

## **Comments from the Danish Government to the report by the Commissioner for Human Rights of the Council of Europe following her visit to Denmark from 30 May to 2 June 2023**

### **Re paragraph 9**

Danish law distinguishes between convention refugees cf. Aliens Act section 7 (1), refugees with protection status cf. Aliens Act section 7 (2), and refugees with temporary protection status cf. Aliens Act section 7 (3).

It is noted that refugees, who have been granted protection status cf. Aliens Act section 7 (2), are in individual risk. Thus, protection status is not based solely on the general conditions. Therefore, an improvement in the general conditions in the country of origin will usually not in itself constitute a reason to terminate the residence permit. Instead, an individual evaluation of the refugees claim for asylum must be made in order to ascertain, whether or not the reasons for the persons claim for protection still exist.

Each case – irrelevant of whether protection was granted based on individual or general circumstances – undergoes a thorough assessment of whether the foreign national will risk persecution or abuse falling within the scope of the Alien Act's section 7 if returned to their home country / area of origin.

### **Re paragraph 10**

In relation to Syria it is noted, that the Refugee Appeals Board has found that the situation in Damascus, Rif Damascus and Latakia has changed to such effect that people do not risk ill-treatment contrary to Article 3 of the European Convention on Human Rights solely on account of their mere presence in those areas.

The Board still finds the situation in these areas severe, fragile and unpredictable, but concluded that the situation has improved, and the Board does not consider the changes to be of a completely temporary nature. Thus, revocations only concern persons, who are not in individual risk of persecution. The Board has also ruled that in cases concerning the withdrawal or refusal to extend residence permits for persons from Syria, a so-called precautionary principle applies.

### **Re paragraph 11**

The Danish Immigration Service closely follows the practice of the Danish Refugee Appeals Board, just as the agency keeps up-to-date on new background information and new judgments from the European Court of Human Rights. To the extent that principled guidelines can be derived from this, the agency adapts its practice accordingly.

### **Re paragraph 12**

With regard to the assessment of private and family life pursuant to ECHR Article 8, it is noted that the authorities always conduct an assessment of whether a refusal to extend or a revocation of the residence permit will violate the individual's right to respect for private and family life, cf. ECHR Article 8, and other international conventions that apply to Denmark. The assessment in relation to Denmark's international obligations is completely concrete and discretionary based on a large number of individual circumstances, assessments and information regarding the individual person, which is compared with case law from the European Court of Human Rights. The elements included in the assessment are, in particular, information about the age of the person concerned (and the children concerned), the length of stay in Denmark, employment, health, language skills etc., combined with the person's connection to the home country.

### **Re paragraph 13**

Rejected asylum seekers who have had a residence permit as unaccompanied minors pursuant to section 9c (3) of the Aliens Act, can be granted a residence permit in accordance with section 9c (1) of the Aliens Act, after the age of 18, if exceptional reasons make it appropriate.

Such reasons may for example exist if the alien was granted a residence permit as a very young child, has a strong attachment to Denmark and a very little attachment to the home country, and is well integrated into Danish society.

In the assessment of this, emphasis can be placed, among other things, on whether the alien speaks Danish, has acquired a Danish education, has stayed with a Danish foster family and has Danish friends or the like.

It will also be included in the assessment whether the alien has family in Denmark with whom the person concerned has close contact.

Exceptional reasons may also exist if the alien is intellectually disabled or severely traumatized.

A residence permit may also be granted if the social authorities in Denmark have assessed that the alien needs special help and support after the age of 18, e.g. in the form of continued placement with a foster family or in a children's institution. This presupposes that there is no family network in the home country that will be able to help and support the foreigner upon return.

However, it will always depend on the specific circumstances in the case, whether the person concerned will be granted a residence permit pursuant to section 9c (1) of the Aliens Act.

In practice, a large number of the rejected unaccompanied minor asylum seekers who have had a temporary residence permit pursuant to section 9c (3) of the Aliens Act, are granted a residence permit based on the above mentioned after they turn 18, if they do not have family who can support them in their home country.

### **Re paragraph 23**

As regards the recommendation concerning third country asylum processing and to abandon attempts to circumvent and externalize responsibilities for dealing with asylum claims and to refrain from further pursuit of an agreement to transfer asylum seekers to Rwanda for this purpose in favour of focusing on responsibility-sharing among European states and globally, the Danish government notes the following:

The Danish Government wishes to clarify that it has an ambition to work for a reform of the European asylum system in full respect of international obligations, including the principle of *non-refoulement*, as a supplement to the EU Pact on Migration and Asylum, and with the aim of breaking the incentive structures of irregular migration.

The Danish Government is of the opinion that it will be better and more effective that challenges related to the asylum system, including irregular migration, are handled within the EU or in collaboration between EU Member States. The Danish Government is thus working for an EU approach. The Danish Government is open to all possible solutions that comply with international conventions and Denmark's EU law obligations, including but not limited to the possibility of transferring asylum procedures to a third country.

The Danish Government would like to stress that it is paramount in any reform of the European asylum system that access to territorial asylum is preserved. It is the assessment of the Danish Government that Denmark fully complies with international obligations to ensure adequate international protection in law and practice for asylum seekers.

### **Re paragraph 27-32**

The Danish Immigration Service notes that residents at Return Center Kærshovedgård are adult men and women who have been:

- Refused asylum and who have exhausted all avenues of appeal and who are not cooperating on their return,
- ordered by a court to leave Denmark, or
- ordered to leave Denmark, but who cannot be returned (so-called “tolerated stay”).

The residents at Return Center Avnstrup are mainly families with no legal right to stay in Denmark regardless if they cooperate with the authorities on return.

The number of residents on so-called "tolerated stay" is very low at Return Center Avnstrup. At the time of the visit by the Commissioner, less than 5 of the residents were persons on tolerated stay.

If families at Return Center Avnstrup are cooperating on their return, they will receive more benefits than those families who are not cooperating with the authorities. Such benefits could be e.g. education and certain social activities as well as the possibility to get a supplementary financial allowance. All families at Return Center Avnstrup are preparing food for themselves while they reside in Return Center Avnstrup.

Furthermore, all residents at Return Center Avnstrup have also access to necessary healthcare, including but not limited to urgent and pain relieving care.

As for the residents' duty to report twice per day to the Danish Return Agency, please note that only residents who do not cooperate with the Danish Return Agency on return will have to report twice per day to the Danish Return Agency.

As for the geographical location of Return Center Avnstrup, the Danish Immigration Service would like to inform that it is possible for the residents to use public transportation to get to Roskilde (45 min.), and to Copenhagen (less than 1h 15 min.).

Finally, the Danish Immigration Service notes that both Return Center Avnstrup and the Return Center Kærshovedgård, has appropriate facilities for family visits at the centres. Furthermore, in order to maintain contact with family members etc., the residents at return centres can visit minor children outside the centre every other weekend.

### **Re paragraph 39-41**

Legislation on family reunification for beneficiaries of temporary subsidiary protection status was amended in 2022 to comply with the Grand Chamber of the Court's judgment in *M.A. v. Denmark*. In its judgment, para 162, the Court did not see reason to question the rationale of a waiting period of two years.

In this regard, it also follows from para 179 of the judgment that the Court was aware that the actual separation period would inevitably be longer than a statutory waiting period, as the family members would also be separated during the period of flight, during the initial period after arrival in the host country pending the processing of the asylum application, and for some time after the waiting period pending the processing of the family reunification case.

In addition, the Court did not find reason to question the distinction made in respect of persons granted protection owing to an individualised threat, namely refugee status under the Refugee Convention or protection status, on the one hand, and persons granted temporary protection status owing to a generalised threat, on the other, see para 177.

### **Re paragraph 42**

When considering Denmark's positive obligations under Article 8 of the Convention regarding family life, the authorities may consider a claim, that the couple was precluded marriage or cohabitation in the country of origin due to legislation or cultural norms but even so have demonstrated a commitment to each other. Significant importance will be attached to background information on the country of origin regarding, e.g. the treatment of LGBT people.

### **Re paragraph 43**

The legislation provides, in general, for family reunification with a child under 15 years of age. Additionally, when the conditions are not met, e.g. the child has turned 15 years of age, it is considered, if a residence permit must be granted the child according to Denmark's international obligations. For children under the age of 18 the consideration of the best interest of the child is emphasised.

### **General remark regarding citizenship:**

Generally, foreign citizens must acquire Danish citizenship by statute. This means that the foreign citizen must be listed in a naturalisation bill, which is then passed by the Danish Parliament. This process is called acquisition of Danish citizenship by naturalisation. The criteria for being listed in a naturalisation bill on Danish citizenship are regarding residence, age, criminal record, no overdue debts to the public authorities, self-support, employment, knowledge of Danish and knowledge of Danish society, Danish culture and history. An applicant who fulfil the criteria must generally attend a ceremony and sign a pledge to respect the Danish Constitution among other things.

The summary shows that there is a rising number of persons who are stateless. However, figures from the central authority on Danish statistics, StatBank Denmark, show that the number in 2022 has decreased compared to the previous year.

### **Re paragraph 44**

In the recommendation regarding young people, it is noted that this group must meet the same requirements for citizenship as migrants arriving in Denmark as adults.

In this regard, it should be noted that for young people, who were born in or have entered Denmark before the age of 15, certain lenient rules apply in regards to the residence requirement, cf. section 10 of the circular letter. In addition, young people who have completed the 9th grade of primary school with an overall grade average of 02 in the Danish subjects can fulfil the language requirement, and they do not have to document their Danish language skills by passing the Danish Language Test 3 like other applicants for Danish citizenship.

In regards to the recommendation regarding children under the age of 18, it is noted that this group usually can only obtain citizenship through a parent obtaining Danish citizenship.

It should be noted that - in accordance with the international conventions – persons, who are born stateless in Denmark, can be admitted on a bill of citizenship, without meeting the general conditions for acquiring Danish citizenship. These rules apply to applicants who apply between the age of 18 and 21, and for children, who apply before the age of 18 certain special lenient rules apply.

The number of EU-citizens living and working in Denmark has increased significantly over the past decades. The group contains many individuals who come to Denmark to work for a set period before leaving again. There is no indication that these people necessarily have a strong wish to obtain a Danish citizenship given the relative short duration of their stay.

#### **Re paragraph 45**

It is worth noting that 63% of all descendants of immigrants had obtained Danish citizenship as per January 1<sup>st</sup> 2023.

#### **Re paragraph 48**

In regards to the recommendation regarding automatic granting of citizenship at birth to children born in Denmark, who would otherwise be stateless, it should be noted that children born stateless in Denmark can acquire Danish citizenship by application. Furthermore, the Danish immigration authorities has implemented procedures ensuring that parents of a stateless child born in Denmark are informed about the possibility of applying for Danish citizenship when their child is granted a residence permit.

#### **Re paragraph 49**

In regards to the recommendation regarding elderly stateless Bhutanese, it is noted that the group of people, who are illiterate and/or have health issues, are simply unable to pass the stringent requirements for permanent residency and citizenship.

It should be noted that in accordance with the Convention on the Rights of Persons with Disabilities, persons with disabilities or health issues can apply for an exemption from certain specific conditions if they can provide proof of illness or disability. In these cases, the application will be submitted to the Naturalisation Committee that will then decide if they can grant an exemption and thus grant citizenship.

Furthermore, recommendation 49 refers to statistics from a report made by a third party, and as such does not contain any officially recognized statistical material.

### **Re paragraph 61**

The report on human rights in Denmark states that participation in social life, cultural activities, and community engagement is strongly correlated with physical disability.

In regard to social life, VIVE's report on living conditions among people with disabilities correctly states that the number of people with physical disability who rarely or never have interactions with close relationships, is higher than for people without disabilities.

However, the number of people with physical disabilities who have daily and weekly interactions in close relationships seems to be roughly equivalent to those without disabilities, when looking at the numbers in the report. Consequently, the statement 'participation in social life is strongly correlated with physical disability' could be toned down.

### **Re paragraph 63**

In regards to the Commissioner's recommendation to adopt a comprehensive national action plan on disability (page 20, para 56), it should be noted that the Danish government has already announced in the government program its intention to adopt such an action plan.

### **Re paragraph 74**

The report on human rights in Denmark states that Denmark's policy and practice on assisted living may limit the rights of persons with disabilities to choose their living arrangements, including with whom and where they want to live.



According to Danish Act on Social Services, people with disabilities who require long-term care in housing facilities have the right to choose which facility they wish to live in, and as such, they are free to choose their home. The right of free choice applies regardless of the location of the facility.

However, there are certain restrictions regarding the free choice. The facility must be registered and meet the needs of the individual whilst not being significantly more expensive than the residential accommodation initially offered by the municipality.

The report also notes the difficulties for young people with autism transitioning into adult residential units. When children with disabilities who receive social services reach 16 years of age, the municipality must begin preparing for the transition to adulthood. The efforts to insure a good transition must be holistic and in dialogue with the young person and their parents, and housing must be taking into consideration.

### **Re paragraph 75**

The report on human rights in Denmark raised concerns over a trend of municipalities and regional authorities towards building relatively large clusters of housing units to provide accommodation for persons with disabilities.

It is The Ministry of Social Affairs, Housing and Senior Citizens' belief that reported figures concerning the size of institutions support the fulfilment of people with disabilities' right to live independently and be included in the community. This is underlined by the fact that 86 percent of the residential accommodations accommodate fewer than 21 individuals.

It should also be noted that some larger housing units who accommodate persons with disabilities are often split into smaller subsections, which function autonomously.

Additionally, more residential accommodations are being built in Denmark. In the annual economic agreement between the state and the municipalities, a total of 1.5 billion DKK have been allocated to the expansion of housing capacity in Danish municipalities. There have also been allocated 200 million DKK in 2024, 600 million DKK in 2025 and 700 million DKK in 2026 to a pool for municipalities to apply for a loan for investments in an increased number of residential accommodations.

### **Re paragraph 76**

The report on human rights in Denmark raised concerns over reports that found that persons with disabilities who are living in residential care facilities, were significantly overrepresented among victims of sexual abuse.

Due to reports from the Danish Institute for Human Rights regarding this topic, all political parties in parliament have recently allocated funds to prevent sexual assaults on adults with disabilities.

These preventive efforts consist of courses and information products for professionals who work in residential care facilities. A total amount of 4 million Danish DKK from 2024 to 2027 have been allocated to the project.

### **Re paragraph 77**

In cases where the municipality has to make a decision to place a child or young person into out-of-home care, e.g. at a residential institution, the municipality has to consider what facility that best can accommodate the needs of the child or young person. This decision should be based on the child protection examination about the needs of the child and the action plan for the child, which is made before the placement of the child.

As provided in the Danish Act on Social Services a secure residential institution may only be used for children or young persons where:

1. It is absolutely essential in order to prevent the child or young person from harming themselves and where the risk of bodily harm cannot be averted in a safe and proper manner by way of other less restrictive measures;
2. It is absolutely essential in an initial observation period in order to provide a basis for the further socio-pedagogical treatment;
3. It is established, following the initial observation period under paragraph, that it is absolutely essential to implement a long-term treatment programme in a secure ward or residential institution;
4. the stay is an alternative to custody on remand
5. the stay counts towards the serving of a sentence imposed and the conditions of paragraph 1, 2 or 3 have also been met;
6. the stay is part of a measure imposed, (see section 74a of the Danish Criminal Code); or

7. the child or young person is a foreign national (alien) under 15 years of age residing unlawfully in Denmark, (see sections 36 and 37 of the Aliens Act).

Both children and youth who are placed under the grounds related to crime, welfare and immigration issues could have the need to be placed in a secure residential institution where there are certain facilities and tools available to take care of the child. The purpose is always taking care of and ensuring the well-being and personal development of the placed children and youth.

### **Re paragraph 92**

In regards to the recommendation regarding a review of the system for acquiring Danish nationality, it is noted that the Commissioner invites the authorities to carry out a review of the system for acquiring Danish nationality, with a view to ensuring that citizenship acquisition procedures are fully accessible to persons with disabilities and that they include provisions of reasonable accommodation.

It should be noted that in accordance with the Convention on the Rights of Persons with Disabilities, persons with disabilities or health issues can apply for an exemption from certain specific conditions if they can provide proof of illness or disability. In these cases, the application will be submitted to the Naturalisation Committee that will then decide if they can grant an exemption and thus grant citizenship.