cohabitation being terminated. According to the Danish Aliens Act, persons who have come to Denmark through family reunion are normally subject to a 7-year residency requirement before they can apply for residence permit in their own right. I welcome that the Act provides for a possibility of exemption from this requirement if the person has been exposed to violence in their marriage or cohabitation, but significant difficulties in obtaining this exemption have been reported<sup>37</sup>. A more flexible application of this provision might be

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<sup>34</sup> Nye tal fra Sundhedsstyrelsen, Avendelse af tvang i psykiatrien 2002.

<sup>35</sup> A law to this effect was adopted on 4<sup>th</sup> June 2004 and will enter into force on 1 July 2004.

<sup>36</sup> According to a recent report by the National Organisation of Shelters for Battered Women, 33 percent of the foreign women annually in the shelters are married to men of Danish origin. See *When dreams and hopes turn into nightmares – A report on violence committed by Danish men against foreign women and children*, by Danish National Organisation of Shelters for Battered Women and their Children (LOKK), 2003.

<sup>37</sup> Over a period of five years (1998-2002), of the 219 persons who applied for a residence permit on the basis of this exemption, 79 were granted an extension of their permit, while the remaining 147 had their residence permit revoked and were expelled from Denmark. Report, National Organisation of Shelters for Battered Women.

encouraged. It would appear that the immigration service continues to apply an attachment to Denmark test in such cases. In assessing the degree of attachment to Denmark, consideration should be given to the particular circumstances and power structures that are typical in violent relationships. Violent partners exercise their domination through various means, such as denying their partner links to the outside world or the possibility of learning the local language, which evidently create obstacles to the formation of a close attachment to the host society.

## RECOMMENDATIONS

66. Denmark has a long-standing and justified reputation as a country guaranteeing a high level of respect for human rights. The importance the Danish authorities attach to human rights is evidenced by the detail in which international obligations are examined in the preparation of new legislation, and the seriousness with which errors of practice are typically addressed. Indeed the respect for human rights requires constant vigilance both in respect of new challenges and to ensure that high standards are not weakened. It is against this background that the following recommendations are made, in conformity with article 8 of Resolution (99)50:

1. Reconsider some of the provisions of the 2002 Aliens Act relating to family reunion, in particular
  - the minimum age requirement of 24 years for both spouses for family reunion and the 28 year citizenship requirement for the exemption from the condition of both spouses aggregate ties to Denmark;
  - such economic conditions as the 50,000 DKK deposit and permanent employment for the granting and retention of residence permits for spouses, as may violate equality before the law;
  - the maximum age limit of 14 for the family reunion of children, in favour of a limit of 17, in accordance with the principles of the UN Convention on the Rights of the Child
2. Ensure that the rights of refugees to family union are clearly stated in the law
3. Ensure the possibility of appealing negative asylum decisions before a qualified and independent authority. As a minimum, the original composition of the Refugee Board should be restored.
4. Grant a more prominent role and greater resources to the Council of Ethnic Minorities.
5. Ensure equal access to quality education, countering the *de facto* and *de jure* segregation of ethnic minority and Roma children.

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According to the report, the immigration authorities can decide to withdraw the residence permit even if there has been violence, if the woman has not achieved a certain degree of attachment to Denmark.

6. Strengthen efforts to promote an inclusive society and combat discrimination and intolerance.
7. Provide the necessary infrastructure and resources for the detention of serious criminals in need of psychological treatment in Greenland.
8. Strengthen the independence and role of the Police Complaints Board
9. Adopt legislation imposing tighter controls on the use of restraining measures in the treatment of psychiatric patients; introduce alternatives to the use of long-term immobilisation.
10. Adopt a more flexible to the granting residence permits to foreign women ceasing to co-habit with violent partners.
11. Increase the access of victims of human trafficking to residence permits, particularly for witnesses testifying in criminal cases.

## **ANNEX TO THE REPORT**

The Danish Ministry of Refugee, Immigration and Integration Affairs has requested that the following comments be annexed to this report.

### **Meeting on 8 July 2004 of the Committee of Ministers (representatives)**

**Reactions from the Ministry of Refugee, Immigration and Integration Affairs regarding the report of 8 July 2004 by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Denmark 13 – 16 April 2004.**

#### **1. General remarks**

The Ministry of Refugee, Immigration and Integration Affairs considers that the report contains some errors which are not satisfactory taking into account that some recommendations contained in the report involve rather serious critics. For example the possibility for obtaining a permanent residence permit after 3 years is not reflected in point 5 and 70. In point 12 it is not correct that it in the bill is explained “which refugees are generally unlikely to meet”. In point 26 the mentioned decrease in the recognition rate from 53 % 2001 to 22 % in 2003 only include decisions from the Immigration Service. The recognition rate of the Danish Refugee Board was 20 % in 2001 and 17 % in 2003. In this context it should be underlined that the recognition rates cannot be seen isolated as they are influenced by improvements in the situation in the country of origin of asylum seekers. In point 30 the Danish correcting remarks regarding the integration councils have not been taken into account.

The report has been carefully read and the Ministry of Refugee, Immigration and Integration Affairs has taken note of the remarks and recommendations made by the Commissioner for Human Rights. All recommendations will be taken into considerations while most recommendations will be commented on.

When discussing the report it should be highlighted that the current situation for many Governments in Europe as regards the necessity to control the migration flows is difficult, complex and also of a very sensitive political nature.

For the Danish Government it is important to continue the constructive dialog with the Commissioner for Human Rights which gives both parties the possibility to listen to and explain their opinions, especially when they differ.

As a general comment it would have been appropriate if the report by way of introduction had highlighted the importance the Danish Government attaches to the respect of its international obligations also relating rights of foreign and ethnic minorities. The attention is drawn to the Government “New Foreign Policy” of 17 January 2002. The very first line of this

Government Position makes it clear that it is and has been fundamental for the Danish Government that the new policy towards third country nationals does respect international conventions and other international obligations.

## **2. The Recommendations**

The Ministry of Refugee, Immigration and Integration Affairs is pleased to note that it in point 66 is pointed out that “Denmark has a long-standing and justified reputation as a country guaranteeing a high level of respect for human rights. The importance the Danish authorities attach to human rights is evidenced by the detail in which international obligations are examined in the preparation of new legislation, and the seriousness with which errors of practice are typically addressed. Indeed the respect for human rights requires constant vigilance both in respect of new challenges and to ensure that high standards are not weakened. It is against this background that the following recommendations are made, in conformity with article 8 of Resolution (99)50”.

This background should indeed be taken into account when discussing the recommendations.

### **2.1. Recommendation number 1**

As regards the first recommendation regarding provisions on family reunification it is noted that the Government is recommended to reconsider a few of the amendments in the Aliens Act introduced in 2002 and earlier this year. The Commissioner for Human Rights seems to find that these amendments might weaken the normal high standard of the Danish legislation, but does not seem to find these provisions in breach with The European Convention on Human Rights. This conclusion is important to the Ministry of Refugee, Immigration and Integration Affairs.

When drafting these provisions the international obligations were indeed taken into account and necessary possibilities for exemptions were elaborated as described in the report.

The Ministry of Refugee, Immigration and Integration Affairs will continue to ensure that exemptions are made when necessary in concrete cases due to Denmark’s international obligations and will thereby take into account the recommendation by the Commissioner for Human Rights.

The mentioned provision on 24 year for family reunification is as already explained aiming at avoiding forced marriages and arranged marriages and thereby protecting young people. The older a person is, the better he can resist pressure from the family or others to contract a marriage against his own will. The purpose of the proposal is thus to protect young people against pressure in connection with contraction of marriages while freeing the young people from the pressure of explaining to the immigration authorities that they want reunification of spouses although in reality this is not the case at all. International conventions even oblige Denmark to ensure that marriages are entered by the free will of both parties. Reference could be made to the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights and the UN Convention on the elimination of all forms of discrimination against women.

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Furthermore, the provision might also lead to better integration for third country nationals. The later young people, especially women, marry the better education and employment opportunities will be available. This has been verified in a recently published report from the Danish Social Research Institute.

The Danish Government does therefore not share the view by the Commissioner (point 13) that the scope of this provision extends far beyond its target.

It should also be noted that similar considerations were behind the introduction of a 21 years rule in the EU Directive of 22 September 2003 regarding family reunification. According to the Danish reservation in this field of EU cooperation, Denmark is not bound by this directive.

The provisions on economic conditions were introduced in order to promote successful integration. The Danish Government firmly believes that it encourages the integration process that third country nationals are active on the labour market instead of being dependent on social welfare payments. In 2003 the employment frequency for Danish citizens was 80 % while it was 53 % for immigrants from third countries and their descendants.

As regards the provision on family reunification of children it should be underlined that that the aim of this provision is to ensure the best interest of the child. A child - who is going to live the rest of its life in Denmark – should rather spend its childhood in Denmark than in the country of origin of its parents. The provision encourages parents to ensure family reunification with their children as soon as possible. Furthermore, the provision seeks to avoid that parents sent their children for “education” in their country of origin.

## **2.2. Recommendation number 2.**

The Ministry of Refugee, Immigration and Integration Affairs does not agree with recommendation number 3. There seems to be no evidence or indications to state that that the current members of the Danish Refugee Board should not be independent, impartial or qualified. The independence of the Board member is directly secured in the Danish Aliens Act, cf. Section 53 (2) which is worded as follows:

*“(2) When a case is tried before the Board, the Board consists of the chairman or one of his deputies and two other members appointed by the Minister for Refugee, Immigration and Integration Affairs. One of the members mentioned in the first sentence must be a member of the Danish Bar and Law Society and is appointed after nomination from the Council of the Danish Bar and Law Society. The members of the Board are independent and cannot accept or seek directions from the appointing or nominating authority or organisation.”*

Furthermore, there are no international recommendations as concerns the composition of a Refugee Board and from a human right perspective there have been presented no evidence that the present composition of the Refugee Board leads to lower standards compared to standards during the original composition of the Refugee Board.

### **2.3. Recommendation number 3**

As it is explained in the report the rights of refugees to family reunification are clearly stated in the Government Bill. The special situation for refugees is taken into account by the Danish authorities when deciding in individual cases.

In this connection it is relevant to mention that it is criticised in the report that several of the provision in the Danish Aliens Act leave the decisions in individual cases to the discretion of the authorities. These critics have been maintained even though the Ministry of Refugee, Immigration and Integration Affairs has made it clear that such decisions will be bound by considerations in the Government Bill and of course also by the Danish Administrative Act.

It should be possible to maintain a system where decisions are taken on a discretionary basis which according to Danish administrative traditions is legally possible and very common. The Commissioner of Human Rights should take into account that all European countries have different rules and traditions for drafting and implementing laws and that the Aliens Act in Denmark does not differ from other areas of Danish legislation.

Furthermore, several legal procedures are available in order to ensure that no mistakes or misinterpretations are made – not at least the possibility to appeal and the role of the Danish Ombudsmand.

### **2.4. Recommendation number 4**

The Government has taken note that it is recommended to grant a more prominent role and greater resources to the Council of Ethnic Minorities.

As already mentioned by the Ministry of Refugee, Immigration and Integration Affairs it is important to bear in mind that The Council of Ethnic Minorities already today is allocated approximately 50.000 euros per year for any costs related to the running of the Council. Furthermore, the Council is provided with secretary assistance from the Ministry. The main task of the Council is to advise the Minister of Integration on issues of importance to refugees and immigrants, but if the Council wishes to engage in other activities (within the powers conferred upon the Council), the Ministry may allocate further funding for the Council, if funding is available.

The Minister for Integration meets the Council of Ethnic Minorities on a regular basis to discuss the points and views of the Council. The Council may of course also at any time send comments and suggestions on specific topics to the Minister. Furthermore, the Ministry asks the Council for comments on legislative proposal or other government initiatives. The Ministry does also seek to ensure that representatives of the Council participate in working groups, meetings, conferences etc. of interest to the Council.

On that background the Council of Ethnic Minorities already enjoys a very unique and prominent role in the field of integration and antidiscrimination policy.

## **2.5. Recommendation number 6**

The Danish Government will take into account the recommendation to strengthen efforts to promote an inclusive society and combat discrimination and intolerance.

The Danish Government has already as described in the report introduced several initiatives in this regard. These initiatives include the *Action Plan to promote Equal Treatment and Diversity and Combat Racism* from November 2003 and the *Government's Vision and Strategies for improved Integration* from June 2003. These initiatives are now being implemented. The Government furthermore provides funding aimed at supporting projects organised by ethnic minorities.

Obviously, these efforts must continuously be monitored and – if necessary - developed. Discrimination and intolerance is not acceptable.

Finally, a recent survey by a private research institute on integration policy, *Integration status 1999-2003 – 5 years in an integration perspective* by *Catinét Research, July 2003*, shows that the number of immigrants who *do not* experience discrimination has increased by 15 percent while the group that experience discrimination has decreased by 18 percent.

The Danish Government does not agree with the view expressed by some human rights organisations that the integration efforts of the Government occasionally blur the distinction between assimilation and integration. The Government seeks to ensure that immigrants and refugees are given the necessary means to be able to participate in the Danish society, first and foremost by language teaching and labour market training. The Government does not seek to ensure that immigrant and refugees become assimilated (in the sense of the disappearance of their distinct cultural identity.)

In this regard it should be pointed out that it is important for the Minister for Integration not to interfere with the cultural and religious private life of immigrants with another ethnic background than Danish. For example no legislation exists regarding veils or food policies in kindergartens.

## **2.6. Recommendation number 10 and 11.**

As regards recommendation number 10 and 11 regarding residence permits to foreign women ceasing to cohabit with violent partners and to victims of human trafficking, particularly for witnesses testifying in criminal cases, the Government has taken note of the recommendations.

As described in the report the Government is already today very preoccupied with both very serious situations, which mainly involves women in vulnerable situations. Action plans have been developed in both areas and in practice there are established legal possibilities for these persons to obtain a residence permit, either on a temporary or permanent basis, as described in the report.

As regard violence against women Denmark has already established rules in order to take into account their situation and attention should specifically be drawn to Section 19(7) of the Danish Alien Act, which is worded as follows:

*“(7) In deciding on revocation of a residence permit issued pursuant to section 9(1)(i), special regard must be had to the question whether the basis of residence is no longer present because of cessation of cohabitation due to the fact that the alien issued with residence permit under section 9(1)(i) has been exposed to outrages, abuse or other ill-treatment, etc., in Denmark”.*

It should be clarified that decisions regarding the possibility for obtaining a residence permit, either on a temporary or permanent basis, in these situations are taken on an individual basis taking into account all relevant information, including documentation.

It is recommended that more flexibility should be shown when granting residence permit and that access to residence permits should be increased in these cases.

It is the opinion of the Ministry of Refugee, Immigration and Integration Affairs that it ought not to be the question of simply increasing numbers of residence permits, but instead considering and giving residence permits in all relevant cases.