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ECRI REPORT ON DENMARK

(fifth monitoring cycle)

Adopted on 23 March 2017

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ECRI Secretariat
Directorate General II - Democracy
Council of Europe
F-67075 STRASBOURG Cedex
Tel.: + 33 (0) 3 90 21 46 62
E-mail: ecri@coe.int

www.coe.int/ecri

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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 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 monitoring deals with all member States of the Council of Europe on an equal footing. The work takes 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, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

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

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation up to 8 December 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Denmark on 23 March 2012, progress has been made in a number of fields.

The Danish Institute for Human Rights (DIHR), the designated specialised body for the promotion of equal treatment and effective protection against discrimination, has been empowered to bring cases of general interest to the public before the Board of Equal Treatment.

Following-up on one of ECRI's priority recommendations from its fourth report, the authorities provided support to civil society actors working on issues relating to groups of concern to ECRI and cooperated with the latter in the field of integration, including for newly-arrived refugees and beneficiaries of subsidiary protection during the migration crisis of 2014 and 2015.

Concerning another priority recommendation made by ECRI in its last report, the authorities took various positive initiatives to increase diversity in policing by recruiting more officers from ethnic minority backgrounds. Having seen some initial results, the authorities also endeavoured to put in place mechanisms to measure, evaluate and sustain progress in this area, which plays an important role in the field of integration.

Recognising the problem of social marginalisation of members of the Greenlandic Inuit community residing in Denmark, the government, in 2013, launched a four-year strategy for them. The strategy has since been extended to 2020. The government provides financial support to the five largest municipalities in order to improve the situation of the most vulnerable members of the Greenlandic community.

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

The country's criminal, civil and administrative law provisions are still not entirely in line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

Racist hate speech, in particular against Muslims, continues to be a problem. Although the authorities have begun to overhaul the data collection mechanism for hate crime incidents in general, it needs to be further improved. Under-reporting of hate speech is a problem that requires urgent attention.

The rising levels of antisemitic violence and hatred, including in social media, are also of concern. During the terror attack in Copenhagen in February 2015, a member of the Jewish community was killed outside the synagogue.

With regard to integration policies, ECRI notes that no wide-ranging reform of the rules for family reunification has taken place, as recommended as a matter of priority in its fourth report. On the contrary, the rules have been further tightened, including an extension of the waiting period for beneficiaries of temporary subsidiary protection before they can normally obtain family reunification to three years, in spite of criticism from international bodies, such as the UN Committee on the Elimination of Racial Discrimination (CERD).

The Danish authorities also introduced, again, a reduced level of social welfare benefits for certain categories of newly-arrived persons in Denmark, including refugees and persons who have been granted subsidiary protection. ECRI had already criticised a similar scheme of differential social welfare standards in the past and is, once more, also worried about the actual amounts, which are widely seen as being too low to facilitate the integration of recipients into Danish society.

In spite of ECRI's recommendation in its fourth report to tackle the problem of school segregation, there are new developments suggesting that such practices continue.

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

The authorities should bring the criminal, civil and administrative legislation, in general, into line with ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

The authorities should set up a comprehensive data collection system for racist and homo-/transphobic hate speech incidents and take active measures to tackle the problem of under-reporting of hate speech. ECRI directs the attention of the authorities to its new General Policy Recommendation No. 15 on combating hate speech.*

ECRI also recommends that the authorities include specific measures to combat islamophobic hate speech in the existing national strategy on the prevention of radicalisation and extremism.

With regard to family reunifications, ECRI reiterates its recommendation to carry out a wide-ranging reform of the spousal reunification rules. Beneficiaries of temporary subsidiary protection should have access to family reunification during their first year of residence in Denmark. Furthermore, the authorities should establish adequate safeguards against discrimination in the process of assessing the integration potential in the context of family reunifications.

The authorities should also review the appropriateness of the integration benefit, including the amounts, with a view to ensuring that it can promote the integration of newly arrived immigrants into Danish society.

ECRI recommends that the authorities take urgent measures to end ethnic segregation in the Langkaer school in Aarhus and prevent any such practices in Danish schools. ECRI reiterates its 2012 recommendation about the need 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 overrepresented in certain schools. In this regard, ECRI refers the Danish authorities to its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education.*

* This recommendation 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. Common topics

1. Legislation against racism and racial discrimination¹

- Protocol No. 12 to the European Convention on Human Rights

1. Denmark has still not signed and ratified Protocol No. 12 and the authorities have indicated in the past that they have no plans to do so.² During ECRI's monitoring visit in September 2016, the Danish authorities confirmed this decision. ECRI considers that this Protocol, which contains a general prohibition of discrimination, will enable Denmark to combat racism and racial discrimination more effectively at national level.

2. ECRI reiterates its previous recommendation to sign and ratify Protocol No. 12 to the European Convention on Human Rights.

- Criminal law provisions

3. Generally speaking, the provisions of the Criminal Code of Denmark (henceforth: CC) reflect most of ECRI's recommendations concerning the use of criminal law contained in the General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The relevant provisions are mainly contained in Articles 81(6) and 266(b) of the CC.³ Some provisions are, however, not fully in line with GPR No. 7 and various gaps remain.⁴

4. ECRI notes that in the Danish legal tradition, laws are supplemented by their respective drafting history (*travaux préparatoires*), which courts are obliged to take into consideration.

5. Language and citizenship are not listed as enumerated grounds in these articles. In addition, "race"⁵ and colour are not included as enumerated grounds in Article 81(6).⁶ The Danish authorities informed ECRI that they consider language and citizenship to be covered by Article 266(b) CC by virtue of the relevant *travaux préparatoires*, but that they are not aware of any case law in this regard.

¹ According to ECRI's General Policy Recommendation (GPR) No.7, "racism" shall mean the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. According to GPR No. 7 "racial discrimination" shall mean any differential treatment based on a ground such as "race", colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² UN General Assembly, Working Group on the UPR 24th Session (2015): 6.

³ Criminal Code of Denmark (2005). Article 266(b) provides that 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 orientation shall be liable to a fine or to imprisonment for a term not exceeding two years. Article 81(6) establishes aggravating circumstances. - See also Articles 21 and 23 CC on attempted offences and complicity, corresponding to ECRI's GPR No. 7, § 20; Article 25 CC on the responsibility of legal persons, in line with GPR No. 7, § 22; and Articles 155-157 CC on committing offences in the exercise of one's public office or function, as mentioned in GPR No. 7, § 18 (h).

⁴ In November 2016, the government decided to set up a commission tasked to carry out an overall assessment of the Criminal Code and to propose amendments.

⁵ Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the legislation.

⁶ The list of enumerated grounds in Article 81(6) is an open one (as indicated by the wording "or similar"). According to the *travaux préparatoires* (Bill No. L 99, Parliamentary year 2003-2004, specific explanatory notes), the enumerated grounds in Article 81(6) should be interpreted on the basis of Article 266(b) CC. In Article 266(b), however, a distinction is made between "race", colour and national or ethnic origin. Hence, there is a degree of ambiguity and uncertainty. Again, in such cases, ECRI advocates for expressly naming all the grounds listed in its GPR No. 7 in the law.

In order to avoid any legal uncertainty, ECRI advocates for expressly mentioning these grounds in the law.

6. The CC does not contain a provision to criminalise the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, as recommended in GPR No. 7, § 18(e).⁷ As a result, the possibility to prosecute, under Article 266(b) CC, the public dissemination or distribution, or the production or storage aimed at public dissemination or distribution, with a racist aim, of written, pictorial or other material, as recommended in GPR No. 7, § 18(f), is also limited; as it does not necessarily extend to the acts listed in GPR No. 7, § 18(e).
7. Furthermore, there is also no specific provision to criminalise the creation or the leadership of a group which promotes racism; support for such a group and participation in its activities.
8. ECRI recommends that the authorities bring the Danish criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) add language and citizenship to the list of enumerated grounds in Article 266(b), and “race”, colour, language and citizenship to the list of enumerated grounds in Article 81(6) of the Criminal Code; (ii) criminalise the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, (iii) criminalise the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities.

- **Civil and administrative law provisions**

9. ECRI notes that the Danish Constitution prohibits discrimination on the grounds of religion or “race”.⁸ The Act on Ethnic Equal Treatment defines and prohibits in its Articles 2 and 3 direct and indirect discrimination on grounds of racial or ethnic origin, as listed in ECRI’s GPR No. 7. Colour, language, religion, and citizenship, however, are not included among the enumerated grounds. Furthermore, the Act on Ethnic Equal Treatment does not contain a provision to prohibit segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate, as recommended in § 6 of GPR No. 7.
10. There is no provision in the civil or administrative law for the review of conformity of all laws, regulations and administrative provisions with the prohibition of discrimination, as recommended in ECRI’s GPR No. 7, § 13.
11. The country’s legislation does not contain an obligation to suppress public financing of organisations, including political parties, which promote racism, as recommended in ECRI’s GPR No. 7, § 16.⁹ It also does not provide for the possibility of dissolution of organisations which promote racism, as recommended in § 17 of ECRI’s GPR No. 7.¹⁰
12. ECRI recommends that the authorities bring their civil and administrative law, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should amend the Act on Ethnic Equal Treatment to include (i) colour, language, religion and citizenship as enumerated grounds; and (ii) a prohibition of acts of segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate. The authorities should also amend the civil and administrative law to include

⁷ In its fourth report on Denmark, ECRI already reiterated 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. See ECRI (2012): § 97.

⁸ Constitutional Act of Denmark (1849), as amended: Articles 70 and 71.

⁹ See also UN CERD (2015): 3.

¹⁰ Ibid. - The Danish Constitution provides for the possibility of dissolving associations, but this is limited to associations which have an unlawful purpose. (Constitutional Act of Denmark (1849), as amended: Article 78.)

(iii) an obligation to suppress public financing of organisations, including political parties, which promote racism, and (iv) the possibility of dissolving organisations which promote racism.

- **Independent authorities entrusted with the fight against racism and racial discrimination (GPR Nos. 2 and 7)**

- *The Parliamentary Ombudsman (Folketingets Ombudsmand)*

13. Victims of alleged discrimination by public institutions can complain to the Parliamentary Ombudsman, which is an independent institution. The competences of the Ombudsman cover all parts of the public administration,¹¹ and its functions and responsibilities cover most of the recommendations made in ECRI's GPR Nos. 2 and 7.¹² The Ombudsman Act, however, does not include provisions that cover the recommendations made in §§ 25 and 27 of GPR No. 7, concerning the right to initiate court cases even when a specific victim is not referred to and protection against retaliatory measures

- *The Board of Equal Treatment*

14. In general the legislation concerning the mandate and powers of the Board of Equal Treatment (henceforth: the Board) is in line with ECRI's GPR No. 7, but some gaps remain. In the employment field the Board cannot deal with discrimination on the ground of language, and outside the employment field, on the grounds of colour, religion, nationality and language. ECRI was informed that the Board interprets the existing legislation broadly and deals with cases of discrimination on the ground of language, both within and outside the labour market, because it considers it to be covered by the ground of ethnic origin. Nevertheless, this practice is not codified in the relevant legislation.¹³

15. The Board does not provide advice to plaintiffs, conduct awareness-raising activities or monitor legislation, as recommended in § 24 of GPR No. 7. The Board cannot examine cases on its own initiative (*proprio motu*)¹⁴ and, since January 2016, it cannot consider complaints if the plaintiff has no direct personal interest in the case.¹⁵ The Danish Institute for Human Rights, however, is now empowered to do this (see § 16 below).

- *The Danish Institute for Human Rights*

16. The Danish Institute for Human Rights (DIHR) has been designated as a specialised body for the promotion of equal treatment and effective protection against discrimination. The role of the DIHR as an independent institution was further clarified by law in 2012.¹⁶ The DIHR assists victims of discrimination by processing their complaints and investigating alleged cases of discrimination. It also conducts surveys concerning discrimination, publishes reports on differential treatment and makes recommendations on how to improve the fight against discrimination. The DIHR can conduct investigations *proprio motu*. It can refer victims of discrimination to the Board of Equal Treatment, the Parliamentary Ombudsman or other bodies. Victims can 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 plaintiff by the Board of Equal Treatment is not high enough, it can take the case to court with the aim of obtaining a higher

¹¹ European Network of Legal Experts in the Non-discrimination Field / Justesen (2014): 5, and Article 7 of the Ombudsman Act, as amended in 2013.

¹² Götze (2010): 33.

¹³ The grounds of sexual orientation and gender identity are discussed in section II.2.

¹⁴ Cf. ECRI (2012): § 44.

¹⁵ Act of 2015 to amend the Act on the Board of Equal Treatment.

¹⁶ Consolidated Act No. 553 of 18 June 2012.

amount.¹⁷ The DIHR can also bring cases of general interest to the public before the Board of Equal Treatment.

17. ECRI recommends that the authorities amend their civil and administrative law, in line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs, in particular they should extend the mandate of the Board of Equal Treatment (i) to include expressly the ground of language in the list of enumerated grounds applicable to the employment field, and the grounds of colour, religion, citizenship and language in the list of enumerated grounds applicable outside the employment field; (ii) to grant the Ombudsman the right to initiate court cases even when a specific victim is not referred to; and (iii) to amend the Ombudsman Act and the Act on the Board of Equal Treatment to provide for protection against retaliatory measures.

2. Hate speech¹⁸

- Data

18. Until 2014, the Danish Security and Intelligence Service (DSIS) was tasked with collecting hate crime data. The DSIS published annual reports on so-called “criminal offences potentially motivated by extremism”, including racist motivations, with combined information about incidents of hate speech and violence (for the latter see section I.3). In 2014, the DSIS concluded that its searches in police records delivered inadequate statistical data. No report was published for that year. In 2015, overall responsibility for hate crime data collection was transferred to the Danish National Police (DNP). The DNP started the process of setting up a new data collection system in which police caseworkers enter relevant information and search-keywords directly into an electronic police case management system. In order to assure data quality, the DNP issued national guidelines to police officers on how to identify and register potential hate motivations. However, as a result of the changes in the data collection system, information has not been collected consistently in the same way since 2012.¹⁹

19. In 2015, the DNP recorded 198 “hate crime incidents”. Again, this category includes certain types of hate speech as well as acts of violence. Of these, 79 were classified by the DNP as “non-violent” incidents, which include racist hate speech and threats, but also vandalism (see section I.3). A further 81 cases were classified as “incidents without charges or other investigative measures”. It is therefore difficult to ascertain the exact number of hate speech cases from the overall recorded number of hate crime incidents. From the 79 recorded “non-violent” incidents, 39 were related to the broader category of “race” and 30 to “religion”.

20. The authorities informed ECRI that in 2012, the Office of the Director of Public Prosecutions issued 10 indictments concerning an alleged violation of Article 266(b) CC due to hate speech and threats. This figure is an aggregated one and includes racist as well as homo-/transphobic motivations. In 2013, the number was 7 and then increased to 12 in 2014 and 13 in 2015.

21. ECRI recommends that the Danish authorities set up a comprehensive data collection system for racist and homo-/transphobic hate speech incidents, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome. Furthermore, the authorities

¹⁷ European Network of Legal Experts in the Non-discrimination Field / Justesen (2014): 6-7.

¹⁸ The section covers Racist and Homo/Transphobic speech. For the definition of “hate speech” see the ECRI’s General Policy Recommendation on Combating Hate Speech (GPR No. 15), adopted on 8 December 2015.

¹⁹ The authorities conduct an annual hate crime survey, which already provides some information about the extent of racist hate speech.

should take active measures to tackle under-reporting of hate speech, including by taking inspiration from ECRI's General Policy Recommendation No. 15 on combating hate speech.

- **Hate speech in public and political discourse**

22. In 2012, ECRI encouraged the Danish authorities to ensure that politicians act responsibly when addressing issues pertaining to groups of concern to ECRI.²⁰ However, the situation is still problematic and hate speech against different groups, especially Muslims and refugees, is becoming even more widespread in Danish society in general and political discourse in particular. In 2014, the Commissioner for Human Rights of the Council of Europe (henceforth: the Commissioner) expressed his concern about the growing trend of hate speech and negative stereotypes in Danish politics.²¹ In 2015, the UN Committee on the Elimination of Racial Discrimination (CERD) noted an increase in xenophobia and political statements targeting non-citizens, especially before general elections.²² Certain members of the Danish Peoples Party (DPP) in particular, are on record for having made islamophobic public statements. In 2014, for example, a DPP politician and former MP and MEP posted an islamophobic comment on Twitter: "On the situation of the Jews in Europe: Muslims continue where Hitler ended. Only the treatment Hitler got will change the situation."²³ In 2013, another former MP for the DPP published a photo on her Facebook page, comparing Muslim women to rubbish.²⁴
23. In 2013, the DPP also published an advertisement in several newspapers with the names of 685 persons, who were about to obtain Danish citizenship, and the headline: "One person on the list is a danger to Denmark's security. Now he will become a Dane".²⁵
24. Verbal abuse and insults against various ethnic minorities also still occur. In 2013, for example, the police forces in Funen, South Zealand and Lolland Falster recorded incidents of hate speech against persons of Middle Eastern origin.²⁶
25. Members of the Jewish community in Denmark have also been experiencing increasing hatred. For the years 2012 to 2014, the Jewish community in Denmark reported 44, 41 and 53 antisemitic hate speech incidents respectively.²⁷ In 2012, 17 of the cases consisted of direct verbal harassment and insults. This number rose to 31 in 2013.²⁸ At least 26 antisemitic incidents were recorded in 2015, approximately half of which were considered to be hate speech.²⁹ It has been reported that a large number of antisemitic hate speech incidents were perpetrated by radicalised Muslims,³⁰ including some clerics. On 13 February 2015, for example, the day before the terror attack against a synagogue in Copenhagen, an imam called for a war against Jews in his sermon delivered in one of the city's mosques.³¹

²⁰ ECRI (2012): § 88.

²¹ Commissioner for Human Rights of the Council of Europe (2014): 19-20.

²² UN Committee on the Elimination of Racial Discrimination (CERD) (15 May 2015): 3-4.

²³ Copenhagen Post (1 February 2016).

²⁴ Copenhagen Post (15 July 2013).

²⁵ Copenhagen Post (13 September 2013).

²⁶ Danish Security and Intelligence Service (2013): 11.

²⁷ The Jewish community of Denmark (2015): 1.

²⁸ US Department of State (2015a): 14.

²⁹ AKVAH (2015): 1-6.

³⁰ US Department of State (2015a): 14; The Jewish community of Denmark (2015): 1.

³¹ The Times of Israel (18 February 2015).

- **Homo- and /transphobic hate speech**

26. Despite the fact that Denmark is a pioneer in the protection of LGBT rights, homo- and transphobic hate speech still occurs in the country. For 2012 and 2013, the DSIS reported 13 cases of anti-LGBT hate speech / harassment on grounds of sexual orientation. No reliable data is available for 2014 (see paragraph 18 above). In 2015, the DNP reported 10 cases of “non-violent” hate motivated offences against LGBT persons and a further 11 incidents “without charges and other investigative measures”.

- **Hate speech in the media and on the internet**

27. In its fourth report, ECRI recommended that the authorities take initiatives, jointly with the media, to prevent the development of a climate of hostility towards vulnerable groups of concern to ECRI and to provide anti-racism training to media professionals.³² It also strongly recommended that the authorities encourage a debate within the media industry on the responsibility to avoid perpetuating prejudice against Muslims.³³ However, ECRI has not received any information about initiatives taken by the authorities in this respect. On the contrary, the Commissioner in 2013, and CERD in 2015, expressed their concern over the fact that stigmatising attitudes towards groups of concern to ECRI, especially towards Muslims, continue to appear in the media, for example by describing Islam as a “barbaric”, “tyrannical” and “fundamentalist” religion.³⁴

28. There are also several organisations spreading hate speech via the internet in Denmark, particularly through social media, such as Facebook. Islamophobic content is common and is propagated, inter alia, by groups such as the “Danish Defence League” and the campaign “Stop Islamization of Denmark”. In 2013, the Police received a complaint about a user of the latter’s Facebook group, who had expressed his desire to fight against Muslims and to find a group that would wage war against them.³⁵ Insults of Jews via social media also make up a large proportion of cases of antisemitic hate speech referred to in paragraph 25 above.³⁶

29. ECRI reiterates its recommendation that the authorities impart to the media the need to ensure that their information does not contribute to hostility towards members of groups subjected to hate speech. The authorities should also encourage and support initiatives by the media industry to (i) provide anti-racism training to journalists, and (ii) debate the image they convey to the public of Islam and Muslim communities.

- **Measures taken by the authorities**

30. Denmark criminalises hate speech under Article 266b of its Criminal Code (see section I.1). With regard to the total of 206 cases reported to the Office of the Director of Public Prosecution between 2012 and 2015, charges were brought in 139 of them, resulting in 42 indictments, and 31 court cases. In all 31 cases, the perpetrators were convicted. The sentences ranged from a warning (1 case) to unsuspended terms of imprisonment (2 cases), while the majority consisted of fines (16 cases).

31. In February 2016, the High Court upheld the 2015 judgment of a District Court, which had convicted the DPP politician who had posted an islamophobic comment on Twitter (see paragraph 22) of a violation of Article 266(b) and fined

³² ECRI (2012): § 86.

³³ Ibid.: § 92.

³⁴ Commissioner for Human Rights of the Council of Europe (2014): 19-20; UN CERD (15 May 2015): 3-4.

³⁵ Danish Security and Intelligence Service Statistics (2012-2013).

³⁶ US Department of State (2015b): 5.

him DKK 8 000 (€ 1 080).³⁷ For the publication of the names of persons about to become Danish citizens mentioned in paragraph 23, the Copenhagen City Court ordered the DPP to pay each of the 15 plaintiffs DKK 10 000 (€ 1 350). In 2015, the East Jutland police opened an investigation into more than 40 hate speech posts on Facebook directed against Muslims.³⁸

32. In spite of these measures, many observers criticise that the number of cases taken up by the police and the courts is too low.³⁹ ECRI notes that in some municipalities, police forces have started working more closely with local civil society organisations to address the problem of under-reporting of racist and homo-/transphobic hate speech. ECRI encourages the authorities to further promote and facilitate such close cooperation between the police and vulnerable groups of concern to ECRI who are subjected to hate speech.
33. ECRI notes positively that the national hate crime guidance for police officers, revised in 2015, specifically instructs them to check for indications of hate motivation, including in cases of threats. If such indications are present, police officers are called to initiate an investigation capable of elucidating any hate motive.⁴⁰ Furthermore, between 2011 and 2013, the authorities provided hate crime training to 250 police and prosecutorial staff. However, since 2013 no such training campaigns have been conducted anymore at the national level. ECRI was informed, that further rounds of training are planned to be offered from 2017 onwards, in cooperation with civil society organisations.
34. ECRI recommends that the authorities provide training on how to handle hate crime cases to police and prosecutorial staff on an ongoing basis across the country. Cooperating partners in this training should also include the DIHR, the Jewish, Muslim and Black communities, ethnic minority associations, refugee support groups and the LGBT community.
35. The government initiated the development of a new national strategy on the prevention of radicalisation and extremism, which was launched in September 2014. In October 2016, it was followed-up by a new national action plan on preventing and countering extremism and radicalisation. Both focus on strengthening cooperation with and support to civil society. However, they have a very broad reach, without emphasising the emerging key areas, such as islamophobic hate speech, in particular.
36. ECRI recommends that the authorities integrate, into the national strategy on the prevention of radicalisation and extremism, and the follow-up national action plan, specific measures to combat islamophobic hate speech, inter alia, by making use of ECRI's General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims and No. 15 on combating hate speech.
37. The Danish Press Council was established pursuant to the Danish Media Liability Act (1992) as an independent complaints body to deal with alleged violations of the sound press ethics⁴¹ in the areas of print media, television and radio.⁴² The Press Council does not have the power to impose sanctions on media outlets, but can direct editors to publish a statement from a plaintiff as well as the Council's decision in a particular case. The Press Council informed ECRI that it has so far only dealt with very few cases concerning racist and homo-/transphobic hate speech and that its expertise in this area is therefore limited.

³⁷ Decision of the Eastern High Court (1 February 2016).

³⁸ The Copenhagen Post (20 March 2015).

³⁹ Commissioner for Human Rights of the Council of Europe (2014): 20. - Cf. UN CERD (2015): 3-4.

⁴⁰ Rigsadvokaten (2016): 6.

⁴¹ As defined in Section 34 (1) of the Media Liability Act (1992), revised in 2013.

⁴² It can also deal with electronic mass media that are registered with the Press Council.

38. The authorities informed ECRI that they intend to commence a 4-year pilot project involving enhanced cooperation between the DNP and the DSIS to generally monitor the internet and social media, including for incidents of racist and homo-/transphobic hate speech. ECRI encourages the authorities to fully implement this planned activity and to ensure that it receives sufficient financial and staff resources.
39. The authorities informed ECRI that, on several occasions, politicians and political leaders condemned hate speech. Various civil society organisations met by ECRI, however, held that such condemnations were few and far between, and that many groups against whom hate speech is directed feel insufficiently supported. ECRI would like to underline the importance of condemnation of hate speech and the usefulness of counter speech, in particular from politicians and high-ranking officials, as mentioned in its GPR No. 15.
40. ECRI recommends that the authorities encourage the country's political leadership and representatives always to condemn all forms of racist and homo-/transphobic hate speech and apply appropriate sanctions when necessary.

3. Racist and homo/transphobic violence

- Data

41. The collection of data on racist and homo-/transphobic violence has been subject to the same changes and shortcomings as for hate speech (see paragraph 18 in section I.2). The DSIS reported 14 incidents of racist violence in 2012, and 17 in 2013. There was no reliable data for 2014. The DNP registered 28 incidents in 2015. However, acts of vandalism are not included in this figure, but were registered separately in the broader category of "non-violent" incidents, together with acts of hate speech, and cannot be disaggregated (cf. paragraph 19 in section I.2). The DIHR points out that, although incidents of racist violence had already occurred previously, the threat level in particular against Muslims and Jews in Denmark increased since 2015.⁴³ Examples of such acts of violence include the below mentioned cases.

- Antisemitic and islamophobic violence

42. During the terror attack in Copenhagen on 14 and 15 February 2015, the attacker killed a Jewish security guard outside a synagogue, in which a bat mitzvah celebration was being held. In 2015, a church congregation in the Copenhagen district of Nørrebro, an area with a large immigrant Muslim population, invited a rabbi to speak during a Sunday service. The church was vandalised the night before, bricks were thrown through the windows and slogans were spray-painted on the doors.⁴⁴ In August 2014, the Carolineskolen, a private Jewish school, was vandalised, with windows shattered and antisemitic graffiti sprayed on the walls. In the same month, a radio reporter wearing a Jewish skullcap while walking through the Nørrebro district, was manhandled and removed from a café and told by a group of men who tore off his skullcap to leave Nørrebro.⁴⁵
43. In August 2015, an arson attack on an Islamic centre in Copenhagen took place.⁴⁶ In June 2015, the Muslim cemetery in Brøndby, near Copenhagen, was vandalised and some 50 graves were desecrated and tombstones damaged or destroyed.⁴⁷ A similar act of vandalism took place in the city of Odense on

⁴³ Danish Institute for Human Rights (2015a): 43.

⁴⁴ Copenhagen Post (4 May 2015).

⁴⁵ US Department of State (2015b): 6.

⁴⁶ IB Times (2 September 2015).

⁴⁷ The Local (7 June 2015).

2 September 2015, when some 60 graves and tombstones were vandalised.⁴⁸ In September 2016, the cemetery in Brøndby was once more vandalised and graves desecrated.

44. ECRI recommends that the authorities facilitate closer cooperation between Muslim communities and the police to prevent and combat islamophobic violence.

- **Homo- / transphobic violence**

45. The DSIS registered 11 cases of homo-/transphobic violence in 2012 and 20 such incidents in 2013. There was no reliable data for 2014. The DNP recorded 10 cases in 2015. LGBT NGOs also criticise that the number of recorded cases does not reflect the full scale of the problem and that the police is not always taking violence against LGBT persons seriously enough, which leads to under-reporting.⁴⁹

46. On 4 June 2013, a transsexual woman was attacked by a 21-year-old man with a hammer on a street in central Copenhagen and was severely injured, suffering serious head injuries.

47. ECRI received information from the LGBT community that minor acts of physical aggression towards LGBT persons occur with increasing frequency in Copenhagen, especially at night time during week-ends. These incidents do not appear to be the result of an organised or coordinated effort, but take place spontaneously. The perpetrators are usually young men.

48. ECRI recommends that the authorities promote increased dialogue between members of the LGBT community and the police in order to facilitate the reporting of homo-/transphobic violence.

- **Measures taken by the authorities**

49. In its 2015 concluding observations on Denmark, the CERD expressed concerns about the low number of court cases with regard to hate crime incidents.⁵⁰ While the authorities collect some statistical data, there is currently neither adequate data on the number of court cases for hate crimes in general, nor disaggregated data specifically for acts of racist and homo-/transphobic violence available.

50. ECRI recommends that the authorities ensure that the hate crime data collection system can trace the judicial follow-up of incidents involving racist and homo-/transphobic violence, including acts of vandalism.

51. On 12 September 2013, the District Court of Copenhagen found the attacker of the transgender woman (see paragraph 46) guilty of grievous bodily harm, motivated by transphobic hatred. Article 81(6) on aggravating circumstances was applied in this case and the perpetrator was sentenced to 15 months imprisonment (see also paragraph 98 in section II.2).⁵¹

52. Concerning the arson attack in 2015 on an Islamic centre in Copenhagen, ECRI was informed that the police investigated a potential racist motive, but could not establish one. The perpetrator has since been convicted and committed to a psychiatric institution. With regard to the vandalism of Muslim gravesites, it has been noted that the police regarded the first act of desecration of the Muslim cemetery in Brøndby initially as a mere act of hooliganism committed by

⁴⁸ The Local (2 September 2015).

⁴⁹ See also Copenhagen Post (1 July 2016).

⁵⁰ CERD (2015): 3.

⁵¹ The Mundt case, judgement of the District Court of Copenhagen (12 September 2013). See: Website of the Danish Courts (Domstol) (24 October 2013).

youngsters without any hate-motivation. A potential islamophobic motivation was only later considered by the police.⁵²

53. ECRI recommends that, in cases of vandalism of religious sites, the police take hate motivations into consideration from the beginning of their investigation.
54. According to the authorities, the National Police has decided to intensify their efforts to combat racist violence and entered into a dialogue with a range of different civil society groups, aimed at establishing closer co-operation and tackling the problem of under-reporting of racist violence.⁵³ The national hate crime guidance for police officers, already referred to in paragraph 33 (section I.2), also specifically instructs officers to check for indications of hate motivation in cases of violence.⁵⁴
55. The Municipality of Copenhagen, the police and the DIHR implemented a project against hate crime and discrimination called “Stemplet”. They developed an application for mobile phones which can be used to anonymously report (in English and Danish) incidents of hate crime. The application was downloaded over 1 800 times within the first five months after its launch and there have been 225 registered cases. The reported information provides an overview of where, when and against whom such incidents occur. The municipality shares the incoming data with the Copenhagen Police Department to improve prevention efforts. There are plans to roll out the application nationwide.⁵⁵
56. As a result of the terrorist attack against the Synagogue, the Danish authorities started to provide police protection to Jewish community institutions in Copenhagen, which ECRI commends.
57. Following the desecration of a Muslim cemetery in Odense in 2015, the country’s Prime minister, Lars Løkke Rasmussen, condemned the vandalism in a Facebook post. In addition, the city’s mayor organised a demonstration to show public support for the city’s Muslim community.⁵⁶ The vandalism of a Jewish school in August 2014 was condemned by several political leaders. The incident concerning a reporter wearing a Jewish skullcap in the Nørrebro area was followed by a protest during which dozens of political leaders, as well as ordinary citizens, walked through Nørrebro wearing Jewish skullcaps as a sign of solidarity.⁵⁷

4. Integration policies

58. While Denmark does not have an overall integration strategy, the government announced in June 2015 its general political plan and priorities (“Together for the Future”), which, inter alia, aims at tackling the problem of social exclusion by preventing the development of parallel societies.⁵⁸ At activity level, a special emphasis is placed on integration programmes for newly arrived immigrants (see below). In addition, the Danish authorities have carried out a number of activities to promote integration of immigrants and ethnic minorities. Some examples of which are provided below.
59. In 2012, ECRI recommended that the 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

⁵² The Local (7 June 2015).

⁵³ UN General Assembly, Working Group on the UPR 24th Session (2015): 14.

⁵⁴ Cf. Ibid.: 10.

⁵⁵ OSCE-ODIHR (2015); Copenhagen Post (13 March 2015).

⁵⁶ IB Times (2 September 2015).

⁵⁷ US Department of State (2015b): 6.

⁵⁸ Danish Government, (2015): 1.

the authorities. In its 2015 Conclusion on this priority recommendation, ECRI noted considerable success in this direction. In 2016, ECRI was informed that the authorities have continued their efforts in this regard and further expanded their support and cooperation with such organisations, including in the context of facilitating the integration of newly-arrived persons during the migration crisis of 2014 and 2015.

60. ECRI's delegation visited the municipality of Roskilde and noted positively the efforts made there to involve citizens and local volunteer groups, including existing ethnic minority associations, in supporting newly-arrived refugees and beneficiaries of subsidiary protection. Mobilising community support to provide a welcome-culture is an essential part of facilitating integration. Moreover, such initiatives provide opportunities to shape integration as a two-way process, which ECRI strongly supports.⁵⁹
61. Nevertheless, in spite of the various measures taken, Denmark's integration efforts need to be further intensified. According to government figures, in 2015, 43% of immigrants experienced discrimination due to their ethnic background.⁶⁰ While this number is slightly down from 2012 (45%), it remains very high. The DIHR also reports that there continues to be a significant difference in the rate of employment between persons of Danish ethnic origin, on the one hand, and immigrants and their descendants, on the other hand.⁶¹

- **Access to employment and social protection**

62. Persons who have been granted refugee or subsidiary protection status have the right to work, as well as access to health care and education, including scholarships for university studies, on an equal footing with Danish citizens.⁶² This is commendable. The local municipalities, with financial support from the central government, are providing accommodation to persons belonging to these two categories.
63. Refugees and beneficiaries of subsidiary protection are obliged to follow a one-year integration programme provided by the municipalities. The programme aims, inter alia, to provide the necessary skills to enter the labour market. If after the initial period the participant is not able to find employment and requires further training, programme participation can be extended, up to a total of five years.
64. During this period, the receipt of social welfare payments ("integration benefit") depends on participation in the integration programme. This runs counter to ECRI's approach of stressing incentives to promote integration while avoiding the threat of withdrawal of social rights as a sanction.⁶³ While enrolled in the programme, participants are required to reside in the municipality they have been allocated to, unless they find employment or enrol at a university elsewhere. In such cases, the mandatory participation can be terminated early.⁶⁴
65. The integration programme consists of Danish language tuition as well as courses about Danish culture. The government's policy focuses on early integration into the labour market. Hence, career advice and skills-building

⁵⁹ Cf. ECRI (2012): §§ 134-135.

⁶⁰ Ministry of Immigration, Integration and Housing (2016).

⁶¹ Danish Institute for Human Rights (2015a): 20.

⁶² See paragraph 78 below, however, for restrictions concerning family reunification for beneficiaries of temporary subsidiary protection.

⁶³ Cf. ECRI (2012): § 134.

⁶⁴ Cf. ECRI (2012): § 137-138. A person who is enrolled in an integration programme is also eligible to continue participation in the programme in another municipality, if the receiving municipality accepts the responsibility for the integration programme of the given person. According to § 18 of the Integration Act, the municipality shall accept responsibility if a relocation is of substantial importance to the integration process of the given person, for example due to special personal circumstances.

activities are also offered and programme participants can access a subsidised-salary scheme (also open to unemployed Danish citizens), which offers work-placements for which the state covers the salary costs for up to one year, with the expectation that the employer, subsequently, offers the participant a regular employment contract. However, there have been no evaluations of the impact of these various integration support measures, and the last survey among participants of integration courses was conducted in 2010. Furthermore, statistics published by the Confederation of Danish Employers indicate that 88% of refugees and beneficiaries of subsidiary protection who obtained a residence permit in 2013 were still unemployed in 2015.⁶⁵

66. ECRI recommends that the authorities carry out a comprehensive evaluation of the integration programme, with a view to assessing its outcomes in terms of effectiveness as regards language and skills acquisition, and adjusting it where necessary.
67. In August 2015, the Integration Act was amended to re-introduce an “integration benefit” for newly arrived persons, who have not resided in Denmark for at least seven out of the last eight years. This benefit is substantially lower than regular social welfare benefits. A single person receives DKK 5 945 (€ 800) per month and a married couple with children DKK 16 638 (€ 2 230). The regular monthly social welfare allowances, by comparison, are DKK 10 849 (€ 1 450) and DKK 28 832 (€ 3 860) respectively. In its third report on Denmark, ECRI had already criticised the existence of a similar reduced benefit scheme at the time (“start allowance”) and reiterated this criticism in its fourth report in 2012.⁶⁶ On this occasion, ECRI pointed out that the amounts were too low and that this could result in vulnerable groups of concern to ECRI being put at risk of living in poverty.⁶⁷ Similarly, the new amounts have been widely criticised as too low and not facilitating, but rather impeding integration into Danish society.
68. Moreover, besides concerns about the actual amount, ECRI reiterates its misgivings, in principal, about lower levels of social welfare benefits for newly arrived persons.⁶⁸ While the Danish authorities hold the view that the integration benefit does not discriminate, as the rule also applies to Danish citizens who lived abroad and return to Denmark; ECRI notes that newly arrived refugees and beneficiaries of subsidiary protection are particularly affected. This is, *inter alia*, due to their higher level of dependency on such benefits because of their need to acquire the Danish language skills necessary to enter the labour market.
69. Furthermore, the integration benefit can be topped up by an additional DKK 1 500 (€ 200), if the beneficiary passes an intermediate-level Danish language test.⁶⁹ While financial incentives for the learning of the Danish language might be well intended, such a provision appears to have an indirect discriminatory effect, as passing the test should, generally, be easier for returning Danes than for newly arrived immigrants.
70. ECRI recommends that the authorities review the appropriateness of the integration benefit, including the amounts, with a view to ensuring that it can promote the integration of newly arrived immigrants into Danish society. The authorities should also modify any elements that could amount to discrimination, such as providing additional payments upon passing of an intermediate-level Danish language test.

⁶⁵ West Info (19 April 2016).

⁶⁶ ECRI (2012): §§ 132-133.

⁶⁷ *Ibid.*: § 133.

⁶⁸ *Cf. Ibid.*: §§ 132-133.

⁶⁹ Danish Language Exam 2 (approximately between B1 and B2 levels of the Common European Framework of Reference for Languages).

71. ECRI also notes with concern that non-EU spouses of Danish citizens can lose their non-permanent right of residence, if the couple or family applies for social welfare benefits. ECRI's delegation met with persons affected by this rule, for whom the requirement to be financially self-sufficient had been merely suspended until their children reach the age of 18.⁷⁰ In such cases, loss of employment does not only result in economic hardship, but also puts into question the entire social existence of families who have already resided in Denmark for a considerable number of years. It goes without saying that such uncertainty and the resulting anxiety does not contribute to successful integration.

72. ECRI strongly recommends that the authorities ensure that the need to apply for social welfare payments does not lead to loss of residency rights for non-EU spouses of Danish citizens.

- **Family reunifications**

73. In its fourth report on Denmark, ECRI recommended as a matter of priority that the authorities 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.⁷¹ In its 2015 Conclusions, ECRI noted that no such reform had been carried out.⁷² Since then, the European Court of Human Rights (ECtHR) found that the Danish family reunification rules are in breach of Article 14 (prohibition of discrimination), read in conjunction with Article 8, of the European Convention on Human Rights.⁷³ While the Court did not criticise the requirement that the spouses' "combined attachment" to Denmark should be considerably greater than their combined attachment to any other country, it found that the exemption from this rule granted to persons who have held Danish citizenship for at least 28 years (reduced to 26 years in 2012), indirectly discriminated against persons who acquired Danish citizenship not at birth but later in life; these persons usually being of non-Danish ethnic origin.

74. The authorities informed ECRI that they are exploring options to adjust the family reunification rules so as to comply with the ECtHR judgment. In the meantime, Danish courts are expected to take the judgment into consideration on a case-by-case basis. The authorities mentioned, however, that amending the existing legislation may consist of removing the possibility of exemptions from the attachment requirement altogether. This might eliminate the discriminatory element criticised by the ECtHR, but would render family reunification merely equally difficult for everyone. ECRI would like to remind the authorities in this context of the importance of family reunifications for successful integration.

75. ECRI reiterates its recommendation that the authorities 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. The Danish authorities should execute the judgment of the European Court of Human Rights in the Biao case in a way that does not render family unifications even more difficult.

76. According to the Aliens' Act, family reunifications involving children aged 8-15 years, who are living abroad together with one parent and whose

⁷⁰ The self-support requirement can be suspended as long as special reasons apply. When these reasons no longer apply, the requirement must be fulfilled. If at this point, the couple receives social welfare payments, the foreign spouse's time-limited residence permit may be revoked or not extended. The foreign spouse can then be ordered to leave the country and, if remaining illegally in Denmark, risks being expelled and given an entry ban.

⁷¹ Ibid.: § 131.

⁷² ECRI (2015): 5. During ECRI's visit in 2016, the authorities did not present any information to ECRI's delegation that altered this assessment.

⁷³ ECtHR, Biao v. Denmark, (No. 38590/10), Judgment (GC), 24 May 2016. This judgment overturned the 2014 ECtHR Chamber judgment in the same case.

reunification with the other parent residing in Denmark has been requested, are dependent on a positive assessment of the child's integration potential.⁷⁴ The socio-economic situation of the parent already residing in Denmark is also taken into consideration during this process. A non-exhaustive list of criteria was established for such assessments, including length of stay in Denmark, level of income, and type and size of accommodation. It appears that the criteria used to assess the integration potential of the child residing outside Denmark are still vague. ECRI did not receive any information about the existence of safeguards against discrimination, for example on the grounds of "race", religion, colour, language, citizenship and ethnic or national origin, during such assessments. Furthermore, in October 2015 the Ministry of Immigration and Integration had suggested making it a requirement for spousal reunification that the spouse already living in Denmark does not reside in a so-called "ghetto" area.⁷⁵ However, after further deliberations the authorities decided not to submit this proposal to Parliament and ECRI strongly encourages them to refrain from doing so in the future.

77. ECRI recommends that the authorities revise the criteria contained in the rules for assessing the integration potential in the context of family reunifications with a view to establishing adequate safeguards against discrimination on the grounds of "race", religion, colour, language, citizenship and ethnic or national origin during the assessment process.

78. In 2015, the Aliens' Act was amended to limit the right to family reunification for persons who have been granted temporary subsidiary protection. Family reunification was from thereon only possible after an extension of the initial one-year protection status has been granted. The UN Committee on the Elimination of Racial Discrimination (CERD) criticised this restriction in its 2015 Concluding Observations on Denmark and called upon the Danish authorities to reverse this step.⁷⁶ In February 2016, however, the Aliens' Act was further amended to extend the waiting period before beneficiaries of temporary subsidiary protection can normally obtain family reunification to three years.⁷⁷ ECRI would like to point out that early family reunification can have a positive impact on the integration process.

79. ECRI recommends that the authorities amend the Aliens' Act with a view to granting beneficiaries of temporary subsidiary protection access to family reunification during their first year of residence in Denmark.

- **Education**

80. In order to facilitate integration in the field of education, children whose mother tongue is not Danish are entitled to receive special support for learning Danish as a second language. In spite of such efforts to promote better integration in schools, an education gap between ethnic Danes and ethnic minorities persists. In 2015, the proportion of young adults aged between 20 and 24 with an immigrant background who completed secondary or higher education was only

⁷⁴ According to the Aliens' Act, this does not apply if Denmark's international obligations require it to grant family reunification in a specific case. See also: Website of the Danish Immigration Service (newtodenmark.dk) / "Potential for successful integration".

⁷⁵ "Ghetto" areas are socially marginalised public-housing neighbourhoods, which are officially defined by a combination of factors: high crime rate, high unemployment rate, low levels of education, low levels of income and a high percentage of immigrants. If three of these five criteria are met, the neighbourhood is classified as a "ghetto" for administrative purposes. As a result, additional state funding is made available to address social problems in these areas. As of 1 December 2015, there were 25 such areas across the country, six less than in 2014.

⁷⁶ UN CERD (2015): 4.

⁷⁷ According to the Aliens' Act, exceptions shall be made if Denmark's international obligation so require.

58%.⁷⁸ Furthermore, the authorities informed ECRI, that in 2015 only some 62% of pupils belonging to ethnic minorities finished school with adequate skills for further education. Among ethnic Danes, by comparison, this ratio was 87%. ECRI therefore calls upon the authorities to intensify their existing efforts to promote better integration of children from ethnic minorities in schools.

81. In its fourth report on Denmark, ECRI recommended that the authorities take measures to combat school segregation by, inter alia, taking into account the socio-economic dimension, in particular employment and housing.⁷⁹ In this context, it is worrying to note that, in September 2016, the Langkaer upper secondary school in Aarhus divided its new students into three classes with a 50% limit of non-ethnic Danes each, while the other four classes were comprised solely of pupils from ethnic minorities. The authorities confirmed the facts of the case and informed ECRI that they are in discussions with the local school authorities to find an appropriate solution. While it appears that the intention of the school's headmaster was to stem a growing trend of ethnic Danish parents moving their children to other schools (since 2007, the proportion of non-ethnic Danes among the new pupils in this school has risen from 25% to 80%), which would eventually result in de-facto segregation; ECRI would like to underline that the measures taken may defeat the purpose, as they themselves are based on segregating pupils on grounds of their ethnicity.
82. ECRI recommends that the authorities take urgent measures to end ethnic segregation in the Langkaer school in Aarhus and to prevent any such practices in Danish schools in the future. Furthermore, ECRI reiterates its recommendation made in 2012 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 overrepresented in certain schools as proposed in its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education.

- **The current migration crisis**

83. The migration crisis⁸⁰ that has ensued in 2014 and 2015, with unprecedented high numbers of migrants arriving in European countries, also affects Denmark. While ECRI considers it legitimate for a country and its political leadership to initiate a discussion about immigration and its associated problems and limitations, it should be born in mind that certain elements of the political reaction to the migration crisis could have a negative effect on integration efforts on the whole.
84. Starting from September 2015, the Ministry of Immigration, Integration and Housing published advertisements in Arabic and English in four Lebanese newspapers aimed at discouraging potential migrants from Syria to come to Denmark. The advertisements explained that the country reduced social welfare payments for refugees, while also having become more restrictive with regard to residence permits and family reunification.⁸¹ In December 2015, the Danish Parliamentary Ombudsman concluded that the advertisements could have given migrants an incorrect view of what their situation would have been in Denmark.⁸²
85. In January 2016, the Danish parliament approved a law allowing the confiscation of cash and valuables from asylum seekers. The immigration authorities are

⁷⁸ Ministry of Immigration, Integration and Housing (2016).

⁷⁹ ECRI (2012): § 53.

⁸⁰ For more details about ECRI's use of this terminology, please see ECRI's Annual Report 2015: 7.

⁸¹ West Info (9 September 2015).

⁸² Global Post (10 December 2015).

permitted to search them and to seize cash and jewellery⁸³ with an estimated value of more than DKK 10 000 (approximately € 1 340), in order to contribute towards the cost of living while their asylum claim is being processed. The police union (Politiforbundet) indicated that the application of the law is highly impractical, as police officers are not trained to accurately estimate the value of jewellery.⁸⁴ ECRI was informed by the authorities that the law had been applied on four occasions, but that only some DKK 117 000 (approximately € 15 000) had been confiscated.⁸⁵ It has thus become evident that the confiscation of cash and jewellery from asylum seekers does not result in any financial advantages for the state, as was initially assumed. It has, however, created a stigmatising effect for persons seeking protection in Denmark, which in turn can have a negative impact on their relationship with the Danish state and their long term integration prospects in the country.

86. ECRI recommends that the Danish authorities discontinue the confiscation of cash and jewellery from asylum seekers.

- **Muslims**

87. In several respects, members of the Muslim communities, in particular those who adhere to a traditional religious code, face the largest obstacles to integration. This is, inter alia, also the result of widely held views which doubt the ability and willingness of Muslims to integrate into Danish society. Such fears are further fuelled by a growing islamophobic political discourse (see section I.2). This in turn results in frequent experiences of discrimination, especially among young Muslims, many of whom have grown up in Denmark, master the language and successfully completed their education. The perception that they will not be accepted as equal members of Danish society merely due to their religion, can easily lead to a vicious circle of marginalisation and radicalisation.

- **The Black community**

88. Members of the Black community in Denmark met by ECRI mentioned ongoing experiences of discrimination, particularly in the fields of employment and housing, where Black persons are allegedly often refused because of their skin colour. Official data or situation-testing exercises in this regard, however, are not available. There appears to be a general absence of reliable information about the levels of discrimination and social exclusion of people of African descent. Relevant state institutions have so far not endeavoured to fill this gap. Community groups also complain about the fact that the available information they gathered and made public, is not taken into consideration by the authorities as a starting point to launch a more detailed enquiry into such allegations of discrimination. NGOs also informed ECRI about existing forms of multiple-discrimination faced by some Black persons, in particular Muslims and women of African descent.

89. ECRI recommends that the authorities carry out an independent study into the situation of the Black community in Denmark with regard to their experiences of discrimination and obstacles to better integration.

- **Greenlanders (Inuit)**

90. An estimated 15 000 Greenlanders of Inuit ethnic background are residing in Denmark.⁸⁶ They are Danish citizens and are entitled to the same rights and benefits as other Danish citizens. Nevertheless, many of them experience social marginalisation, in particular low levels of education and high levels of

⁸³ Items with a sentimental value, such as wedding rings, are exempt.

⁸⁴ The Local (22 December 2015) and Deutsche Welle / DW.com (22 December 2015).

⁸⁵ Cf. The Local, (4 November 2016).

⁸⁶ The territory of Greenland has autonomy status within the Kingdom of Denmark.

unemployment. Many also suffer from homelessness and substance abuse.⁸⁷ The Danish government has recognised these problems and, in 2013, launched a four-year strategy for vulnerable Greenlanders and their children in Denmark. The strategy has since been extended to 2020 and it aims, in particular, at supporting recently arrived Greenlanders by helping them overcome the challenges they face. The government provides financial support to the five largest municipalities in order to improve the situation by reaching out to the most vulnerable members of the community. The authorities also support the four existing Greenlandic Houses in the country. ECRI was informed by civil society representatives that, while the political will to address the problems exists and funding appears to be adequate, progress is still limited.

91. ECRI recommends that the Danish authorities carry out a comprehensive evaluation of their support programmes for members of the Greenlandic (Inuit) community residing in Denmark, in order to assess how to further enhance the support for their social integration.

- **Roma**

92. There are no official statistics on the number of Roma who live in Denmark, but estimates range from 1 000 to 10 000 persons.⁸⁸ In its fourth report⁸⁹, ECRI recommended that the authorities, in order to measure the problems of the Roma better and address them more effectively, collect statistical data on Roma, in particular in the fields of education, employment, housing and health, while ensuring respect for the principles of confidentiality, voluntary self-identification and informed consent as recommended in ECRI's GPR No. 13. The government, however, held the view that, since the Roma community in Denmark is relatively small and concentrated in a few locations, ethnic data should not be registered centrally.⁹⁰ Furthermore, the authorities underline the fact that Roma in Denmark enjoy the same rights as other Danish citizens or resident foreigners, as applicable. Nevertheless, the situation of Roma in Denmark has long been characterised by low levels of school enrolment and high unemployment. In 2011, the authorities developed an Action Plan for Roma Inclusion.⁹¹ Instead of developing Roma-specific measures, however, the authorities opted for better integrating Roma through the measures provided for by the country's existing and well developed social welfare system. ECRI has not received any information as to whether the reliance on existing social welfare structures is proving to be an adequate response to the integration problems faced by Roma. In 2012 and 2014, the European Commission (EC) emphasized that measuring the impact of the equal treatment approach on the situation of Roma people is necessary.⁹² In 2014, the EC also criticised Denmark for insufficiently integrating Roma.⁹³

93. ECRI recommends that the authorities evaluate the situation of the Roma community with a view to developing a Roma-specific strategy.

⁸⁷ See also: Danish Institute for Human Rights (2015b).

⁸⁸ European Commission (2011): 15; OHCHR (2015). See also: Council of Europe, Special Representative of the Secretary General for Roma Issues (2012).

⁸⁹ ECRI (2012): § 109.

⁹⁰ Danish Ministry for Social Affairs and Integration (2011): 2. - There is generally no registration of ethnicity in the official Danish population statistics.

⁹¹ Cf. FCNM (2015): § 59.

⁹² European Commission (2015).

⁹³ European Commission (2014): 18; Copenhagen Post (18 August 2014).

II. Topics specific to Denmark

1. Interim follow-up recommendations of the fourth cycle

94. Two of the three priority recommendations made by ECRI in 2012, namely the one concerning a reform of the family reunification rules and the one concerning support for civil society actors working on issues related to groups of concern to ECRI, are discussed above in paragraphs 73 and 59 respectively.

95. In its third priority recommendation, ECRI encouraged the authorities to intensify their efforts in recruiting members of ethnic minorities to the police. In its 2015 Conclusions, ECRI found that this recommendation had been implemented.⁹⁴ In 2016, ECRI received information indicating that previous positive efforts and initiatives to increase diversity in policing have continued since. Examples include the mentoring of persons from an ethnic minority background whose initial application to join the police training college was unsuccessful, but who show a general potential for becoming a qualified candidate in the future. The authorities also conducted an anonymous statistical survey to be able to review the retention rates and career progression of new police recruits from ethnic minority backgrounds.

2. Policies to combat discrimination and intolerance against LGBT persons⁹⁵

- Data

96. There is no official data on the size of the LGBT population in Denmark.⁹⁶ According to the Act on Processing of Personal Data, information related to a person's LGBT status is considered personal data which cannot be processed without the person's explicit consent.⁹⁷

97. On the ILGA Rainbow Europe Map 2015, which reflects European countries' legislation and policies towards LGBT persons, Denmark has one of the highest scores and is ranked 9th out of 49 countries.⁹⁸ According to the 2013 EU FRA LGBT survey, 70% of the participants in Denmark were very open or fairly open about their LGBT identity.⁹⁹

- Legislation

98. While sexual orientation is included in the enumerated grounds of Articles 81(6) and 266(b) of the Criminal Code (see section I.1 above), gender identity is not. However, it has been established by case law that, based on the relevant drafting history (*travaux préparatoires*), it is included in the list of enumerated grounds as part of a broad interpretation of sexual orientation.¹⁰⁰

99. Similarly, the legislation concerning the mandate of the Board of Equal Treatment does not include gender identity among the enumerated grounds. The authorities, however, point to the case law of the European Court of Justice, stating that the principle of gender equality is also applicable to discrimination cases arising from gender reassignment.¹⁰¹ In practice, the Board of Equal Treatment also interprets gender identity to be covered by the ground of gender and has dealt with discrimination cases related to gender identity on a number of occasions.

⁹⁴ ECRI (2015): 6.

⁹⁵ Concerning the definition of LGBT cf. Council of Europe, Discrimination based on sexual orientation and gender identity in Europe 2011: 21 and 139 et seq.

⁹⁶ Cf. COWI (2009): 3-4.

⁹⁷ Act on Processing of Personal Data (2000), as amended in 2013: Articles 6(1) and 7(1).

⁹⁸ ILGA Europe (2015).

⁹⁹ EU LGBT Survey Data Explorer.

¹⁰⁰ See for example: the Mundt case, judgment of the District Court of Copenhagen, 12 September 2013 (Website of the Danish Courts (Domstol) (24 October 2013)).

¹⁰¹ The Danish authorities refer in particular to ECJ case C-13/ 94.

- **Gender reassignment**

100. On 1 September 2014, the Amendment to the Act on Civil Registration entered into force and allows transgender persons, who are 18 years or older and who wish to change the gender marker in their civil registration number (CPR), to do this by means of a simple application to the relevant authority. No medical assessments or interventions are required. Following a waiting period of six months, which is intended to provide the applicant with sufficient time to reflect on the matter, the gender marker will be changed and the applicant will from thereon be treated by all state authorities in accordance with the requested new gender.
101. In order to access gender reassignment procedures in Denmark, a person needs to undergo a physical and psychiatric evaluation by a multidisciplinary team of experts at the National Hospital's Sexology Clinic in Copenhagen. It is alleged that this evaluation contained elements also used in the treatment of sex offenders. ECRI's delegation was informed by LGBT groups, that a substantial number of transgender persons felt that this was inappropriate and insulting.¹⁰² The Ministry of Health investigated the issue and informed ECRI that since early 2016, these evaluation elements are no longer used.

¹⁰² Cf. Amnesty International (2014): 33.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the Danish authorities are the following:

- ECRI recommends that the Danish authorities set up a comprehensive data collection system for racist and homo-/transphobic hate speech incidents, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome. Furthermore, the authorities should take active measures to tackle under-reporting of hate speech, including by taking inspiration from ECRI's General Policy Recommendation No. 15 on combating hate speech.
- ECRI recommends that the authorities take urgent measures to end ethnic segregation in the Langkaer school in Aarhus and to prevent any such practices in Danish schools in the future. Furthermore, ECRI reiterates its recommendation made in 2012 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 overrepresented in certain schools as proposed in its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education.

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

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI reiterates its previous recommendation to sign and ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 8) ECRI recommends that the authorities bring the Danish criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) add language and citizenship to the list of enumerated grounds in Article 266(b), and “race”, colour, language and citizenship to the list of enumerated grounds in Article 81(6) of the Criminal Code; (ii) criminalise the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes, (iii) criminalise the creation or the leadership of a group which promotes racism, support for such a group, and participation in its activities.
3. (§ 12) ECRI recommends that the authorities bring their civil and administrative law, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should amend the Act on Ethnic Equal Treatment to include (i) colour, language, religion and citizenship as enumerated grounds; and (ii) a prohibition of acts of segregation, discrimination by association, announced intention to discriminate and inciting or aiding another to discriminate. The authorities should also amend the civil and administrative law to include (iii) an obligation to suppress public financing of organisations, including political parties, which promote racism, and (iv) the possibility of dissolving organisations which promote racism.
4. (§ 17) ECRI recommends that the authorities amend their civil and administrative law, in line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs, in particular they should extend the mandate of the Board of Equal Treatment (i) to include expressly the ground of language in the list of enumerated grounds applicable to the employment field, and the grounds of colour, religion, citizenship and language in the list of enumerated grounds applicable outside the employment field; (ii) to grant the Ombudsman the right to initiate court cases even when a specific victim is not referred to; and (iii) to amend the Ombudsman Act and the Act on the Board of Equal Treatment to provide for protection against retaliatory measures.
5. (§ 21) ECRI recommends that the Danish authorities set up a comprehensive data collection system for racist and homo-/transphobic hate speech incidents, with fully disaggregated data by category of offence, type of hate motivation, target group, as well as judicial follow-up and outcome. Furthermore, the authorities should take active measures to tackle under-reporting of hate speech, including by taking inspiration from ECRI’s General Policy Recommendation No. 15 on combating hate speech.
6. (§ 29) ECRI reiterates its recommendation that the authorities impart to the media the need to ensure that their information does not contribute to hostility towards members of groups subjected to hate speech. The authorities should also encourage and support initiatives by the media industry to (i) provide anti-racism training to journalists, and (ii) debate the image they convey to the public of Islam and Muslim communities.
7. (§ 34) ECRI recommends that the authorities provide training on how to handle hate crime cases to police and prosecutorial staff on an ongoing basis across the country. Cooperating partners in this training should also include the DIHR,

the Jewish, Muslim and Black communities, ethnic minority associations, refugee support groups and the LGBT community.

8. (§ 36) ECRI recommends that the authorities integrate, into the national strategy on the prevention of radicalisation and extremism, and the follow-up national action plan, specific measures to combat islamophobic hate speech, inter alia, by making use of ECRI's General Policy Recommendations No. 5 on combating intolerance and discrimination against Muslims and No. 15 on combating hate speech.
9. (§ 40) ECRI recommends that the authorities encourage the country's political leadership and representatives always to condemn all forms of racist and homo-/transphobic hate speech and apply appropriate sanctions when necessary.
10. (§ 44) ECRI recommends that the authorities facilitate closer cooperation between Muslim communities and the police to prevent and combat islamophobic violence.
11. (§ 48) ECRI recommends that the authorities promote increased dialogue between members of the LGBT community and the police in order to facilitate the reporting of homo-/transphobic violence.
12. (§ 50) ECRI recommends that the authorities ensure that the hate crime data collection system can trace the judicial follow-up of incidents involving racist and homo-/transphobic violence, including acts of vandalism.
13. (§ 53) ECRI recommends that, in cases of vandalism of religious sites, the police take hate motivations into consideration from the beginning of their investigation.
14. (§ 66) ECRI recommends that the authorities carry out a comprehensive evaluation of the integration programme, with a view to assessing its outcomes in terms of effectiveness as regards language and skills acquisition, and adjusting it where necessary.
15. (§ 70) ECRI recommends that the authorities review the appropriateness of the integration benefit, including the amounts, with a view to ensuring that it can promote the integration of newly arrived immigrants into Danish society. The authorities should also modify any elements that could amount to discrimination, such as providing additional payments upon passing of an intermediate-level Danish language test.
16. (§ 72) ECRI strongly recommends that the authorities ensure that the need to apply for social welfare payments does not lead to loss of residency rights for non-EU spouses of Danish citizens.
17. (§ 75) ECRI reiterates its recommendation that the authorities 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. The Danish authorities should execute the judgment of the European Court of Human Rights in the Biao case in a way that does not render family unifications even more difficult.
18. (§ 77) ECRI recommends that the authorities revise the criteria contained in the rules for assessing the integration potential in the context of family reunifications with a view to establishing adequate safeguards against discrimination on the grounds of "race", religion, colour, language, citizenship and ethnic or national origin during the assessment process.
19. (§ 79) ECRI recommends that the authorities amend the Aliens' Act with a view to granting beneficiaries of temporary subsidiary protection access to family reunification during their first year of residence in Denmark.

20. (§ 82) ECRI recommends that the authorities take urgent measures to end ethnic segregation in the Langkaer school in Aarhus and to prevent any such practices in Danish schools in the future. Furthermore, ECRI reiterates its recommendation made in 2012 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 overrepresented in certain schools as proposed in its General Policy Recommendation No.10 on combating racism and racial discrimination in and through school education.
21. (§ 86) ECRI recommends that the Danish authorities discontinue the confiscation of cash and jewellery from asylum seekers.
22. (§ 89) ECRI recommends that the authorities carry out an independent study into the situation of the Black community in Denmark with regard to their experiences of discrimination and obstacles to better integration.
23. (§ 91) ECRI recommends that the Danish authorities carry out a comprehensive evaluation of their support programmes for members of the Greenlandic (Inuit) community residing in Denmark, in order to assess how to further enhance the support for their social integration.
24. (§ 93) ECRI recommends that the authorities evaluate the situation of the Roma community with a view to developing a Roma-specific strategy.

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