

# **ECRI REPORT ON DENMARK**

**(fourth monitoring cycle)**

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## FOREWORD

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 8 December 2011 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.**



## SUMMARY

**Since the publication of ECRI's third report on Denmark on 16 May 2006, progress has been made in a number of fields covered by that report.**

The Danish authorities have created the Board of Equal Treatment (the Board). This body is empowered to receive complaints on the grounds of gender and/or race or ethnic origin for cases outside the labour market. In relation to the labour market, the Board is empowered to receive complaints on the grounds of, inter alia, race, ethnic origin, colour, religion or belief, nationality and gender. The Board is empowered to deal with cases brought against the government, companies and private persons.

The Danish authorities have also carried out a number of measures to integrate immigrants into the labour market including funding 35 projects for the sum of € 4 million and hiring 200 extra job consultants working in municipalities with minorities. Moreover, in 2010 special efforts were made to get young immigrant males into the job market.

Some measures have been taken to provide judges and deputy judges with training on national and international legal instruments pertaining to racism<sup>1</sup> and racial discrimination<sup>2</sup>. In the area of access to public places, an initiative to raise awareness of issues pertaining to racial discrimination has started.

**ECRI welcomes these positive developments in Denmark. However, despite the progress achieved, some issues continue to give rise to concern.**

Denmark has still not ratified Protocol No. 12 to the European Convention on Human Rights.

The provisions for obtaining Danish citizenship, including that the applicant must not have received any assistance under the Act on Active Social Policy or the Integration Act for an aggregate period exceeding six months within the last five years, run the risk of disproportionately affecting groups of concern to ECRI. The difficulty of the language examination and citizenship test as well as the cost of the citizenship procedure also disproportionately affect these groups.

The Board of Equal Treatment is empowered to receive only written evidence and cannot receive oral testimony. Outside the employment sector, the Board does not deal with discrimination on the grounds of colour, religion or belief, nationality and language. ECRI has been informed that the Board is not very active and not very visible. Furthermore, its Secretariat's staff only work part-time. There are also concerns about the extent of the Board's resources and its overall visibility.

NGOs and other specialised bodies dealing with issues pertaining to groups of concern to ECRI still suffer from a lack of funding, and cooperation between these organisations and the government need to be strengthened. More measures need to be taken to combat school segregation through improved housing and social policies. Immigrants continue to be found in lower paid jobs and therefore have fewer opportunities than ethnic Danes. Moreover, more measures need to be taken to integrate immigrants and members of groups of concern to ECRI into the labour market. As concerns housing,

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<sup>1</sup> Racism is understood as meaning the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt of a person or group of persons or the notion of superiority of a person or group of persons.

<sup>2</sup> In accordance with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, racial discrimination is understood as meaning any difference of treatment based on grounds such as "race", colour, language, religion, nationality or national or ethnic origin which has no objective and reasonable justification.

strategies to combat segregation have not taken sufficiently into account of factors such as poverty and discrimination.

Some media have continued to portray minority groups, in particular Muslims and Roma in a negative light. Moreover, some politicians, especially from the Danish People's Party, have continued to make disparaging statements about groups of concern to ECRI in general and Muslims in particular. Few cases have been brought to court under the Criminal Code for this type of speech. The public's attitude towards Roma is negative and they face harassment and discrimination. Asylum seekers are still not permitted to attend upper secondary school or university in Denmark. The negativity of public and political discourse has had a disproportionately adverse effect on groups of concern to ECRI in a number of important areas of policy.

In June 2011, the Aliens' Act was amended to make the already existing strict rules for spousal reunification even stricter. Some provisions of this piece of legislation discriminate directly or indirectly against groups of concern to ECRI. These include the requirement that the spouse/partner living in Denmark should not have received public assistance for the past three years and that he should have had full-time employment in Denmark for at least two years and six months out of the past three years. Moreover, the entire cost of the spousal reunification procedure remains quite high which indirectly discriminates against members of groups of concern to ECRI who are more affected by unemployment and poverty than ethnic Danes.

In 2010 a points system was introduced whereby to qualify for a permanent residence permit a person must obtain 100 points by meeting certain criteria. These criteria include not having received certain types of public assistance for a period of three years prior to submitting the application and having had ordinary full-time employment for at least two years and a half out of the past three years prior to submitting an application. These criteria also disproportionately affect groups of concern to ECRI including refugees. ECRI therefore welcomes the Danish authorities' assurances that the permanent residence permit procedure will be changed. Non-ethnic Danes continue to be underrepresented in the police force.

**In this report, ECRI requests that the Danish authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

ECRI recommends that Denmark ratify Protocol No. 12 to the European Convention on Human Rights.

Concerning citizenship, ECRI encourages the Danish authorities to amend the Circular on Naturalisation's provision concerning applicants' obligation to be self-supporting to ensure that it does not disproportionately affect members of groups of concern to ECRI in contravention to Article 5 of the European Convention on Nationality. ECRI also encourages the Danish authorities to review the language examination and citizenship test required to acquire Danish citizenship in order to ensure that they do not become an obstacle for applicants.

ECRI recommends that the Danish authorities ensure that the Board of Equal Treatment is empowered to hear oral testimony and to examine cases proprio motu. ECRI recommends that the Danish authorities extend the mandate of the Board to empower it to deal with discrimination outside the employment sector on the grounds of colour, religion or belief, nationality and language. ECRI further recommends that measures to increase the visibility of the Board and its knowledge of issues pertaining to discrimination based on "race", ethnic origin, religion or belief and nationality be taken.



ECRI recommends that the Danish authorities ensure that NGOs and other civil society actors working on issues relating to groups of concern to ECRI receive sufficient funding and that there is closer cooperation between them and the authorities.\*

As concerns education, ECRI recommends that the Danish authorities take measures to combat school segregation by devising, in consultation with all the parties concerned and taking into account the socio-economic dimension (employment and housing) policies to avoid, in the best interests of the child, pupils from minority groups being over-represented in certain schools. Concerning employment, ECRI stresses the need for research on the discrimination suffered by non-ethnic Danes in the employment sector.

ECRI encourages the Danish authorities to continue their efforts to counter the disproportionate concentration of groups of concern to ECRI in disadvantaged neighbourhoods and recommends that the Danish authorities monitor the impact of measures taken in these fields.

ECRI encourages the Danish authorities to ensure that politicians act responsibly when addressing issues pertaining to groups of concern to ECRI. ECRI recommends again that the Danish authorities ensure that asylum seekers are assisted by a lawyer during the entirety of the asylum procedure.

ECRI urges the Danish authorities to carry out a wide-ranging reform of the spousal reunification rules in order to remove any elements which amount to direct or indirect discrimination and/or which are disproportionate to their stated aims.\*

ECRI recommends that the Danish authorities encourage the media to refrain from broadcasting any information likely to fuel discrimination and intolerance towards Roma. ECRI recommends that the authorities encourage debate within the media on the image which they convey of Islam and Muslim communities and on their responsibility in this respect to avoid perpetuating prejudice and biased information. ECRI recommends also that the Danish authorities amend the requirements for obtaining a permanent residence permit in order to facilitate applicants' access thereto.

ECRI encourages the Danish authorities to intensify their efforts in recruiting members of ethnic minorities to the police.\*

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.



## FINDINGS AND RECOMMENDATIONS

### I. Existence and Application of Legal Provisions

#### International legal instruments

1. In its third report, ECRI recommended that Denmark ratify Protocol No. 12 to the European Convention on Human Rights. ECRI also reiterated its recommendation that Denmark ratify the (Revised) European Social Charter and recommended that Denmark accept the provisions of Article 19 of the European Social Charter. ECRI further recommended that Denmark ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
2. Denmark has not ratified Protocol No. 12 to the European Convention on Human Rights. Denmark has explained that it is currently unwilling to sign and ratify this instrument because it considers its wording to be so wide as to create uncertainty both as regards its likely scope and the number of cases to be generated. Denmark has further indicated that it is monitoring the application of the Protocol and if it becomes clear from the case law what the extent of its legal obligations under this instrument are, it would be willing to reconsider its view on it. ECRI is therefore pleased to note that Denmark is open to the idea of ratifying this important instrument in the fight against racial discrimination. ECRI wishes to bring to Denmark's attention the case of *Sejdić and Finci v Bosnia and Herzegovina*, judgement of 22 December 2009, in which the European Court of Human Rights established that Protocol No. 12 will be interpreted in the same manner as Article 14 of the European Convention on Human Rights.
3. ECRI recommends that Denmark sign and ratify Protocol No. 12 to the European Convention on Human Rights.
4. Denmark has still not ratified the (Revised) European Social Charter. Denmark has informed ECRI that it has not accepted the provisions of Article 19 of the European Social Charter; this article provides for the right of migrant workers and their families to protection and assistance. Denmark has informed ECRI that it has no plans to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families because it finds this instrument likely to be very wide. ECRI would like to highlight that the ratification of the (Revised) European Social Charter and the acceptance of the provisions of Article 19 of the European Social Charter would signal a strong commitment towards the development of an integration policy. Furthermore, ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families would assist the authorities in their efforts to control irregular migration by eliminating incentives for labour exploitation and work in abusive conditions.
5. ECRI recommends again that Denmark ratify the (Revised) European Social Charter and that it accepts the provisions of Article 19 of the European Social Charter. ECRI recommends that Denmark reconsider its position on the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ratify this instrument.
6. In its third report, ECRI recommended that Denmark reconsider the incorporation of international human rights conventions, in particular the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) into its national legislation so that they may be directly applied by the courts.

7. On the one hand, the authorities have stated to ECRI that Danish law is “up to standard” in the sense that, irrespective of incorporation, domestic legislation must be applied in the light of international obligations. On the other hand, ECRI notes information according to which the administrative authorities rarely rely on non-incorporated conventions; the same holds true for the courts, even in cases where the parties have made submissions based on such conventions. Civil society actors are therefore of the opinion that ICERD is not applied by the Danish authorities in the same manner as it would if it had been incorporated. Furthermore, the Danish Institute for Human Rights (DIHR)<sup>1</sup> considers that the incorporation of ICERD and other international human rights instruments will help raise awareness among, inter alia, lawyers and the judiciary.<sup>2</sup> A judgement of the Danish Supreme Court from 5 December 2005 concluded that non-incorporated ILO conventions cannot be directly applied in a way as to disregard national legislation. The DIHR considers that this judgement confirms the necessity of general incorporation in case of direct conflict between international law and Danish legislation as well as in the absence of Danish law that can serve as a basis for interpretation (and thus application of international law).<sup>3</sup> DIHR is concerned that the non-incorporation of ICERD results in the weakening of the effective protection of the individual against some forms of discrimination. ECRI considers that the incorporation of ICERD as well as other international human rights instruments will be beneficial to combating discrimination on grounds of colour, ethnicity, citizenship, religion and language in Denmark and raising general awareness of human rights issues.
8. ECRI reiterates its recommendation that Denmark incorporate international legal instruments, in particular the Convention on the Elimination of All Forms of Racial Discrimination, into its national legislation.

### **Citizenship law**

9. In its third report, ECRI recommended that the Danish authorities bear in mind the European Convention on Nationality when they amend the Nationality Act. It also recommended that any amendments to this act be made in conformity with Article 5 of the European Convention on Nationality, which states, inter alia, that rules on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of religion, “race”, colour or national or ethnic origin. ECRI considered that the Danish authorities should also ensure that the Nationality Act is effectively implemented with due regard for these principles.
10. The Nationality Act has not been amended since ECRI’s third report. However, Circular Letter No. 61 of 22 September 2008 on Naturalisation<sup>4</sup> provides guidelines for the acquisition of Danish citizenship. The circular provides that the applicant must have resided in Denmark for nine consecutive years; an exception is provided for refugees, stateless persons, persons who came to Denmark before the age of 15 and spouses of Danish nationals.<sup>5</sup> Some provisions in this

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<sup>1</sup> For more information on the DIHR, see Anti-discrimination bodies and other institutions below.

<sup>2</sup> Parallel report July 2010 to the UN Committee on the Elimination of Racial Discrimination on the 18<sup>th</sup> and 19<sup>th</sup> reports by the Government of Denmark on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, p.7-8.

<sup>3</sup> *Ibid.*, p.8.

<sup>4</sup> This circular came into force on 10 November 2008.

<sup>5</sup> An exemption from the period of residence for nine consecutive years is also provided for Nordic nationals, persons who have undergone a substantial part of their general education or vocational training in Denmark, persons born to a Danish mother within a certain period and persons who are former Danish nationals or who are of Danish descent as well as for Danish-minded persons from South Schleswig. Moreover, there are certain exemptions for children, including children adopted by Danish nationals (also adopted stepchildren) who do not automatically become Danish nationals pursuant to Article 2 a) of the

circular give rise to concern as they may disproportionately affect members of groups of concern to ECRI as the latter suffer from higher levels of unemployment and economic disadvantage than ethnic Danes<sup>6</sup>. Specifically, the circular provides that the applicant must be self-supporting, that is, that s/he must not have received any assistance under the Act on Active Social Policy or the Integration Act<sup>7</sup> for an aggregate period exceeding six months within the last five years.<sup>8</sup> The Danish authorities have informed ECRI that they will change this requirement so that the applicant must not have received any assistance under the Act on Active Social Policy or the Integration Act for an aggregate period exceeding two years and six months within the last five years instead of a period exceeding six months within the last five years. The circular also provides that the applicant must pass a Danish language examination and a citizenship test on Danish society, culture and history. The citizenship test consists of 40 questions and the applicant must answer 32 of them correctly in 45 minutes. The now defunct Ministry of Refugees, Immigration and Integration Affairs prepared study material for this test. However, ECRI notes reports according to which the language examination and citizenship test are very difficult, thus reducing the number of persons who pass them and are able to obtain Danish citizenship. The Danish authorities have informed ECRI that changes will be made to this requirement so that applicants will be required to pass the Danish language examination at level 2 at language centres. Furthermore, the requirement that they must have knowledge of Danish society, culture and history documented by a certificate of a special citizenship test will also be changed. The Danish authorities have indicated that the language examination costs 900 DKK (approximately € 120) and the citizenship test 600 DKK (approximately € 80). Moreover, the application fee for citizenship is 1 000 DKK (approximately € 134). Therefore, the total cost of the citizenship procedure is approximately € 334. This sum may be high for persons who are economically disadvantaged, thus again disproportionately affecting groups of concern to ECRI.

11. ECRI encourages the Danish authorities to amend the Circular on Naturalisation's provision concerning applicants' obligation to be self-supporting in order to ensure that it does not disproportionately affect members of groups of concern to ECRI in contravention to Article 5 of the European Convention on Nationality.
12. ECRI encourages the Danish authorities to review the language examination and citizenship test required to acquire Danish citizenship in order to ensure that they do not become a disproportionate obstacle for applicants.
13. In 2010, it transpired that several stateless persons, including 22 stateless Palestinians who were born in Denmark had been wrongly required to apply for Danish citizenship under the normal procedure.<sup>9</sup> The Danish authorities have informed ECRI that the 22 stateless Palestinians have now acquired citizenship. Moreover, stateless persons aged between 21 and 38 years<sup>10</sup> who were made to

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Danish Nationality Act, children who, due exclusively to their parents' separation, have failed to become Danish nationals as dependants in connection with the naturalisation of one of the parents, children born out of wedlock to a foreign mother and a Danish father, and, in accordance with the 1989 UN Convention on the Rights of the Child, children who were born stateless in Denmark.

<sup>6</sup> For more information on employment see Discrimination in Various Fields below.

<sup>7</sup> For more information on the Integration Act, see Vulnerable/Target Groups, Migrants, refugees and asylum seekers.

<sup>8</sup> Articles 23 1) and 2) of the circular.

<sup>9</sup> The authorities have indicated to ECRI that 36 persons had wrongly been denied the right to be listed in a naturalisation bill.

<sup>10</sup> Statistics from the Danish Civil Registration System show that 378 persons born stateless in Denmark are under 38 years old.

apply for citizenship under the normal procedure will now be listed in a naturalisation bill if they submit an application before 1 March 2012; these persons have been contacted and informed of their rights. A commission of enquiry has been asked to conduct an independent review of the situation of the stateless persons. ECRI takes note of this information. The authorities have indicated that matters relating to citizenship have been transferred to the competence of the Ministry of Justice following the dismantling of the Ministry of Refugees, Immigration and Integration Affairs. They have informed ECRI that one of the measures taken to ensure future compliance with Denmark's international obligations and to facilitate the application procedure will be that applications from stateless persons born in Denmark are to be handed in directly to the Ministry of Justice instead of the local police. The authorities have further stated that Article 17 of Circular Letter No. 61 of 22 September 2008 provides that children born stateless in Denmark may be listed in a naturalisation bill in accordance with the Convention on the Rights of the Child, if they reside in the country. ECRI considers that to avoid cases whereby stateless persons are made to apply for citizenship under the normal procedure arising in the future, the Nationality Act and/or the Circular on Naturalisation should specifically state that all stateless persons are exempt from applying for citizenship under the normal procedure.

14. ECRI recommends that the Danish authorities amend the Nationality Act and/or the Circular on Naturalisation to ensure that all stateless persons are exempt from applying for citizenship under the normal procedure.

15. ECRI has been informed that persons suffering from Post Traumatic Stress Disorder (PTSD) used to be exempt from having knowledge of Danish at a certain level for citizenship purposes. However, the situation has now changed and persons who suffer from PTSD and other mental illnesses as well as torture victims, who thus face difficulties in learning Danish, are no longer exempt from passing the language test at the same level as everyone else. Persons falling within these categories are mostly refugees. ECRI considers that the way in which citizenship is granted to refugees is indicative of a state's level of openness towards others and that refugees in such a vulnerable position should be given special consideration. It therefore welcomes the Danish authorities' statement that PTSD should become again a condition allowing for exemption from passing the Danish language and citizenship tests on a par with everyone else. ECRI hopes that this will also be extended to other mental illness sufferers as well as torture victims.

16. ECRI strongly recommends that the Danish authorities ensure that persons suffering from Post Traumatic Stress Disorder and other mental illnesses as well as torture victims are exempt from passing the language test usually required in order to acquire Danish citizenship.

### **Criminal law provisions against racism and racial discrimination**

#### *- Act Prohibiting Discrimination on the Basis of Race*

17. In its third report, ECRI recommended that the Danish authorities ensure that the Act Prohibiting Discrimination on the Basis of Race is implemented more actively. It also recommended that more awareness-raising measures on this law be taken, including outside the Copenhagen Municipality.

18. Section 1 of the Act Prohibiting Discrimination on the Basis of Race forbids discrimination on the basis of, inter alia, "race", colour, national or ethnic origin, or religion, when a commercial or non-profit service is offered or when granting access to a public place. The Danish authorities have informed ECRI that there are few complaints and few cases brought to court under this piece of legislation.

Between 2005 and 2010, there were only five convictions under this Act. There are grounds for thinking, however, that cases of discrimination are underreported.<sup>11</sup> The Danish authorities have also indicated to ECRI that in the context of the Action Plan on Ethnic Equal Treatment, research will be carried out on what the obstacles are to the application of this law. The Danish authorities have informed ECRI that in September 2011, the Director of Public Prosecutions revised his instructions to the police and prosecution services on, amongst others, this Act. The authorities have further indicated that an awareness-raising campaign was launched on discrimination in nightlife in the context of the Action Plan on Ethnic Equal Treatment<sup>12</sup>. They have explained that the focus on nightlife is due to the fact that that is where the biggest problem lies.<sup>13</sup> Civil society actors have informed ECRI that the Act Prohibiting Discrimination on the Basis of Race is very rarely used because it requires proof of intent.

19. ECRI encourages the Danish authorities to continue raising awareness of the Act Prohibiting Discrimination on the Basis of Race among the public in general and members of groups of concern to ECRI in particular. It recommends that measures be taken to remove all obstacles to this piece of legislation's full application.

- *Criminal Code*

20. In its third report, ECRI urged the Danish authorities to take a more proactive approach in prosecuting anyone who makes racist statements, since Article 266 b) of the Criminal Code as interpreted by the Supreme Court does not appear to be adequate.

21. Article 266 b) of the Danish Criminal Code provides that: 1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination shall be liable to a fine or imprisonment for any term not exceeding two years; 2) when the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance. The Danish authorities have informed ECRI of two cases brought to court under this article since its third report concerning hate speech by politicians against Muslims.<sup>14</sup> The authorities have also indicated that the prosecution services make the final decision as to whether a case should be brought to court and that for a statement to fall under Article 266 b), it has to be made against a group of people and be widely disseminated. The authorities have also indicated to ECRI that the above-mentioned new instructions issued by the Director of Public Prosecutions include specific guidelines on when a statement can be considered to be in violation of Article 266 b). ECRI has, however, been informed by civil society actors that it is unclear who is entitled to bring a complaint under this provision. For example, on the one hand, attempts to do so have been made by representatives of minority groups who were informed that they could not do so because they were not individual victims. On the other hand, individuals have also been informed that they have no standing to bring a complaint under this provision. ECRI is concerned by the fact that in cases of such public importance there is no provision for a private prosecution in the event of a decision by the Public Prosecutor not to prosecute. The Danish

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<sup>11</sup> [http://fra.europe.eu/fraWebsite/home/home\\_en.htm](http://fra.europe.eu/fraWebsite/home/home_en.htm).

<sup>12</sup> For more information on discrimination in access to public places, see Discrimination in Various Fields below.

<sup>13</sup> This is largely confirmed by civil society actors; according to them, when this piece of legislation is invoked, it is largely in cases of discotheques refusing entry to groups of concern to ECRI.

<sup>14</sup> For more information on the situation of Muslims, see Vulnerable/Target Groups below.

authorities have informed ECRI that there are no restrictions as to who may bring a complaint (report a crime) to the police under Article 266 b) of the Criminal Code. However, they have stated that, as a general rule, a decision to end an investigation or to drop the charges in a case concerning this provision cannot be appealed by organisations or persons that do not have a direct, legal interest in the outcome of the case. The authorities have, however, not indicated to ECRI which organisations or persons would be considered to have a direct and legal interest in the outcome of a case. It is precisely this lack of clarity that appears to have left civil society actors somewhat in a limbo in these types of situations. The Danish authorities have further indicated that Article 275 of the Criminal Code provides that private prosecutions may be brought for cases where one has impinged upon the honour of a person or for defamation under Articles 267 and 268 of the Criminal Code respectively.

22. ECRI notes that there exist concerns among civil society actors and international agencies about the operation of these statutory obligations. Civil society actors have indicated that very few cases are brought to court under Article 266 b), although hate speech against Muslims in particular, especially by some politicians, has been a prevalent problem since ECRI's third report. They have informed ECRI that in 2010, the police received a total of 29 reports regarding a violation of Article 266 b). Civil society actors have indicated that the prosecution has a very narrow interpretation of this article. Furthermore, ECRI has been informed that those convicted under this provision are usually only required to pay a small fine.
23. ECRI fully appreciates the problems of defining the boundaries of freedom of expression, particularly in situations where a strong tradition of free speech exists side by side with important problems relating to the position of groups of concern to ECRI within society. However, it is in situations such as this that it is most important to ensure a rigorous application of legal sanctions in conformity with General Policy Recommendation No. 7<sup>15</sup>. Thus it is essential in ECRI's view that the law in this area should have the maximum clarity and that it should be seen to be firmly and consistently enforced.
24. ECRI recommends that the Danish authorities ensure that Article 266 b) of the Criminal Code is applied in a manner consistent with the principles set out in paragraph 23 above.
25. According to Article 81 6) of the Criminal Code, the fact that a criminal offence is based on, inter alia, the victim's ethnic origin, colour or religious beliefs should be considered an aggravating circumstance. On the one hand, ECRI has been informed by civil-society actors that Article 81 6) of the Criminal Code is very rarely invoked even in cases where the racist motivation of a criminal offence is apparent; the police do not take racist motivation seriously; as a result, the low numbers reported do not provide an accurate picture of the extent of hate crime. In particular, the DIHR is concerned about whether sufficient, systematic and effective investigation of hate crime takes place<sup>16</sup>. On the other hand, ECRI notes

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<sup>15</sup> Paragraph 18 of ECRI's General Policy Recommendation No.7, ECRI provides that criminal law should penalise the following acts when committed intentionally: public incitement to violence, hatred or discrimination, public insults or defamation or threats against a person or grouping of persons on the grounds of their "race", colour, language, religion, nationality, or national or ethnic origin. This General Policy Recommendation also provides that criminal law should penalise, when committed intentionally, the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the above grounds and the public denial, trivialisation, justification or condoning, with a racism aim, of crimes of genocide, crimes against humanity or war crimes.

<sup>16</sup> Parallel report July 2010 to the UN Committee on the Elimination of Racial Discrimination on the 18<sup>th</sup> and 19<sup>th</sup> reports by the government of Denmark on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, pp. 14-15.



with interest a number of initiatives taken by the authorities to ensure that Article 81(6) of the Criminal Code is applied to all cases it was intended to cover. Thus, the Danish Security and Intelligence Service (PET) administers a system whereby the police have to report criminal offences with potentially racist or religious motivation. Moreover, the authorities have informed ECRI that the Director of Public Prosecutions is about to set up a monitoring system regarding the use of Article 81(6) by using data on criminal offences and incidents with a potentially racist or religious motive that the PET collects each year. The authorities have indicated that data concerning 2010 is currently being analysed to determine to what extent Article 81(6) has been invoked by the prosecution and applied by the courts. Finally, according to the above-mentioned 2011 instructions by the Director of Public Prosecutions, the prosecution is obliged to raise the racist motivation of a criminal offence in court; as a consequence, judges will have to be explicit about taking it into consideration in their judgements or not.

26. As concerns actual numbers, the Danish authorities have informed ECRI that there have been ten cases in which Article 81(6) of the Criminal Code has been applied since 2007<sup>17</sup>. The Danish authorities have informed ECRI that information on the number of cases where Article 81(6) has been invoked or applied is based on a search carried out in Danish Weekly Law reports and that only a small number of the judgements issued each year are printed in this review. The Danish authorities have therefore stated that the number of cases in which the prosecution has invoked and the courts have applied section 81(6) may be significantly higher than these ten cases. In parallel, the latest data available from the PET (from December 2009) concern 175 hate motivated offences for 2008<sup>18</sup>; this represents an increase compared to 2007. Reports indicate that the police attributed the increase to a new definition used by the PET of what constitutes hate crime which was broadened to include criminal offences motivated by political issues, skin colour, nationality, ethnic origin, religious beliefs and sexual orientation. Moreover, for the first time, the PET combined its hate crime cases with those from the various regional and national police registries. According to the police, hate-crime victims included "Jews and people of an ethnic origin other than Danish" (mostly African or Middle Eastern ethnic groups)<sup>19</sup>.
27. ECRI is pleased to note the efforts made by the Danish authorities to monitor hate crime. However, ECRI considers that more efforts appear necessary to translate this action into more prosecutions of the perpetrators.
28. ECRI recommends that the Danish authorities ensure that Article 81(6) is applied where relevant.
29. In its third report, ECRI recommended that the Danish authorities penalise the creation or leadership of a group which promotes racism, as well as support for such a group and participation in its activities.
30. The creation or leadership of a group which promotes racism as well as support for such a group and participation in its activities is still not forbidden in Denmark although ECRI has been informed that there are White supremacist groups in the

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<sup>17</sup> They also include criminal offences committed wholly or in part on the basis of the victim's sexual orientation.

<sup>18</sup> These seem to include anti-immigrant (mainly Muslim and African) graffiti, desecration of Jewish gravesites and assaults on Muslims and Africans.

<sup>19</sup> Civil society sources indicate that during the period 2005-2008, 10% of the population experienced hate crime based on racism. The Fundamental Rights Agency (FRA) indicated in an EU-wide survey carried out in 2008 that 31% of Somalis in Denmark have experienced intimidating harassment, threats and physical attacks.

country. The authorities are aware of the existence of such groups as they are monitored by the PET.

31. ECRI recommends again that the Danish authorities ensure that the law prohibits groups which promote racism as well as participation in their activities as recommended in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

### **Civil and administrative law provisions against racial discrimination**

#### *- Act on Ethnic Equal Treatment*

32. In its third report, ECRI recommended that the Danish authorities take a more proactive role in applying the Act on Ethnic Equal Treatment by, inter alia, ensuring that potential victims of discrimination are also aware of its existence and of the mechanisms for invoking it before the courts.

33. Since ECRI's third report, the Board of Equal Treatment was created and it is entitled to hear cases under the Act on Ethnic Equal Treatment.<sup>20</sup> The authorities have informed ECRI that under the previously mentioned Action Plan on Ethnic Equal Treatment<sup>21</sup>, the DIHR has been given the task of assisting several libraries and community centres in setting up local advisory units on discrimination. ECRI welcomes this measure. However, it has been informed by civil society actors that the focus of this initiative is on the measures groups of concern to ECRI can themselves take to improve their situation. Civil society actors have indicated that they would wish to see greater emphasis on the issue of discrimination.

34. ECRI recommends that the problem of racial discrimination be dealt with in any awareness-raising campaign carried out.

#### *- Act on the Prohibition of Discrimination in the Labour Market*

35. The Act on the Prohibition of Discrimination in the Labour Market prohibits direct and indirect discrimination in the labour market on the grounds of, inter alia, race, colour, religion and national or ethnic origin. This prohibition applies to both private and public employers and to any persons engaged in vocational training and education/training activities as well as placement activities. The Act guarantees employees' equality at all stages of the employment relationship. It is, however, possible to grant exemptions from the Act if it is of decisive importance for an enterprise that the employees are of a specific "race", colour, religion, etc. The Board of Equal Treatment is also entitled to consider complaints under this law. It does not appear that many cases have been heard under this law as concerns discrimination based on "race", colour, religion or national or ethnic origin although there seems to be a wide perception that discrimination does exist in Denmark.

36. ECRI recommends that the Danish authorities ensure that the Act on the Prohibition of Discrimination in the Labour Market is applied to all the cases it was intended to cover. ECRI recommends that the provision in this piece of legislation regarding exemption on the grounds of "race" be scrapped as the same objective would be reached by applying, for example the colour criterion.

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<sup>20</sup> See Anti-discrimination bodies and other institutions below.

<sup>21</sup> See Criminal law provisions above.

## Anti-discrimination bodies and other institutions

### - *The Board of Equal Treatment*

37. In its third report, ECRI recommended that the Danish authorities provide the Complaints Committee on Ethnic Equal Treatment with sufficient powers and financial means to enable it to function effectively as a specialised body within the meaning of its General Policy Recommendation No. 2. It further called on them to ensure that the Complaints Committee's jurisprudence and general recommendations were widely disseminated to the public at large as well as to all government bodies both at the national and local levels.
38. Since ECRI's third report, the Board of Equal Treatment (the Board), which was created in 2008<sup>22</sup> and started operating on 1 January 2009, has taken over the functions of the Complaints Committee on Ethnic Equal Treatment and the Gender Equality Board. The Board is empowered to receive complaints about discrimination on the grounds of gender, race and ethnic origin outside the labour market. Although ECRI is pleased to note that, in relation to the labour market, the Board is empowered to receive complaints on grounds of, inter alia, race, ethnic origin, colour, religion or belief, nationality and gender, it notes that it cannot deal with discrimination on the ground of language. The Board is empowered to deal with cases brought against the government, companies and private persons. The Board is composed of one Chairwoman who is a judge, two Deputy Chairmen who are also judges and nine ordinary members who must all hold a master's degree in law and have specialist knowledge of labour market regulations and issues pertaining to discrimination. The nine Board members are appointed by the Minister of Employment: three used to be nominated by the now defunct Minister of Refugee, Immigration and Integration Affairs; three are nominated by the Minister of Gender Equality and three by the Minister of Employment. It is supported by a Secretariat composed of one Head and one Deputy Head of Service, four Heads of Section and two students; all are employed on a part-time basis.
39. Although the Board has assured ECRI that all its members must be independent of the nominating and appointing authorities, ECRI is concerned that the Board may be perceived by the public as not being fully independent due to the nomination procedure which is exclusively in the hands of the Government Departments concerned. On another issue, the Board's Secretariat screens complaints that are not deemed to be suitable for consideration by the Board. An evaluation by the Secretariat that a complaint is not suitable for the Board may be appealed before this body. If a complainant is dissatisfied with the Board's decision, s/he may, of course, go to court. However, ECRI notes that s/he must pay for the cost him/herself.
40. Complaints to the Board are free of charge and can be filed on its website. The Board's decisions are binding on the parties and it may award compensation or set aside a dismissal if the complaint relates to the labour market. In case of non-compliance, the Board can bring a case to court, free of charge for the complainant. The Board has informed ECRI that cases are often submitted to it by trade unions, NGOs and attorneys who represent a specific client.
41. ECRI has been informed that the Act on the Board of Equal Treatment will be reviewed. This may provide an opportunity to remedy some lacunae in this law including the fact that the Board's decisions are based only on written evidence, as it has no power to hear oral evidence. Therefore, if oral testimony is needed in order to evaluate the matter more fully, (as is apparently often the case) the

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<sup>22</sup> In accordance with the Act on the Board of Equal Treatment of 27 May 2008.

issues cannot be handled satisfactorily by the Board. Moreover, the Board cannot take up cases proprio motu. The Board has also stated that in cases related to “race” or ethnic origin, lack of evidence is often the main problem. It has further indicated that it receives many complaints regarding access to restaurants, but as the restaurants deny the accusations, the cases are dismissed due to lack of evidence. The Board has indicated that it applies the principle of shifting the burden of proof.

42. The Board has informed ECRI that in 2009, it received 194 cases; out of the 64 the examination of which was concluded, 22 concerned “race” or ethnic origin. In four of these cases, the Board decided in favour of the complainant. In 2010, the Board received approximately 286 cases. It concluded the examination of 122 cases, 26 of which concerned discrimination on the grounds of “race” or ethnic origin. Five of those cases were decided in favour of the complainant. The Board has informed ECRI that the compensation awarded for cases of discrimination in the labour market is usually 25 000 DKK (approximately € 3 360).
43. Civil society actors have informed ECRI that in their view the Board is not very active and not very visible. They have further suggested that although the Board is very strong on gender-related issues, it has very little knowledge of questions regarding “race”, ethnic origin, etc. As to resources, ECRI notes that Board’s budget currently stands at € 250 000 a year. The Secretariat staff work only part time and have to examine approximately 200 to 300 cases per year. ECRI hopes that the review will examine the case for strengthening these resources.
44. ECRI recommends that the Danish authorities ensure that the Board of Equal Treatment is independent in line with Principle 5 2) of its General Policy Recommendation No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. ECRI recommends that the Danish authorities ensure that the Board of Equal Treatment is empowered to hear oral testimony and to examine cases proprio motu. ECRI recommends that the Danish authorities extend the mandate of the Board to empower it to deal with discrimination, in the employment field, on grounds of language and, outside the employment field, on grounds of colour, religion or belief, nationality and language as per its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. ECRI recommends that the Danish authorities take measures to increase the human and financial resources allocated to the Board of Equal Treatment. ECRI further recommends that measures be taken to increase the visibility of the Board and its knowledge of issues pertaining to discrimination based on “race”, ethnic origin, religion or belief and nationality.

- *The Danish Institute for Human Rights*

45. The DIHR was established as the Danish Centre for Human Rights by parliamentary decision in 1987. In 2002, the DIHR was established as a national human rights institution through the Act on the Establishment of the Danish Institute for International Studies and Human Rights (Act No. 411 of 6 June 2002). The work undertaken by the DIHR on the basis of the mandate follows from the EC Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin. According to its mandate, the DIHR promotes the equal treatment of all persons irrespective of racial or ethnic origin. The DIHR therefore assists victims of discrimination by processing their complaints, by investigating discrimination, by publishing reports on differential treatment and by making recommendations on the fight against discrimination. The DIHR indicated that in 2010, assistance was given in 28 cases in relation to all forms of discrimination (gender, age, handicap, religion

or belief, sexual orientation, “race” and ethnicity). The assistance provided by the DIHR to victims of, inter alia, discrimination based on “race” or ethnicity, consists in referring them to the Board of Equal Treatment, the Ombudsman or other bodies. The DIHR is also empowered to make ex officio investigations and the victims of discrimination may refer their case back to the DIHR if the Board of Equal Treatment has rejected it. Moreover, if the DIHR considers that the compensation awarded to a complainant who has filed a claim to the Board of Equal Treatment is not high enough, it can take the case to court for a larger amount.

46. The DIHR has informed ECRI that it receives six million DKK a year (approximately € 800 000) to deal with issues relating to equality, which it considers insufficient.

47. ECRI recommends that the Danish authorities review the budgetary situation of the Danish Institute for Human Rights.

- *Other institutions and non-governmental organisations*

48. In its third report, ECRI recommended that the Danish authorities provide NGOs and other specialised bodies with sufficient funds to enable them adequately to assist minority groups in solving the problems that they face.

49. ECRI has been informed that NGOs and other specialised bodies dealing with issues pertaining to groups of concern to ECRI still suffer from lack of funding. ECRI has further been informed that cooperation between NGOs and the government should be strengthened.

50. ECRI recommends that the Danish authorities ensure that NGOs and other civil society actors working on issues relating to groups of concern to ECRI receive sufficient funding and that there is closer cooperation between them and the authorities.

## **II. Discrimination in Various Fields**

### **Education**

51. In its third report, ECRI recommended that any measures taken better to integrate children from minority groups be made on a voluntary basis, with the full consultation of the parents and children involved. ECRI also recommended that the authorities adopt an all-encompassing policy for fighting school segregation by taking into account the employment, housing and social components of this problem.

52. The Danish authorities have informed ECRI that some municipalities such as Aarhus have been bussing children from groups of concern to ECRI to schools where the majority of the pupils are ethnic Danes. This measure is taken after a Danish language assessment has been made. ECRI has been informed that although the parents are consulted, they cannot veto the school change. The authorities have indicated that this measure has been successful and that the children involved have progressed much better linguistically. The Danish authorities have further indicated that the relevant rules do not allow pupils to be removed from a school in order to be referred to another school. The authorities have stated that children with a significant language support need, who are about to start school or change school, can be referred to a school other than the local school or the school that their parents have requested if, on the basis of an assessment of the child’s learning needs, the school authorities have reason to believe that the child’s learning needs can be better accommodated in that school. This could be a school where, in addition to a qualified language support

offer, the child will benefit from a larger share of classmates who speak the language of instruction at mother tongue level. ECRI considers that the parents' wishes should be taken into consideration, but that the solution to the problem is the implementation of broader measures. In this regard, civil society actors have informed ECRI that more needs to be done to combat school segregation through housing and social policies rather than bussing children as they consider that everyone should have the right to schooling in their district. They have further pointed out the very good performance of certain schools with approximately 80% migrant pupils. ECRI considers that the housing, employment and social components of the school segregation problem still need to be taken more into consideration by the Danish authorities.

53. ECRI recommends that the Danish authorities take measures to combat school segregation by devising, in consultation with all the parties concerned and taking into account the socio-economic dimension (employment and housing) policies to avoid, in the best interests of the child, pupils from minority groups being over-represented in certain schools as proposed in its General Recommendation No.10 on combating racism and racial discrimination in and through school education.

54. In its third report, ECRI recommended that the Danish authorities provide mother-tongue education to children in a non-discriminatory manner.

55. Before 2002, all children in Denmark were provided with mother-tongue teaching. However, since 2002, this teaching is mandatory only for children from European Union (EU) and European Economic Area (EEA) countries as well as those from the Faroe Islands and Greenland. The Danish authorities have informed ECRI that some municipalities have decided to continue providing mother-tongue teaching to children who are not from these regions on a voluntary basis. They have indicated that schools in these municipalities have not performed significantly better than other schools. ECRI considers that as prior to 2002 children of all nationalities were offered mother-tongue education, this change in policy may be interpreted as a means of pressurising the groups affected to assimilate. Moreover, providing mother-tongue education should not be linked to performance. ECRI wishes to bring to the authorities' attention, a survey carried out in 2008 on parents' views on mother-tongue instruction which revealed that parents felt that it enabled their children to develop self-esteem as bilingual and multicultural children and that it was an asset for their children's educational and employment perspectives.<sup>23</sup>

56. ECRI recommends again that the Danish authorities ensure that once the necessary numbers of interested persons are reached, all children in Denmark are taught their mother-tongue irrespective of their country of origin.

57. Some measures have been taken by the Danish authorities to provide children with Danish language skills at an early age. They have indicated to ECRI that initiatives have been taken to ensure that all children are offered the opportunity to obtain such skills. Since 2010, local authorities are obliged to conduct a language evaluation of all children at age 3 to establish whether there are indications that they are in need of language stimulation. The Danish authorities have further stated that all children who do not attend daycare should be language tested, that local authorities are obliged to offer language stimulation to all children living in Denmark who are in need of such training and that participation is compulsory. The Danish authorities have also indicated that bilingual children who do not attend daycare should have 15 hours of language stimulation a week, this being increased to 30 hours a week if one of the parents

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<sup>23</sup> Muslims in Copenhagen, At Home in Europe Project, Open Society Foundations, p. 86.

is unemployed. The authorities have indicated that if these children do not attend the language stimulation, their parents could lose the right to child benefits. Although the authorities have assured ECRI that the majority of migrant children attend daycare, ECRI considers that encouraging persons to learn a language should be done without recourse to punitive measures. Moreover, it is not clear to ECRI why a child with one unemployed parent should attend 30 hours of language stimulation, as opposed to 15.

58. Another initiative mentioned by the Danish authorities is the so called “reception classes” which are for bilingual students who need basic teaching in Danish as a second language. Attendance in a reception class is limited to two years by the end of which these children are fully integrated in other classes.
59. The Danish authorities have also informed ECRI that in 2007, a reform of the training received by teachers was carried out and that one of the mandatory subjects taught concerns teaching children with a minority background. During their training, some teachers gain practical experience teaching in schools where the majority of the pupils are of a minority background. However, civil society actors have informed ECRI that they consider that teachers should receive more training in teaching in a multicultural environment. Trainee teachers receive training in Christianity/civics/citizenship; the authorities have explained that there is an emphasis on Christianity because of the links between the latter and Danish history and that this subject is used as a general platform regarding subjects such as ethics. However, ECRI considers that as Denmark is a multifaith society, emphasis should be placed on this aspect of Danish society when training teachers. The Danish authorities have further informed ECRI that in 2007, a campaign to recruit more teachers from groups of concern to ECRI was carried out; the authorities have indicated that in one large teacher training college, two-thirds of the trainees had an immigrant background. A task force for bilingual students was established in an effort to bring school leaders together in sharing experiences in teaching in a multicultural society.
60. ECRI notes reports indicating that drop-out rates, particularly in vocational training colleges is higher for groups of concern to ECRI than for ethnic Danes. ECRI considers that research into the reasons for this drop-out rate should be carried out and that measures to combat this phenomenon should be taken.
61. ECRI recommends that the Danish authorities take measures to ensure that teachers receive multifaith training. ECRI further recommends that they ensure that teachers are provided, at all levels, with initial and on-going training to prepare them to educate and respond to the needs of pupils from different backgrounds as outlined in its General Policy Recommendation No. 10.

## **Employment**

62. In its third report, ECRI urged the Danish Authorities to take more proactive measures to implement the anti-discrimination legislation in the employment sector by, inter alia, carrying out information campaigns aimed at minority groups, as well as employers, employment agencies and local and national governmental authorities.
63. The Danish authorities have indicated that in January 2006, the Ministry of Employment published a guide on the previously mentioned Act on Prohibition of Discrimination in the Labour Market<sup>24</sup>. The guide is an update of an earlier guide from 2000 and its purpose is to provide organisations, employers, employees and others with a tool to understand how the rules should be used. The guide

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<sup>24</sup> See Existence and Application of Legal Provisions, Civil and administrative law provisions against racial discrimination.

includes examples of how the law should be understood. ECRI is not aware of any other measures taken by the authorities since 2006 to raise awareness of discrimination in the employment sector. No statistics are recorded on cases of racism and racial discrimination in the employment sector, but ECRI has received information of discriminatory job advertisements, Islamophobia in the employment market as well as a negative opinion of Central and Eastern European workers apparently held by many Danes. There are also reports that the latter are exploited in the labour market. The Danish authorities have informed ECRI that there are 20 000 nationals of new EU member states working in Denmark and that they consider them to be contributing positively to the Danish labour market. The Danish authorities have also indicated that they are not aware of any cases of discrimination against these nationals, but that they recognise that there is a risk that these persons may be offered pay below that received by Danes in similar jobs. The authorities have further indicated that trade unions have hired Polish staff as Poles are the largest group of workers from Central and Eastern Europe who live in Denmark. The authorities have assured ECRI that efforts have been made to ensure that foreign workers are aware of their rights. However, ECRI has been informed that, according to some estimations, 17% of Poles have been threatened physically by those who recruited them and 32% are threatened with layoffs by their employers.<sup>25</sup>

64. ECRI stresses the need for research on the discrimination suffered by non-ethnic Danes in the employment sector. It also considers that more awareness-raising programmes are needed to alert employers to the importance of these issues and to the substance of the relevant legal requirements.
65. In its third report, ECRI urged the Danish Authorities to adopt and implement a clear, consistent and long-term policy for integrating minority groups into the labour market. It also urged the Danish authorities to ensure that measures taken to encourage people to enter the job market not be implemented in a manner that would in effect punish minority groups without providing them with the necessary tools and opportunities to find work. ECRI recommended that minority groups, all relevant partners such as the business and NGO sectors, national and local authorities as well as employment agencies be involved in devising and implementing policies aimed at integrating minority groups into the job market. ECRI also recommended that the Danish authorities provide adequate funding for any initiatives aimed at offering better job training and employment skills to minority groups.
66. The Danish authorities have informed ECRI that the number of employed immigrants from non-Western countries aged 16-64 has increased from 44% in 2001 to 54% in 2009. They have also indicated that the employment rate among immigrant women of non-Western background increased from 36.5% in 2001 to 48.8% in 2009 and that the gap in employment rates for 16-29 year old descendants of non-Western origin and persons of Danish origin in the same age group was reduced by almost five percent from 2001 to 2009. However, there was still an employment gap of 10% for this group in employment. The Danish authorities have indicated a number of initiatives taken to integrate immigrants including funding 35 projects for the sum of € 4 million; 200 extra job consultants working in municipalities with minorities; in 2010 special efforts were made to get young immigrant males into the job market. Furthermore, a diversity campaign targeting businesses was initiated in 2006 and there is a yearly Diversity in the Workplace Award in Denmark. ECRI welcomes these developments. However, more could be done as ECRI has been informed that immigrants are disproportionately found in lower paid jobs and therefore have fewer opportunities than ethnic Danes. ECRI considers that all the necessary

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<sup>25</sup> ENAR Shadow Report 2009/2010, Racism and Discrimination in Denmark, Ethnic Debate Forum, p.13.



measures should be taken to integrate immigrants and members of groups of concern to ECRI into the labour market.

67. In 2006, Law No. 239 on changes to the Law on active social and employment policy provided that in cases where a married couple lives on social benefits, one partner will lose the right to those benefits if they have had less than 300 hours employment within the last two years. In 2008 the requirement of 300 hours was raised to 450 hours. ECRI welcomes reports indicating that this legislation will be repealed as of 1 January 2012. ECRI has no information as yet on what will replace these provisions.

## Housing

68. In its third report, ECRI recommended that any measures taken to ensure more multicultural neighbourhoods should not have an adverse effect on minority groups by housing them in areas where they are, in effect, isolated. It moreover recommended that when members of minority groups are housed in new areas, they be given adequate financial and social support and that measures to promote neighbourly contacts be taken. ECRI further recommended that the Danish authorities examine the cause of the disproportionately high number of homeless people among minority groups and find adequate solutions to this problem.
69. A Programme Board for Dialogue and Balance in Vulnerable Neighbourhoods (the Programme Board) composed of representatives from the housing sector, the business sector and local councils was established for the period 2004-2008 with the aim of developing a comprehensive, forward-looking strategy for action in the most vulnerable neighbourhoods in Denmark. In November 2008, the Programme Board published a report with its observations and recommendations to the government, local councils and housing organisations. The Danish authorities have informed ECRI that this board recommended that they provide legal and economic conditions to make permanent changes. Reports indicate that in 2010, the Danish Government presented new “ghetto strategies” and defined “ghettos” as areas where at least 50% of the inhabitants are migrants, the unemployment rate is more than 40% and at least 270 out of 10 000 inhabitants have been convicted of a criminal offence. According to this definition, there are 29 “ghettos” in Denmark, 10 of which are in Copenhagen. Reports indicate that the Danish authorities have announced that their goal is to reduce by one quarter the number of areas which fall into this category.
70. Reports also indicate that the Government’s Strategy against ghettoisation includes the demolition of buildings and a strengthening of police efforts to overcome crime and improve safety in these areas. However, ECRI notes that researchers and social workers in the housing area consider that solutions should be found in strategies for overcoming poverty in these social housing areas. ECRI agrees with this assessment and considers that issues such as poverty and the economic crisis should be taken into consideration when devising housing strategies. Furthermore, the term “ghetto” is still perceived as stigmatising towards groups of concern to ECRI. ECRI therefore welcomes reports according to which the Government that was elected on 15 September 2011 has indicated that this term will no longer be used and that these neighbourhoods will instead be considered as vulnerable areas. The Danish authorities have also indicated to ECRI that no study was carried out on the impact of measures taken for more integrated neighbourhoods on groups of concern to ECRI.
71. ECRI encourages the Danish authorities to continue their efforts to counter the disproportionate concentration of groups of concern to ECRI in disadvantaged neighbourhoods. While recognising the challenges posed by this task, ECRI

strongly recommends that the Danish authorities monitor the impact of measures taken in these fields.

72. As concerns the issue of homelessness among groups of concern to ECRI, the Danish authorities have informed ECRI that € 65 million have been allocated to the elimination of homelessness from 2009 to 2012 and that in 2010 and 2011, the government established emergency shelters for homeless people regardless of their status. They have also indicated that 5% of homeless persons in Denmark are from the EU, 5% from the Middle East and 6% from Africa. ECRI is concerned by reports<sup>26</sup> of racism and discrimination faced by non-Danish homeless persons in homeless shelters, notably those from Africa, Eastern Europe and Roma.<sup>27</sup> ECRI considers that these reports should be investigated.

## Health

73. A new rule was introduced in June 2011 whereby everyone who has been living in Denmark for seven years and does not speak Danish was obliged to pay for the services of an interpreter at each medical consultation. The fee was 150 DKK (approximately € 20), but as concerns hospital admission, the fee was only paid once. The Danish authorities have informed ECRI that torture victims and mental health patients were exempt from this provision. ECRI wishes to highlight the importance of patients receiving information on health issues in a language that they understand particularly given the risk of misdiagnosis when immigrants do not have access to interpretation. It therefore welcomes the Danish authorities' information that the Health Act was amended on 21 December 2011 and that the provision concerning the interpretation fee for medical consultation was repealed. This change came into effect on 1 January 2012.
74. The Danish authorities have informed ECRI that in the years 2005-2007 four projects concerning Health Care Houses for members groups of concern to ECRI were established in three parts of the country. They elaborated new methods suitable for health care, working with different ethnic groups in a local society. The Danish authorities have indicated that the results have been described in two publications which have been distributed to all municipalities in Denmark. Reports indicate that research on the health problems prevalent among immigrants has been developed in the last years, although further progress could be made in this regard.

## Administration of justice

75. In its third report, ECRI recommended that the Danish authorities ensure that judges, lawyers and prosecutors receive training on all national and international legal instruments pertaining to racism and racial discrimination during their formal training as well as throughout their career. ECRI also recommended that the Danish authorities continue taking measures to encourage members of minority groups to apply for positions in all areas of the judicial system.
76. The Danish authorities have informed ECRI that training on national and international legal instruments pertaining to racism and racial discrimination as well as training on the right of individuals to respectful treatment is part of the general training offered to judges and deputy judges where relevant. They have further stated that general courses on human rights are offered to judges and

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<sup>26</sup> ENAR Shadow Report 2009/2010, Denmark, Ethnic Debate Forum, p.15-16 and Submission by the Documentary and Advisory Centre on Racial Discrimination, Denmark (DACoRD) to the Committee on the Elimination of Racial Discrimination at its 77<sup>th</sup> session (2-27 August 2010) on the consideration of the 18<sup>th</sup> and 19<sup>th</sup> periodic reports of Denmark, para 59.

<sup>27</sup> For more information on the situation of Roma, see Vulnerable/Target Groups below.

prosecutors as part of their training. The Danish authorities have informed ECRI that prosecutors and police officers will participate in a one-day seminar which is specifically aimed at increasing their knowledge of hate crime. Civil society actors have, however, informed ECRI that judges are not very knowledgeable of discrimination issues, that they readily admit it and have agreed on in-house training on the matter. Civil society actors have further indicated that in 2008 and 2009 training was provided to judges on issues pertaining to discrimination. However, they regret that judges are not very interested in these issues, although they are interested in having more diverse courts.

77. As for measures taken to encourage members of minority groups to apply for positions in all areas of the judicial system, the Danish authorities have indicated to ECRI that jobs advertisements from the Ministry of Justice state that all interested applicants are encouraged to apply regardless of gender, age, religion or ethnic background. However, ECRI considers that a more proactive policy needs to be implemented in order for Denmark to have a judiciary that better reflects the country's diversity.

78. ECRI recommends that the Danish authorities continue and strengthen the training provided to the judiciary on issues pertaining to racial discrimination. ECRI also recommends that the Danish authorities carry out more proactive measures to recruit members of groups of concern to ECRI in all areas of the judicial system.

#### **Access to public places**

79. In its third report, ECRI encouraged the authorities in their endeavours to fight racial discrimination in access to public places and recommended that they carry out a long-term and consistent policy for addressing this problem. ECRI recommended in this regard that more awareness-raising campaigns be carried out and programmes implemented throughout the country.

80. The Danish authorities have informed ECRI that an initiative to raise discotheque doormen's awareness of issues pertaining to racial discrimination has started. Moreover, there is the previously-mentioned awareness-raising campaign on discrimination in nightlife.<sup>28</sup> Civil society actors have indicated that in 2006, the City Court of Copenhagen sentenced four doormen (from four different night clubs) for discrimination against young men of a non-Danish ethnic origin and that the most persistent and obvious discrimination is found in the leisure industry, especially in nightclubs and discotheques. They point to research<sup>29</sup> carried out among 200 minority youth and 181 ethnic Danes which showed that minority youth who are born and bred in Denmark had difficulties entering discotheques. 59% among the questioned minority youth between 25-34 stated that they were not permitted entry into a discotheque or a nightclub compared to only 18% of ethnic Danes. The survey further revealed that skin colour also played a role: the darker a person is, the harder it is to be allowed entry: while 44% of persons from the former Yugoslavia were refused entry, the figure rose to 54% for Turks and 79% for Somalis. ECRI, therefore, considers that the Danish authorities need to continue and to strengthen initiatives taken to combat racism and racial discrimination in access to public places.

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<sup>28</sup> See Existence and Application of Legal Provisions, Criminal law provisions against racism and racial discrimination above.

<sup>29</sup> ENAR Shadow Report 2008, Racism and Discrimination in Denmark, Ethnic Debate Forum, pp. 26-27.

### **III. Racist Violence**

81. The Danish authorities have indicated to ECRI that in 2009, the PET identified from the police's case-handling system nine cases of racist violence. Moreover, according to the Director of Public Prosecutions, the majority of the cases in which Article 81 6) of the Criminal Code has been applied since 2007, concern acts of violence. Finally, in 2008 Article 81 6) of the Criminal Code was invoked by the prosecution in a case concerning the murder of a Turkish paper-boy, but the judgement does not reflect whether this was taken into consideration by the court. ECRI refers, in this connection to the observations it has made under the heading Criminal law provisions against racism and racial discrimination.
82. ECRI notes that for 2008, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) received information from the Ministry of Justice indicating that 122 hate crime cases, including one attempted murder, 13 assaults and six cases of vandalism were committed, but that it did not specify in its submission if these were considered to be racist or xenophobic crimes.

### **IV. Racism in Public Discourse**

83. In its third report, ECRI urged the Danish authorities to give a more balanced view of issues pertaining to minority groups and their role in Danish society. It also urged them to send a strong message that incitement to racial hatred will not be tolerated by ensuring that those who commit such acts are consistently prosecuted in accordance with the Criminal Code. ECRI recommended that awareness-raising campaigns be carried out on the benefits of a multicultural society and that members of minority groups, relevant NGOs as well national and local authorities work together at all stages of these campaigns. In its third report, ECRI recommended that the Danish authorities encourage and provide financial support to initiatives aimed at training journalists on issues pertaining to human rights in general and to racism and racial discrimination in particular.

### **Media**

84. ECRI notes with concern reports according to which some media continue to portray minority groups, especially Muslims and Roma, in a negative light. ECRI has also received reports indicating that some media report the ethnic background of a suspected criminal when this is not necessary for understanding the information, but that criminal offences committed by Danes against groups of concern to ECRI are underplayed. Moreover, ECRI is aware of the view among some members of groups of concern to ECRI that they are being denied opportunities to express themselves in the media while no exception is taken to those, including academics, who express racist views in the media. The rhetoric carried by the media concerning groups of concern to ECRI thus has affected the majority population's perception of such groups with which they otherwise have little day to day interaction. ECRI further notes with concern that those media which incite racial hatred face in practice no legal consequences. In ECRI's view, efforts need to be made to raise media awareness of the need for responsible journalism.
85. The Danish authorities have informed ECRI that in their first year of studies, journalists receive mandatory training on the media and the law (i.e., freedom of expression, its limitations as well as journalists' responsibilities) and on journalism in society (the influence of the media in society). During their training, journalists can also choose subjects on stereotyping and cultural understanding. The Danish authorities have indicated that the Danish Press Council which deals with mass media and the Danish Radio and Television Board which deals with audio-visual media are empowered to receive complaints. The latter verifies that

programmes do not incite racial hatred. The Danish authorities have further informed ECRI that there was one case where a local radio transmitted hatred against Jews, but the Danish Radio and Television Board decided that there was no incitement. Furthermore, the Danish authorities have indicated that a project entitled “Media and New Danes” facilitated workshops for a debate on the media.

86. ECRI strongly recommends that the Danish authorities impart on the media, by whatever means are practically available without encroaching on their editorial independence, of the need to ensure that the information they provide does not breed a climate of hostility towards members of groups of concern to ECRI. It also recommends that the authorities support any initiatives taken by the media in this field and supply them with the necessary resources to provide initial and in-service training in human rights in general and racism issues in particular.

### **Political discourse**

87. ECRI notes with concern reports indicating that since its third report, some politicians, especially from the Danish People’s Party, have continued to make disparaging statements about groups of concern to ECRI in general and Muslims in particular, portraying them in a constantly negative light. As indicated above,<sup>30</sup> some politicians have been brought to court. However, civil society actors have informed ECRI that they have in many instances made complaints against these politicians to no avail. In ECRI’s view, the cumulative effect of these trends has been to produce a climate which has affected negatively specific areas of policy which impact directly on groups of concern to ECRI. ECRI is thus pleased to note reports indicating that the newly elected Danish Government has pledged to ensure a more positive debate on issues pertaining to immigration. ECRI hopes that this will lead to more responsible public discussions of issues pertaining to groups of concern to ECRI by politicians. It wishes in this regard to bring to the authorities’ attention the Charter of European Political Parties for a Non-Racist Society and ECRI’s Declaration on the use of racist, antisemitic and xenophobic elements in political discourse which can serve as useful guidelines on improving political discourse on groups of concern to ECRI in general and Muslims in particular.

88. ECRI encourages the Danish authorities to ensure that politicians act responsibly when addressing issues pertaining to groups of concern to ECRI.

## **V. Vulnerable/Target Groups**

### **Muslim communities**

89. In its third report, ECRI urged the Danish authorities to send a strong signal that incitement to racial hatred against Muslims will not be tolerated, by strengthening Article 266 b) of the Criminal Code to that end. It also recommended that the authorities carry out awareness-raising campaigns throughout the country, in which members of Muslim communities, NGOs, the media as well as members of local and national authorities are involved, in order to present a more objective and balanced view of Muslims and Islam and to foster a constructive debate on living in a plural society. In its third report, ECRI further recommended that the Danish authorities continue to meet with members of Muslim communities in order to work with them on issues of particular concern to Muslims such as, inter alia, access to education and employment.

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<sup>30</sup> See Existence and Application of Legal Provisions, Criminal law provisions against racism and racial discrimination above.

90. As indicated above<sup>31</sup>, some politicians have continued to make negative statements against Muslims since ECRI's third report. ECRI notes with concern that few have been prosecuted. The Danish authorities have indicated to ECRI that there have been 27 successful prosecutions of persons making racist statements against Muslims between 2000 and 2010.<sup>32</sup> However, ECRI was not provided with a breakdown of the number of successful prosecutions since its third report. Considering the low number of successful prosecutions in the space of a decade, ECRI considers that more efforts still appear necessary to tackle the problem. ECRI hopes that the above-mentioned Danish Government's pledge for a more positive debate on immigration issues<sup>33</sup> will also benefit the Muslim community.
91. As also mentioned above<sup>34</sup>, since ECRI's third report, the media have continued to portray Muslims in a negative light. An EU-wide survey carried out in 2009 by the FRA indicates that 61% of Somalis and 58% of Turks living in Denmark believed that discrimination based on ethnic or immigrant origin was widespread in Denmark. ECRI is not aware of any awareness-raising campaigns on Muslims and Islam that have been carried out since its third report.
92. ECRI strongly recommends that the authorities encourage debate within the media on the image which they convey of Islam and Muslim communities and on their responsibility in this respect to avoid perpetuating prejudice and biased information as recommended in its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims.
93. The Danish authorities have informed ECRI that in 2006, a Muslim cemetery was opened in Brøndby. They have further stated that Danish law provides for Muslims to be buried in parts of Christian cemeteries and that there are plans to build a Muslim cemetery in Roskilde. As concerns mosques, the Danish authorities have indicated that, although there are none with minarets, 125 can be found in the country and that these are usually built in buildings such as old factories. There are two applications in Copenhagen to build new mosques, but the authorities have indicated that whether this will be done depends on the financing. There are also plans to build two mosques in Aarhus, but they also encounter problems due to financing.
94. ECRI recommends that the authorities take the necessary measures to ensure that the freedom of religious practice is fully guaranteed. In this context particular attention should be directed towards removing unnecessary legal or administrative obstacles to both the construction of sufficient numbers of appropriate places of worship for the practice of Islam and to its funeral rites as recommended in its General Policy Recommendation No. 5.

### **Jewish community**

95. In its third report on Denmark, ECRI urged the Danish authorities to forbid the public denial, trivialisation, justification or condoning of the Holocaust as well as the production, publication and dissemination of Nazi memorabilia and Holocaust denial and revisionism material.

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<sup>31</sup> See Existence and Application of Legal Provisions, Criminal law provisions against racism and racial discrimination and Racism in public discourse.

<sup>32</sup> For more information on hate speech, see Existence and Application of Legal Provisions, Criminal law provisions against racism and racial discrimination above.

<sup>33</sup> See Racism in Public Discourse.

<sup>34</sup> Ibid.

96. The Danish authorities have informed ECRI that no specific measures have been taken to forbid the above; if a statement is threatening, insulting or degrading, it will be covered by Article 266 b) of the Criminal Code. Although ECRI has been informed that Holocaust denial is not a major problem in Denmark, it notes that many Holocaust denial and Nazi memorabilia are produced in Denmark.
97. ECRI reiterates its recommendation that the public denial, trivialisation or condoning of the Holocaust as well as the production, publication and dissemination of Nazi memorabilia and Holocaust denial and revisionism material be forbidden as recommended in its General Policy Recommendation No. 9 on the fight against antisemitism.
98. In its third report, ECRI recommended that the Danish authorities ensure that antisemitic statements were duly monitored and punished under Article 266 b) of the Criminal Code.
99. The Danish authorities have informed ECRI that the Danish Security and Intelligence Service (PET) publishes reports on hate crime which also contain information on neo-Nazi propaganda and acts such as vandalism in synagogues. The FRA has, however, indicated that the PET does not distinguish between antisemitic and other incidents.<sup>35</sup> The FRA has further indicated that in 2006 four antisemitic incidents were noted followed by an increase to 22 in 2009.<sup>36</sup> Representatives of the Jewish community in Denmark have stated that there is a very direct link between events in the Middle East and in Copenhagen, that the Jewish community was cooperating with the Muslim community and that they were creating a network together with the City of Copenhagen. Representatives of the Jewish community have further informed ECRI that attacks on synagogues, Holocaust memorials and the desecration of tombs occur. Moreover, they have informed ECRI of an assault of a young man which occurred in 2010.<sup>37</sup> ECRI has already made recommendations on measures to take regarding racist crimes.
100. In its third report, ECRI recommended that research be carried out regarding the situation of the Jewish community in Denmark in order to combat antisemitism in all its forms. ECRI also recommended that the Holocaust be included in all school curricula.
101. The Danish authorities have indicated that the Action Plan on Ethnic Equal Treatment contains actions to combat antisemitism including mapping regarding antisemitism and research on this subject. They have, however, indicated that no specific research is carried out regarding the Jewish community in Denmark. ECRI considers that research should be carried out regarding racist incidents. The Danish authorities have stated to ECRI that history classes contain elements on antisemitism in Denmark during World War II and the Holocaust. They have further indicated that the Holocaust Remembrance Day is observed every 27 January and that on that day, Holocaust survivors and politicians are invited to speak throughout the country.

## Roma

102. In its third report, ECRI recommended that the Danish authorities enhance Roma's cultural, historical and linguistic heritage by, inter alia, envisaging their recognition as a national minority under the Framework Convention for the

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<sup>35</sup> Anti-Semitism - Summary overview of the situation in the European Union 2001-2010, Working Paper, April 2011, p.10.

<sup>36</sup> Ibid.

<sup>37</sup> For more information on this type of act, see Racist Violence above.

Protection of National Minorities. ECRI also recommended that Denmark combat all forms of educational segregation against Roma children as well as other forms of discrimination that Roma face.

103. The Danish authorities have informed ECRI that they will not recognise Roma as a national minority under the Framework Convention for the Protection of National Minorities. They have indicated that there is no information on Roma in the Danish Civil Registration System (a database which contains information on the population of Denmark such as gender, place of birth, etc.); they have worked with civil society actors to shed light on the historical presence of Roma in Denmark and concluded that Roma do not have a long-standing attachment to the country. ECRI regrets the Danish authorities' decision not to recognise Roma as a national minority under the Framework Convention for the Protection of National Minorities as this decision has reportedly made Roma organisations give up their effort to spread information and improve the situation of the Roma population. Moreover, this lack of recognition has resulted in a lack of support for organisations working with information and education on Roma rights, history, culture and language.<sup>38</sup> ECRI recognises that states have a margin of appreciation concerning the recognition of a given group as a national minority; nevertheless it considers that in order to combat racism and racial discrimination against Roma, their identity should be recognised.
104. Since ECRI's third report, Denmark has seen an increase of Roma from Eastern Europe and new EU member states. There are no official statistics on the number of Roma who live in Denmark, but this number has been estimated between 5 000 and 10 000. The Danish authorities have indicated on this point that the European Commission has estimated the number of Roma living in Denmark to be between 1000 and 10 000 persons.<sup>39</sup> As indicated above<sup>40</sup>, some media portray Roma in a negative light, branding them as criminals. ECRI has been informed that the information relayed by the media to the public about Roma is often derived from police sources.
105. ECRI recommends that the Danish authorities encourage the media, without encroaching on their independence, to refrain from broadcasting any information likely to fuel discrimination and intolerance towards Roma as recommended in its General Policy Recommendation No. 13 on combating anti-Gypsyism and discrimination against Roma.
106. ECRI recommends that the Danish authorities ensure that the police communicate with the media and the public at large in a manner that does not perpetuate hostility or prejudice towards members of groups of concern to ECRI as recommended in its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing.
107. In July 2010, approximately 20 Roma from Romania were arrested and deported on the grounds that the deportations were necessary to preserve public order and health because they had squatted an abandoned building. Following a Supreme Court ruling, in April 2011, the now defunct Ministry of Refugees, Immigration and Integration Affairs decided to overturn the Immigration Service's deportation order for 14 of the Roma. ECRI notes with concern that the case fuelled negative comments by some politicians about Roma.

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<sup>38</sup> Denmark Raxen National Focal Point, Thematic Study, Housing Conditions of Roma and Travellers, March 2009, p. 7.

<sup>39</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020, COM(2011) 173, p. 15.

<sup>40</sup> See Racism in Public Discourse.



108. The public's attitude towards Roma is also negative and ECRI has been informed that this is especially the case during music festivals in the summer where they are harassed when collecting empty bottles to earn some money. The DIHR has informed ECRI that it plans to produce a brochure in Romanian and Bulgarian informing Roma of their rights. Roma also face discrimination in, amongst others, access to camping sites; there are reports of them being denied access to these sites. This type of discrimination is forbidden under the Act Prohibiting Discrimination on the Basis of Race, but no cases in which this law was used to punish the perpetrators of such acts have been reported to ECRI. ECRI notes that, in general, there is little information on Roma in Denmark which renders a deeper assessment of their situation difficult.
109. ECRI recommends that in order to measure the problems of the Roma better with the aim of combating them more effectively and to adapt policies to be undertaken, the Danish authorities collect statistical data on Roma, in particular in the fields of education, employment, housing and health, by ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent as recommended in its General Policy Recommendation No. 13.

### **Migrants, refugees and asylum seekers**

- *Asylum seekers and refugees*
110. In its third report, ECRI recommended that asylum seekers be assisted by a lawyer when they submit their claim to the competent authorities and during the entirety of the asylum procedure.
111. The Danish authorities have informed ECRI that asylum seekers are not assisted by a lawyer when filling out an asylum application form and during their interview with the Danish Immigration Service. Civil society actors have indicated that they would like to speak to newly arrived asylum seekers to ensure that they understand the procedure and to give them advice. ECRI notes that the asylum application form is a 24 page document which some asylum seekers may require assistance in filling out. ECRI also considers that they should have legal assistance during the interview with the Danish Immigration Service. The Danish authorities have indicated that asylum seekers are provided with an attorney when submitting their case before the Appeals Board.
112. ECRI recommends again that the Danish authorities ensure that asylum seekers are assisted by a lawyer during the entirety of the asylum procedure.
113. In its third report, ECRI recommended that Denmark ensure that asylum seekers are able to put their case before the authorities fully by providing them with equal access to all the legal remedies afforded to everyone living in Denmark, including the right to appeal before an independent court.
114. The Danish authorities have indicated to ECRI that the Danish Immigration Service examines asylum claims at first instance and if the application is rejected, it is automatically referred to the Refugee Appeals Board (the Board). If an application is deemed to be manifestly unfounded, an accelerated procedure will be applied whereby it will be rejected from the outset. In this case, the Danish Refugee Council is given an opportunity to state whether it agrees with the decision. If it does not, the case will be brought before the Board. The Danish authorities have indicated that according to Article 56 8) of the Aliens' Act, decisions of this body are final which implies that they are not subject to judicial review; this has been confirmed by the Danish Supreme Court. Article 53 b) of the Aliens' Act provides for the rejection of manifestly unfounded claims, but it does not provide a list of nationals whose claims will be considered as falling in that category. The Danish authorities have indicated to ECRI that these nationals

come from a country where, according to the most up-to-date information available, it is unlikely that they would face persecution. The Danish authorities have further informed ECRI that all submissions for asylum from nationals of EU member states are deemed to be manifestly unfounded as well as applications from nationals of countries such as Albania, Australia, Canada, Kosovo, Serbia, etc. ECRI considers, however, that applications for asylum should be examined on a case by case basis.

115. The Danish authorities have indicated that the Board overturns approximately 25% of the rejected cases. The Board was composed of a judge, a person appointed by the Danish Bar Association and another by the now defunct Ministry of Refugees, Immigration and Integration Affairs. Previously, this body was composed of five members, one of whom was appointed by the Danish Refugee Council and the other by the Ministry of Foreign Affairs. The Danish authorities have assured ECRI that the Board is independent. However, ECRI notes concerns by civil society actors that this new composition lead to the Board not being perceived as independent by the public and asylum seekers, due to the appointment of a person by the now defunct Ministry of Refugees, Immigration and Integration Affairs. ECRI has been informed that this person will now be nominated by the Ministry of Justice. The Danish authorities have informed ECRI that they intend to broaden the composition of the Refugee Appeals Board with one member from the Ministry of Foreign Affairs and another from the Danish Refugee Council.
116. In its third report, ECRI recommended that asylum seekers have access to employment and professional training as well as to Danish schools for their children in mainstream Danish society. ECRI also recommended that asylum seekers be provided with adequate care in accordance with national and international human rights standards.
117. Asylum seekers are in principle not permitted to work in Denmark. They only participate in training activities at the asylum centre where they are accommodated or in unpaid on-the-job training outside the asylum centre; they are also allowed to carry out voluntary work. Moreover, asylum seekers who have been offered employment in a sector where there is a labour shortage may obtain a residence permit (otherwise they maintain their status until a final decision is made). However, the procedure for receiving a residence permit under this exception is rather cumbersome. In ECRI's experience, there are several factors which should be taken into consideration when deciding whether asylum seekers should be allowed to seek paid employment, including the fact that it reduces the risk that they will be perceived by the public as a burden on society and that those who subsequently receive refugee status will be able to integrate better once they have received this status. ECRI considers that it is in principle up to the authorities to establish the period after which asylum seekers can work in their country. It therefore welcomes the authorities' information that asylum seekers whose case is being processed are to be given the possibility of working and living outside asylum centres after a six month period. The authorities have further indicated that an inter-governmental committee has been established to examine the manner in which asylum seekers may be given possibility of living outside asylum centres.
118. The Danish authorities have also informed ECRI that all school-aged children staying in Denmark for a minimum of six months are subject to compulsory education under the provisions of the Public Primary School Act. This also applies to children of asylum seekers and unaccompanied minors seeking asylum. The Danish authorities have indicated that in practice, all school-aged children who are under the authority of the Danish Immigration Service are enrolled in primary or lower secondary education immediately after they are

housed in an asylum centre or other appropriate forms of accommodation financed by the Danish Immigration Service. The Danish authorities have also stated that children of asylum seekers and unaccompanied minors seeking asylum may attend upper secondary school if they meet the general academic and linguistic criteria for admission. However, it does not appear that they are allowed to attend university. The Danish authorities have indicated that asylum seekers who fall under the authority of the Danish Immigration Service have access to the necessary healthcare<sup>41</sup> covered by this body and Regional State Authorities. They have moreover informed ECRI that children of asylum seekers and unaccompanied minors seeking asylum have access to the same level of healthcare as other children who reside in the country. The Danish authorities have also indicated that the daily cash allowances for adult asylum seekers who do not get their meals at the accommodation centre consist of a basic allowance to cover expenses for food and other basic needs, a caregiver allowance for asylum seekers with custody of minor children and a supplementary allowance subject to the applicants' fulfilment of a contract with the accommodation centre. The basic daily allowance is 40.76 DKK (approximately 5.48 €) for married/cohabitating adults and 51.48 DKK (approximately 6.92 €) for single adults. The caregiver allowance for the first two children is 51.48 DKK for rejected asylum seekers who do not cooperate in their departure, 60.08 DKK (approximately 8.08 €) for asylum seekers in the initial/Dublin phase and 81.52 DKK (approximately 10.95 €) for registered asylum seekers and rejected asylum seekers who cooperate in their departure. For the third and fourth child, the caregiver allowance is 42.91 DKK (approximately 5.77 €) regardless of the status of the asylum case. The supplementary allowance available to adult asylum seekers who fulfil their contract with the accommodation centre is 8.59 DKK (approximately 1.15 €) for asylum seekers in the initial/Dublin phase and 30.04 DKK (approximately 4.04 €) for registered asylum seekers and rejected asylum seekers who cooperate in their departure. The authorities have indicated that rejected asylum seekers who do not cooperate in their departure are not eligible for the supplementary allowance. ECRI therefore notes with concern that the allowances received by asylum seekers are so low that it cannot reasonably be deemed to enable them to live in dignity.

119. ECRI encourages the Danish authorities to give asylum seekers the right to paid employment after a certain period of stay in the country. It also recommends that all asylum seekers be given appropriate assistance to be able to attend upper secondary school and university while in Denmark. It urges the authorities to increase the allowances received by asylum seekers.

120. The Danish authorities have informed ECRI that for the period 2006 until November 2011, approximately 19 000 asylum claims were submitted of which approximately 9 200 were accepted. The Danish authorities have further indicated that it takes on average 100 days for an asylum claim to be processed and that by November 2011 a submission to the Refugee Appeals Board took approximately 180 days to be dealt with.

121. As concerns rejected asylum seekers, ECRI has been informed by the Danish authorities that if they have resided in an accommodation centre for one and a half years after their application has been rejected, they may be provided with special accommodation outside these centres. However, ECRI has been informed that only some rejected asylum seekers are provided with accommodation outside asylum centres. Furthermore, ECRI notes with concern

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<sup>41</sup> The Immigration Office will cover treatment which relieves pain or which cannot be postponed because there would be a risk of permanent injury, or that a condition would be developed or worsen or that a condition may become chronic. See <http://www.nyidanmark.dk/en-us/coming-to-dk/asylum/conditions-for-asylum-applicants/conditions-for-asylum-applicants.htm>.

that there are children who were born in these centres and have been living there for anything up to 10 years in an environment which is harmful to their welfare because they associate primarily with people who are themselves traumatised due to the precariousness of their situation in Denmark. The Danish authorities have informed ECRI that rejected asylum seekers with custody of minor children who have stayed in an accommodation centre for more than 18 months following a final rejection of their asylum application may be provided with special accommodation outside asylum centres. They have further indicated that rejected asylum seekers who cannot return to their country and who have been cooperating in their departure are to be given the possibility of working and living outside asylum centres after a six month period.

122. Rejected asylum seekers who cooperate in their departure from Denmark are treated differently from those who do not. Those who cooperate in their return, but cannot be sent back because, for example, their government refuses to accept them, will receive a temporary residence permit. Asylum seekers who cooperate in their return will also be awarded an extra four € per day. The allowance of those who do not cooperate is reduced and they are obliged to live in specific departure centres; the police may decide on whether they need to report to them on a daily basis. The Danish authorities have indicated to ECRI that asylum seekers whose claim has been rejected and who do not cooperate in their return can be detained for a period of six months, which can be extended to 12 months after which they must be released. ECRI notes that the DIHR is concerned that measures taken to encourage future cooperation on the part of rejected asylum seekers who have not hitherto cooperated are unlikely to produce the intended effect on those who could not be returned by force and that they are disproportionate. ECRI considers that reducing the allowance of asylum seekers who do not cooperate in their return has no clearly justifiable basis. The Danish authorities have indicated to ECRI that the above-mentioned inter-governmental committee will look at measures taken as an incentive for the return of rejected asylum seekers.
123. ECRI recommends that the Danish authorities ensure that all families of rejected asylum seekers with children do not live for prolonged periods in accommodation centres as this can be harmful to their children's welfare.

## VI. Reception and status of non-citizens

### - *Aliens' Act*

124. In its third report, ECRI urged the Danish authorities to reconsider the provisions contained in the Aliens' Act on spousal and family reunification, bearing in mind Article 8 of the European Convention on Human Rights. It also urged the Danish authorities not to adopt laws which in effect indirectly discriminate against minority groups.
125. ECRI notes with concern that on 1 June 2011, the Danish Parliament adopted new rules (which entered into force on 1 July 2011) for spousal reunification which further tightened the strict rules already in force. The new rules on spousal reunification provide that the spouse residing in Denmark (who is not Danish or a national of Nordic countries) wishing for spousal reunification must normally: 1) not have committed serious criminal offences; 2) not have overdue public debts, unless s/he has been granted a reprieve and the debt does not exceed 100 000 DKK (approximately 13 405 €) which has been increased to 102 900 DKK (approximately 13 840 €) on 1 January 2012<sup>42</sup>; 3) not have received public assistance for the past three years under the Active Social Policy Act or

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<sup>42</sup> The Danish authorities have informed ECRI that this sum is increased annually.

the Integration Act; 4) have submitted a signed declaration about integration and active citizenship in Denmark; 5) have passed a Danish language examination, level two or equivalent; 6) have had ordinary full-time employment in Denmark for at least two years and six months out of the past three years (unless s/he is retired or is on early retirement), and 7) have had ordinary full-time employment in Denmark for at least four out of the past four and a half years (unless s/he is retired), or have completed a higher educational programme, professional bachelor's degree, business academy or vocational upper secondary school, or have passed a Danish language examination, level three equivalent. The Danish authorities have informed ECRI that those who were found to fulfil the above requirements at the time of obtaining permanent residence are exempt and that these requirements may be disregarded when their imposition would be contrary to Denmark's international obligations.

126. A point system for the applicant for spousal reunification has also been introduced. If both spouses/partners are over 24, the applicant must obtain 60 points. If one or both spouses/partners are under 24, the applicant must normally obtain 120 points. These points will be granted based on a number of criteria, such as work experience, language skills and completed education. The spouses'/partners' combined attachment to Denmark must be considerably greater than their combined attachment to any other country. Persons who have held Danish citizenship for over 28 years, or who were born and raised in Denmark or came to the country as small children and have resided legally there for over 28 years are exempt from the attachment requirement. In order to fulfil the attachment requirement, the applicant spouse/partner is normally required to have visited Denmark at least twice on a visa or visa-free stay and to have completed a Danish language course (on A1 level as a minimum). The spouse/partner residing in Denmark must have made an effort to integrate into Danish society. The resident spouse/partner must also post 100 000 DKK (approximately € 13 405), which was increased to 102 900 DKK (approximately 13 840 €) on 1 January 2012; this amount was previously 63 413 DKK, (i.e. approximately € 8 514) in bank-backed collateral to cover any public assistance paid to the foreign spouse/partner under the terms of the Active Social Policy Act or the Integration Act.
127. The applicant spouse/partner must take an immigration test in Denmark which is a two-tier test consisting of a language test and a test on knowledge about Danish norms, values and fundamental rights. Citizens of the US, Canada, Australia, New Zealand, Japan, Israel, Switzerland and South Korea are exempt from passing this test as they are deemed to be able to integrate into Danish society more easily. ECRI has reservations regarding the process by which such a conclusion was reached and as to what criteria were used. The fee for the test, is 3 000 DKK (approximately 404 €). Moreover, the fee for submitting an application for family reunification with a spouse/partner was raised from 5 975 DKK (approximately € 800) to 8 000 DKK (approximately 1081 €) on 1 January 2012. ECRI welcomes the Danish authorities' assurances that it is their political goal to scrap the immigration test and the application fee for spousal reunification.
128. The Danish authorities have informed ECRI that they intend to change the current rules regarding spousal reunification. They intend to abolish the point system and reverse the 24 year rule to what it used to be before Act No. 601 of 14 June 2011 entered into force on 1 July 2011. The previous rule is contained in Article 9 1 (i) of the Aliens' (Consolidation) Act No. 785 of 10 August 2009.<sup>43</sup> The

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<sup>43</sup> This article provides that a residence permit may be issued to a foreigner over the age of 24 who cohabits in a shared residence either in marriage or in regular cohabitation for a prolonged duration, with a person permanently resident in Denmark over the age of 24 who is a Danish national or is a national of

authorities have also indicated that they intend to change the attachment requirement also to what it used to be before Act No. 601 of 14 June 2011 entered into force, thus using the criterion that the spouses' or cohabitants' aggregate ties with Denmark must be stronger than their aggregate ties with any other country. The authorities have informed ECRI that they intend to change the 28 year rule to a 26 year rule. The Danish authorities have stated that it is their intention to lower the amount that the spouse in Denmark has to post as collateral from 100 000 DKK (approximately 13 403 €) to 50 000 DKK (approximately 6 725 €). A bill containing proposals for changes to the present rules regarding spousal reunification was presented to the Danish Parliament on 2 March 2012.

129. ECRI welcomes the above measures, but it nevertheless considers that, even with these proposed changes, a far-reaching overhaul of the spousal reunification rules is necessary in order to make it possible for persons to obtain spousal reunification without any discrimination. The requirement that the spouse/partner who lives in Denmark should not have received public assistance for the past three years as well as the high amounts involved in the process and the requirements on the periods of ordinary full time employment may disproportionately affect groups of concern to ECRI who suffer from higher levels of unemployment<sup>44</sup> than ethnic Danes; it may also affect disproportionately refugees who are often on the cash benefit.<sup>45</sup> Moreover, ECRI considers the fact that some nationals are exempt from passing the immigration test because they are presumed to have better chances of integrating in Denmark to be arbitrary and discriminatory as the ability of an individual to integrate into society depends on many factors. It therefore hopes that this requirement will indeed be scrapped as soon as possible. As concerns the rule by which family reunification can only be achieved at the age of 24, with the stated purpose of preventing forced marriages, ECRI notes research indicating that 84% of marriages are contracted with the free will of the parties concerned. Furthermore, ECRI considers that this measure is disproportionate to the aim sought. Even if the requirement that the spouses'/partners' combined attachment to Denmark should be considerably greater than their combined attachment to any other country is changed to the above-mentioned aggregate ties requirement, it remains a criterion which can be subject to subjective interpretation. The rule that persons who have held Danish citizenship whether it be for over 28 or 26 years, or who were born in Denmark or came to the country as a small child or have resided legally in the country, whether it be for over 28 or 26 years, are exempt from these requirements, also risks disproportionately affecting non-ethnic Danes. The Danish authorities have informed ECRI that the Aliens' Act contains an exemption mechanism. An example of an exceptional reason for allowing family reunification although not all the requirements for spousal reunification have been met is when refusing an application would interfere with Denmark's international obligations (e.g. the right to respect for private and family life guaranteed in Article 8 in the European Convention on Human Rights). The Danish authorities have indicated that exemptions can, for example, be granted if the spouse in Denmark holds a residence permit as a refugee and would otherwise have to enjoy his/her family life in a country where s/he risks persecution. ECRI also notes with concern reports indicating that if a child is not assessed as being able to integrate in

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one of the other Nordic countries or is issued with a residence permit as a refugee, or who has held a permanent residence permit in Denmark for at least the past three years.

<sup>44</sup> For more information on this issue, see Discrimination in Various Fields above.

<sup>45</sup> For more information on the starting allowance, see Integration Act below.

Denmark s/he will not be allowed to join his/her parent(s) in Denmark for family reunification purposes or s/he will be deported from the country.<sup>46</sup>

130. The Danish authorities have informed ECRI of a number of planned changes to the rules concerning family reunification for children. For example, the requirement concerning a child's potential for successful integration in Denmark will no longer apply to children aged eight or younger. Moreover, when the immigration authorities consider whether this criterion is met, special attention will be paid to the situation of the parent living in Denmark as concerns employment and language proficiency. The authorities have further indicated that in future, more importance will be attached to the willingness of the parent living in the home country to care for the child. The authorities have indicated that a bill amending the Aliens' Act in line with the above-mentioned changes is expected to be presented to Parliament in April 2012. ECRI wishes in this regard to recall the European Court of Human Rights' judgement in the *Osman v Denmark* case<sup>47</sup> in which the Court found Denmark to be in breach of Article 8 of the European Convention on Human Rights due to its refusal to renew the residence permit of a Somali girl who grew up in Denmark with her family, but had spent more than two years living in Kenya, allegedly against her will. ECRI would further like to recall Article 10 1) of the Convention on the Rights of the Child which provides that applications by a child or his or her parents to enter a State Party for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner.

131. ECRI urges the Danish authorities to carry out a wide-ranging reform of the spousal reunification rules in order to remove any elements which amount to direct or indirect discrimination and/or which are disproportionate to their stated aims. ECRI also urges the authorities to ensure that the right of children to live with their parents in Denmark is not subject to an integration assessment, whatever their age.

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<sup>46</sup> The Danish authorities have explained that according to the current rules in the Aliens' Act, foreign children aged 15 or younger can, as a general rule, be granted family reunification with a parent residing permanently in Denmark, although in certain situations, the additional condition of "basis for successful integration" is applied. If the parent residing in Denmark has left the child behind in the country of origin, if the child's other parent is still living in the country of origin, and if the child's application for a residence permit is submitted more than two years after the parent in Denmark meets the requirements for family reunification with the child, a residence permit will only be granted if the child has, or has the opportunity to achieve, an attachment to Denmark sufficient to form the basis for successful integration in Denmark. When assessing whether this requirement is met, attention is paid to the length and nature of the child's stay in the country of origin and attachment to the parent there. Furthermore, the child's age and any visit to Denmark, e.g. visa stay, are considered. Among other things, attention is also paid to the resident parent's degree of integration, and to his/her intentions and will to let the child stay in the country of origin. The Danish authorities have further indicated that as a general rule, a residence permit will automatically lapse if the immigrant no longer has residence in Denmark or stays abroad for a longer period of time (the Danish authorities have indicated that the definition of "longer period of time" depends on how long an immigrant has resided legally in Denmark. If the person has done so for less than two years, s/he may stay abroad for up to six months before the residence permit will, as a general rule, lapse. If s/he has legally resided in Denmark for more than two years, the period abroad can be up to 12 months). If the child has resided outside Denmark for more than three consecutive months in a way that has a negative effect on the child's schooling and integration, his/her residence permit will lapse after this period of time. A new residence permit can be granted only if the best interest of the child warrants it. When assessing whether this requirement is met, the length and nature of the child's stay in Denmark and in the country of origin are among other things considered. Upon application the Danish Immigration Service can decide that a residence permit should not be considered lapsed. This is for instance if the person can demonstrate that it was his/her intention to return to Denmark within the time-limit, but was obstructed in doing so by unforeseen events.

<sup>47</sup> Application no. 38058/09, 14 June 2011.

- *Integration Act*

132. In its third report, ECRI urged the Danish authorities to place everyone receiving social welfare on an equal footing as the current “start allowance” amounted to indirect discrimination against newly arrived immigrants and refugees, in violation of international legal norms.
133. The start allowance which applied to both Danes and foreigners who had not been living in Denmark for seven out of the last eight years, was a monthly allowance of 5 000 DKK (i.e. € 670) and was only approximately 65% of the normal social welfare benefit. The allowance was provided to persons fulfilling the conditions for social benefits, except that it was a reduced amount. ECRI was informed that the regulations regarding the start allowance affect persons with a non-Danish ethnic background more than persons with a Danish ethnic background although they applied to all irrespective of ethnic origin. Persons of ethnic Danish origin are more likely to find employment within a shorter period of time than non-ethnic Danes and the latter therefore stayed on this allowance for a longer period of time. ECRI was further informed that the living conditions of persons receiving the start allowance were so poor that it made it difficult for them to have proper accommodation and food. Civil society actors had indicated that they were concerned that lawful residents in Denmark with a non-ethnic Danish background may be subject to indirect discrimination as a consequence of the start allowance. They also considered that this allowance contributed to pushing a group, the majority of which is persons of concern to ECRI, into poverty. At the beginning of 2012, the Danish authorities informed ECRI that the start allowance was replaced by a cash benefit. The authorities have, however, not indicated what this benefit entails.
134. The Danish authorities have informed ECRI that in May 2010, the Integration Act was amended to provide for a new, free of charge basic course on Danish society and culture which all newcomers to Denmark, except nationals of the European Union, have to attend. This 40 hour long course is provided by municipalities and ECRI has been informed that not taking part in it can affect the newcomer’s welfare benefits, which runs counter to ECRI’s approach of stressing incentives to promote integration while avoiding the threat of withdrawal of social rights as a sanction. The Danish authorities have also informed ECRI that in 2011, municipalities which have the obligation to provide housing for refugees cannot do so in deprived neighbourhoods. While noting these measures, ECRI considers that as integration is a two-way process, in order to create an integrated society, steps should be taken to ensure that any integration programmes devised by the authorities address also general public attitudes to groups of concern to ECRI and their culture.
135. ECRI recommends that the Danish authorities reflect in their policies the idea of integration as a two-way process. To this end, ECRI recommends that the Danish authorities develop a policy to address any integration deficit among the majority population by promoting respect for diversity and knowledge of different cultures. To the same end, it recommends that the Danish authorities make their work against racial discrimination an integral part of their integration policy and that they present it as such to the public.
136. In its third report, ECRI recommended that the Danish authorities continue to monitor the policy of housing refugees and providing them with an integration course in different municipalities in order to ensure that refugees are not isolated.
137. ECRI has been informed that refugees can give their opinion on where they wish to live, but that this is not necessarily taken into consideration. ECRI is pleased to note reports indicating improvements in the authorities’ willingness to take



more into consideration refugees' preferences. ECRI notes that there is some flexibility as to refugees' choice of residence when they are settling in Denmark. The Danish authorities have informed ECRI that once they are allocated to a municipality, refugees can freely choose to move to another residence within the same municipality. They are also free to settle in a different municipality if they so wish, but in order to continue their integration programme in the new municipality, this municipality must accept responsibility for the integration programme. If the new municipality refuses to assume responsibility for the integration programme and the refugees decide to move regardless, this may have consequences on their access to the introduction allowance (the authorities have informed ECRI that this allowance has been replaced by a cash benefit. However, they have not indicated what this benefit entails). The authorities have further indicated that under certain circumstances the new municipality is obliged to assume responsibility for the continuation of the integration programme. This may be the case if a refugee has been offered employment in the new municipality and no reasonable transportation facilities exist from the municipality of residence to the municipality of employment. The authorities have assured ECRI that refugees continue to have access to the labour market, educational facilities and other social and health services regardless of whether the new municipality assumes responsibility for their integration programme or not. The authorities have indicated to ECRI that in principle the policy described above applies to all newly arrived foreigners entitled to an integration programme under the Integration Act (which implies both refugees and foreigners reunited with a family member). The authorities have, however, indicated that the situation is mostly relevant for refugees, as the housing scheme under the Integration Act only applies to refugees and their family members because those benefiting from family reunification are expected to live with their spouse. ECRI notes, however that the authorities have provided no information on the situation of refugees who chose, within the first three years of their arrival, to live in a municipality other than that assigned to them for reasons other than employment, such as to be closer to family members.

138. ECRI recommends that the Danish authorities exercise more flexibility as concerns refugees' being allowed to change their municipality of residence within the first three years of their arrival in Denmark and examine each situation on a case by case basis.
139. In its third report, ECRI recommended that the Danish authorities make it mandatory for each municipality to establish an integration council in order to facilitate newly arrived immigrants' and refugees' integration. ECRI also recommended that these councils be provided with sufficient means to function adequately and that they be given a genuine opportunity to contribute to laws and policies relating to immigrants and refugees.
140. ECRI has been informed that approximately 44 municipalities have established a local integration council, each having a minimum of 7 members. The task of these integration councils is to advise politicians on local integration measures. Integration councils are not mandatory as it is up to the municipal council to decide whether it wants to set up an integration council. As some municipalities have few residents belonging to groups of concern to ECRI, they consider that they do not need an integration council. ECRI has been informed that in some municipalities, local integration councils are elected and in others they are appointed. ECRI notes with concern that in 2009, the Copenhagen integration council was closed down and replaced with a think tank consisting of persons with expertise in some areas. ECRI hopes that the decision will be reversed as Copenhagen has the largest number of groups of concern to ECRI in the country and an integration council in this city is necessary.

141. The Council of Ethnic Minorities was an advisory body to the now defunct Ministry of Refugee, Immigration and Integration Affairs composed of the 14 members from the above-mentioned integration councils. The Council of Ethnic Minorities used to meet four times with this Ministry and ECRI has been informed that some of its proposals were implemented. For example, following advice by the Council to the Ministry about hiring groups of concern to ECRI, the Ministry held a meeting with employers' associations after which there was an increase in hiring the numbers of such groups, especially in supermarkets. However, as the Ministry of Refugee, Immigration and Integration Affairs has now been dismantled, ECRI is unaware of what future role the Council of Ethnic Minorities will play.

- *Permanent residence*

142. ECRI notes that the threshold for obtaining permanent residence in Denmark is so high that there is a risk that very few persons, including refugees, can meet it. In 2010, a points system was introduced whereby to qualify for a permanent residence permit, a person must obtain 100 points by meeting a series of criteria. To gain 70 points the applicant, who is 18 years old or older, must satisfy the following criteria: 1) residence in Denmark for four years; 2) not having committed a serious crime; 3) not having received certain types of public assistance for a period of three years prior to submitting an application and until being given a decision about the application; 4) submitting a signed declaration about integration and active citizenship in Danish society, 5) having had ordinary full-time employment for at least two and a half years out of the past three years prior to submitting an application and still be employed at the time of being given a decision about the application, 6) not having any overdue public debts, and 7) having passed a Danish language examination at level 2.<sup>48</sup> To gain 15 points, the applicant must either show him/herself to be an active citizen by serving on a board or through active membership of other organisations for at least 12 months or pass an active citizenship test. Moreover, to gain an additional 15 points the applicant must either: have had ordinary full-time employment in Denmark for at least four out of the past four and a half years prior to submitting his application and must still be employed when the decision on the application is given, or have completed a higher education programme, professional bachelor's degree, business academy, vocational upper secondary school in Denmark, or have passed a Danish language examination at level 3 or a Danish language test of an equivalent or higher level. Exemptions are provided for pensioners and persons with disabilities. The requirement that the applicant have been employed for a certain period of time risks disproportionately affecting groups of concern to ECRI. ECRI has been informed that since the introduction of this points system, the number of persons who have received permanent residence permits has dropped by 70%. The Danish authorities have indicated that this drop may be partially explained by the fact that the Active Citizenship Test by which applicants can obtain 15 points was not available until June 2011. ECRI welcomes the Danish authorities' assurances that they plan on changing the requirements for permanent residence and abolishing the point system. ECRI hopes that the review of the permanent residence requirements will also include a change in the policy whereby young persons who are born and raised in Denmark are required to apply for permanent residence when they turn 18 on a par with other foreigners. ECRI has been informed that this policy makes young persons who are not ethnic Danes feel excluded.

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<sup>48</sup> If the applicant applies before turning 19, and s/he has been studying or working full-time since completing primary school, s/he is exempt from requirement 5 above and the requirement of having an additional 15 points in accordance with the criteria set-out above.

143. ECRI recommends that the Danish authorities amend the requirements for obtaining a permanent residence permit in order to avoid disproportionate obstacles to an applicant's access thereto. ECRI also strongly recommends that those who are born and raised in Denmark not be required to obtain permanent residence on the same level as other foreigners, but that measures be taken to provide them with Danish citizenship.

## **VII. Conduct of Law Enforcement Officials**

144. In its third report on Denmark, ECRI recommended that the Danish authorities provide basic and on-going training to police officers on issues pertaining to racism and racial discrimination. ECRI also recommended that disaggregated data be collected on the number of complaints of police misconduct filed by members of minority groups and that such complaints be duly followed up.

145. ECRI has been informed by civil society actors that police officers receive training at the police academy on issues pertaining to racism and racial discrimination, but that it is very basic and insufficient. They have further indicated that the police do not receive on the job training on these issues. The Danish authorities have informed ECRI that the initial education curriculum in the Police Academy is being revised. They have stated that in the future, questions concerning racism, intolerance and relationships with minorities will play a central role. These questions will, among others, be the subject of a five week course entitled The Police and Cultural Diversity which will aim at ensuring that trainee police officers can handle cases involving ethnic, sexual and religious minorities at a high and professional level. The Danish authorities have further informed ECRI that a number of one-day seminars on hate crime are being held in police districts. The PET and the Danish Institute for Human Rights have developed the seminars. The Danish authorities have indicated that police and prosecution services attend the seminars which address subjects such as human rights, including the right to be free from racism and racial discrimination, identification and registration of hate crime and guidelines concerning investigating and prosecuting hate crime, including relevant legal provisions.

146. ECRI recommends that the Danish authorities provide initial and on-going training to the police in human rights, including the right to be free from racism and racial discrimination, and on the legal provisions in force against racism and racial discrimination as recommended in its General Policy Recommendation No. 11.

147. The Danish authorities have indicated that no disaggregated data on complaints filed against the police is collected. They have, however, stated that the Director of Public Prosecutions publishes an annual report containing, inter alia, information on complaints against the police and that some of these concern the use of racist language. ECRI notes reports indicating that there have been cases of heavy-handedness, discrimination and racist statements by the police and welcomes information it has received that these cases have been dealt with by the authorities concerned. ECRI welcomes the planned creation, on 1 January 2012, of a police complaints authority which will operate independently of the police and the prosecution services.

148. The Danish legislation allows the police to carry out random measures, such as establishing special zones in certain areas where they are empowered to carry out random stops to search for weapons without reasonable suspicion. Civil society actors have informed ECRI that there is a risk of racial profiling when these random measures are carried out. They have indicated that there is no data on who is being stopped and searched. While welcoming the Danish authorities' information that they have issued new guidelines to limit stop and

search zones in time and space, ECRI notes that the fact that no reasonable suspicion is required creates a real risk of ethnic profiling. In this regard, in February 2008, simmering frustration regarding claims of police harassment by young people from visible minorities which centred on the over-use of stop and search police powers lead to rioting in the Nørrebro neighbourhood, a district of Copenhagen. ECRI notes reports concluding that at the time, many young men from these groups felt discriminated against and humiliated in their interactions with the police in public places. ECRI therefore hopes that the authorities will introduce a reasonable suspicion criterion for the stop and search powers given to the police. ECRI notes the relevance of the *Gillan and Quinton v United Kingdom* judgement rendered by the European Court of Human Rights in January 2010 whereby stop and search powers in the United Kingdom similar to those used in Denmark were found to be in violation of Article 8 of the European Convention on Human Rights.<sup>49</sup>

149. ECRI recommends that the Danish authorities introduce a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria, as outlined in General Policy Recommendation No.11. ECRI also recommends that the Danish authorities train the police on the issue of racial profiling and on the use of the reasonable suspicion standard, as stated in this General Policy Recommendation.

150. The Danish authorities have informed ECRI that measures are being taken to recruit members of groups of concern to ECRI in the police force, with a focus on the four largest cities in the country. Moreover, applicants to the police academy with a non-ethnic Danish background who fail the entry examination to the academy are given another chance to pass the examination. According to statistics provided by the authorities, an average of 6.6% of applicants to the police academy and an average of 5% of newly employed police officers have a non-ethnic Danish background. This number does not reflect the ethnic composition of the population in Denmark as in January 2009, some 6.4 % of the total were immigrants and their descendants from non-Western countries.

151. ECRI encourages the Danish authorities to intensify their efforts in recruiting members of ethnic minorities to the police.

### **VIII. Education and Awareness-Raising**

152. In its third report, ECRI recommended that the Danish authorities ensure that school curricula at all levels include teaching on human rights in general and on issues pertaining to racism and racial discrimination in particular as well as on cultural diversity, in a cross-cutting manner. ECRI reiterated its recommendation that minority groups' contribution to Denmark be taught in all schools at all levels.

153. The Danish Primary and Lower Secondary School Act provides in its preamble that school shall contribute to pupils' understanding of other cultures. It further provides that teaching must build on, amongst others, equality and democracy. The Danish authorities have informed ECRI that according to the binding objectives for the subject of history, 25% of the instruction should be devoted to a range of topics which include the Universal Declaration of Human Rights, the rights of the child, civil and political rights and other human rights. Therefore, human rights related issues form part of, but not all, of these mandatory topics. The authorities have further indicated that schools are free to devote more time to instruction in human rights and tolerance and many schools choose to do so. The Danish authorities have informed ECRI that there is no teaching on minorities'

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<sup>49</sup> Application no. 4158/05, 12 January 2010.

contribution to Denmark as such, but that subjects such as cultural knowledge are taught and that all students should have basic knowledge of the different groups living in Denmark.

## **IX. Monitoring Racism and Racial Discrimination**

154. In its report, ECRI recommended that the Danish authorities establish and implement a system of ethnic data collection to assess and redress racial discrimination in full compliance with all the relevant national laws, including the Act on Processing of Personal Data, as well as European and international regulations and recommendations on data protection and the protection of privacy, as stated in ECRI General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. ECRI considered that the Danish authorities should ensure that data collection is carried out with full respect for the anonymity and dignity of the people involved and in accordance with the principle of full consent. Furthermore, ECRI stated that the data collection system on racism and racial discrimination should take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination.
155. The Danish Act on Processing of Personal Data has been amended since ECRI's third report. Article 7 of this Act provides that no processing of personal data may take place if it reveals the "racial" or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sex life of the person concerned. Such data may, however, be processed if the data subject has given his/her explicit consent; or processing is necessary to protect the vital interests of the data subject or of another person where the person concerned is physically or legally incapable of giving his consent; or the processing relates to data which have been made public by the data subject; or the processing is necessary for the establishment, exercise or defence of legal claims. The Danish authorities have informed ECRI that data is collected based on whether a person is an immigrant, descendant of an immigrant or a person of Danish origin. They have also indicated that comprehensive data has been collected on the integration (in education, employment, housing, health, etc.) and citizenship of immigrants, descendants of immigrants and persons of Danish origin (according to country of origin, gender, age, etc.) since ECRI's third report. The Danish authorities have also stated that several monitoring reports have been published, including a statistical overview of integration published in 2011 and a report on citizenship in Denmark published the same year. However, in ECRI's view, this system may not provide a comprehensive overview of the situation of groups of concern to ECRI. Accurate and comprehensive data are particularly important in areas such as health, education, employment and housing to enable policies to be devised to deal with any problems they may encounter in these areas. ECRI therefore suggests that consideration be given to whether the present system could be further developed so as to provide adequate, easily accessed and routinely used data for these purposes. Moreover, ECRI considers that the reference to the "racial" origin in Article 7 of the act is redundant.
156. ECRI recommends that the Danish authorities consider ways of developing a coherent, comprehensive data collection system in order to monitor the situation of groups of concern to ECRI by means of information broken down according, for instance, to ethnic origin, language, religion and citizenship. Data should be collected in different public policy areas and the authorities should ensure full respect for the principles of confidentiality, informed consent and voluntary self-identification of people as belonging to a particular group. This system should also take into consideration the possible existence of double or multiple discrimination.



## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The three specific recommendations for which ECRI requests priority implementation from the authorities of Denmark, are the following:

- ECRI urges the Danish authorities to carry out a wide-ranging reform of the spousal reunification rules in order to remove any elements which amount to direct or indirect discrimination and/or which are disproportionate to their stated aims.
- ECRI recommends that the Danish authorities ensure that NGOs and other civil society actors working on issues relating to groups of concern to ECRI receive sufficient funding and that there is closer cooperation between them and the authorities.
- ECRI encourages the Danish authorities to intensify their efforts in recruiting members of ethnic minorities to the police.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.





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