

Committee of the Parties
to the Council of Europe Convention
on Action against Trafficking in Human Beings



CP(2017)17

**Report submitted by the Danish authorities
on measures taken to comply with
Committee of the Parties Recommendation
CP(2016)4 on the implementation
of the Council of Europe Convention
on Action against Trafficking in Human Beings**

Second evaluation round

Received on 23 May 2017

Ce document n'est disponible qu'en anglais.



Dato: 23. Maj 2017
Kontor: Enheden for Internationalt
Politisamarbejde
Sagsbeh: Sofie Anne Marner
Sagsnr.: 2014-19000-0278
Dok.: 2292114

Report submitted by the Danish authorities on measures taken to comply with the Committee of the Parties Recommendation CP(2016)4 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings

1. Improving the identification procedure

GRETA considers that the Danish authorities should take measures to improve the identification procedure for victims of trafficking with a view to ensuring that all victims are identified as such and can benefit from the assistance and protection measures provided for under the Convention, in particular by:

- 1.1. Extending the time-frame for the identification of victims of trafficking with an irregular migration status, taking into account the traumatic experience victims may have suffered and the need for sufficient time to gather all the necessary information and decide on the status of victims of trafficking, and ensuring that when there are reasonable grounds to presume that an irregular migrant is a victim of trafficking, the person is speedily removed from detention and offered assistance and protection as provided in the Convention;**

Denmark is considering the recommendation.

The Danish Government notes that the identification procedure of victims of trafficking with an irregular migration status is currently under reconsideration, including whether to extend the time-frame for the identification of victims. This work is being carried out in the frame-

Slotsholmsgade 10
1216 København K.

T +45 7226 8400
F +45 3393 3510

www.justitsministeriet.dk
jm@jm.dk

work of the preparation of a new National Action Plan to Combat Human trafficking that will become effective from 2018.

1.2. Ensuring that the guidance, toolkits and criteria used for the identification of victims of trafficking by frontline staff are harmonised and that application is rigorously monitored;

Denmark accepts the recommendation.

The national referral mechanism functions amongst others as a system to ensure the harmonization of procedures and efforts such as identification in cases of human trafficking.

Moreover, the Danish Centre against Human Trafficking (CMM) is continuously training different frontline personnel in order to ensure awareness on indicators and procedures when dealing with victims of human trafficking.

Furthermore, the Danish Police, National Centre of Investigation (NCI), provides education regarding the identification of victims to police staff that carries out border control. NCI will assess the need to provide similar education to FRONTEX staff that carries out border control at the external EU borders.

1.3. Increasing the incentives for self-identification by victims of trafficking;

Denmark accepts the recommendation.

Denmark is continuously working to strengthen the possibility of identification of victims and the support for victims of human trafficking.

1.4. Improving the identification of victims of trafficking in detention centres, by giving access to such centres to specialised NGOs and enabling detained irregular migrants to have access to early legal assistance;

Denmark does not accept the recommendation.

Access to early legal assistance

According to section 37 (2) of the Danish Aliens Act, the court assigns an attorney for a migrant who has been detained pursuant to section 36 (i.e. a person detained due to his or her status as an irregular migrant).

Detained irregular migrants are placed at one of Denmark's two institutions for detained foreigners, Ellebæk or Vridsløselille.

In practice, a lawyer is assigned to all detained irregular migrants at Ellebæk and Vridsløselille in connection with the first arraignment, and they are thus guaranteed legal aid. In addition, the detainees are free to contact their embassy, consulate and other authorities.

Furthermore, the detained irregular migrant may contact a legal aid provider. Thus, the detainee is allowed to post and receive letters, cf. section 37e (1) of the Danish Aliens Act, but the police can examine the letters before the receipt or the sending. The detainee will always have the right to uncontrolled correspondence with the assigned attorney and the immigration authorities, cf. section 37e (2).

If the detained irregular migrant is a victim of human trafficking, a support attorney will be appointed, if the detainee so requests, cf. section 741a of the Administration of Justice Act. The police must inform the victim of this right before the first interview by the police, and the information must be repeated before a second interview is conducted. The victim may only be interviewed by the police without the support attorney present, if the victim accepts this, cf. section 741b. The support attorney is paid by the Government (unless the expense is covered by a private insurance).

Thus, according to current legislation and practice, a detained irregular migrant already has access to early legal assistance, seeing that the migrant will be assigned an attorney before he or she is brought before a judge in the case concerning the detention and possibly also a support attorney, if the migrant is a victim of human trafficking.

Access to detention centres for NGOs

According to section 37d (1) of the Danish Aliens Act, a detained migrant (who is detained due to his or her status as an irregular migrant) has the right to have visitors to the extent that order and security are maintained. The migrant will always have the right to uncontrolled visits from the assigned attorney.

If the detained irregular migrant has sought asylum in Denmark pursuant to section 7 of the Danish Aliens Act, the migrant will also have the right to uncontrolled visits from a representative from the Danish Refugee Council and a representative from UNHCR.

According to Ellebæk Institution, the health staff and officers in the section for detained women are alert to cases of human trafficking and will contact Hope Now International in cases of confirmed suspicion that a detainee is or has been the victim of human trafficking.

CMM also has access and performs outreach work, identification and support of victims in detention centres.

In order to facilitate visits by the relevant NGOs, Ellebæk Institution keeps a list of approved members of staff from CMM and Hope Now International which is revised regularly, facilitating continuous and trouble-free operations. Both organisations regularly visit the institution, both when the institution requests assistance and on their own initiative, if they have prior knowledge of a given detainee.

Vridsløselille Institution reports that all detained migrants are interviewed by a nurse (if necessary by means of phone interpretation) in connection with their commitment to the institution. In connection with the interview, the detained migrants are asked about their background, the purpose of their stay in Denmark and the cause of their detention. They are also asked whether there is anything else they would like to talk about, and whether they have questions about their stay at the institution. The conversation is confidential, unless the detainee indicates otherwise.

Vridsløselille Institution further reports that detained migrants may choose to talk to representatives of the Red Cross and the Danish Refugee Council. Other NGOs are also welcome to contact the institution, but the institution cannot recall being contacted by such organisations. Detained migrants are also free to talk to representatives of the Danish Immigration Service. It should be noted that the migrants detained at Vridsløselille are all men.

Thus, according to current legislation and practice, the relevant NGOs already have a wide access to detention facilities in order to identify possible victims of human trafficking.

1.5. Pursuing a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by expanding the mandate of the Danish Customs and Tax Administration (SKAT) and labour inspectors and by encouraging regular and co-ordinated multi-agency inspections by organisations responsible for regulating employment, health and safety in sectors most at risk;

Denmark does not accept the recommendation.

The Danish Customs and Tax Administration (SKAT) has no supervisory powers related to human trafficking. It is noted that investigation concerning human trafficking is part of the Ministry of Justice's jurisdiction.

In case SKAT suspect Trafficking in Human Beings, the information will be passed to the appropriate authority - in this case the police.

In the light of the applicable general administrative rules on exchange of information between government authorities, the Ministry of Taxation see no need for an expansion of SKAT's mandate regarding Trafficking in Human Beings.

Furthermore, the Ministry of Employment finds the existing set-up combating “social dumping” and regular inspections to be relevant and sufficient.

The Ministry of Employment notes that efforts to ensure decent working conditions in Denmark continue to be a high priority for the Government, and monitoring of foreign companies and workers operating in Denmark is an important element in this.

Joint inspections are carried out regularly in sectors most at risk and the co-operation between authorities is well-developed. In addition labour inspectors already are involved in the efforts of identifying victims of human trafficking.

Since 2012, the Danish Working Environment Authority (WEA) has had a strong and specialized focus on preventing and identifying “social dumping”.

The WEA, the Danish Customs and Tax Administration and the police has since 2012 performed one-day joint inspections in sectors most at risk, e.g. construction, farming and service. In 2016 36 such one-day joint inspections were carried out, of these 8 were nationwide.

Since 2012 38 nationwide and 131 regional one-day joint inspections have been carried out in total.

Furthermore the WEA performs inspections on a daily basis in both foreign and Danish companies, where the authorities suspects problems with the working conditions.

To ensure an effective co-operation, permanent lines of communication have been established in order for the authorities to notify each other, if infringements are suspected in other areas.

This means that if the WEA find signs of trafficking, a notification is made immediately to the police or to CMM. Labour inspectors are trained to identify signs of trafficking and guidelines have been made to help the labour inspectors in this respect.

1.6. Making efforts to identify victims of forced begging as a form of human trafficking for the purpose of forced labour;

Denmark accepts the recommendation.

As part of the efforts under the national action plan to combat human trafficking, CMM is continuously working to expand and strengthen the cooperation with relevant actors to establish a first contact and strengthen the possibility of identification of victims of all forms of human trafficking including forced begging.

Upon request, the Danish Police provide assistance to other authorities in their proactive work regarding the identification of victims of trafficking for the purpose of forced labor.

Furthermore reference is made to the description under item 1.5.

2. Improving the identification of and assistance to child victims

GRETA considers that the Danish authorities should take measures to improve the identification of, and assistance to, child victims of trafficking, including among unaccompanied children, including by:

2.1. Establishing a clear procedure (National Referral Mechanism) concerning the identification of child victims of trafficking and disseminating information and guidance about the application of this procedure to relevant professionals;

Denmark accepts the recommendation.

A National Referral Mechanism concerning identification of child victims of trafficking is already established in Denmark. CMM is working on improving the referral mechanism system.

CMM is continuously training different frontline personnel in order to ensure awareness on indicators and procedures when dealing with child victims of human trafficking.

Furthermore, the Danish Government is funding a project over four years to develop screening and identification of unaccompanied minors by the Red Cross in the asylum system. The overall objective is to identify and assist unaccompanied minor victims of human trafficking and to refer the child to further assistance if necessary. Training and education of staff is an essential part of the project.

The NCI have established guidelines as well as an administrative procedure for the handling of cases regarding trafficking, including cases regarding child victims of trafficking.

Furthermore, the NCI provides education for police officers within the framework of the Danish Police College regarding the handling of human trafficking cases concerning children.

The NCI will take action to review the guidelines to ensure that they are clear and up to date.

2.2. Ensuring that legal guardians are appointed without delay and are able to carry out their tasks in an efficient manner and by training persons who are likely to be appointed as legal guardians in matters of assistance and protection of child victims of trafficking;

Denmark accepts the recommendation.

All unaccompanied minors, including asylum seekers, non-asylum seekers, EU citizens etc., in Denmark are appointed a personal representative as soon as possible.

If there is information that suggests that the minor might be a victim of human trafficking, the Danish Immigration Service will take urgent steps to ensure that the minor gets a personal representative appointed as soon as possible. Currently, the prioritized process of appointing a personal representative can be done within a week.

The Danish Immigration Service will request the Danish Red Cross to nominate a person to become the representative of the minor. The Red Cross will find a candidate that is suitable and has the right competences to represent the minor's best interests. Statsforvaltningen (The State Administration) will finally appoint the candidate if they consider the candidate suitable.

Cases concerning unaccompanied minors who have been victims of human trafficking or are in risk of such, will in general be prioritized through the entire asylum procedure.

2.3. Taking steps to address effectively the problem of disappearance of unaccompanied minors from reception facilities, by providing suitable safe accommodation and sufficient numbers of adequately trained supervisors;

Denmark accepts the recommendation.

Regarding the disappearance of unaccompanied minors from reception facilities, it is noted that as a general rule unaccompanied minors are accommodated in specialised centres for unaccompanied minors or other appropriate accommodation based on their individual needs.

The specialised accommodation available to unaccompanied minors provides a safe environment staffed with trained personnel. The Danish Government notes that the operators of the centres are contractually obliged to have sufficient and qualified staff available at the centres. The minors are supervised by staff all day, and members of the staff are present at all times.

Furthermore, the Danish Government notes that the problem of disappearance of victims of trafficking in general is currently under consideration. This work is being carried out in the framework of the preparation of a new National Action Plan to Combat Human trafficking that will become effective from 2018.

2.4. Review the legislation in order to ensure that all victims of trafficking of an irregular migration status, including those to whom the Dublin II Regulation is applicable, are unconditionally provided with an adequate recovery and reflection period, in line with Article 13 of the Convention, regardless of nationality, rather than a time-limit to prepare their departure from the country as irregular aliens;

Denmark does not accept the recommendation.

As mentioned in Denmark's reply of 4 February 2014 concerning measures taken to comply with Committee of the Parties Recommendation CP(2012)4 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings regarding the first evaluation (paragraph 19), a recovery and reflection period of at least 30 days must be granted when there are reasonable grounds to believe that a person is a victim of trafficking according to Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings.

This article was implemented directly in the Danish Aliens Act in 2007 by Act no. 504 of 6 June 2007, which entered into force on 1 August 2007. Thus, according to Section 33 (14) of the Danish Aliens Act, such a recovery and reflection period of 30 days is granted to presumed victims of trafficking who do not have permission to stay in Denmark. The reflection period of 30 days is granted regardless of whether or not the victim cooperates with the authorities.

Furthermore, the reflection period can be prolonged up to a total of 120 days.

Reference is made to Denmark's reply of 4 February 2014, proposal 19.

Victims of trafficking who are returned to another EU country under the Dublin Regulation are as a general rule not granted a reflection period. According to recital no. 27 of the Dublin III Regulation, the exchange of an applicant's personal data, including sensitive data on his or her health, prior to a transfer, will however ensure that the competent asylum authorities are in a position to provide applicants with adequate assistance and to ensure continuity in the protection and rights afforded to them.

2.5. Review the legislation in order to fully reflect the substantive provisions of the Convention regarding the criminalisation of acts relating to travel or identity documents (Article 20) and aggravating circumstances (Article 24).

Denmark accepts the recommendation.

Forgery is a criminal offence pursuant to Section 171 of the Danish Criminal Code. According to this Section, the intentional use of a false document to deceive in legal matters is punishable. A document is false when it does not originate from the issuer named in the document, or content given to it does not originate from the issuer.

Pursuant to the general provisions in Sections 21 and 23 of the Criminal Code it is also punishable to attempt to commit forgery or aid and abetted forgery by e.g. forging a travel or identity document or by procuring or providing a false document to another person.

Acts whereby a person intentionally retains, removes, conceals, damages or destroys a travel or identity document of another person are punishable pursuant to Section 276 (theft) or Section 291 (destruction of property) of the Criminal Code. If the actions are not in itself considered criminalised as theft or destruction of property the actions will be punishable as aiding and abetting trafficking in human beings pursuant to section 262a of the Criminal Code, cf. section 23 of the Criminal Code.

According to Section 5(2)(1) of the Danish Passport Act, wrongfully obtaining a passport or other travel document by knowingly submitting false information or by concealment causing a passport or other travel document issued for oneself with another name and birth date than one's own is a criminal offense. According to Section 5(2)(2) it is furthermore a criminal offense to have a passport issued for illegal purposes with another name and birth date than one's own. Lastly, according to Section 5(2)(3) it is a criminal offense to distort or remove parts of a passport or another travel document or notations therein for illegal purposes.

The criminal act covered by article 20 of the convention is thus already criminalised in Danish legislation.

Chapter 10 of the Criminal Code (Sections 80-89a) sets out general principles for determination of penalty for violations of the Criminal Code, e.g. trafficking in human beings.

It follows from Section 80(1) that when determining a sentence, consideration must be given *inter alia* to the gravity of the offence, while ensuring consistency in the application of the law. In assessing the gravity of the offence, the harm, danger and infringement pertaining to the offence and what the offender realised or should have realized in this regard must be taken into account, cf. Section 80(2) of the Criminal Code.

Section 81 of the Criminal Code contains a non-exhaustive list of circumstances which as a general rule are to be considered as aggravating circumstances when determining the sentence. Thus, the courts can without a specific statutory basis also take other aggravating circumstances into consideration when determining the penalty.

According to Section 81 it must *inter alia* be considered an aggravating circumstance, if the act was committed jointly with others, if the act had been carefully planned or was a constituent element of extensive crime, if the act was committed in the exercise of a public function or office or by abuse of a position or of trust and confidence, or if the offender exploited the victim's defenseless position. The reference to the victim's defenseless position aims *inter alia* at child victims.

Furthermore, it follows from the preparatory works to section 262 a that it for instance should be considered an aggravating circumstance if the victim is under 15 years of age, if the victim is exploited for prostitution or other forms of sexual exploitation, if the act constitutes organised trafficking or if the victim's life is intentionally or by gross negligence endangered.

The aggravating circumstances mentioned in article 24 of the convention are thus already encased in Danish legislation.