



THE MINISTER FOR
FOREIGN AFFAIRS

Date
21 . April, 2006

Dear Secretary General,

Denmark has a long tradition for strong support to monitoring-mechanisms and attaches great importance to the vital follow-up on commitments made. Compliance and accountability are key elements when we move from norm setting to implementation. Denmark recognises the important role played by The European Commission against Racism and Intolerance (ECRI) in this regard. The monitoring of the development in greater Europe in the field of racism and intolerance is a valuable and important task.

In light of this the Danish Government is concerned by the third report on Denmark adopted by ECRI on March 23, 2006. The Government regrets the development in ECRI's otherwise important and usually objective and useful reporting. The report on Denmark contains a number of factually incorrect and unfounded allegations. Further the report reflects a very limited use of comprehensive and substantive information, clarifications and comments provided by Denmark. Examples on both errors and undocumented statements can be found in the appendix enclosed.

It is of utmost importance for the upholding of ECRI's credibility and impact that the reports provided are based on solid information in order to secure the maintenance of a high quality of the important work of ECRI.

Kind regards,

Per Stig Møller

Council of Europe
Secretary General
Mr. Terry Davis



ECRI's third report regarding Denmark – some examples of errors and undocumented statements in the report

ECRI's third report regarding Denmark contains many errors and undocumented statements. Some examples of such errors and undocumented statements are given below with remarks from the Danish Government. Other examples and more information about the position of the Danish Government can be found in a matrix attached to ECRI's final report.

Errors and incomplete information:

1. ECRI notes that apart from the European Convention on Human Rights, Denmark has not taken any steps to incorporate international human rights conventions into its national legislation and that the courts rarely refer to conventions that have not been incorporated into Danish law (9).

The Danish Government has informed ECRI that human rights conventions ratified by Denmark can and are indeed invoked before and applied by the Danish courts and other national authorities. Conventions are not specifically implemented if harmony of norms has been ascertained. Also unincorporated conventions are relevant sources of law in Denmark. This is confirmed by concrete examples of judgements from Danish courts which are described in the mentioned matrix.

2. ECRI states, that it is worried that some asylum seekers who have a meritorious case may be sent back to a country where they have a well-founded fear of persecution within the meaning of the 1951 Convention Relating to the Status of Refugees. ECRI refers in this regard to the function of the Danish Refugee Board and to the statement that applications for a residence permit on humanitarian grounds according to ECRI cannot be appealed (55).

The Danish Government finds the worry expressed by ECRI absolutely unfounded and incorrect. The rules in the Danish Aliens Act and the Danish asylum practice are fully in accordance with international obligations concerning non-refoulement, including article 33 of the 1951 Convention Relating to the Status of Refugees and article 3 of the European Convention of Human Rights. ECRI has been recommended to have this verified with other sources, for example UNHCR. The Danish Refugee Board – due to its com-

position with a Judge in the chair, its independency and its procedural rules - is a court-like body. Furthermore, it is not correct that applications for a residence permit on humanitarian grounds cannot be appealed. These matters are further substantiated in the mentioned matrix.

3. ECRI indicates in its recommendation in paragraph 58 that asylum seekers do not have access to legal remedies, including the right to appeal before an independent court.

The Danish Government has informed ECRI that this as mentioned above is not correct. This is further substantiated in the mentioned matrix.

4. ECRI states, that it has been indicated to ECRI that the few cases that are brought to court regarding complaints of racist statements under Article 266 b) of the Criminal Code only result in a fine (18).

The Danish Government has informed ECRI that this is not correct. From January 2001 to December 2003 four cases resulted in imprisonment sentences.

Undocumented statements and recommendations:

1. ECRI notes that the Government does not appear to have established a clear and consistent policy aimed at integrating minority groups into the labour market (63). ECRI urges the Danish Government to adopt and implement a clear, consistent and long-term policy for integrating minority groups into the labour market (66).

The Danish Government finds these statements absolutely unfounded. ECRI has been informed about the many initiatives taken by the Danish Government in this regard as part of a long term policy. The Danish Government has kept it a main priority and a clear goal to improve integration of immigrants and descendants of immigrants in the labour market. This is further substantiated in the mentioned Matrix.

2. ECRI deeply regrets the fact that the police are still very reluctant to register complaints of racist statements and to investigate and press charges under Article 266 b) of the Criminal Code, partly due to the fact that freedom of speech is given priority consideration in Denmark (18). ECRI notes that the police are generally reluctant to investigate complaints made by Muslims concerning hate speech directed against them (89).

The basis for these assumptions does not appear in the report and the Danish Government does not agree. Section 266 b) in the Danish Criminal Code is interpreted in accordance with Article 10 in the European Convention on Human Rights and the case-law of the European Court of Human Rights. According to this case-law freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for individual self-fulfilment. In the matrix the Danish Government further substantiates its position.

3. ECRI states that a very few cases are brought to court and there are few convictions in Denmark for racist or discriminatory acts, mainly due to the fact that the judges, prosecutors and lawyers do not take adequate notice of the relevant national and international legislation. ECRI is further deeply concerned by reports according to which some judges show prejudice towards ethnic minority witnesses and defendants (29).

The Danish Government finds these statements undocumented and unjustified and opposes these statements.

4. ECRI notes that the Danish authorities have confirmed that in the last few years, there has been a decrease in the number of people who have been granted asylum or family reunification permits, whilst inversely, more student and employment visas have been handed out. ECRI deeply regrets the fact that this policy adds another level of discrimination between on the one hand, those seeking asylum or family reunification and on the other hand, people who are perceived as being economically viable for Denmark, in a manner which disproportionately affects minority groups (51).

The Danish Government strongly opposes the view put forward by ECRI that granting favourable conditions for some professionals and students can be seen as an expression of discrimination of other groups. The total number of residence permits to foreigners in Denmark has risen with 3.375 persons from 2001 to 2005. Statistics show that a decline in the number of asylum seekers is a general tendency in the EU. It should be seen as a positive development that residence permits to third-country nationals in general have increased as this clearly indicates that Denmark welcomes persons from third-countries also when belonging to minority groups. It is fair, legitimate and quite common for most European states to demand different requirements depending on the foreigner's purpose for applying for residence permit.