

Committee on the Elimination
of Racial Discrimination

HR/CERD/06/24
10 August 2006

COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION
CONSIDERS REPORT OF DENMARK

The Committee on the Elimination of Racial Discrimination has considered the sixteenth and seventeenth periodic reports of Denmark on its implementation of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination.

Presenting the report, Kim Vinthen, Head of the Human Rights Unit of the Ministry for Foreign Affairs of Denmark, said that the Government had decided to establish a new reporting system with regard to criminal acts and incidents on a presumed racist background and had also taken steps to set up a reporting system concerning the Act on Prohibition against Discrimination in order to ensure the effective application of that Act. The Danish Government had increased its financial support for organizations and initiatives against racism, discrimination and intolerance and for equal opportunities and increased integration. There was substantial financial Government support for awareness-raising initiatives combined with awareness-raising activities undertaken by the Danish Institute for Human Rights.

In preliminary remarks, Nourredine Amir, the Committee Expert who served as country Rapporteur for Denmark, said that there was one key phrase he would use in his final comments, "red card". The red card was the very strong message Denmark was sending to racism. He paid tribute to the Danish Prime Minister for his words in a spirit of compassion and solidarity with the Muslim community; it was one that he held close to his heart. It was a message that would be transmitted to all Arab and Muslim countries to say that Denmark was a country that respected the rule of law as well as freedom of expression.

Committee Experts also asked about why the police appeared to be hesitant to investigate discrimination complaints lodged by Muslims; whether the Government considered the Thule tribe to be an indigenous people; the anti-ghettoization bill; whether feedback on mechanisms to integrate immigrants into Danish society was sought from the immigrants themselves; and, in the wake of the cartoon case, whether Denmark intended to elaborate its own standards to judge statements of racial hatred.

The delegation of Denmark also included representatives from the Ministry for Integration, the Ministry of Justice, the Ministry of Labour, and the Ministry of Education, as well as representatives from Greenland Home Rule Government and representatives from the Permanent Mission of Denmark to the United Nations Office at Geneva.

The Committee will present its written observations and recommendations on the reports of Denmark, which were presented in one document, at the end of its session, which concludes on 18 August.

When the Committee reconvenes at 3 p.m. it is scheduled to take up the seventeenth and eighteenth periodic reports of Norway, presented in one document (CERD/C/497/Add.1).

Report of Denmark

According to the sixteenth and seventeenth periodic reports of Denmark, submitted in one document (CERD/C/496/Add.1), the Ministry of Refugee, Immigration and Integration Affairs was established in 2001 to gather all key areas concerning immigration and integration in one entity and thereby strengthen policies on integration of immigrants and refugees. In January 2003, the Government set up a Steering Group on Improved Integration to follow up on initiatives already taken and to look at various other aspects of integration efforts. On the basis of work of the Steering Group, the Government's integration policy agenda was published in June 2003, containing more than 100 concrete initiatives to ensure a coherent and open democratic society, including through efforts to help persons of an ethnic background other than Danish to manage better in the educational system and efforts to help more foreigners get a job.

In 2004, the Danish Parliament included in the Criminal Code a number of aggravating circumstances for crimes, including if the offence is based on others' ethnic origin, faith, sexual orientation or the like. The Danish Government gives high priority to the fight against discrimination in any form, including hate speech. The number of criminal proceedings against politicians for violating the Danish Criminal Code in that regard illustrates that the prosecution authorities and the courts do not hesitate to set limits for the freedom of expression for politicians when they have uttered racist comments, in some cases even comments bordering on hate speech. A reporting system is in place to ensure that criminal acts with a presumed racist or religious background, which are punishable by law, are reported to the National Commissioner of Police. The number of criminal acts reported in relation to Article 6 (of the Convention) indicates that there has been a decrease in such acts from 2002 to 2003. Hence, the situation concerning harassment of people of Arab and Muslim backgrounds since 11 September 2001 now seems to have improved. The Government will, however, continue to monitor the situation carefully.

Presentation of Report

KIM VINTHEN, Head of the Human Rights Unit of the Ministry for Foreign Affairs of Denmark, said that the effective and independent international monitoring of compliance with international human rights standards was a priority issue for the Danish Government. It was one of five key areas of Danish international human rights policy. The other priorities were to continue efforts within priority fields such as the fight against torture and the rights of indigenous peoples; to increase scrutiny of the human rights

situation in individual countries; to promote democratisation and respect for human rights development assistance activities; and to strengthen cooperation with civil society.

With regard to criminal acts and incidents on a presumed racist background, Mr. Vinthen said that the Government had decided to establish a new reporting system. The system referred to decisions in criminal cases where the crime had been committed on account of the victim's race, national or ethnic background, religious beliefs or sexual orientation. The Government had also taken steps to set up a reporting system concerning the Act on Prohibition against Discrimination in order to ensure the effective application of that Act.

Mr. Vinthen wished to highlight the mentor scheme, which was one of the newest instruments in the range of employment measures to ensure that unemployed persons and, in particular, immigrants with only little knowledge of the Danish labour market, would be given a better start. The mentor would introduce, guide and train the person to a wider extent than an employer could normally be expected to do. The scheme was already becoming increasingly popular and widespread.

Moreover, Mr. Vinthen pointed to the Guide to the Act Prohibiting Discrimination in the Labour Market that had been published in January 2006 to ensure that the Act was observed in the Danish labour market. Among others, the guide set out the rules on complaint and appeal procedures, award of compensation and the imposition of sanctions in cases of unlawful discrimination.

As to the Committee's concern about the withdrawal of funds from non-governmental organizations (NGOs), Mr. Vinthen informed members that the Danish Government had increased its financial support for organizations and initiatives against racism, discrimination and intolerance and for equal opportunities and increased integration. There had been a shift from the earlier and limited awareness-raising activities conducted by the Board of Ethnic Equality to the present situation of substantial financial Government support for awareness-raising initiatives combined with awareness-raising activities undertaken by the Danish Institute for Human Rights.

The Government, inter alia, financially supported voluntary work in the Danish Red Cross and the Danish Refugee Council, campaigns against discrimination and for diversity, as well as smaller initiatives to bring ethnic Danes and ethnic minorities together to eliminate prejudice and create further tolerance and understanding, Mr. Vinthen said.

MARIANNE LYKKE THOMSEN, of the Greenland Home Rule Government, said that she would like to address three issues mentioned in the report of relevance to Greenland. First, the European Court of Human Rights had dismissed the Thule Case on 12 December 2006 because the forced relocation of the Thule tribe had taken place before the ratification by Denmark of the European Convention on Human Rights. The Danish Government in cooperation with the Greenland Home Rule Government had initiated efforts to implement the recommendations in a report on the updating of

Greenland's judicial system. The Joint Commission established to develop proposals for a new self-governance arrangement for Greenland Home Rule had just held its seventh meeting on 13 June 2006, at which a comprehensive draft for a future self-determination act was discussed.

Oral Replies by the Delegation to Written Questions Submitted in Advance

Responding to written questions submitted in advance, the delegation said, on the issue of population statistics, the Danish Government did not divide the population into ethnic groups. Instead, the population was divided into three groups based on descent: Danes, immigrants and descendants. A person was a Dane if he or she was born in Denmark and at least one of his or her parents was a Danish national; a person was a descendant if he or she was born in Denmark; and a person was an immigrant if he or she was born abroad. As of 2006, there were 350,436 immigrants and 112,799 descendants in Denmark, corresponding to 6.5 per cent and 2.1 percent of the population of Denmark, respectively. Among immigrants, 35.1 had Danish nationality and among descendants 68.4 per cent were nationals. Slightly over 70 per cent of all immigrants and descendants originated from a non-Western country. Turkey was the country from which most immigrants and descendants originated.

The employment rate among immigrants and descendants was lower than that among Danes, the delegation observed. Denmark had, however, seen an improvement in the employment rate of descendants from non-Western countries.

On the issue of the direct application of the Convention by the courts, the delegation said that the Danish High Court had made reference to the Convention in a number of cases. The Convention was invoked in judging a case of a complaint of a guest who was not admitted into a restaurant on the basis of the colour of his skin. The Court did not find that the violation had such gravity or involved such humiliation that warranted compensation. In the case of a politician who had made anti-Muslim statements during a debate, the Court held that the speech was punishable and the politician was given a suspended sentence of 7 days' imprisonment. In another case in which the Convention was invoked an employee was sent home from her employment because she wore a headscarf. In that case the dismissal was adjudged unfair and the High Court awarded the plaintiff 10,000 krone.

The delegation noted that there were currently no plans to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ratification would have consequences for alien and criminal law and would involve considerable relaxations to the Danish immigration policy. Moreover, some parts of the Convention would be difficult to reconcile with Danish criminal law and administration of justice. It was highlighted that none of the European Union Member States had ratified the Convention.

Concerning organizations and individual projects the Government supported within the field of integration and anti-discrimination policy, the delegation said that they had established an action plan in 2003, as a direct follow-up to the Durban Declaration

and Programme of Action, which contained a variety of initiatives to combat discrimination. Approximately 680,000 euros had been allocated for its implementation. The Government, however, supported a wide range of initiatives that aimed to promote integration and combated discrimination. In 2005, the Ministry of Integration alone contributed more than 30.8 million euro to such initiatives conducted by non-governmental organizations and actors other than the Ministry itself.

Regarding powers granted to the Director of Public Prosecutions to ensure proper and uniform enforcement of Section 266 b of the Criminal Code (prohibiting the dissemination of statements or other information by which a group of people is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation), the delegation noted that the Director of Public Prosecutions was mandated to be notified in all cases. From 2004 forward the Director of Public Prosecutions had drawn up a survey of convictions under that Section which contained detailed information on all complaints made and the decisive circumstances of the cases. The information was widely disseminated. The Government had found that the current mechanism was very effective in monitoring claims.

The Government did not have information on whether Danish political parties guidelines adhered to the Charter of European Political Parties for a non-Racist Society, the delegation said. However, there were two instances in which politicians were sentenced to imprisonment under Section 266 b (2) of the Penal Code.

The right to freely form associations was protected under the Constitution, however, those associations had to be for lawful purposes. But, the delegation pointed out that only a court could decide whether an organization had to be dissolved. Members of an unlawful organization or individuals with connections to such groups could also be prosecuted like any other individuals under section 266 b of the Danish Criminal Court.

Regarding Radio Oasen, the delegation said that the Radio and Television Board did not monitor content of broadcasts, but they did receive complaints. No such complaints had been received on Radio Oasen since it had been given a new license to broadcast. The Directive Television Without Frontiers, which was implemented in Danish legislation, held that programmes could not incite to violence on the grounds of, inter alia, race, gender or ethnicity.

Turning to the cartoon case, the delegation said that following the publication in September 2005 of 12 cartoons of the Prophet Mohammed in the newspaper *Jyllands-Posten*, a number of complaints had been brought by individuals and groups under Sections 140 and 266 (b) of the Danish Criminal Code. The regional public prosecutor, upon examination of the claims, had decided to discontinue the investigation. Several complaints were then directed to the Director of Public Prosecutions on the dismissal of the complaints of the regional public prosecutor. The Director had upheld that finding, holding that the drawings depicted a religious figure and that the intention was not to represent Muslims in general or to portray Muslims as propagators of violence or terrorism.

The delegation drew attention to the statements made by the Danish Prime Minister in the public debate about the freedom of expression that followed the cartoons' publication. The Prime Minister had condemned any expression, action, or indication that attempted to demonize people on the basis of their religious background. He had noted that there had been a long history of freedom of speech in Denmark, but it had to be exercised in mutual respect and understanding. In general that had been the case. There had been a few examples of unacceptable expressions, which had come from both sides of the debate, and the Prime Minister had said Denmark had to strongly repudiate those expressions. The Prime Minister had made it clear that the Danish Government respected Islam and did not support such activities.

The Danish Government had established a hotline for persons who were the subject of attempts to force them into marriage. The Government also had two shelters where women who were the targets of forced or arranged marriages could be accommodated.

The Anti-ghettoization Bill had been adopted in 2005, allowing municipalities to control the concentrations of populations there, in particular to ensure that one area was not overwhelmed by high levels of unemployed persons. It was too early to assess whether the scheme was successful in preventing ghettoization or what impact the scheme had on restricting the freedom of individuals, if any.

On the issue of the reduction of social assistance funds for refugees, the delegation said that in proposing the new legislation on the starting allowance the Danish Government had found it very important to ensure that all Denmark's commitments under international conventions were fully honoured. The starting allowance was an employment promoting arrangement, so that persons who needed incentives would not earn more by receiving social assistance than by working. That had been a significant problem until the new legislation was introduced. The rules applied to all foreigners and Danish citizens alike and were thus non-discriminatory.

Oral Questions Raised by the Rapporteur and Experts

NOURREDINE AMIR, the Committee Expert serving as Country Rapporteur for Denmark, said that Denmark was at the forefront of those countries in terms of freedom of expression and had spearheaded the provision of official development assistance to developing countries, allocating 0.87 per cent of its gross domestic product for that purpose. The Government had showed its constant concern for the cultural, ethnic and religious minorities within its population.

The establishment of the new Ministry of Refugee, Immigration and Integration Affairs in 2001 was part of the ambitious undertaking set out in the Act on Integration of Aliens in Denmark of 1998, Mr. Amir noted. The goal of that law was a noble one, as it sought to assist immigrants to attain citizenship, if they wished to, and to guarantee to foreigners their rights under international laws and treaties. Under that law, 70 integration councils had been set up to encourage improvement of minority and refugee access to employment. Unfortunately, there had been no statistics in the report that could allow the Committee to assess the effectiveness of those schemes.

However, Mr. Amir lamented the Government's decision not to incorporate the Convention in its domestic law, for numerous reasons, among them that it would have provided for more effective remedies for victims of racial discrimination and would hold a higher place in the legal hierarchy with regard to the implementation of its provisions.

Concerning the dismissal of the complaints regarding the cartoons, Mr. Amir said that there had been grounds for such an appeal. The Danish Criminal Code did protect religions against derision and ridicule, and individuals against outrage or any defamation with regard to their religion. The present case fell within those rules; it was not a question here of freedom of expression.

Mr. Amir noted that the Danish Government had taken the observations and conclusions of the Committee seriously and was attempting to implement them. However, concerns remained with regard to a quota system for housing, the admission of children from minorities into certain kindergartens, and the ban on the use of one's mother tongue in certain establishments. Restrictions on marriage and on family reunification, the increase from 3 to 7 years for granting of residence permits, the reduction of social services for refugees and the extension of motives to justify the refusal of asylum requests were also areas of concern.

Other Committee Experts raised questions and asked for further information on subjects, including, why the police appeared to be hesitant to investigate discrimination complaints lodged by Muslims; whether the Government considered the Thule tribe to be an indigenous people; the anti-ghettoization bill; whether feedback on mechanisms to integrate immigrants into Danish society was sought from the immigrants themselves; and, in the wake of the cartoon case, whether Denmark intended to elaborate its own standards to judge statements of racial hatred.

Regarding criminal investigations into racist statements, one Expert asked for the delegation to comment on an individual complaint before the Committee regarding a member of the Danish Parliament.

One Expert raised the issue of the terminology used with regard to the breakdown of its population. It mentioned immigrants coming from Western countries and those from non-Western countries. It appeared that that referred to countries with Western civilization or culture; he was not sure, however, what was meant by Western civilization or culture and was concerned that it was a restrictive definition, including only Scandinavia, the European Union and North America.

Intervention from Danish Institute of Human Rights

BIRGITTE KOFOD OLSEN, of the Danish Institute of Human Rights, the Danish national human rights institution, said that the Government had done much to promote minority culture and human rights in the society. However, discrimination against immigrants and minorities remained. She stressed that it was very difficult for

immigrants to get access to the labour market, and that it had little to do with their educational background or linguistic abilities. Such indirect discrimination was hard to prove and there was a lack of Government funding to research the presence of such discrimination, as well as perceived discrimination, in the labour market.

Ms. Kofod Olsen said asylum-seekers were often housed in remote areas or required to move as many as 12 times while their applications were being considered. That was a discriminatory practice the motive of which appeared to be to prevent such persons from forming ties to a particular location or integrating in the society.

Further Responses by Delegation to Written Questions Submitted in Advance

The delegation said that the language of the courts was Danish. In criminal cases interpreters were provided for those who did not speak Danish, the cost of which was born by the court. In civil cases interpretation was provided, with the costs born as per the regular rules of civil cases.

All Danish nationals – including immigrants and descendants with Danish citizenship – over the age of 18 and living in Denmark had the right to vote in national or municipal elections and the right to run for a seat either in at the municipal or national level. Non-nationals had the right to run for a seat in local councils and to vote at all local elections provided that they had lived in Denmark for the last three years and were over 18.

Since 1981, Denmark had seen an increasing number of immigrants and descendants among the elected representatives in municipal councils and in parliament. In 1981 there were only three immigrants and descendants elected to local councils, none to Parliament. In 2005, they had 67 representatives in local councils and 3 in Parliament.

Regarding the closing of the Board on Ethnic Equality, that had been incorporated into the Danish Institute of Human Rights. The rationale had been to consolidate and rationalize national human rights institutions and thus to make more effective use of government funds allocated for those purposes. Moreover, the Board for Ethnic Equality never had the authority to hear individual complaints, the delegation clarified. That was, however, part of the mandate given to the Paris Principles Institute of Human Rights in 2003.

On the topic of the school curriculum, the delegation said there was a requirement for all students to learn Danish culture and history, and the history and culture of other areas. Among the main objectives for the subject of history was to strengthen the pupils' awareness of history and identity and to promote their active participation in a democratic society.

Response by Delegation to Oral Questions

On the issue of incorporation of international conventions into Danish law, the delegation said that it would bring the Experts comments back to its capital, but the Government's position at the moment not to do so was clear.

Regarding family reunification, and the 24-year rule (abolishing the right for spouses under 24 years of age to be reunified), the delegation said that Denmark had been reviewing recommendations on those topics, in particular from the Danish Institute for Human Rights. In the view of the Government, there was a connection between its immigration and its integration policy. The current policy had been the product of the poor level of integration of immigrants in the labour market.

The Government fully respected the right of an alien to be reunited with a foreign spouse. The right for refugees to be reunited with their families was in the explanatory notes to the current law, but the need for more specific legislation would be reviewed in the future.

Concerning the independence of the Danish Refugee Board, the delegation said that the Board was made up of three members: a Chairman, appointed by a Judge, and two members appointed by the Ministry of Refugee, Immigration and Integration Affairs. Decisions of the Board were final, and were not appealable. The right for asylum-seekers to have their case reviewed by the Refugee Board made a quick and easy procedure available to them. It guaranteed that aliens had a thorough and adequate review of their application with full regard for due process. It was the opinion of the Government that the Board was an effective, independent expert body.

On the question of violence against minority women, the delegation said that the problem was that immigrants had their residence permits issued to them on the basis of marriage. When the parties separated because of domestic violence, that threatened their legal status in the country. In cases of desertion from a violent spouse, for those immigrants who had been in the country for over two years, it was possible to apply for a grant to stay in the country. The Government was currently undertaking a study on the topic and expected to have that report in a month or so.

On the topic of Radio Oasen, the delegation reiterated that no case against them had been tried in 2002 or in 2006, nor had any case been brought against them in 2006. The licence had been renewed in 2006 till 2007 and the terms of that licence required that they not make racist statements or issue attacks on minority groups in the society.

There was freedom of speech, but there were limits, the delegation stressed. There were provisions in the criminal code – in particular in Section 266 b – against hate speech, and there was also a provision against blasphemy.

In the cartoon case, the delegation clarified that the Director of Public Prosecution had found that there was no basis for initiating a case because the portrayals did not meet the requirements of either section 140 or of 266 b of the Criminal Code. The Director of

Public Prosecutions recognized that there were limits to freedom of expression, but law had not justified the imposition of any restriction in this particular case.

The numbers of bilingual children was still increasing the delegation observed. In 2005 to 2006 there were 60,000 bilingual children, representing 10 percent of all pupils, half of whom received training in Danish as a second language. All bilingual children, including Roma children, who had a special need for linguistic support, were offered Danish as a second language from kindergarten to tenth grade.

The delegation affirmed that the Greenlandic language was not in any danger. Whereas the language of administration was still mainly Danish, the proceedings in the Greenland Home Rule Parliament were held in Greenlandic and Greenlandic was the primary language. In terms of primary education, Greenlandic was the principal language of instruction and emphasis was being placed on Greenlandic in the culture and traditions of Greenland.

The delegation said that the Council for Ethnic Minorities had visited several local integration councils in 2005 and had concluded that the local integration councils were effective. It had also developed a handbook on how to set up such a council, with the support of the Ministry of Integration, and that handbook was distributed to municipalities contemplating setting up such a council.

Newly arrived immigrants signed an integration contract. Refusal to sign such a contract did not bear any consequence, except that it then impeded the immigrant from obtaining permanent residence in Denmark.

The system of housing of refugees provided immediate permanent lodging. They were allocated to municipalities on a quota system, which ensured an equal distribution of the refugees. Refugees could select their municipality from among those with an open quota. That system provided the municipality with the security to plan for the services it would need to offer, including refugee introduction programmes. The introduction programme lasted for three years and after that refugees could settle where they wished without threatening the benefits they received.

The delegation stressed that there were no ghettos in Denmark. There was a process of ghettoization, where people who were unemployed and had fewer resources were becoming concentrated, and the Danish Government wanted to address that.

To assess the efficiency of the integration policy, the Ministry of Integration looked at the external factors, such as how soon the immigrants found jobs, etc. Integration policy was formulated through discussion both at the ministerial level, which included seeking input from the immigrants themselves, as well as at the local level, the delegation said.

Further Remarks by Experts

An Expert welcomed the statement made by the Prime Minister on the cartoon issue, but opined that if it had been made earlier it might have prevented a lot of the ensuing violence. Timing was of the essence in such matters. He also wondered if the Convention had been incorporated into Danish law whether the Director of Public Prosecutions would have dismissed the complaint.

On the topic of ghettoization, an Expert thought it might be useful to understand the logic behind that propensity. It might be that, among other things, it represented people's desire to establish some kind of identity.

Preliminary Remarks

NOURREDINE AMIR, the Committee Expert who served as Country Rapporteur for Denmark, said that there was one key phrase he would use in his final comments, "red card". The red card was the very strong message Denmark was sending to racism.

Mr. Amir paid tribute to the Danish Prime Minister for his words in a spirit of compassion and solidarity with the Muslim community; it was one that he held close to his heart. It was a message that would be transmitted to all Arab and Muslim countries to say that Denmark was a country that respected the rule of law as well as freedom of expression.

There was also an image of the Middle East with regard to the educational system of Danish society, which supported dialogue among civilizations, Mr. Amir said. The Government should strengthen its resolve to move in the direction of progress.

Finally, Mr. Amir observed that if cultural and linguistic minorities had the right to protections under national and international law, it was also important that those minorities respect the rights and obligations of the Danish State.

CORRIGENDUM

In press release HR/CERD/06/23 of 9 August, the comments by the Chairperson of the Committee, Régis de Gouttes, which appeared on page 2 and page, 7, should read as follows:

Introducing the reports of the fifth Inter-Committee Meeting and of the eighteenth meeting of Chairpersons of Treaty Bodies, Régis de Gouttes, the Chairperson, said that the majority of the members of the Inter-Committee had concluded that it was not useful to establish a unified standing treaty body, but other suggestions – such as the establishment of unified guidelines for treaty body documents – were thought to be worth pursuing. The majority of the Chairpersons, in their meeting, had similarly been in favour of preserving the specificity of the particular Committees.

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