

## **Denmark's comments**

to

**the Memorandum to the Danish Government**

**concerning**

**assessment of the progress made**

**in implementing the 2004 recommendations of  
the Council of Europe Commissioner for Human Rights**

Denmark is pleased to respond to the Commissioner's invitation to comment upon the draft Memorandum to the Danish Government on the assessment of progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights.

## **1. General remarks**

The Danish Government is pleased that the Human Rights Commissioner appreciates initiatives taken by Denmark in the area of integration and that he acknowledges other initiatives taken in the area of asylum and migration since the report of the previous Human Rights Commissioner. The Government has had a good dialogue with the Secretariat of the Human Rights Commissioner in the drafting of his memorandum.

The Commissioner has a strong focus on the Danish legislation on family reunification and recommends several changes in line with the recommendations made by his predecessor in 2004.

The Danish Government does not agree with these recommendations. The Danish Government continues to maintain that the Danish rules on family reunification do not amount to unfounded discrimination and do not violate ECHR article 8.

In this regard, it should be noted that the Government considers it crucial for Denmark to observe its international obligations, including the European Convention on Human Rights and the UN Refugee Convention. Therefore the Danish Aliens Act, including its rules on family reunification, has been developed in respect of these obligations.

In the processing of applications for a residence permit in Denmark the immigration authorities always consider whether, in the specific case, an applicant should be granted a residence permit despite non-fulfilment of one or more of the statutory conditions in the Danish Aliens Act to ensure regard for the observation of the international human rights obligations, including the right to family life.

Furthermore, particular emphasis should be put on the fact that the Danish Government has developed rules in order to increase managed migration as a tool to improve the successful integration of immigrants into the Danish society.

Besides being a means to ensure managed migration, the Government sees the Danish rules as a means to support the integration of immigrants. It appears from the draft memorandum that the Human Rights Commissioner has another opinion.

As noted in the comments below, the Danish Government stresses the importance of the many positive initiatives in the area of integration. Integration is an ongoing process, but it should be emphasised that progress is made day by day.

It should be noted that in its memorandum of 22 September 2004 the Danish Government commented on the report of 8 July 2004 by Mr. Alvaro Gil-Robles, the previous Commissioner for Human Rights, as regards the part of the report concerning foreigners. Already in the

memorandum of 22 September 2004 the Danish Government put forward a range of arguments to support the legislation and policies that Mr. Alvaro Gil-Robles alluded to in his report.

The Danish Government suggests that the comments below to the draft memorandum of the Human Rights Commissioner be taken into account when drafting his final memorandum.

## 2. The recommendations

### **Recommendation 1 on the minimum age requirement from 24 to 21 years**

The Commissioner for Human Rights (hereinafter the Commissioner) recommends that the Danish authorities reduce the minimum age requirement of both spouses from 24 to 21 years for their reunification in Denmark when at least one of them needs a residence permit. The Commissioner finds the age limit disproportionate in view of the extent of the exception to the right to privacy and family life, cf. ECHR article 8.

In that respect the Commissioner in para 9 notes that funds for the Government's action plan against forced marriages were sharply reduced in 2005-2007. The details appear in footnote 6 of the Commissioners Memorandum.

Further, the Commissioner in para 9 notes that while drafting the report he got the impression that no sound statistics on the impact of the age limit on the number of forced marriages were available.

In para 10, the Commissioner reiterates his predecessor's concern that the 24 year age limit bars too many truly consenting partners from enjoying the right to family life in Denmark and recommends that the Government put the age requirement for living together on Danish soil with a foreign partner more in line with the rules applying to Danish couples.

#### *Comments by the Danish Government*

The Government finds no grounds for amending the minimum age requirement of 24 years for spouses for family reunification. The Danish Government still finds that the age limit is in line with ECHR article 8 and would like to add the following:

The Government maintains that the 24 years rule is necessary to prevent young people from being forced to marry or entering into arranged marriages for family reunification purposes. The Government finds the 24 years rule effective, because it protects young people against pressure in connection with the entering into a marriage in the light of the fact that the older a person is, the better s/he can withstand pressure from his/her family or others.

Additionally, the rule promotes better integration, because it contributes to improved educational and work opportunities for young people.

If it is found, that the applicant can not be granted a residence permit according to the Aliens act section 9 (1) (1) because of at least one of the spouses' young age, as common practise an assessment will be conducted as to whether there are circumstances which as a consequence entail that the applicant must be granted a residence permit according to the Aliens Act section 9 (c) (1). This includes an assessment of ECHR art. 8.

It should in this regard be noted that the Danish Government in line with the recommendation of former Commissioner recommendation, the Danish Government has included a reference to the right to family unity of refugees in the relevant provision of the 2005 Aliens Act. The reference indicates the reasons, which allow the exemption from conditions for granting a residence permit for the purpose of family reunification.

The Commissioner for Human Rights recommends the reduction of the minimum age requirement to an age limit of 21 years or below. The Government notes that the Commissioner in para 10 accepts that there can be a minimum age requirement higher than 18 years. The Government is of the same opinion and considers 24 years the age limit best suited to attain the above-mentioned goal.

The action plan against forced marriages mentioned by the Commissioner covered the period 2003-2005. But many of the initiatives in the action plan are continuing, and the funds dedicated to the fight against forced marriages are still considerable. Furthermore, the focus is no longer only on forced marriages but on honour related violence in general.

The funds at state level allocated to the fight against forced marriages and honour related violence in families, are as follows:

2004: 16.5 million DKK ~ 2.2 million €

2005: 6.8 million DKK ~ 0.9 million €

2006: 8.1 million DKK ~ 1.1 million €

2007: 13.2 million DKK ~ 1.8 million €

2008: 10.4 million DKK ~ 1.4 million €

2009: 5 million DKK ~ 0.7 million €

2010: 5 million DKK ~ 0.7 million €

The funds are for example spent on:

- Shelters for women and girls who are in danger of a forced marriage or have escaped a forced marriage
- Hotline offering advice for young people experiencing honour related violence

- Hotline for professionals dealing with youngsters
- Specialised “ethnic team” which can advise the municipalities in these difficult cases
- Information to the municipalities for example in the form of an Internet based tool case, seminars etc.
- Lectures for parents and children belonging to ethnic minorities
- “Attitude campaigns”

Some of the coming initiatives consist of:

- A shelter for young couples who are in danger of forced marriages or have escaped a forced marriage
- Aftercare for such young couples
- A corps of professional mediators
- A corps of ethnic male role models

Furthermore, funds have been dedicated to strengthen the initiatives for ethnic women and their families. The funding comprises 12 million DKK ~ 1.6 million € in 2006, 6 million DKK ~0.8 million € in each of the years 2007 and 2008 and 4 million ~0,5 million € DKK in 2009. Some of these funds can be allocated to initiatives against forced marriages, honour related violence in the family, re-education journeys etc.

As regards the Commissioner’s comment on the lack of adequate statistics, it is correct that there is no direct statistical evidence of any correlation between the introduction of the age limit and the number of forced marriages. Such statistical evidence is very difficult to produce due to the obvious difficulties in assessing the number of forced marriages.

However, the annual statistical report concerning foreigners “*Tal og fakta – befolkningsstatistik om udlændinge*”, published by The Ministry of Refugee, Immigration and Integration Affairs on 18 June 2007 provides strong indications of the age limit having an effect on marriage patterns among immigrants and descendants from non-western countries.

- The report shows that the general age of marriage among immigrants and descendants from non-western countries has increased noticeably from 2001 to 2006.
- Furthermore, the report shows that the share of marriages with foreign spouses within the group of immigrants and descendants from non-western countries living in Denmark, has dropped from 62.7 percent in 2001 to 37.8 percent in 2006.

Forced marriages typically involve relatively young immigrants or descendants from non-western countries and foreign spouses. Thus, the changes in marriage patterns, described in the abovementioned report, may indicate that the number of forced marriages can be expected to decrease as a result of the age limit.

## **Recommendation 2 on the 28 years of citizenship exception to the rule on aggregate ties to Denmark in cases on family reunification**

The Commissioner recommends a reduction of the requirement of 28 years of citizenship of the person living in Denmark for an exemption from the condition of both spouses having aggregate ties to Denmark that are stronger than those with another country for granting a residence permit to his or her foreign partner (hereinafter the 28 years rule).

### *Comments by the Danish Government*

The Government finds no reason to amend the 28 years rule.

The Government refers to its memorandum of 22 September 2004 as regards this issue. Thus, the Government continues to find that the 28 years rule is not in contradiction with the principle of equality.

The 28 years rule represents an objectively based deviation from the condition of ties stipulated by the Aliens Act in cases, where the person who wants to bring his or her spouse or regular cohabitant to Denmark has held Danish citizenship for 28 years. The 28 years rule is therefore an exception to the condition of ties and reflects a standardised assessment of ties. Therefore, it is necessary to require citizenship of a certain length of time. Thus, a 28-year-old Danish national will normally be found to have such ties with Denmark that it is possible to refrain from making a condition of ties. Hence, there are objective reasons for the differential treatment accorded to citizens depending on the length of their citizenship.

In order to ensure equal treatment of Danish nationals and foreign nationals living in Denmark in comparable situations the legislation specifies that an exemption from the condition of ties will generally also apply to persons who have not held Danish nationality for 28 years, but were born and grew up in Denmark, or arrived in Denmark as small children and grew up in Denmark, when they have resided lawfully in Denmark for 28 years.

## **Recommendation 3 on the bank guarantee in cases on family reunification**

The Commissioner recommends a removal of the requirement of a bank guarantee of approximately 7,500 € from the list of economic conditions for family reunification in order to avoid discrimination on the grounds of economic conditions, cf. para 17 in the Commissioner's draft Memorandum.

### *Comments by the Danish Government*

The Government does not find that there is reason to change the regulation regarding the demand for financial security in connection with family reunification for spouses.

Reference is made to the Governments memorandum of 22 September 2004.

The Government finds that as a starting point everyone must be self-supporting. This also applies to aliens arriving to Denmark as part of a family reunification for spouses. Thereby it is ensured that the person in question does not burden the state. At the same time this will contribute to a greater goodwill and understanding towards foreigners from the public in general.

Family reunification for spouses is therefore as a starting point granted on the condition that the person residing in Denmark deposits app. 50.000 DKK as financial security for the coverage of possible future public expenditure for the purpose of helping in accordance with the Act on an Active Social Policy or the Integration Act, which is granted to the applicant.

In the draft Memorandum the Commissioner mentions the fact that the amount has been increased from 50.000 DKK in 2002 to 56.567 DKK in 2006. It should be noted that this is an ordinary adjustment of the amount relative to the increase of salary payments in the Danish job market. Thus there is no decision to increase the amount. The adjustment was presumed necessary when the requirement for financial security was introduced.

The demand for deposition of financial security does not imply a demand that the person in question must possess 50.000 DKK as the person can provide a Banker's Guarantee, which typically carries with it a fee of 1.500 DKK per year.

The position suggested by the Commissioner on discrimination on the grounds of economic conduct would imply that no country would be able to maintain or introduce a requirement of self-maintenance as such a requirement per se always will involve the property or financial capacity of the persons concerned. The Danish Government does not support this position.

In 2006 as an alternative to the financial security requirement it was made possible to deposit a sum corresponding to the size of the security, in a financial institute. The spouse residing in Denmark is now able to choose between providing a security and making a deposit. The deposition of the amount in a financial institute will usually be cheaper than providing security, as the deposition carries no annual fee.

It is emphasized, that exceptions can be made from the requirement for security, where family reunification of spouses is allowed as a consequence of Denmark's international obligations.

In addition, the Government points to the fact that a simplification of the requirement for self-maintenance by act no. 89 of 30 January 2007 in the Aliens act section 9 (3) has been introduced rendering the decision independent of a person's income, as long as the person is self-maintaining. The decisive factor in regard to the assessment of ability to self-maintenance is thus whether help is received 1 year prior to the decision regarding family reunification and until the possible granting of a permanent residence permit.

Furthermore it should be noted, that the European Court of Human Rights in the decision *Haydarie vs. the Netherlands* and in the judgement *Konstantinov vs. the Netherlands* states

that the Court in principle "does not consider unreasonable a requirement that an alien having achieved settled status in a Contracting State and who seeks family reunion there must demonstrate that he/she has sufficient independent and lasting income, not being welfare benefits, to provide for the basic costs of subsistence of his or her family members with whom reunion is sought."

#### **Recommendation 4 on the maximum age limit of 14 for the family reunification of children**

The Commissioner recommends raising the maximum age limit of 14 for family reunification of children to 17 years. He urges the Danish Government to revise the family reunification rules with respect to the age limit for children in order to bring the Danish legislation in line with the international definition of the child (i.e. a person below the age of 18) and the presumption that living with the family is in the best interest of a child, unless the contrary is proven.

The Commissioner furthermore notes in para 20 that instead of a 14 year age limit a constructive dialogue with the Danish Institute for Human Rights and specialised NGOs could help better understand the phenomenon of re-education journeys, assess its possible effects on integration in Denmark and, if appropriate, identify and implement alternative effective measures. The Commissioner also believes that links with the country of origin should not automatically be deemed to be dangerous for the purpose of integration in the country were the child lives with the parents.

#### *Comments by the Danish Government*

The Government is still of the opinion that the Convention on the Rights of the Child does not automatically confer a right to family reunification on children below the age of 18 and therefore finds no reason to change the legislation in this area.

The Government refers to its memorandum of 22 September 2004 as regards this issue.

The Government finds, that it can be derived from the existing case law from the European Court of Human Rights (ECHR) regarding article 8 in the European Convention of Human Rights in relation to family reunification with children that families according to the European Convention of Human Rights article 8 do not have an immediate right to choose the country where they wish to practice their family life, and that in each case where a child applies for family reunification with parents residing in Denmark, a concrete assessment must be made as to whether it is proportionate to dismiss an application for residence permit.

In cases where the child at the time of application has been separated from the parent resident in this country for a period of time, the Government finds, that it can be derived from the case law of the ECHR that in applying the proportionality assessment emphasis must in particular be placed on the reason for the separation of the family in the concrete case. If the separation is due to the choice of the parent residing in Denmark to leave the child in the home country and seek a residence permit in the state of residence, this condition will weigh greatly in disfavour



of granting the right to family reunification. Even more so this will be the case if a considerable time has passed since the reference's entry into the state of residence and until family reunification is applied for.

In addition, when carrying out the proportionality assessment emphasis will amongst other factors be placed upon the applicant's family, cultural and linguistic ties to the country of origin, the applicant's age and whether there are substantial barriers to practicing family life in the country of origin and/or continuously to practice family life to the present extent via visiting stays.

The Danish immigration authorities will in connection with an application for family reunification from a child conduct an assessment of whether special reasons are present that render it necessary to grant permission to family reunification of a child in this country even though the child does not fulfil the condition that it should be under the age of 15 years at the time of application.

In cases where denial of family reunification would be in conflict with the international obligations of Denmark and family reunification cannot be granted according to the Aliens act section 9 (1) (2), a residence permit will thus be issued according to section 9 (c) (1) of the Aliens Act.

This could for instance be the case if the child and the parent residing in Denmark otherwise have to live as a family in a country, which the person residing in Denmark does not have the possibility to enter into and reside in together with the applicant – for instance due to health reasons or rights connected to the asylum status.

This is for instance also the case if one of the child's parents who is residing in the home country and with whom the child resides, is granted permission to family reunification of spouses in Denmark with a person that is not the child's parent and if the child has not previously shared family life with the other parent who is still residing in the home country.

This also applies if the establishment of family life with the parent who is still residing in the home country must be assumed impossible or if the best interest of the child goes against referring the child to establishing family life with the parent who is still residing in the home country.

Thus, children between 15 and 18 years of age are not barred in general terms from applying for family reunification. The immigration authorities thus examine all applications for family reunification with children. The lowering of the age limit from 18 to 15 years merely means that children between 15 and 18 do not have a statutory right to family reunification. The rule is no expression of a prohibition against residence permits for these children.

Furthermore, it should be noted, that the European Court of Justice in its judgement C-540/03 states that a condition for integration provided for by Member States' legislation existing on the date of implementation of the Family Reunification Directive in order to examine the specific

situation of a child over 12 years of age arriving independently from the rest of his or her family cannot be regarded “as running counter to the fundamental right to respect for family life, to the obligation to have regard for the best interests of children or to the principle of non-discrimination on grounds of age, either in itself or in that it expressly or impliedly authorises the Member States to act in such a way.”

The Government believes that the best interests of the child must be the primary consideration in all matters affecting the child. The very reason for reducing the age limit to 15 years was, in fact, consideration for the best interests of the child.

With the rule, the Government wants to prevent children from being sent on re-education journeys to the parents’ countries of origin and thus being separated from their parents living in Denmark.

The rule also encourages parents living in Denmark to apply for family reunification with their children as soon as possible to allow the family a life together. Examples were seen of parents letting their children stay in their country of origin until they were almost 18 years old either with one of the parents or with other family members in order to give the child an upbringing in accordance with the culture of their country of origin. Out of consideration for the child and for purposes of integration a child who is to live the rest of its life in Denmark should spend its childhood in Denmark and not in the parents’ country of origin.

However, this does not mean that the Government believes that links with the country of origin should “automatically be deemed to be dangerous for the purpose of integration in the country where the child lives with the parents”.

Since 2004, the Government has carried out various initiatives in order to obtain further understanding of the phenomenon of re-educational travels. In the autumn of 2004, the Government initiated two independent study-projects to acquire information concerning the quantity of re-educational travels and the qualitative consequences thereof.

The Government acknowledges that links to the country of origin should not automatically be deemed dangerous for the process of integration. However, it is the Government’s perception that each incident that involves a child’s lasting absence from school in order to be replaced within the cultural context of the country of origin marks a serious threat to the child’s process of integration into Danish society.

Following the research made available, the Government appointed a cross-ministerial working group in order to identify relevant actions in regard to prevent re-educational travels considered harmful for the child’s education and general integration process in Danish society. The working group published a report in June 2006 listing a number of initiatives, which are to be implemented throughout 2007. Among the initiatives are:

- Developing a valid procedure for collecting reliable data concerning re-educational travels. A pilot study is being carried out throughout 2007.

- Providing information for embassies, municipalities, schools, parents and children: All relevant actors are to receive information on the subject matter. The Ministry of Refugee, Immigration and Integration Affairs is to collaborate with the National Council for Children in order to provide children with information on rights and responsibilities in regard to family problems, including possible re-educational pressure from parents.
- Providing grants to support the establishment of networks and support-groups for youngsters experiencing generational conflicts. The Ministry of Refugee, Immigration and Integration Affairs provides financial aid to various NGO's offering support and counselling to youngsters and parents experiencing family conflicts. Also, additional grants are to be provided for the set up of a telephone advice-line for parents experiencing generational conflicts specifically related to trans-cultural challenges.

The Government believes that the initiatives will have a preventive effect in regard to re-educational travels in particular and generational conflicts in general. Also, the Government believes that the initiatives will bring further clearance to the understanding of the phenomenon and its possible effects on integration in Denmark.

### **Recommendation 5 on the composition of the Refugee Board**

The Commissioner recommends adding the competences of representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs to those of the other members of the Refugee Board.

#### *Comments by the Danish Government*

The Government does still not agree with the Commissioner's recommendation regarding restoring the original composition of the Refugee Board by adding representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs as members of the Board.

The Government refers to its remarks in its memorandum of 22 September 2004 concerning this issue.

The Government remarks that the actual independence of the Refugee Board has never been called into question. This also goes for the period before an amendment of the Aliens Act of 1 July 2005, in which the independence of the Refugee Board was explicitly stipulated in section 53.

The Government draws attention to the fact that the former Commissioner for Human Rights in his report from 2004 recognised that the Board members' independence was also at that stage safeguarded by law. The mentioned amendment of the Aliens Act in 2005 only serves to further clarify the independence of the Refugee Board.

For the Government, it is not clear in what exact manner participation by the Danish Refugee Council and the Ministry of Foreign Affairs on the Refugee Board is supposed to reinforce the

expertise of the Board. The Government also remarks that neither the former Commissioner nor the present Commissioner has described in detail why the Refugee Board with its current composition is not found to be sufficiently qualified.

Finally, it should be noted that the Refugee Board, also with its current composition, possesses a high degree of legal expertise in general and in asylum law in particular, which is supported by secretariat assistance to the Board. The Board is also in possession of an extensive selection of background information from a large number of sources, including the Ministry of Foreign Affairs and the Danish Refugee Council.

### **Recommendation 6 on confinement of finally rejected asylum seekers in reception centres**

The Commissioner recommends that the Danish Government try to find alternative solutions to the indefinite confinement of adults and children in reception centres when it is impossible to deport foreigners whose applications to stay have been finally rejected.

#### *Comments by the Danish Government*

The Government agrees that asylum seekers shall not remain in the asylum centres for several years. Consequently the Government has made a serious effort in order to reduce the time for procedures in cases of asylum.

If an asylum seeker is denied asylum it is his or her duty to leave the country. It is crucial for the legitimacy of the asylum system that rejection of an application for asylum actually results in the asylum seeker leaving the country.

Therefore the Government has consistently maintained that rejected asylum seekers have an obligation to leave the country for their homeland voluntarily, in cases where home journey is possible.

In such cases a rejected asylum seeker should not – by denying to abide by the authorities' rejection of asylum etc. – through counteracting be able to exert pressure to obtain a residence permit.

The Government would like to stress that rejected asylum seekers who can leave Denmark voluntarily only reside in this country because they refuse to respect the decision by the Danish authorities to reject their application for asylum and to have them leave the country. All asylum applicants in Denmark have received a thorough treatment of their cases by the authorities, i.e. the Danish Immigration Service and the Refugee Board.

The number of attempted suicides in Danish asylum centres has been slightly increasing during the last years. In comparison with the fact that the amount of persons in the centres has been declining, this results in an increasing number of incidents.

The Government is aware of this development and has therefore initiated a number of improvements of the conditions in the centres.

With the amendment to the Aliens Act implemented in 2006 the possibility of offering courses and activation was introduced also for rejected asylum seekers, if they contribute to their own departure. Education and activation must generally be considered good for the health and quality of life of the asylum seekers, and it is expected that this will encourage the rejected asylum seekers to return to their home country and start a new life there.

The Danish Parliament has on 1 June 2007 passed a bill introduced by the Government which means that rejected asylum seekers who until now have not assisted with their departure – in cases where voluntarily but not compulsory departure is possible, can be offered a total upgrading scheme in Denmark and in the home country in addition to economic support when returning to and help to housing and employment in the home country. The rejected asylum seeker must in return agree to cooperate in connection with the departure and voluntarily depart Denmark.

Specific criteria apply concerning which groups of rejected asylum seekers the scheme includes. It is thus among other things a condition that bigger supporting projects are planned or initiated as part of the reconstruction efforts in a country after war.

For practical reasons the offer is at first given to rejected Iraqi asylum seekers. The scheme is to be evaluated by 1 May 2008. If the scheme fulfils its purpose the Minister for Development Cooperation can extend the offer to other groups of rejected asylum seekers if the criteria are met. The scheme is based on a completely voluntary concept.

An examination undertaken by the Danish National Institute of Social Research of the conditions in the asylum centres in Denmark (“Living conditions for children with family in the Danish asylum centres”, published October 2006) confirms that families who have been denied asylum and will not depart voluntarily can suffer during a stay of long duration in the centres, but the draft Memorandum links the difficulties in the families to the rejection of asylum. The conditions in the centres also play a vital role.

The same examination shows that the settings for education, activation and health treatment are good, that the children are happy about the education and activation activities and that health treatment lives up to what is offered children outside of the asylum centres.

The examination was conducted during the spring of 2006 and describes the situation before the Government implemented a series of improvements in relation to the conditions on the asylum centres. In May 2006 the Government injected 37,6 million DKK to the improvement of the conditions at the asylum centres, especially the conditions for families with children. The improvements also concern rejected asylum seekers and the funds will also cover support for returned asylum seekers in their respective countries of origin. In 2007 and 2008 respectively 47,3 and 44,5 million DKK have been allocated to continue the initiatives.

Families with children are offered accommodation in 2 rooms as part of the Government’s efforts to create the best possible environment for children in asylum centres. Furthermore,

self-housekeeping was introduced at Centre Avnstrup in summer 2006, which has resulted in increased well being at the centres and a strengthening of family ties. The Government is now expanding this scheme, so that rejected asylum seekers accommodated in Centre Sandholm can receive the same offers regarding subsistence allowances and self-housekeeping.

Concerning the movement of asylum seeker-families, cf. para 31 of the Commissioner's draft Memorandum, the Government can inform the Commissioner that some asylum seekers have moved several times due to the large decline in the number of asylum seekers, which has made it necessary to close some centres.

In addition, circumstances in relation to the ordinary procedures, have resulted in the movement of asylum seekers. When asylum seekers enter the country and apply for asylum the person concerned will usually be registered at Centre Sandholm. After that the asylum seeker moves to an accommodation centre. When the asylum procedure is finished, an asylum seeker who has received asylum stays at the accommodation centre until the person can be offered housing in the receiving municipality. Asylum seekers who do not receive asylum can stay in the accommodation centre if they agree to voluntary return. Asylum seekers, who do not agree to voluntary return, are moved to a deportation centre.

Following these general remarks, the Danish Government has some additional comments on the paragraphs underpinning recommendation no. 6 by the Commissioner (para 28-30)

Para 30 states that the persons staying in the reception Centre Sandholm are "isolated from the outside world". This is not correct. Sandholm reception centre is not a closed centre. There is control of access to the centre, but the persons living there can enter and leave as they please. Hence, they are not confined.

Para 30 furthermore states that the persons staying in the reception centres "have to face the prospect of having to stay in the Danish centres for what could be the rest of their lives". As already mentioned, the persons in question are rejected asylum seekers; their applications have been finally turned down and they have overstayed the deadline given to them regarding their leaving Denmark. These rejected asylum seekers can leave Denmark voluntarily if they so wish. Moreover, it follows from section 9 (c) (2) in the Danish Aliens Act that upon application rejected asylum seekers can be granted a residence permit if they can not return to their home country, provided that for 18 months they have cooperated with the Danish authorities in making a return possible.

Para 31 and 32 state that persons i.a. children "have been held in reception centres" and that they are staying in "unlimited confinement". Following the comment above to para 30 it should be stressed that the children are not deprived of liberty; they are not confined to the reception centres.

In para 32, the Commissioner deplores a situation where the authorities insist on the absence of a legal entitlement to stay for the persons held in the centres and the obligation for them to leave the country, whereas this is technically impossible.

As already mentioned, the rejected asylum seekers can leave voluntarily. It is therefore not technically impossible for them to leave Denmark.

Consequently, the Danish Government is not “insisting on deporting” the rejected asylum seekers, cf. para 30 and 32. The Danish authorities are insisting that the rejected asylum seekers leave voluntarily since their application for asylum have been overturned. Only if an applicant does not leave the country voluntarily, forced return may be an option, cf. section 32 (a) of the Danish Aliens Act.

### **Recommendation 7 on social assistance “starthjælp”**

The Commissioner recommends the Danish Government to grant social assistance under the same criteria to every person residing in Denmark, without discrimination on the grounds of legal status or length of residence.

#### *Comments by the Danish Government*

The Danish Government firmly believes, that the starting allowance promotes an inclusive society.

The recommendation does not take into consideration that the level of social assistance in Denmark is one of the highest in the world and often exceeds the wage which people without skills can earn in the ordinary labour market.

Until 2002, when the new legislation was passed, newly arrived foreigners typically received such high cash benefits, that the earned income they could otherwise obtain was far lower than the social benefits. Therefore the employment rate especially for refugees was very low - about 9 per cent. In the then new Government’s point of view that policy was very exclusive. Therefore it was important for the Government that benefit rates were reduced to a level that made work pay.

The starting allowance is based on the idea of qualifying principles, which are, to a great extent, used in the field of social security (i.e. pensions).

Persons covered by the new rates during the seven-year period receive, as a minimum, benefits corresponding to the – compared to almost all other countries - advantageous level of the benefits granted to students in Denmark.

The starting allowance has been successful. From surveys it can be established that the reduced allowance increases the encouragement to become self-supporting and that a larger part of the persons receiving the reduced allowance are actually self-supporting than those who receive the high allowance.

The table below shows the development on introduction allowances covering citizens from abroad.

**Number of new introduction allowance receivers, who are self-supporting or are participating in education**

	Introduction allowance on starting allowance level	Introduction allowance on social assistance level
After 4 quarters	21 %	14 %
After 8 quarters	33 %	21 %
After 12 quarters	45 %	28 %
After 16 quarters	49 %	34 %
After 17 quarters	52 %	35 %

Percentage of all receivers - people in education counts for about 3 percentage points

The table shows - according to the latest figures – that labour market inclusion after about four years is 52 per cent for people at starting allowance level while it is only 35 per cent for people on social assistance level.

As to the employment effect on refugees a survey from the Rockwool Foundation Research Unit from April 2007 identified significant and robust positive employment effects of the reduction of the welfare benefits. After 16 months an increase in employment on 56 per cent could be identified. The probability for refugees on social assistance level of being employed after 16 months was 9 percent, while the probability of refugees on starting allowance being employed after the same period of time was 14 per cent.

**Recommendation 9 on initiatives to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.**

While recognising initiatives made in recent years in order to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society, the Commissioner recommends the Danish Government to design additional positive initiatives to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.

*Comments by the Danish Government*

The Government agrees with the Commissioner that integration is an ongoing challenge, and that the work cannot be “considered done”. However, it should be stressed that a series of



initiatives have been taken in order to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.

In recent years, the Danish Government and Parliament has initiated or supported a series of initiatives aimed at promoting and strengthening dialogue between ethnic and religious groups in a framework of a coherent society with room for diversity.

At the political and organisational level, both the Prime Minister and the Minister of Refugee, Immigration and Integration Affairs have hosted a number of ad hoc meetings with religious and ethnic minorities.

At the institutional level, dialogue with ethnic minorities is continuously taking place through the National Council for Ethnic Minorities, which advises the Minister of Refugee, Immigration and Integration Affairs on issues of importance to immigrants and refugees. The Council meets with the Minister of Refugee, Immigration and Integration Affairs regularly – and at least every three months – to discuss current challenges, new initiatives and legislation. Local integration councils representing ethnic minorities are established in many municipalities and have an advisory role vis-à-vis the local authorities on issues related to the local integration politics, cf. also below as regards para 41 in the Commissioner's report.

The Minister of Refugee, Immigration and Integration Affairs has initiated specific dialogue-initiatives with women belonging to ethnic minorities in order to improve their integration into the labour market and society in general thereby acquiring knowledge about the barriers which the women themselves perceive as hindering their participation in the labour market and their integration in general. An example is the initiative Dialogue Days in June 2007, where the Minister met ethnic minority women from socially deprived urban areas.

The activities of the Minister also include open dialogue with youngsters from ethnic minorities on important questions relating to integration. These activities include visits to schools, the opportunity to chat with the Minister on the Internet, participation in education and work bazaars and an integration-game on the Internet.

In 2006, the Minister initiated a competition for young people to write a speech on democracy and integration for the traditional Danish constitution day celebration. 13 young people were given speaking time on the constitution day in connection with public statements made by a number of the Government ministers, including the Prime Minister. This attracted broad media attention and wide exposure of the issues of democracy and integration.

Moreover, a number of other initiatives contain elements of intercultural dialogue. This includes among others the role model campaign "We need all youngsters" aiming at attracting minority youth to the educational system, the Government Action Plan to Promote Equal Treatment and Diversity and Combat Racism and subsequently the 10 million DKK (approx. 1.350.000 €) allocated in 2007 - 2010 to local activities and projects to further equal treatment and combat discrimination, the campaign "Show Racism the Red Card" aimed at fighting racism among players and audience, a European conference on active participation of ethnic minority

youth organised jointly with the Netherlands in September 2006 and a national Danish conference in August 2006 on Community and Diversity bringing together politicians, researchers, writers, practitioners and representatives from business and the education system. An additional conference will be held in 2007 focusing on active citizenship for ethnic minority women.

Furthermore, the Ministry of Refugee, Immigrant and Integration Affairs has recently initiated a diversity program to be implemented in the years 2006-2009. The main idea with the program is to expand the experiences from companies having good experiences with employment of workforce of foreign origin, to make other companies act likewise. Special funding has been allocated to increase diversity in the workplace and thus improve the situation for immigrants and descendants in the labour market. The Ministry has allocated approx. 3, 0 million Euros to the diversity programme.

Furthermore, as a part of the Danish Anti-Terror Action Plan, the Danish Police is engaged in a permanent dialogue with leaders and key figures from ethnic or religious minority groups partly to prevent radicalisation and recruitment to terrorism.

On the finance bill, a total of 10 million DKK (approximately 1.350.000 €) has been allocated for the period 2006–2008 for support to projects and initiatives organised by local authorities, civil society organisations, ethnic minority associations etc. to strengthen local dialogue on fellowship and diversity. Support to the EU Year for Intercultural Dialogue 2008 is also provided from this budget.

### **Recommendation 10 on the establishment of municipal integration councils;**

In connection with recommendation no. 9 above, the Commissioner recommends a restoration of the obligation for municipalities to establish integration councils in order to ensure the possibility of ethnic minorities to make their concerns and views known and thereby to fight discrimination and racism and to promote an inclusive society.

#### *Comments by the Danish Government*

As can be seen already from the comments above on recommendation no. 9, Integration Councils are only one of the channels available for ethnic minorities to enhance their political influence in the Danish society.

All Danish citizens, including citizens with an ethnic minority background, can seek political influence through elections to parliament and municipal authorities. Furthermore, all foreigners above 18 years are allowed to vote for and seek election to municipal assemblies three years after having been granted permanent residence permit. In fact, the number of members of municipal assemblies who are either third country nationals or descendants of third country nationals (non-EU citizens and citizens not coming from Norway, Iceland, USA or Canada) increased to 67 in 2005 from only 3 in 1981.

To strengthen the dialogue between the municipalities and the ethnic minorities even further, the Minister for Refugee, Immigration and Integration Affairs has supported the Council for Ethnic Minorities with 570.000 DKK (approx. 76.550 €) to arrange five regional conferences to discuss the opportunities and barriers for the integration councils with regard to their work, role and political influence. The aim of the conferences was also to establish more integration councils in the long run. The Council for Ethnic Minorities will continue to work with the recommendations and experiences from the conferences and will try to provide tools for the local integration councils, so that they can become more visible and obtain more political influence.

The Minister for Refugee, Immigration and Integration Affairs has also supported the Council for Ethnic Minorities with 450.000 DKK (approx. 60.435 €) to conduct an information campaign to promote awareness of the local integration councils and their potential and the Council for Ethnic Minorities, and to make the concerns and views of the ethnic minorities broadly known.

The local integration councils consist partly of members representing local ethnic minority associations, so as to ensure that the interests of immigrants and refugees are ensured at the local as well as the national level. The local integration councils advise the local authorities on issues related to the local integration politics and help to secure an effective and coherent effort to integrate ethnic minorities in local society.

The majority of the local integration councils either have a formal right to be heard in matters concerning the local integration policies or are consulted by the local authorities on such issues. The majority of the local integration councils therefore have a relatively close dialogue with the local politicians and authorities.

Local integration councils are provided with secretarial assistance and cost free facilities such as conference rooms by the local authorities. Most integration councils have separate budgets.

Until 1 January 2004, the establishment of local integration councils was mandatory for the municipalities if 50 citizens in a municipality requested it by a written form. It is correct that the establishment of local integration councils is no longer mandatory, as the Danish Government emphasises the autonomy of local governance enshrined in the Constitution. It should be underlined that this flexibility was requested by local authorities in many municipalities and by Local Government Denmark (KL) – the interest group of which all 98 municipalities in Denmark are members. By making advisory councils voluntary, integration councils become highly prioritised partners of dialogue for the local authorities. It furthermore ensures the active support from the individual local authority towards the local integration council and is consequently thought to increase their actual influence.

Even though it was made a voluntarily option for the municipalities to establish integration councils in 2004, it has not directly resulted in a decrease in the number of local integrations councils. When a municipality decides to discontinue the integration council it is primarily justified by the lack of interest and participation among the ethnic minorities themselves.

Therefore, it should be taken into account that the aim is to ensure real influence and participation by the councils and not in itself to ensure a high number of councils.

Currently, 42 local integration councils are operative in all 98 municipalities, including in all major cities in Denmark. This represents an increase in the coverage of integration councils in the municipalities compared to last year (2006). The Minister for Refugee, Immigration and Integration Affairs will this year award the best integration council with an 'Integration award' to increase the visibility of the local integration councils.

**Recommendation 11 on the ratification of the European Social Charter, the signing and ratification of the 1991 Protocol amending the European Social Charter, the ratification of the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints and the signing and ratification of the additional Protocol 12 to the ECHR.**

*Comments by the Danish Government*

Denmark has not ratified the revised European Charter and the two protocols mentioned due to the fact that the Government finds that there is a possible conflict between certain provisions of the Revised Social Charter and various Danish laws and the fundamental model of collective agreements on the labour market. In addition to this, Denmark has hesitations with respect to the general anti-discrimination clause in art. E, which is open-ended.

The Government finds that the extent of the Contracting States' obligations under Protocol 12 to the ECHR are very uncertain. The Danish Government has therefore decided to await the case-law of the European Court on Human Rights on the interpretation of Protocol 12 ECHR before it decides whether or not to ratify the protocol.

**Recommendation 12 on setting up an institution in Greenland for the detention of serious criminals in need of psychological treatment.**

The Commissioner expresses his understanding for the serious difficulties to build a highly specialised institution with the necessary infrastructure and resources for criminals in need of psychological treatment in Greenland. However, he reaffirms his predecessor's recommendation to set up such an institution.

*Comments by the Danish Government*

A report on Greenland's Judicial System was handed over to the Danish Government and to the Greenland Home Rule by the Commission on Greenland's Judicial System in August 2004. The Danish Government and the Greenland Home Rule will in the nearest future take the last steps in order to implement the various proposals and recommendations made by the Commission, including a proposal to set up an institution in Greenland for the detention of serious criminals in need of psychological treatment.

### **Recommendation 13 on the independence and the powers of the Police Complaints Boards.**

Reference is made to para 62 of the draft Memorandum concerning investigation into allegations of improper behaviour by the police.

#### *Comments by the Danish Government*

It should be noted that the Danish Government informed the Commissioner's representatives that the Government has set up a broad-based committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers. The report of the committee is expected by mid 2008.

### **Recommendation 14 on residence permits to victims of trafficking who cooperate with the authorities**

The Commissioner recommends that victims of trafficking who cooperate with the authorities be granted a temporary, if not permanent, residence permit.

#### *Comments by the Danish Government*

The Government does not support the Commissioner's recommendation of granting a residence permit to foreigners who are victims of trafficking.

Like all other foreigners, foreign victims of trafficking can apply for asylum in Denmark.

The Aliens Act in its implementation in practice allows the authorities to abstain from deporting victims of trafficking in order for them to testify in the investigation or criminal proceedings regarding trafficking.

In para 6 of his draft memorandum, the Commissioner mentions that the Government on 1 March 2007 has launched a new action plan dealing with any type of human trafficking. This plan aims to ensure holistic and nationwide efforts directed at victims of trafficking also in the future. The key aspect is the outreach and help to the victims, but the plan also comprises a strengthening of the work of the police and of international cooperation.

An element in the action plan is the possibility to offer a 100-day reflection period to victims of trafficking who accept and assist in an offer of assisted voluntary return. In this respect the Danish Government would like to clarify the position for victims who cooperate with the authorities and are consequently allowed to stay in the country for up to 100 days: Anyone who is a victim of human trafficking will, upon request, normally be granted a travel deadline of 30 days, with an option to further extend the travel deadline upon request. This is done so that support and counselling can be provided to the individuals in question. Victims who are EU

nationals may, as a starting point, stay for up to 3 months in Denmark. This reflection period will be extended so that human trafficking victims, who collaborate on a prepared return, may be granted a travel deadline of up to 100 days.

This type of assisted voluntary return comprises psychological, legal and social welfare help as well as health treatment, while the victim of trafficking is staying in Denmark. And whenever possible, it will be assured that the victim of trafficking is received by an organisation in his or her home country. The new action plan will ensure increased focus on establishing cooperation with NGOs and social authorities in the countries of origin of the victims of trafficking.

The Government is of the opinion that the initiatives in the new action plan cater for the situation of the victims trafficking.

### **Recommendation No. 15 on ratifying the Council of Europe Convention on Action against Trafficking in Human Beings**

The Commissioner recommends that Denmark ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

#### *Comments by the Danish Government*

The legal changes necessary for ratification of the Council of Europe Convention on Action against Trafficking in Human Beings were made by bill no. 504 of 6 June 2007, adopted by Parliament on 1 June 2007. On 1 June 2007, the Parliament also accepted that the convention be ratified.

Following this, the Government plans to ratify the convention during the summer of 2007.

### **Recommendation 16 on granting a residence permit to foreign women who are victims of domestic violence in Denmark even when they have lived less than two years in the country.**

The Commissioner recommends that a (temporary) residence permit to foreign women who are victims of domestic violence in Denmark be granted even when they have lived less than two years in the country.

#### *Comments by the Danish Government*

The Government finds no reason to amend the rules regarding residence permit to foreign women who are victims of domestic violence in Denmark.

The Government would like to underline that when deciding on revocation or refusal of prolongation of a residence permit to a foreign woman who has been subjected to violence by her spouse or cohabitant, the immigration authorities always – i.e. no matter how long the woman has been living in Denmark – have to assess all the factual circumstances of the case. This i.a. implies that it has to be assessed whether circumstances exist that would make a decision on revoking or refusing prolongation of the residence permit particularly burdensome.

When assessing whether revocation or refusal of prolongation of the residence permit should not be the result of a separation of the spouses or cohabitants, the factors outlined in section 26 of the Aliens act should be taken into account, i.a. the children of the foreigner, the situation in the foreigner's country of origin, i.a. whether the alien upon return will be ill-treated or outcast due to the cessation of the marriage or cohabitation, and/or whether the person in question will be without any family and/or social network in the country of origin. This applies in particular when the general conditions for single women in the country of origin are deemed to be difficult, or when the couple was married already in the country of origin. In assessing the case, a relevant factor can be the length of stay in Denmark of the foreign woman subjected to violence.

In para 76 of the draft memorandum, the Commissioner mentions a two-year limit. This is a rule of positive presumption. According to this rule, a foreigner who substantiates that he or she has been subjected to violence and has lived in Denmark for a minimum of approximately two years and has tried to integrate into Danish society, is presumed to have such an affiliation to Denmark that revoking or refusing to extend the residence permit is assumed to be particularly burdensome. Therefore, this foreigner can normally expect to retain his or her residence permit – no matter end of marriage or cohabitation.

Based on this, it should be underlined that also in cases regarding women with less than two years stay in Denmark, an assessment has to be made of the ties of the foreigner to Denmark.

In the fall of 2006, the Minister for Refugee, Immigration and Integration Affairs asked the Danish Immigration Service to go through those cases, where foreigners have argued that they are no longer living together with their spouse due to domestic violence.

The Danish Immigration Service has informed the Minister that there are no limits as to what can be accepted as proof for such violence. In line with the *travaux préparatoires* to the Aliens Act, all kinds of documentation can be put forward, i.a. statements for doctors or of crisis centres, emergency rooms or police reports etc. In practice it has no impact on the decision on revocation or refusal of extension of the residence permit if some time lapses between the violence happened and the termination of cohabitation was committed.

Based on this information, the Government sees no reason to changing the mentioned practice.

The immigration authorities have drafted guidelines for the caseworkers in order to ensure that the practice described above is always taken into consideration when deciding on these cases.

In order to enhance the legal position of persons subjected to violence, the Government has recently changed practice in these cases. This implies that a foreigner subjected to violence can stay in a crisis centre for 30 days without the immigration authorities starting a procedure of withdrawal of the residence permit.

Moreover, the Government has launched an action plan to fight domestic violence. The plan runs from 2005 to 2008.

Based on the action plan, an information campaign has been carried through in 2005 and 2006. The campaign was directed towards women from ethnic minorities who were informed about their economic rights and their rights in respect of their children, divorce, and their rights as victims of domestic violence.

Further, five information films have been produced aimed at women belonging to ethnic minorities. The films are about these women's rights and the possibilities of receiving help from the police, crisis centres, local authorities and lawyers. The films are available in nine different languages.

In addition, employees at crisis centres have received education about meeting and working with women from ethnic minorities who have been subjected to violence.

The National Organisation of Shelters for Battered Women and their Children (LOKK) offers counselling for young people and for professionals. LOKK has received funds to employ staff, in particular to deal with honour related crime.

The Minister of Refugee, Immigration and Integration Affairs would like to launch additional information campaigns with LOKK aimed at informing foreign women staying in Denmark due to family reunification about their rights thereby trying to avoid that the husband keeps his wife isolated or in ignorance.

### **3. Other comments by the Commissioner:**

In para 22 of the draft Memorandum, the Commissioner notes that the delegation of the office of the Commissioner visiting Denmark in December 2006 heard complaints about difficulties encountered by applicants for family or spousal reunification in reaching the Immigration Service and receiving information on their cases. Other complaints concerned the length of the processing of visa applications. The delegation was informed that the Danish Ministry of Integration had launched in spring 2006 an Internet portal with information on relevant legislation and case law to increase transparency for the benefit of (potential) applicants, lawyers and other interested parties. The Commissioner in para 24 notes that he is pleased to note this development and commends the Danish authorities for their efforts to improve the information on and the transparency of the use of discretion in the determination of individual applications for family reunification, including by refugees.

#### *Comments by the Danish Government*

The Government would like to add a few additional comments on the speed and transparency in case handling:



Generally letters to the Danish Immigration Service are answered within 15 working days. From 1 June 2006, the opening hours of the telephone service of the immigrations officials of the Danish Immigration Service were extended to 6 hours a day. In average, 96 % of all incoming calls have been answered by the Danish Immigration Service in the last 7 months of 2006. The high number of answered calls is expected to be maintained in 2007. The telephone service is managed, so that individuals can receive information and guidance on their cases. Before the extension of the telephone service 55-65 % of all incoming calls was answered.

As regards visa applications, the average processing time of visa applications in 2005 and 2006 was 44 days and 49 days. The processing time in 2007 averages 40 days at the moment, but 80 % of all applications are processed within 22 days. It is expected that the average processing time for visa applications for the year of 2007 will be 35 days. The processing time for application for extensions of visa is expected to be only 30 days for 2007. This processing time applies to approximately the 20 % of the visa applications handled by the Danish Immigration Service. The remaining approximately 80 % are handled by diplomatic missions within approximately one week.

However, two incidents in 2006 in particular caused a slowing down of processing times of applications for visa and residence permits, which as a general rule are lodged at diplomatic missions abroad. Firstly, the burning down of Danish embassies during the controversy based on the drawings of the Prophet Mohammed published by a Danish newspaper resulted in a change of the usual working routines in the visa area at the end of 2005 and start of 2006. Resources had to be redirected to give guidance to people in the crisis areas. Secondly, the war in Lebanon resulted in the biggest evacuation of Danish nationals since World War II, and special attention had to be put to this evacuation, which drained substantial resources from both the embassies in the area and from the Danish Immigration Service.

Copenhagen, 29 June 2007