



CRI (99) 1

European Commission Against Racism and Intolerance

First report on Denmark

Adopted on 26 January 1999

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, three series of ECRI's country-specific reports have been made public, in September 1997 and in March and June 1998 respectively². A fourth series of country-specific reports was

¹ The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site www.ecri.coe.int and, in hard copy, from ECRI's Secretariat.

² The first three series comprise reports on Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Slovenia and Switzerland.

transmitted to the governments of the countries concerned in November 1998, and is thus now being made public³.

The following report contains ECRI's analysis and proposals concerning Denmark.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fourth series of reports, for which the procedure was completed by November 1998, will be followed by other series of reports during 1999 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI is beginning a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

³ Reports on Denmark, Estonia, the Russian Federation, Spain and the United Kingdom.

REPORT ON DENMARK⁴

Introduction

Denmark is an advanced welfare state of the Scandinavian model. It has seen an increase in the number of immigrants, refugees and asylum-seekers entering its territory over recent years. The basic assumption in Danish law and in general welfare policy is one of equality between Danish citizens and citizens of other countries who have a permanent residence permit. There is a real will in Denmark to recognise and tackle the problems of racism and intolerance, but since most measures and policies in this area seem to have been created fairly recently, it may be time for an overall evaluation of what has been done, in order to develop a global strategy based on a realistic assessment of the situation.

Denmark has a German minority in Jutland. Greenland and the Faroe Islands are under Danish sovereignty but have wide-ranging self-governments with their own parliaments and executive governments. In both of these territories the official language is the native language, with Danish as a second language. The Danish government has recognised the right of secession, and the consequent right to full independence for both of these territories, if their populations so wish: this wish has not as yet been expressed.

Lately, some negative attitudes towards immigrants have surfaced in Denmark. The public debate has become more polarised, and this is also reflected in the results of the latest local elections, where a right-wing party with strong views on immigrants and immigration policy won 10% of the votes.

Some of the key areas identified by ECRI as meriting particular attention include:

- the need to fight the growing hostility towards refugees and immigrants in the Danish society;
- the need to further develop and implement an active and structured plan to combat racism and intolerance and to carry out an evaluation of its effectiveness;
- the possibility of developing a specialised body to combat racism and intolerance with powers to investigate individual complaints;
- the need to counter, by implementing existing legal possibilities, the spread of racist material and propaganda;
- direct and indirect discrimination in the fields of employment and housing, and difficulties in proving and remedying discrimination.

⁴ Note: Any development subsequent to 28 November 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS⁵

A. International legal instruments

1. Denmark has ratified most of the relevant international legal instruments in the field of combating racism and intolerance, with the exception of the European Charter for Regional and Minority Languages. It is felt that this instrument should be ratified as soon as possible. It is noted with concern that Denmark has not accepted any of the provisions of Article 19 of the European Social Charter dealing with the right of migrant workers and their families to protection and assistance.
2. The European Convention on Human Rights was incorporated into Danish law in 1992. Following similar developments in other Nordic countries, Denmark should consider the possibility of incorporating other human rights conventions into national law. ECRI hopes that particular consideration will be given to the question of incorporating the Convention on the Elimination of All Forms of Racial Discrimination.

B. Constitutional provisions

3. The Danish Constitution, which is one of the oldest in Europe, contains no articles expressly prohibiting racial discrimination, although Article 70 does contain a clause prohibiting any restriction of civic or political rights for reasons of creed or descent. Case law and legal theory do not specify whether this guarantee, which applies to everyone, irrespective of whether they are Danish citizens, can be construed as something which generally establishes the principle of equal treatment; at most, it has been accepted that "serious, arbitrary discrimination" could be censured by the courts, but no such case has as yet arisen.

C. Criminal law provisions

4. Although the Criminal Code contains a provision (Article 266b) prohibiting certain forms of racially derogatory speech, this provision has not given rise to much case law since it is rather narrowly interpreted based on respect for the freedom of expression as enshrined in the Constitution, and the Director of Public Prosecution is rather reluctant to bring charges in such cases. However, given that the obligation to respect the freedom of expression exists alongside an obligation to protect minority groups against discrimination, which might be fuelled by racist or derogatory statements uttered publicly, particularly on the part of politicians, Denmark might consider initiating a more offensive policy in this area, for example by encouraging prosecutors to routinely accept complaints made not only by individuals but also by organisations.

D. Civil and administrative law provisions

5. There is no specific body of legislation in Danish civil and administrative law relating to discrimination in the areas of health, education, housing and social security, although as in most other countries, minority groups in Denmark are disadvantaged and face discrimination in all these fields. Consideration might be given to extending the legal protection against discrimination in all fields of life to ensure the adequate development and protection of all groups of society, since merely relying upon the basic principle of

⁵ A full overview of the legislation existing in Denmark in the field of combating racism and intolerance is provided in the publication CRI (98) 80, prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography)

equality before the law is not always sufficient or effective. As specified in the Convention for the Elimination of All Forms of Racial Discrimination, special and concrete measures should be taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them, and it would seem that further efforts might be made in Denmark to fulfil its obligations under the Convention regarding the possibilities of these groups to exercise their rights.

6. In the field of employment, a law forbidding any discriminatory treatment on racial or other grounds came into force at the beginning of July 1996. This law was criticised for not allowing the reversal of the burden of proof. This question might be further examined, bearing in mind that discrimination in the field of employment is notoriously difficult to prove. Employees and applicants should be provided with information about the law and the reasons behind it, and special advisory bodies could be set up to advise applicants and support their claims.

E. Specialised bodies

7. The Committee for Ethnic Equality, set up in 1993, had the task of advising the authorities and private associations about anything relating to the combating of racism, but had no powers of decision. This Committee was replaced in 1997 by a Board for Ethnic Equality: the Board has additional functions but still does not have the power to deal with individual complaints. The private Race Discrimination Documentation Centre, which receives State funding, charts complaints and facilitates an advisory service to the injured party. ECRI feels that the powers and functions of the Board for Ethnic Equality might be further extended, drawing inspiration from similar specialised Ombudsmen or commissions existing in other countries: it might for example be given powers to investigate and mediate complaints about situations of racial discrimination, and to advise on the development and implementation of legislation. In this respect, attention is drawn to ECRI's general policy recommendation N° 2 on specialised bodies existing at national level to combat racism and intolerance: Denmark might wish to develop the Board for Ethnic Equality in accordance with the framework set out in this recommendation.

II POLICY ASPECTS

8. Although there is a general commitment to equality for all and several initiatives underway in this field, ECRI feels that a more active and structured plan to combat racism and intolerance in Denmark could be further developed. In addition to the adoption of new legislation in this field - which, although not always the most effective means to combat discriminatory attitudes and behaviour, does nevertheless convey a strong signal - a range of non-legal (policy) measures should also be put in place, regularly monitored and co-ordinated to ensure a comprehensive approach to combating racism. The specialised body mentioned under E above could play an important role in this respect.

F. Reception and status of non-citizens

- *Immigration policy*

9. Denmark, like many European countries, has tightened its policies regarding entry into the country, for immigrants, refugees and asylum-seekers alike. Care should be taken

however to ensure that a more rigorous policy does not lead to discriminatory practices or unfair treatment. Training of officials responsible for border control, coupled with written rules governing their decisions and conduct, is paramount in this respect. Furthermore, the possible negative effect of a more restrictive policy as regards the attitude of the general public towards immigrants, refugees and asylum-seekers should be countered by ensuring that the policy and the reasons behind it are clearly explained to the public and by ensuring that a clear distinction is made between immigration policy and policies to deal with the immigrants, refugees and asylum-seekers already present in society.

- ***Integration policy***

10. The Danish authorities place much emphasis on the positive effects of the general integration policy, in which mutual tolerance and equal opportunities are key components rather than assimilation. However, there seems to be very little systematic evaluation or evidence to show that policies are working in the desired way, although an ad hoc Commission on integration published a report on Danish integration policy in May 1997. There has been some criticism that Danish policy in this field tends to be too passive and places the onus on the immigrants themselves to fit in. Active measures to promote integration, such as the proposals put forward by the Town and City Committee⁶ or the Barrier Commission⁷, should be further pursued and developed. In this respect, ECRI notes initiatives such as the 18 month integration programme offered to immigrants.

G. Education and training

11. ECRI recognises that there is an awareness within the Danish school system of the special problems facing children with a cultural background which differs from that of the majority. For example, an Act passed in 1997 makes it obligatory for local authorities to provide language stimulation for all immigrant children from the age of three for 15 hours per week. Measures to reach this group to ensure a solid education and prevent school drop-outs should be continued and strengthened.
12. Additional preventive measures might also be taken to improve knowledge of the problems of racism and discrimination among schoolchildren: for example, inclusion in curricula of the subject of racism, special training for teachers and teacher trainers and strategies to combat racial violence and harassment in schools.

- ***Training of officials***

13. Officials who come into contact with immigrants, refugees and asylum-seekers in the course of their work should receive special training to ensure that they are aware of the issues involved, legislation in force, and their own prejudices. This would include police training, training of immigration officials, officials in health and social services etc. ECRI recognises that such initiatives have been taken, but they should be broadened and strengthened.

⁶ The Town and City Committee has proposed a number of initiatives: inter alia the establishment of immigrant languages as optional courses in all parts of the primary and secondary school education; adult education for refugees and immigrants; provision of more apprenticeships for young immigrants and other young people; activities in the field of housing and community life.

⁷ The Barrier Commission was set up in 1992 to improve the employment situation of refugees and immigrants.

- ***Awareness-raising and political leadership***

14. In Denmark, as elsewhere, there is sometimes a tendency to portray minority groups in a rather negative fashion, as a burden on the State and a source of conflict. It is important that opinion-leaders, particularly politicians, refrain from resorting to such tactics, and instead stress the contribution that minority groups can make to the country. Objective information should be provided to the public concerning the situation of minority groups. Policies aimed at improving the situation of minority groups should be widely publicised and the motivation behind them clearly explained.

- ***Nazi propaganda and material***

15. ECRI notes that its general policy recommendation N° 1 calls on States to ensure that "national criminal, civil and administrative law expressly and specifically counter racism, xenophobia, anti-Semitism and intolerance, inter alia by providing that, in conformity with the obligations assumed by States under relevant international instruments and in particular with Articles 10 and 11 of the European Convention of Human Rights, oral, written, audio-visual and other forms of expression, including the electronic media, inciting to hatred, discrimination or violence against racial, ethnic, national or religious groups or against their members on the grounds that they belong to such a group are legally categorised as a criminal offence, which should also cover the production, the distribution and the storage for distribution of the material in question." Concern has been expressed in Denmark and neighbouring countries about the effects of the production and export of Nazi propaganda and material. ECRI stresses that there is an obligation to ensure that the possible negative effects of such material in Denmark and other countries are countered by vigorous educational, awareness-raising and other policy measures.

H. Employment

16. Unemployment is reported to be higher among immigrants and their descendants than among the majority population. This even seems to affect persons who have had their entire education in the Danish system and who speak fluent Danish. ECRI notes the various initiatives taken by the Ministry of Labour to promote access to the labour market among minority groups. In order to strengthen the effectiveness of anti-discrimination legislation, ECRI emphasises the important role of measures aimed at raising awareness among employers and relevant agencies on the ways in which discrimination and prejudice work in society. Such a task could be undertaken by a specialised body such as that suggested under E.

I. Statistics

17. It is felt that steps should be taken to record statistics relating to complaints concerning racial discrimination, possibly in consultation and collaboration with the Race Discrimination Documentation Centre (a private NGO already active in charting such complaints).

J. Media

18. The media sometimes has a tendency to report in a rather negative fashion as regards the situation of immigrants and other new-comers in Denmark. Efforts could be made by the media professions to achieve a more balanced reporting on these issues,

emphasising the positive contribution that the presence and culture of minority groups can make to Danish society.

K. Other areas

- ***Indirect discrimination***

19. Legislation and practices should be screened to ensure that no unintentional indirect discrimination may result from them, given that they were mainly developed before the influx of immigrants and refugees into Denmark. It is noted that indirect discrimination has been made unlawful in the field of employment.

- ***Greenlandic Inuit***

20. It has been reported that some Greenlanders living in the metropolitan territory of Denmark are very disadvantaged socially and economically. However, up-to-date information concerning the situation of Greenlanders in metropolitan Denmark seems difficult to obtain. It is felt that further measures might be taken to monitor and improve the situation of members of this group living in metropolitan Denmark.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Danish authorities on 13 July 1994.

ECRI accepts no responsibility for the data below.

Largest groups of non-citizens: Turks (36, 835); citizens of ex-Yugoslavia (32, 184); stateless (10, 215), Somalian (9, 683), Iraqi (8;066) Iranian (7, 029); Pakistani (6, 736); Sri Lanka (5, 415), North American (5, 100), Moroccans (3, 383), Thai (3, 024), Oceania (1, 038), Brazilian (737)

Asylum-seekers: 5, 954 in 1997, of which 4980 were granted refugee status

11, 222 persons in Denmark born in Greenland

Population: 5 196 600 (1 January 1994). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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