Minister for Immigration, Integration and Housing

Nils Muižnieks
Commissioner for Human Rights
Council of Europe
Strasbourg

Ministry of Immigration,
Integration and Housing

11 March 2016

Udlændinge-, Integrations- og Boligministeriet

Slotsholmsgade 10
Post 1216 Copenhagen K
Denmark
Phone +45 7226 8400
E-mail uibm@uibm.dk
Website www.uibm.dk

CVR no. 3697 7191

Case no. 2016-1458

Dear Commissioner for Human Rights,

Thank you for your letter of 12 January 2016 regarding the Danish Government's recent initiatives in the field of asylum and immigration.

In your letter, you mention the adopted amendment to the Danish Aliens Act regarding the possibilities of detaining asylum seekers. You also mention the proposed amendments – which have subsequently been adopted by the Danish Parliament on 26 January 2016 – regarding family reunification, permanent residence, selection of quota refugees, and seizure of asylum seekers' assets.

I am grateful for this opportunity to respond to these concerns and also to clarify certain aspects of the initiatives.

Before addressing your concerns one by one, I would like to explain why the Danish Government finds the initiatives prudent and reasonable.

I very much agree with you that these are challenging times as Europe is faced with the largest numbers of refugees and migrants since The Second World War.

Denmark receives a significant number of the asylum seekers both in absolute terms and relatively. In relative terms, Denmark was in fact among the top 10 EU Member States in 2015 (January-October).

The Danish Government firmly believes that the current situation requires joint solutions – namely, that each country takes a fair share of the joint responsibility. Accordingly, the Danish Government is also fully willing to take its share of the responsibility.

However, in order to preserve a safe and cohesive society in Denmark, the Government also finds that the extraordinary situation requires that measures are taken at a national level. The solutions are neither simple nor easy to find. They must ensure that refugees are treated in a fair and respectful manner, but they must also effectively address the relevant matters.

It is the Danish Government's belief that the number of refugees and immigrants matters in regard to both capacity and integration, and that it is necessary to address the current influx of migrants and refugees to Denmark. The Government has therefore found it necessary to introduce a number of initiatives in the field of asylum and immigration.

The Danish Government attaches the highest importance to observing our international obligations. It is therefore important for me to emphasize that every initiative, which has been introduced, has been thoroughly examined with regard to Denmark's international obligations, including the ECHR, and is found to be in compliance with these obligations.

Below I will firstly address your concern regarding the regulation on detention of asylum seekers, which was adopted by the Danish Parliament on 20 November 2015, and secondly address your concerns regarding the other legislative amendments, which were adopted on 26 January 2016 and entered into force on 5 February 2016.

I. Detention of Asylum Seekers

You express concerns that the amendments to the Danish Aliens Act, which increase the possibility to detain newly-arrived asylum seekers and rejected asylum seekers, in combination with the elimination of important legal safeguards regarding detention, could lead to detention being used disproportionately and indiscriminately, in contradiction with Article 5 of the ECHR protecting the right to liberty.

I am grateful for this opportunity to clarify any misconceptions of the recently adopted amendments as regards detention of asylum seekers.

Firstly, I would like to stress that the adopted rules on detention of asylum seekers are in full compliance with Article 5 of the ECHR. The amendments have been drafted with careful consideration of Denmark's obligations on human rights, including Article 5 of the ECHR.

Generally, before detaining an asylum seeker the police are required to make an individual assessment in each case of whether less intrusive means can be applied. The detention can only be carried out if it is necessary and proportionate.

Newly arrived asylum seekers can only be detained if it is necessary to complete the registration and identification process. The asylum seeker shall be released immediately after this process is complete.

A regulation on suspension of automatic judicial review of detention within three days has been adopted. This regulation implies that, in a period with a very significant increase in the number of arriving refugees and migrants, automatic judicial review within three days can be suspended.

However, on request, the lawfulness of a detention is to be reviewed by a court as soon as possible, i.e. 'speedily', cf. the European Court of Human Rights' case law as regards Article 5 (4) of the ECHR.

As such the suspension refers to a suspension of *automatic judicial review* within three days, *not* a general suspension of judicial review.

It is important for me to emphasize that this rule, which suspends automatic judicial review within three days, will only be activated by the Minister for Immigration, Integration and Housing in special circumstances. As such the law mandates that the suspension of automatic judicial review within three days can only be activated if a very high number of asylum seekers arrive in Denmark, is detained to complete the registration and identifica-

tion process, and the number of detainees is so high that it is not possible for the police and/or the courts to decide on the lawfulness on detention within three days. This suspension rule has not yet been activated.

Rejected asylum seekers may only be detained, if they do not cooperate on their return and if deportation is possible. A detention will not be carried out or upheld, unless these conditions are fulfilled. In the opinion of the Government the regulation is therefore in full compliance with Denmark's obligations under Article 5 of the ECHR as interpreted by the European Court of Human Rights.

The Government fully acknowledges that asylum seekers – newly-arrived and rejected, as well as other asylum seekers – are not criminals, nor shall they be considered as such. The detaining of asylum seekers, therefore, has to be carried out in special facilities and if this is not possible, the asylum seekers must be kept separately from other detainees. Furthermore unaccompanied minor asylum seekers will under no circumstances be detained in prisons.

II. Seizure of Asylum Seekers' valuables

You mention in your letter that the amendment regarding seizure of asylum seekers' valuables could amount to an infringement of human dignity and could lead to violations of the right to property.

Your letter provides me with a welcome opportunity to clarify an initiative, which has given rise to a lot of debate – and a number of misunderstandings.

It is important to note that Denmark ensures that asylum seekers coming to Denmark are treated in a fair and respectful manner, and that they receive the necessary support while their asylum applications are being considered. Denmark provides asylum seekers with basic subsistence, health care services, and accommodation.

This reflects the very basic principle of the Danish welfare state. We ensure that those, who do not have the financial means to take care of themselves, will receive support from the government. On the other hand, those who have the financial means to take care of themselves should do so. This applies to Danish citizens as well as to asylum seekers.

If an asylum seeker brings sufficient means, the asylum seeker must cover the basic costs of his or her accommodation. These rules were already in force prior to the enactment of the amendment, and they have not been changed. According to these rules, an asylum seeker is obliged to inform about any means that the asylum seeker brings with him or her.

The regulation adopted on 26 January 2016 provides the Danish authorities with the power to search the clothes and luggage of asylum seekers with a view to finding assets, which may cover the expenses mentioned above. As I understand it, comparable rules on seizure of asylum seekers' assets exist also in other European countries.

The intention is basically to apply the same rules to asylum seekers as those which apply to Danish citizens, who have public or private debt – the major difference being that asylum seekers may in fact keep a larger share of their belongings compared to Danish citizens.

Under the regulation adopted on 26 January 2016, if an asylum seeker carries with him or her an amount *exceeding* approximately 1,300 Euros, this exceeding amount will be seized for the purpose of covering the expenses for the basic accommodation during the asylum process. Similarly, with respect to other valuables than cash, the asylum seekers may keep in his or her possession any asset for a value of up to approximately 1,300 Euros. Assets with a higher value may be seized to cover the expenses of the asylum seeker.

Furthermore, items of certain sentimental value are completely exempted from seizure. This may include items such as wedding and engagement rings. It has been a very unfortunate misconception that Danish authorities will seize such assets. This is not the case.

Let me also stress that an asylum seeker, who wishes to dispute the seizure may complain to the police, which will bring the case before the Danish courts.

The Government does acknowledge that many refugees only bring with them few assets and small amounts of cash and – even though the Danish authorities provide for basic subsistence, health care services, and accommodation – the Government does not wish to seize assets below the threshold of approximately 1,300 Euros. But the Government also believes that it is fair and reasonable that those who do bring with them sufficient means should cover the expenses for their basic accommodation during the asylum process.

Please also note that the powers of the police to search asylum seekers have not been expanded. Today, the police may search the clothes and the luggage of an asylum seeker in order to find documents related to the identity of the person in question. According to the amendment, the police will be able to use the same procedure when verifying if an asylum seeker has valuables.

III. Family Reunification to Aliens with a Temporary Protection Status

You mention in your letter that the legislative amendment regarding family reunification to aliens with a temporary protection status raises issues of compatibility with ECHR article 8 and could infringe on the rights of children.

I shall first outline the relevant legal context, and then turn to these concerns.

Firstly, it should be noted that under the previous regulation, family reunification would in general not be granted to an alien with temporary protection status, whose residence permit had not (yet) been extended after one year. This was due to the fact that the character and the extent of the person's ties to Denmark is limited in this situation.

Secondly, the regulation on temporary protection status has a limited scope. The regulation on temporary protection status does *not* apply to refugees who are granted a residence permit according to the 1951 Convention Relating to the Status of Refugees, and aliens who – due to *individual* circumstances – are at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return.

The regulation on temporary protection status therefore *only* applies to asylum seekers who are entitled to protection due to a general unstable situation in the home country at such a level of intensity that anyone would be in real risk of being subjected to inhuman or degrading treatment in case of return. Among those who have been granted asylum under

the current regulation, only approximately 20 percent fall under the regulation of temporary protection status.

The amendment adopted by the regulation of 26 January 2016 should be seen in this context.

The amendment postpones the access to family reunification for aliens with a temporary protection status from 1 to 3 years.

However, exceptions shall be made in all cases, where Denmark's international obligations so require – as it was also the case under the previous rules.

The Danish authorities will perform an individual assessment in each case, ensuring that Denmark's international obligations are respected and ensuring that family reunification is granted, when individual circumstances should lead to such a decision. In regard to your concern raised in relation to children, it should be noted that it is specifically stated in the preparatory works to the regulation that cases may arise, where the rights of the child require that family reunification is granted.

It should also be mentioned that asylum seekers may free of charge make a complaint on decisions on refugee status and family reunification to an independent complaints board.

As to the compliance of the proposal with international human rights, including ECHR article 8, the Danish Government is not familiar with any case law from The European Court of Human Rights concerning the right to family reunification under the said circumstances.

However, taking into account the limited duration of the alien's stay in Denmark, the expected temporary nature of the need of protection, and the fact that the residence permit is only granted for one year at a time, the Government finds that there are compelling arguments in favour of the regulation's compliance with Article 8.

IV. Permanent Residence Permit

You mention in your letter that the amended rules on permanent residency appear to run counter to promoting a speedy and effective integration of beneficiaries of protection in Denmark.

The Danish Government believes that a permanent residence permit is a privilege and that an alien must have made an effort to integrate in Denmark prior to such a permit is granted.

This is why some of the requirements for granting a permanent residence permit have been changed. And this is why refugees now must meet the same requirements as other aliens to qualify for a permanent residence permit.

The new rules stipulate that all aliens must have resided legally in Denmark for at least 6 years to qualify for a permanent residence and that they must meet all fundamental requirements and 2 of 4 additional requirements as well.

However, aliens who have shown a particular willingness and ability to integrate in Denmark can qualify for a permanent residence permit after only four years of legal residence in Denmark, if the alien meets both some fundamental requirements and all of the additional requirements.

As under the previous rules, one or more of the requirements are not imposed if Denmark's international obligations – e.g. the UN Convention on the Rights of Persons with Disabilities – require that exemptions should be made.

In compliance with the Convention, aliens who are unable to fulfil one or more of the conditions due to a disability will thus not be required to fulfil these requirements.

The Danish Government does not find that the amended rules run counter to the aim of promoting a speedy and effective integration of refugees in Denmark.

V. Selection of Quota Refugees

You recall in your letter that the primary aim of resettlement is to provide effective protection to those most in need of such protection.

I would first like to underline that the entitlement to protection of the person concerned is the primary criterion for the selection of quota refugees under Danish law, and that the new rules do *not* imply changing the primary criterion for the selection of quota refugees. The primary criterion thus remains whether the person concerned is entitled to protection or not.

The new rules concern the *subsidiary* criterion for the selection of quota refugees under Danish law.

The previous subsidiary criterion placed the emphasis on the extent to which resettlement in Denmark was likely to entail a lasting improvement of the person's life situation. The assessment was based on the alien's needs and expectations in conjunction with the terms and conditions which Denmark can offer.

This criterion has now been substituted by the reintroduction of a subsidiary criterion placing the emphasis on integration potential.

The consideration behind the amendment is that the previous subsidiary criterion did not take into account the individual refugee's opportunity to improve his or her living conditions when resettled in Denmark. Refugees who are resettled in Denmark should have the best possible conditions to put down roots in this country and enjoy being here. This is the rationale behind the integration criterion.

The assessment of whether a refugee possesses the required integration potential will be based on a concrete assessment of all the facts in the case. The assessment includes level of linguistic skills, educational aspects and work experience, family relationships, networks and the refugee's age and motivation.

It should be noted that the Government considers it essential that families continue to be resettled together irrespective of the fact that not all family members share the same integration potential. This is reflected in the preparatory works to the rules. Moreover, the

integration potential criterion will not apply to the selection of quota refugees who are in immediate risk of refoulement to their country of origin and/or who risk assaults in their country of stay. Nor will it apply to the selection of the approximately 30 quota refugees with special medical needs that Denmark each year makes reservations for under the so-called Twenty or More Programme.

-o-

In conclusion, it is the Government's firm belief that the adopted rules are necessary in the current situation, and that the rules are compliant with Denmark's international obligations.

I assure you that I and the Danish Government as a whole are willing to engage in a constructive dialogue. Looking forward to such a dialogue, I remain,

Yours sincerely,

Inger Støjberg