TILLÆG: DEN DANSKE REGERINGS SYNSPUNKTER

Følgende tillæg udgør ikke en del af ECRIs analyse og forslag vedrørende forholdene i Danmark.

I overensstemmelse med den vedtagne procedure for overvågning af forholdene i medlemsstaterne har det første udkast til landerapporten for Danmark været genstand for en fortrolig dialog imellem ECRI og de danske myndigheder. Flere af de bemærkninger, som blev fremsat af myndighederne i den anledning, er blevet taget i betragtning af ECRI og indarbejdet i den endelige udgave af rapporten (som kun dækker udviklingen indtil d. 8. december 2016, der er datoen for gennemgangen af det første udkast).

De danske myndigheder har bedt om at også følgende synspunkter gengives i form af et tillæg til ECRIs landerapport.

VIEWPOINTS OF THE DANISH GOVERNMENT ON ECRI'S FIFTH REPORT ON DENMARK

The Government of Denmark wishes to express our support for the work of the European Commission against Racism and Intolerance (ECRI) and welcomes this opportunity to provide our viewpoints on its 5th report on Denmark.

We were pleased with the ECRI-delegations visit to Denmark in September 2016 and the good cooperation during the following confidential dialogue. We welcome many parts of the report and appreciate that most of the factual comments and adjustments provided by Danish authorities has been taken into account in the final report.

The Government of Denmark wishes to make use this possibility to provide some additional information, highlight new developments as well as providing some initial observations on selected parts of the report. These will be presented in line with the chronology of the findings and recommendations in the report.

Section on the Protocol No. 12 to the European Convention on Human Rights (§§ 1-2)
As background for the decision of the Danish Government not to accede to Protocol No. 12 to the European Convention on Human Rights (as mentioned in § 1) it should be noted that on 21 December 2012, the former Danish Government appointed a committee to assess, *inter alia*, the appropriateness and necessity of acceding to a number of human rights instruments, including Protocol No. 12. In its recommendations some members of the committee recommended that Denmark accedes to Protocol No. 12, while other members of the committee expressed concerns. After a public consultation process it was decided not to accede to the Protocol, as such accession might entail a risk of a shift in the powers conferred upon the legislature to decide, what could serve as a legitimate basis for differential treatment, to the courts and – as a last resort – the European Court of Human Rights.

Section on criminal law provisions (§§ 3-8)
In relation to ECRI's consideration on the scope of Section 266 b of the Criminal Code, it should be noted that, according to paragraph 1 of Section 266 b, any person who publicly, or with intent of dissemination to a wide group, issues a statement or other communication threatening, humiliating or degrading persons of a particular group because of their race, colour, national or ethnic origin, religious faith or sexuality is sentenced to a fine or imprisonment for a term not exceeding two years.

As noted in § 5 of the report, it has not been possible to identify cases where a statement covered by Section 266 b had been made expressly in regards to a person's citizenship. However, the Danish Government finds that a person's language and citizenship is already in practice covered by "national origin" in Section 266 b. It follows from the preparatory works to Section 266 b of the Criminal Code that "national origin" presumably must be understood as a person's affiliation to a nation or to a nation's population. It also follows that when determining a person's "national origin" one cannot rely only on a person's citizenship. Thus, an amendment to Section 266 b was made to enable Denmark to ratify the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which included inserting "national or ethnic origin" in the section. It follows that the term "national origin" should be subjected to a wide interpretation. Thus, if a person publicly or with the intent of dissemination to a wide group, issues a statement covered by the section in regards to a person's language or citizenship it would in practice be covered by Section 266 b.

Furthermore, it should be noted, that according to paragraph 2 of Section 266 b, when determining a penalty for a violation of paragraph 1 of Section 266 b it must be considered a particularly aggravating circumstance if the act is considered an act of propaganda. According to the preparatory work of paragraph 2 of Section 266 b, "propaganda" should be understood as "exercising an activity with the purpose of affecting the opinion of a wider group". It also follows from the preparatory works of paragraph 2 of Section 266 b that when determining whether an activity is exercised as "propaganda" it must be determined as part of an overall evaluation of the activity, e.g, especially whether a systematic distribution of statements or other communications threatening, humiliating or degrading persons of the groups mentioned in Section 266 b has taken place with the purpose of affecting the opinion of a wider group.

Finally, leaders as well as members of extremist organizations can be individually charged and prosecuted for statements which fall under Section 266 b of the Criminal Code. If a person assists in an offence covered by Section 266 b by incitement or aiding and abetting, that person can be punished in accordance with the general rules on aiding or abetting in a criminal offence in Section 23 of the Criminal Code. Thus, the participation in activities of a group can be punished.

Section on civil and administrative law provisions (§§ 9-12)
Regarding the issue of public funding for political parties (§ 11) it should be noted, that in Denmark political parties and lists of candidates, who have participated in the most recently held Parliament, regional or local election, are entitled to receive public funding. The public funding is provided by public authorities (the state, regions and municipalities) and is solely dependent on voter support at the most recently held election. However, in order to receive the public funding the parties and lists of candidates must file an application, which fulfil certain formal requirements set by law. It is the opinion of the Danish Government that it would be democratically questionable if public authorities were to assess the politics of the political parties and lists of candidates in order to provide public funding.

Section on independent authorities entrusted with the fight against racism and racial discrimination (§§ 13-17)
The Danish Government informs that the recommendation to amend the Act on the Board of Equal Treatment to provide for protection against retaliatory measures (§ 17 (iii)), in the Government's view, neither reflects the dialogue with ECRI during the evaluation in September 2016, nor does it reflect §§ 14-15 in the report regarding the Board of Equal Treatment. The Government further notes that § 7(2) in the Equal Treatment Act provide protection against retaliatory measures.

Section on data regarding hate speech (§§ 18-21)
Regarding the recommendation of setting up an comprehensive data collection system on hate speech (§ 21), it should be noted, that the Danish National Police has initiated a dialogue regarding hate crimes with a number of significant stakeholders to establish a closer and ongoing cooperation with the stakeholders and to obtain input to considerations regarding future efforts of the police in this area. Also, the dialogue will serve the purpose of improving the cooperation in order to get more victims to report hate crimes to the police and to highlight any difficulties or barriers regarding the reporting process.

Furthermore, it should be noted that case law on hate speech according to Section 266 b of the Criminal Code is published on the website of the Prosecution Service (www.anklagemyndigheden.dk) in the form of a register that contains brief summaries of all rulings concerning Section 266 b, including acquittals, ticket fines etc. Quotation of the statements of hate speech – oral or written – is included in the summaries as well as the circumstances surrounding the statements. Thus, from the

outset, it is possible to derive from the summaries information on racist and homo-/transphobic hate speech incidents or other defining characteristics of the individual victim of hate speech.

Section on measures taken by the authorities to counter hate speech (§§ 30-40)
The report refers to the number of cases of hate speech under Section 266 b of the Criminal Code (§ 30). Comparison is made between the registered number of cases reported, the number of charges, the number of indictments and the number of court cases. However, it should be noted that the numbers are not correlated as e.g. indictments in a single year do not necessarily correspond to the convictions in the same year and so forth.

Regarding the finding and recommendation on training of police and prosecutorial staff (§§ 33-34) it should be noted that the Danish National Police most recently conducted training on hate crime in February 2017. From now on such training will be offered as needed. The training is aimed at police officers and the training includes presentations from different civil society organizations. Furthermore, the Danish Government wishes to inform, that in both the mandatory courses for prosecutor trainees and optional courses for all prosecutors international legislative obligations and human rights issues are often an important part of the content. Thus, latest jurisprudence regarding human rights and other international legislative topics are implemented in all courses of relevancy. Also, the guidelines issued by the Director of Public Prosecutions on the processing of cases of hate crime (Instruction no. 2/2011) which apply to both prosecutors and police officers have recently been revised as part of a project on modernization of the professional communication of the Prosecution Service. The revised instruction includes chapters specifically directed at the police regarding circumstances that the police should be aware of in connection with the investigation of cases of hate crime.

Regarding ECRI's recommendation of integrating specific measures to combat islamophobic hate speech into the national strategy on the prevention of radicalization and extremism (§ 36), the Danish Government would like to stress that our preventive effort towards extremism and radicalisation addresses extremism and radicalisation in general and thus covers e.g. left-wing extremism, right-wing extremism, militant Islamism etc.

As part of the comprehensive effort to prevent extremism and radicalisation, preventive interventions towards all children and young people are intended to further the welfare, development and active citizenship of our children and young people, as well as prevent the development of risk behavior that can lead to radicalisation or crime. These interventions aim at providing children and young people democratic skills, honing critical thinking and social competences and also address problems related to hate speech of any kind.

The Danish Government wishes to provide further specified information about the pilot project mentioned in § 38 of the report. The new 4-year pilot project on digital mapping anchored within the Danish Security and Intelligence Service and the police shall ensure a more systematic mapping of the activities of extremists on the open social media. This is to make sure that the authorities have a better and more adequate, precise and updated picture of the role that the social media in particular play in connection with radicalization and hate crimes in Denmark. The knowledge collected is, among other things, to be used for focusing and strengthening the preventive efforts carried out by various ministries, agencies, municipalities, the police, civilian actors etc.

Section on homo-/transphobic violence (§§ 45-48)
In addition to the recommendation to increase dialogue between the police and members of the LGBT community it should be noted that the Danish National Police has initiated a dialogue regarding hate crimes with a number of significant stakeholders – and also members of the LGBT community – to establish a closer and ongoing cooperation with the stakeholders and to obtain input to considerations regarding future efforts of the police in this area. The dialogue will also serve the purpose of improving the cooperation in order to get more victims to report hate crimes to the police and to highlight any difficulties or barriers regarding the reporting process.

Section on access to employment and social protection (§§ 62-72)
ECRI recommends that the Danish authorities carry out a comprehensive evaluation of the integration programme (§ 66). In this regard, the Danish Government would like to draw attention to the fact that several evaluations have already been initiated, which is not reflected in the report. This includes an evaluation of the new integration measures, which are a result of the two and tripartite agreements on integration from 2016 and which are primarily implemented through amendments concerning the integration programme in the Integration Act and a new Act on Integration Basic Education.

The evaluation focuses on the implementation and the outcomes of the new integration measures. The evaluation is based on surveys among municipalities and asylum centers, as well as register data from Statistics Denmark, the Agency of Labour Market and Recruitment and the Ministry of Immigration and Integration. The first results of the evaluation will be published in May 2017. The results of the final evaluation are expected to be published in March or April 2018.

Furthermore, it should be mentioned that the Ministry of Immigration and Integration in 2016 has published two reports prepared by the research institute KORA. One includes an updated literature study on effective employment efforts towards non-Western immigrants, three benchmarking analyses on the municipal integration effort towards newly arrived refugees and the weakest immigrants and finally a series of sequence analyzes that look at which interventions this group typically undergoes, and which of these interventions are leading to a job. The other report relates to the results of Danish education and consists of a benchmarking analysis on the results of the language centers and an efficiency analysis where the results of the language centers are compared with the price they agreed with the municipalities.

Regarding the paragraphs on the integration benefit (§§ 67-70) it should be noted, that when it comes to the Danish Government's labour market policy, the emphasis is on making work pay. The Government has thus not only introduced integration benefit, aiming at giving newly arrived refugees and immigrants a greater incentive to work and become integrated in Danish society, but also amended the social welfare benefits in general, in order to make work pay for all family types in Denmark.

As for the additional payment by passing of an intermediate-level Danish language test it is intended to give newly arrived refugees and immigrants a greater incentive to learn Danish. Moreover, newly arrived refugees and immigrants are offered massive Danish language training free of charge enabling the newcomers to achieve Danish language skills. On this basis it is the point of view of the Danish Government that any indirect discrimination the rules on additional payments may cause is justified as it pursue a legitimate aim in a proportionate manner.

Concerning the finding and recommendation regarding the right of residency and social welfare payment (§§ 71-72) the Danish Government would like to clarify the scope of the so-called "special reasons" that can lead to suspension of the self-support requirement. When granting family reunification with spouses, who are non-EU citizens, it is normally a requirement according to the Danish Alien Act that the foreigner and the spouse/partner living in Denmark are able to support themselves. The self-support requirement can be suspended if special reasons apply – e.g. if the spouse/partner in Denmark is a refugee or has protected status and still risks persecution in his/her country of origin, has children under the age of 18 living in the home who have formed an individual attachment to Denmark, has children from a previous relationship and has custody of the child or has visitation rights and sees the child on a regular basis, or is seriously ill. This means that the self-support requirement can be suspended as long as special reasons apply.

Section on education (§§ 80-82)
In addition to the findings about the composition of classes at Langkaer Gymnasium it should be noted, that in September 2016 the Danish Institute for Human Rights submitted a complaint to the Board of Equal Treatment, because the institute believed that the composition of classes at Langkaer Gymnasium was illegal discrimination. On 15 March 2017, Langkaer Gymnasium agreed that pupils had been discriminated on the grounds of ethnicity even though this was not the intention, and therefore the Danish Institute for Human Rights and Langkaer Gymnasium made an out-of-court settlement. Langkaer Gymnasium also agreed that in the future, the school will not use the pupils' names as criteria for the composition of classes.

Section on interim follow-up recommendations of the fourth cycle (§§ 94-95)
In addition to the findings on recruitment of ethnic minorities into the police (§ 95) the Danish Government wishes to inform that statistics show that there has been an increase in employees with another ethnic background than Danish/Western European since before January 2015.

Section on Greenlanders (§§ 90-91)
In addition to ECRI's recommendation of carrying out a comprehensive evaluation of the support programmes for members of the Greenlandic community residing in Denmark (§ 91), it must be noted that the Danish authorities in 2020 will publish an evaluation of the initiative on supporting recently arrived Greenlanders by helping them overcome the challenges they face. This initiative forms part of the overall strategy for an effective inclusion of vulnerable Greenlanders in Denmark which expires in 2020.

Section on gender reassignment (§§ 100-101)
As an addition to the findings regarding gender reassignment procedures the Danish Government would like to highlight that in spring 2017 the Danish Health Authority initialised a review of the current guideline to the health sector regarding gender identity issues, evaluation and treatment of transgender persons in the health sector. The purpose of the review is to establish a more individualised and differentiated approach to evaluation and treatment of transgender persons and to avoid stigmatisation of transgender persons in the health sector.