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## **Memorandum to the Danish Government**

### **Assessment of the progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights**

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

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## I. INTRODUCTION

1. The first Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Denmark on 13-16 April 2004 at the invitation of the Danish Government. In the report of his visit<sup>1</sup> he made recommendations to the Danish authorities to help address what thought to be shortcomings in the protection of human rights.
2. To assess progress made in implementing the 2004 recommendations, a delegation of the Office of the new Commissioner, Thomas Hammarberg, ("the delegation") visited Denmark on 5-7 December 2006<sup>2</sup>.
3. The delegation met with officials from all the authorities, bodies and establishments it had wished to discuss with<sup>3</sup> and visited all the places it had asked to see<sup>4</sup>.
4. The Commissioner expresses his gratitude to the Danish authorities for the constructive co-operation and generous hospitality provided to his delegation<sup>5</sup>.
5. The present memorandum follows the order of themes as presented in the 2004 report and is built upon information gathered before, during and after the visit.

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

### **Clarity and certainty of the legal rules on family reunification**

6. In 2004, the Commissioner was concerned that the total overhaul operated by the 2002 Aliens Act and its subsequent amendments at times lacked clarity and that the frequency of the amendments bore the risk of jeopardising the principle of legal certainty, tendencies that were reinforced by the room left to discretionary decisions.

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<sup>1</sup> Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, 8 July 2004, on his visit to Denmark, 13-16 April 2004, CommDH (2004)12. Hereafter "the 2004 report".

<sup>2</sup> Mr Markus Jaeger, Ms Irene Kitsou-Milonas and Mr Stefano Montanari.

<sup>3</sup> The officials met were from the National Council for Children, the Department of Prison and Probation, the Office of the Greenland Home Rule, the Ministry of Foreign Affairs (Human Rights Unit), the Complaints Committee for Ethnic Equal Treatment, the Danish Refugee Board, the Ministry of Family and Consumer Affairs, the Ministry of Social Affairs and Gender Equality, the Ministry of Education (International Unit), the Ministry of Refugees, Immigration and Integration Affairs, the Council of Ethnic Minorities, the Ministry of the Interior and Health, the Ministry of Justice, the Police Complaints Board, the Representation of the Faeroe Islands in Denmark. The delegation also met with the Parliamentary Ombudsman, officials from the Danish Institute for Human Rights, the Chairman of the Danish Press Council, the members of the Danish Delegation to the Parliamentary Assembly of the Council of Europe, members of the Danish Parliament (Legal Affairs Committee and Integration Affairs Committee). The delegation also had a meeting with representatives of major non governmental organisations operating in Denmark; that meeting was kindly hosted by the Danish Institute of Human Rights.

<sup>4</sup> The delegation visited the Vesterbro New School, the "Kvindehjemmet" in Copenhagen (Shelter for women and children victims of domestic violence), the Reception Centre in Sandholm and the Sandholm Foreigners Detention Centre, the Glostrup Hospital (Psychiatric and Forensic Psychiatric Departments), the prison of Herstedvester.

<sup>5</sup> In particular, the Commissioner is grateful to Ms Marianne Hoffmann, Minister Counsellor at the Ministry of Foreign Affairs, for the time she devoted to the preparation of the visit of his delegation.

**Minimum age requirement of 24 years of both spouses for their reunification in Denmark**

7. The Danish authorities have explained that the 24-year age requirement is meant to protect young adults from forced marriages since it is felt that the older a person is the greater the capacity of resistance.
8. In 2004, the Commissioner pointed out the case law regarding Article 8 of the European Convention on Human Rights (ECHR) (right to family life and private life) and expressed the opinion that the restriction in place went beyond target in that it seriously limited the right of persons of marriageable age to marry and to found a family in Denmark, including many persons who are not parties to a forced or arranged marriage. Other initiatives, like those contained in the Government's action plan against forced and arranged marriages, could bring very positive results as regards the aim pursued. The Commissioner asked for reconsideration of the age limit.
9. In its reaction to the 2004 report the Danish government did not agree on the appropriateness to lift the said age requirement and has, consequently, not done so. At the same time, funds for the above-mentioned action plan against forced marriages were sharply reduced in 2005-2007<sup>6</sup>. This being said, the delegation also met individuals and was informed of media reports who mentioned cases where the additional time for reflection imposed on the foreign partner was deemed beneficial for a critical assessment of the planned marriage. It was, however, generally admitted that no sound statistics on the impact of the age limit on the number of forced marriages are available.
10. On his side, 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. He is not convinced of the general assumption that individuals from countries who need a residence permit to live in Denmark are less apt to judge on the well-foundedness of their intention to marry than Danes of the same age. He also wonders why, if a differential were to exist at all, it would be of six years<sup>7</sup>. He notes that the EU Directive of 22 September 2003 regarding family reunification allows for setting an age limit of 21 year<sup>8</sup>. The Commissioner recommends to reduce the minimum age requirement in Denmark to that limit, or below.

**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 with another country for granting a residence permit to his or her foreign partner**

11. In 2004, the Commissioner considered that this provision did not guarantee the principle of equality before the law because it treated differently Danish citizens depending on the period during which they have held citizenship. He noted that in

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<sup>6</sup> From 10.5 million DKK (approximately 1.4 million euros) in 2003 to 2.9 million DKK (approximately 390,000 euros) in 2005.

<sup>7</sup> Under Danish law, marriage can be contracted between persons of the age of 18 years. Under exceptional circumstances, municipalities can allow a marriage also to people under 18.

<sup>8</sup> The Danish authorities have pointed out, in their reaction to the 2004 report, that they made a reservation on the Directive and are, thus, not legally bound by it.

practice the provision was affecting particularly first and second-generation immigrants who often have to wait until they are in their late 30's before they can settle in Denmark with a foreign partner who needs a residence permit. The possibilities of exceptions from that rule were not considered sufficient safeguards for ensuring the right to family life and for securing refugees' spouses reunification. The Commissioner recommended reconsidering the provision.

12. In its reaction to the 2004 report the Government of Denmark considered it had no legal obligation to change the rule in question as the possibility of exceptions was foreseen in the law and allowed to deal appropriately with concrete cases involving, for example, refugees. Consequently, the 28-year citizenship requirement has not been changed.
13. The Commissioner cannot see how one can dispute that the requirement in question does introduce a different treatment of Danes who have held citizenship as of birth and those who have obtained it later on in their life and normally have to wait another 28 years before they can live in Denmark with their foreign partner. He notes that, in a meeting of his delegation with the Legal Affairs Committee of the Danish Parliament, it was conceded that there was indeed a discriminatory effect of such legislation and that this corresponded to a political decision. The Commissioner recommends that the Government reduce the very high threshold of 28 years.

#### **Economic conditions of family reunification**

14. The Commissioner three years ago was concerned by the fact that, in addition to the conditions already mentioned, the economic situation of applicants was taken into account for granting family reunion and for maintaining the right to a residence permit for the members of the family. This could lead to a violation of the principle of equality before the law and of Article 14 of the ECHR, which prohibits discrimination on grounds such as property. He also pointed out that the constant threat of separation from one's spouse or of having to move abroad in order to continue family life created strain and anxiety and was not propitious for integration.
15. Since 2004 the economic conditions have not been done away with. There have been developments both in the direction recommended and in the opposite sense. Among the economic conditions is the obligation for the applicant who lives in Denmark to provide a bank guarantee which is released only after seven years and insofar as it has not been used for social assistance to the couple. Contrary to the Commissioner's recommendation, in 2006 the amount requested was increased from 50,000 to 56,567 DKK (approximately 7,500 euros as of April 2007). On the other hand, in line with the recommendations, the 2005 Aliens Consolidation Act provides now that this economic requirement can be halved upon request if the foreigner passes a final Danish language test or provides evidence of having completed a course of Danish education. It would seem that no changes have been introduced as concerns the condition for the person demanding family reunification to have a regular income and to occupy (and maintain) an adequate accommodation.
16. Even though economic conditions may well be intended to make sure that a successful integration of non-EU nationals in the Danish society can take place in good material circumstances, the Commissioner considers that these measures are most of all likely to result in indirect discrimination of minority and vulnerable groups. Because these are more likely than others to have difficulties in fulfilling the conditions. In addition, as regards the bank guarantee, it should be considered that this requirement puts the applicants in the hands of private entities (commercial banks) who may or may not grant the financial guarantee required.

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17. The Commissioner recommends that the Danish Government remove the requirement of a bank guarantee from the list of economic conditions for family reunification in order to avoid discrimination on the grounds of economic conditions.

### **Maximum age limit of 14 for the family reunification of children**

18. Since 2004, the legal rule in Denmark is that the right to family reunification of children ends when the child turns 15. Waivers to the rule can be granted under Article 9(c) of the Alien's Act. This possibility, the Government argued, allows to take care of the best interest of the child in individual cases, thus keeping the Danish legislation in line with the basic principle of the UN Convention on the Rights of the Child which holds that a child is a human being below the age of 18 and should be permitted to grow up in a family environment. In his report, the Commissioner judged "incongruous and certainly dissuasive" the fact that non-eligibility to live with the parents was made the rule in Denmark and the possibility to do so left to be the exception. Such presumption was the exact contrary of that of the Rights of the Child Convention. Also, it failed to secure the legal certainty that ought to surround the determination of fundamental rights.
19. The Government explained that the reason for the legislation was to protect children from being sent on so-called "re-education journeys" to their parents' country of origin, a phenomenon it judged dangerous for the integration in Danish society. The Commissioner pointed out that no reliable data on this phenomenon had been provided and that the provision affected all children and families, including those who did not resort to a practice that was judged "fairly unusual" by the Council of Ethnic Minorities. He "strongly encouraged" the Danish Government and the Parliament to reconsider the provision.
20. Today, the Commissioner regrets that the Danish Government has not given suit to the recommendation made in 2004. He considers that 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 effect 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 where the child lives with the parents. In any event, the Commissioner 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 the child, unless the contrary is proven.

### **The rights of refugees to family reunion**

21. One of the Commissioner's recommendations made in 2004 was to ensure that the right of refugees to family reunion was clearly stated in the law.
22. In line with the Commissioner's 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. However, the delegation 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.

23. 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.
24. The Commissioner 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.

### **The composition of the Refugee Board**

25. In the 2004 report the Commissioner recommended that the possibility of appealing negative asylum decisions “before a qualified and independent authority” be ensured; as a minimum, the original composition of the Refugee Board should be restored. Indeed, the Commissioner regretted that the membership of the Refugee Board was reduced by the reform of the Aliens’ Act with representatives of the Danish Refugee Council and of the Ministry for Foreign Affairs being removed.
26. In line with the first part of the Commissioner’s recommendation, the 2005 Aliens Consolidation Act (echoed by the Board’s Rules of Procedure) provides for a clarifying amendment asserting the independence of the members of the Refugee Board and providing that they can only be removed by judicial decision. The Commissioner highly welcomes that the independence of the members of the Refugee Board has been positively affirmed.
27. The Commissioner agrees with his predecessor that 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 Board would reinforce and broaden its collective expertise.

### **Visit to the Sandholm reception and foreigners detention centres**

28. In 2004 the Commissioner visited the Sandholm centre. He observed that the conditions in all respects were commendable but was concerned by the asylum and immigration statistics, which revealed the extent of the restrictions of new arrivals.
29. The delegation visited both the Sandholm reception centre and the foreigners’ detention centre (where it had the possibility to speak in private with detainees). It also visited apartments for families as well as the school run by the Danish Red Cross with state financing and had the opportunity to talk with the Director of the Centre and a number of staff during the visit. The delegation found that the material conditions both at the reception centre and the detention centre were commendable. It was informed that in June 2006 the Government had allocated additional appropriations to the various asylum centres. The delegation was, however, made aware of two sets of concerns.
30. The first concern is the length of stay in the centres. An estimated 40 per cent of the asylum-seekers in Denmark stay more than three years in reception centres. Some of the people met in Sandholm had spent 11 years of their lives in Danish centres,

isolated from the outside world<sup>9</sup>, after final refusal of a residence permit which they had requested on one ground or another and in the impossibility of deporting them. Living in a stalemate between the authorities' insistence on deportation and the impossibility to do so for a host of technical reasons (often including the foreigner's lack of cooperation, as pointed out by the Government), finally rejected foreigners nowadays have to face the prospect of having to stay in the Danish centres for what could be the rest of their lives<sup>10</sup>. This results often in serious consequences for their (mental) health. The delegation was informed about a considerable increase in the number of suicide attempts in the centres, alcohol addiction and a steep rise of medication expenses.

31. The second issue of concern is the prolonged stay of children in such conditions. Of the 2,374 inmates of Denmark's reception centres, around 400 are children. The Minister for Refugees estimated that 220 children have been held in reception centres for over four years, 97 of them for between three to four years. Revisions of the Aliens Consolidation Act and the Integration Act have improved the legal status of asylum-seeking children and ensure that more attention is paid to their needs. The delegation could witness that highly committed personnel try their best to offer quality schooling and social services to the children in the centres. Some children are allowed to attend schools outside the centres. But, as the delegation was told, there could be no doubt that their prolonged stay in the centres in the company of desperate adults puts huge mental strain on the children. In addition, being compelled to move from one centre to another prevents them from establishing durable relations both with other children and the adults (staff) who take care of them.
32. The Commissioner welcomes the commendable material conditions secured by the Danish authorities to the foreigners in the Sandholm reception centre and the particular effort made for the children there by devoted and qualified personnel. But he 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. While recognizing the legal right of the Danish Government to insist on the deportation of irregular migrants, the Commissioner points out the authorities' duty to safeguard the physical and mental health and the dignity of human beings in all circumstances and recommends to try to find alternative solutions to unlimited confinement of adults and children in reception centres.

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<sup>9</sup> The Danish Government has indicated that this statement 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."

<sup>10</sup> The Danish Government has made the following comment on this observation: "[T]he 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.



### III. THE FIGHT AGAINST DISCRIMINATION, RACISM AND EXCLUSION

#### **The Council of Ethnic Minorities**

33. In his 2004 report the Commissioner expressed satisfaction with the creation of the Council of Ethnic Minorities and the work done by it. He recommended a more prominent role and greater resources to that institution.
34. For 2007 the Government has allocated additional funds (now approximately 67,000 € compared to 50,000 € in 2004) to the Council of Ethnic Minorities. The chairman of the Council told the delegation he could not complain about lack of financial means or Government attention. The Minister for Refugees was showing readiness to help the Council in becoming more visible in the public debate and involved it in dialogue with all sorts of authorities. The Council had, of course, only a consultative function.
35. The Commissioner expresses his satisfaction with the measures taken and encourages the Danish authorities to continue providing effective and adequate support to the work of the Council of Ethnic Minorities and to take into consideration the views expressed by it.

#### **Promoting an inclusive society**

36. Three years ago the Commissioner recognised the emphasis Danish authorities placed on the need to strengthen the fight against discrimination and racism and that important initiatives had been launched in that respect. He took note, however, that a number of human rights organisations felt that occasionally there was a lack of distinction between assimilation and integration (an assertion that was strongly rejected by the Government). The Commissioner found in 2004 that greater emphasis could be given to the positive aspects of the preservation of minority cultures and expressed concern about the frequent expressions of strong anti-immigrant statements by certain politicians, as well as about the fact that a frequently distorted and distrustful image of ethnic minorities was reflected in the public debate and in the media. As a consequence, the Commissioner recommended to strengthen efforts to promote an inclusive society and combat discrimination and intolerance.
37. The delegation was informed that the Danish authorities have launched various initiatives to better address discrimination, racism and exclusion. 10 million DKK (approx. 1,34 mill. Euros) have been allocated in 2007-2010 to further promote equal treatment and diversity and combat discrimination. The 3-year campaign "Show Racism the Red Card" aims at fighting against racism in football and society. The Danish police stations have improved their performance in registering cases of racially motivated violence, vandalism and harassment. In the beginning of 2005, Police started a new campaign ("Nightlife for every one") providing extra police on the street to stop the discrimination that minority youth experience during nightlife. The Danish Security Intelligence Service (PET) is working towards improving the system for reporting racist incidents. Several politicians said they considered calling for an awareness campaign to improve immigrants' confidence in reporting to the police. In 2007 the Prosecutor's Office is to start monitoring court practices with regard to the criminal code provisions allowing racist motivation to be taken into account as an aggravating factor. Also, the Government has ratified the Council of Europe Additional Protocol to the Convention on cyber crime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

38. While these initiatives are highly appreciated, the Commissioner feels that a number of concerns still needs to be addressed to foster a more inclusive society. For instance, under Act n° 361 of June 2002, only persons who have legally dwelled in Denmark for at least seven years out of the preceding eight years are entitled to full cash allowance benefit. All the others, including Danes, receive only a so-called "starting allowance". It amounts to between 56 and 73 per cent of what is considered to be a discount budget for life in Denmark. According to Amnesty International, 64 per cent of those who receive the starting allowance live in poverty. This rule is intended to entice beneficiaries of social benefits to seek employment. But it has been criticised because of the risk of creating poverty and as a cause of indirect discrimination against lawful foreign residents of minority origin insofar as, in practice, they find it more difficult to find a job than Danes in the same situation and, consequently, have to live longer than others on the "starting allowance". Such situation was deemed in violation of Art. 13.1 of the European Social Charter (ESC)<sup>11</sup> and of Art. 23 of the Convention relating to the Status of Refugees (UNCSR)<sup>12</sup>. NGOs have pointed out that the practice contributes to marginalizing refugees.<sup>13</sup>
39. The delegation visited the Vesterbro New School, where, reportedly, foreign pupils were separated from Danes during curriculum activities. The delegation talked at length with the headmaster and two teachers and was informed about the efforts made to integrate foreign pupils, also by way of extra-curriculum activities. Moreover, it was informed about the free mother tongue classes that the school offers as extra-curriculum activities for bilingual pupils. The delegation was positively impressed by the commitment and the efforts undertaken by that school in promoting the integration of foreign pupils.
40. Offering mother tongue teaching is compulsory only for the benefit of "bilingual students"<sup>14</sup> from the European Union and European Economic Area countries, the Faeroe Islands, Greenland and the German minority. The municipalities' obligation to offer mother tongue classes also to bilingual students from other countries has been repealed and municipalities no longer receive financial support for such purpose. As a consequence, 11 out of 20 of the largest municipalities in Denmark do not offer minority children mother tongue education any more while five municipalities demand payment. The Commissioner fears that the reduction in the offer of free mother tongue classes results in a loss of minority identity and favours indeed assimilation rather than integration.
41. The delegation was informed that since January 2004 municipalities are no longer obliged by law to establish an integration council. This reduces the possibility of ethnic minorities to make their concerns and views known.

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<sup>11</sup> European Committee of Social Rights, Conclusions XVIII-1 (Denmark), article 1, 5, 6, 12, 13, 16 of the Charter (Strasbourg: n. a.) pp. 21-23; The Danish Institute for Human Rights, Supplementary Report to Denmark's Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination (Copenhagen: June 2006) p. 4.

<sup>12</sup> UN Committee on the Elimination of Racial Discrimination, Consideration of Reports submitted by States parties under Article 9 of the Convention. Concluding observation: Denmark (New York: August 2006), p. 5; the Danish Institute for Human Rights, Supplementary Report to Denmark's 4th Periodical Report to the UN Committee on Economic, Social and Cultural Rights 2004 (Copenhagen: October 2004) p. 2; Documentary and Advisory Centre on Racial Discrimination, Submission to the UN Committee on the Elimination of Racial Discrimination at its 69th session on the consideration of the 16th and 17th periodic reports of Denmark (Copenhagen: 8 June 2006) p. 2; and ENAR, Shadow Report 2005. Racism in Denmark (n. p.: 2006), p. 15.

<sup>13</sup> International Helsinki Federation for Human Rights, Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006 (Vienna: 2006) pp. 147-148.

<sup>14</sup> « Bilingual student » or pupil is the term that designates a child who has at least one foreign parent.

42. As regards gender equality, the Danish legislation is not applicable in the Faeroe Islands and Greenland and the rights enshrined in the UN Convention on the Elimination of Discrimination against Women (UNCEDAW) have not been fully incorporated in the legislation of those territories where information about the situation of women is still too limited.
43. The Commissioner pays tribute to the various initiatives of the Danish authorities to fight discrimination and racism and to promote an inclusive society. To help identify and adopt additional measures for that purpose, the Commissioner recommends the government to grant social assistance under the same criteria to every person residing in Denmark, to bring the situation of women in the Faeroe Islands and in Greenland in line with that in Denmark, to design positive initiatives to promote inter-religious and intercultural dialogue and promote a fair image of ethnic minorities in the Danish society, to restore the obligation for municipalities to establish an integration council as well as to ratify the revised European Social Charter, sign and ratify the 1991 Protocol amending the European Social Charter, ratify the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and to sign and ratify the additional Protocol 12 to the ECHR.

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

44. In the 2004 report, concern was expressed over a number of reports of discrimination against Roma regarding access to employment, housing and education. The Commissioner was particularly concerned to learn of difficulties faced by Roma children in accessing education. In the municipality of Elsinore there were special classes for 30 Roma children. The Commissioner pointed out that, on a number of grounds, segregate schooling was detrimental to the Roma children and asked for alternative solutions to be found. He recommended ensuring equal access to quality education for all children, countering the segregation of ethnic minority children, including Roma children.
45. The Danish Ministry of Education found that the municipality of Elsinore had violated the Act on Public Schools by establishing special classes for pupils with a high absence rate. As a consequence, these classes were closed by the summer 2005.
46. The Commissioner welcomes the measures adopted and invites the Danish authorities to actively involve Roma people in issues that are relevant to them.

#### **IV. CRIMINAL JUSTICE, THE POLICE AND THE PRISON SYSTEM**

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

47. The Commissioner observed in 2004 that, further to international criticism, isolation for remand prisoners ordered by the courts had significantly decreased and that the same was true regarding the use of isolation as a disciplinary punishment by decision of the prison director. But it seemed to him that the use of isolation was still fairly common in Denmark.
48. In 2005, the number of cases of solitary confinement by court decision was again on the rise and concerns arouse about the possibility that such a measure could be adopted also as regards minors. Although the 2004 changes in the Administration of Juvenile Act provide clear, exhaustive rules for measures that may be taken against minors under 15, the delegation was informed about concerns over the practice of solitary confinement and imprisonment in youth institutions of minors below 18 with serious behavioural problems. It was explained to the delegation that minors might

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find themselves alone in a prison (i.e. with no other minors, while being separated from the adults as a requirement of the European prison rules) because of the mere fact that few minors are imprisoned and that those are often spread over the country's prisons due to the necessity to bring them before the judges in the places where they are indicted.

49. The delegation was informed by the Ministry of Justice officials it met that a bill amending the provisions on solitary confinement of the Administration of Justice Act would enter into force on 1 January 2007. The main purpose of the amendment is to decrease the number of solitary confinements by court decision and to further limit their duration. In particular, the amendments provide for a tightening of the rules for implementing and extending solitary confinement of detainees under the age of 18, shorter time limits for solitary confinement for detainees of all ages and stricter controls over the request for extension of isolation; introduction of a maximum time limit of six months (to be exceeded only under particular circumstances), the obligation for Court to state reasons more specifically when ordering solitary confinement; an extension of the access to an oral hearing of appeals on solitary confinement and pre-trial court examination of the person charged and of witnesses for the purpose of lifting the solitary confinement, while requests for extension of solitary confinement will always have to be submitted in writing.
50. Regarding solitary confinement as a disciplinary measure the interlocutors of the delegation confirmed that there was now more restraint in using such measure and they underlined that the inmate concerned could bring the case to the court if the confinement lasted longer than 7 days.
51. Finally, as regards the absence of a definition and of an explicit prohibition of torture in the Danish Criminal and Military Criminal Codes, the delegation was informed that torture is covered by provisions on violence and threats and that in June 2006 the Minister of Justice asked the Penal Reform Council to examine the issue.
52. The Commissioner welcomes the new legal provisions that further qualify and narrow the scope of court decisions ordering solitary confinement and he expresses the hope that prison authorities in Denmark would show restraint in using solitary confinement as a disciplinary measure. The Commissioner is pleased that the discussion about introducing a definition of torture and its express prohibition in the Danish criminal codes has now started in Denmark.

**Security detention of indeterminate duration and “medical castration” (anti-hormone therapy)**

53. In the 2004 report the Commissioner flagged his concern that a prison sentence of indeterminate duration as established under the Danish law (“safe custody” under Article 72 of the Danish Penal Code) confounded the principle of legal certainty and he considered it of paramount importance that judicial review of such a sentence is available at reasonable intervals from the very outset. The Commissioner was informed that the way decisions of “safe custody” were handled and reviewed in Denmark indicated great caution and restraint on behalf of all the authorities involved.
54. The Commissioner was also informed of the use of the so-called “medical castration” of sex offenders held in safe custody, all of them at the Herstedvester Prison. Although this treatment was administered on a voluntary basis, the Commissioner was concerned by the pressure put on the detainee to accept it, since the treatment

was almost always a precondition for release on parole. The Commissioner believed it essential that the detainees were able to make an informed and free decision on the treatment and that its long-term side-effects were carefully studied.

55. The delegation was informed that at the time of its visit 33 detainees were kept in safe custody. These detainees were very serious offenders, including sexual offenders, and their dangerousness was assessed by a panel of experts including psychiatrists on the basis of which judges decide on whether or not to order or extend safe custody. Officials met by the delegation conceded, however, that for a detainee to be imprisoned without any time limit under the regime of "safe custody" does pose major problems for his or her mental health and behaviour and, by way of consequence, for the modalities of the detention itself.
56. Regarding the anti-hormone therapy as a way to put an end to or to avoid safe custody to sex offenders, a visit to the prison at Herstedvester gave the delegation a chance to learn about the results obtained so far in Denmark. These are encouraging: Since the mid-1990's according to data gathered by the Department of Prisons and Probation no single case of reoccurrence of sexual crime has been registered for offenders who were released on parole on condition to continue the medical castration treatment. As regards informed consent by the prisoner and the possibility to stop the treatment, it was underlined by the delegation's interlocutors that the various safeguards called for by the Commissioner in 2004 are being scrupulously granted.
57. The Commissioner welcomes the information he received from his delegation on the good conditions at the Herstedvester prison and on the encouraging results of anti-hormone therapy when practiced with numerous, strict safeguards. As concerns safe custody, the Commissioner reiterates his predecessor's concerns of principle and the absolute requirement that judicial review of such decision be carried out at short intervals on the basis of thorough expert reports and contradictory examination.

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

58. Three years ago the Commissioner was concerned by the fact that Greenland had no institution capable of hosting prisoners who have committed serious offences and are in need of psychological treatment under the safe custody regime. As a result convicts from Greenland had to be held in Denmark, far away from their friends and family. The Commissioner recommended to provide the necessary infrastructure and resources in Greenland. His concerns were shared by a number of interlocutors in the Danish authorities and his recommendation basically accepted.
59. At the Herstedvester prison the delegation was informed of the special measures taken to try to compensate for the distance that separates the Greenlanders detained there from their homeland and their family and found that the living conditions offered to them were as good as could be under the given circumstances. The delegation was also informed that the Parliament would discuss the issue in October 2007 in order to find a solution to the difficulties faced in setting-up an adequate establishment in Greenland, namely the need for adequate funds and the lack of qualified professionals available in Greenland or willing to move there. There was, however, an issue of financial burden-sharing between the Danish and the Greenlandic authorities.
60. The Commissioner understands 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. Therefore, he invites the Danish Government and, possibly, the authorities of Greenland to explore the possibility of setting incentives to attract professionals to Greenland and to find ways to allocate adequate funds for the building and the running of the institution.

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

61. In his report of 2004 the Commissioner noted concerns over the independence and effectiveness of the procedures for dealing with complaints against the police, including with respect to firearm incidents and deaths in police custody. Complaints are dealt with the Regional Public Prosecutors who must inform a Regional Police Complaints Boards consisting of two lay men and one lawyer and that delivers non-binding opinions to the Regional Public Prosecutor. The Commissioner noted that at local level Chief Constables represent both the police and the prosecution; in their latter function the Regional Prosecutors are their superiors. He concluded that given such close ties between the prosecution service and the police the independence and role of the Police Complaints Boards was vital in Denmark and his recommendation was to strengthen the independence and role of the Boards by awarding it greater influence over the activity of the prosecution service in investigating and deciding on complaints against the police.
62. The delegation discussed the issue with competent officials of the Ministry of Justice (which in Denmark is responsible for both law enforcement and the administration of justice) as well as the president of the National League of Police Complaints Boards. They informed that the Parliament was indeed considering changes regarding the composition and the role of the Police Complaints Boards but that, as the Commissioner had conceded in 2004, the matter was difficult.
63. The Commissioner insists on the importance of his predecessor's recommendation made three years ago that the independence and the powers of the Police Complaints Boards need to be strengthened in Denmark.

### **V. TRAFFICKING IN HUMAN BEINGS**

64. In 2004 the Commissioner hailed Denmark's efforts to raise public awareness of trafficking in human beings and to fight that crime effectively. As regards the protection of the victims the Commissioner noted that the emphasis was laid on the victim's swift return to the country of origin with "impressive" measures being taken to ensure their safety and their reintegration and help them restart their lives. However, he thought that further consideration should be given to the grounds on which victims of trafficking were allowed to stay in Denmark and the length of such stay. He recommended that permission to stay in Denmark be given automatically to witnesses for at least the duration of the criminal proceedings irrespective of whether they were staying lawfully or unlawfully in the country, rather than leaving such decisions to the discretion of the immigration authorities. The right to stay beyond the time of the criminal proceedings should also be considered as the threat of quick deportation made victims more reluctant to inform on traffickers and act as witnesses. The Commissioner also recommended to take into account the specific protection needs of children victims of trafficking for whom no particular measures were foreseen in the 2002 Government's Action Plan to combat trafficking.
65. In 2005, the Danish authorities added an appendix to the original action plan against trafficking to cover also specifically questions relating to children and to carry out additional initiatives. In 2006 the Danish authorities signed the Council of Europe Convention on Action against Trafficking in Human Beings.

66. In March 2007 the new Action Plan 2007-2010 was published. It covers all persons trafficked to Denmark and strengthens the efforts already undertaken to increase public awareness, improve domestic and international efforts, provide support and assistance to victims and take traffickers to justice. According to the Action Plan, victims are now granted a reflection period of 30 days (from 15 days in 2004) before they are returned to their country of origin. Victims who cooperate with the authorities may obtain an extension of up to 100 days. EU nationals may, as a starting point, stay for up to three months in Denmark.
67. Trafficked children may, as other aliens, seek asylum in Denmark. Special guidelines have been drawn up for processing children's applications. If a child's application is rejected, the child can still, in certain cases, be granted a residence permit if the situation in his/her country of origin is unsafe.
68. The Commissioner warmly welcomes the many initiatives undertaken to fight against trafficking in human beings and the fact that Danish authorities have set this fight as one of their priorities. He is glad to note that there are now specific provisions in the action plan to deal with trafficked children. However, he reiterates the recommendation to grant a temporary, if not permanent, residence permit to victims of trafficking who cooperate with the authorities. Also, he calls on the Danish authorities to ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

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

69. In the 2004 report, the Commissioner recommended adopting a legislation imposing tighter controls on the use of restraining measures in the treatment of psychiatric patients and introducing alternatives to long-term immobilisation. He referred to criticisms of the Committee for the Prevention of Torture and national human rights actors which questioned the use of immobilization and emphasized that long periods of restraints had no medical justification. The Commissioner welcomed the intention of the Minister for Interior and Health to address this issue in the revision of the Danish Psychiatric Act in 2005-2006, but called on the Minister to introduce alternatives to the use of long periods of immobilization without delay.
70. The delegation went to the Glostrup psychiatric hospital and spoke with the Director and several of his colleagues and visited the institution (which they found very commendable, by the way). The practitioners explained in detail the new Danish Psychiatric Act that was going to enter into force as of January 2007. It establishes the requirement of medical control of the necessity of an immobilisation every four hours and, if the immobilisation exceeds 48 hours, the need for a concurring opinion by a second medical doctor<sup>15</sup>.
71. The delegation was also told that, after the Commissioner's visit in 2004, a pilot project was launched to see if alternative measures to long-term immobilisation could indeed be used. The results of the project proved that this was the case to quite some extent. As a consequence, the use of immobilisation has now dropped significantly in some Danish psychiatric institutions.

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<sup>15</sup> In case of disagreement the view of the treatment doctor takes precedence. The practitioners met expressed satisfaction with the new Act except on one issue which they judged not realistic: The need of a formal medical check before starting a restraining measure does not take into account the fact that patients' crises occur most often rather suddenly and not necessarily at hours where several doctors are immediately available, leaving no time for formal prior double-check.

72. The Commissioner notes with appreciation that both the Danish legislators and practitioners have taken action in line with his predecessor's recommendations.

## **VII. VIOLENCE AGAINST WOMEN**

73. In the 2004 report, the Commissioner recommended the adoption of a more flexible approach in the granting of residence permits to foreign women who cease to live with their violent partners. He pointed out that such women were in a particularly vulnerable situation since the violent men frequently abused their fear of losing their residence permit in the event of the marriage or cohabitation being terminated, as persons who have come to Denmark for family reunification are normally subject to a 7-year residence requirement before they can apply for a permit in their own right. The Commissioner welcomed the possibility of exemption from that requirement for victims of domestic violence under the Danish Aliens Act but noted that there seemed to be significant difficulties in obtaining such exemption in practice.
74. The delegation visited the Kvindehjemmet in Copenhagen, the largest shelter for women and children victims of domestic violence, and found the conditions commendable. The centre hosted at that moment 41 women and 35 children, with ethnic women highly represented (almost 80%). The delegation was informed about the difficulties foreign women victims of violence have in obtaining a residence permit on their own right, thus becoming too dependent on the violent spouse. As a consequence of this dependency, some women decided to leave the centre and rejoin their violent partner. The delegation was also informed about the different pedagogical activities that the centre organised for children and was positively impressed by the commitment of the centre's personnel.
75. The delegation was informed that immigrants who leave a violent partner after having dwelled in the country for at least two years may apply for a residence permit and will normally obtain it. A study on the issue was expected to be available by the end of 2006<sup>16</sup>.
76. The Commissioner notes with satisfaction that, in line with the 2004 recommendation of his predecessor, exemptions from the 7-year residence requirement for obtaining a residence permit are indeed usually made for foreign spouses (and their children) who have dwelled at least two years in Denmark before quitting their violent partner. He recommends that the Danish authorities grant at least a temporary residence permit to victims of domestic violence in Denmark who have not yet lived for two years in the country.

## **VIII. SUMMARY OF RECOMMENDATIONS**

The Commissioner for Human Rights recommends that the Danish authorities *with respect to the situation of ethnic minorities, immigrants, refugees and asylum-seekers*

1. 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;

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<sup>16</sup> The delegation also received information on a number of other important government initiatives against domestic violence, such as the gradual use of restraining orders against the perpetrators. Under the Exclusion Act (with respect to which a recent study showed, however, a number of shortcomings) and the possibility for violent men to receive treatment.



2. reduce 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 with another country for granting a residence permit to his or her foreign partner;
3. remove the requirement of a bank guarantee of approximately 7,500 € from the list of economic conditions for family reunification;
4. raise the maximum age limit of 14 for the family reunification of children to 17 years;
5. add 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;
6. 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;

*with respect to the fight against discrimination, racism and exclusion*

7. 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;
8. bring the situation of women in the Faeroe Islands and in Greenland in line with that in Denmark;
9. design 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;
10. restore the obligation for municipalities to establish an integration council;
11. ratify the revised European Social Charter, sign and ratify the 1991 Protocol amending the European Social Charter, ratify the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and sign and ratify the additional Protocol 12 to the ECHR;

*with respect to criminal justice, the police and the prison system*

12. set up an institution in Greenland for the detention of serious criminals in need of psychological treatment;
13. strengthen the independence and the powers of the Police Complaints Boards;

*with respect to trafficking in human beings*

14. grant a temporary, if not permanent, residence permit to victims of trafficking who cooperate with the authorities;
15. ratify the Council of Europe Convention on Action against Trafficking in Human Beings;

*with respect to violence against women*

16. grant a (temporary) 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.