

COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

REPORT FOLLOWING HER VISIT TO DENMARK
FROM 30 MAY TO 2 JUNE 2023

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SUMMARY

Commissioner Dunja Mijatović and her team visited Denmark from 30 May to 2 June 2023. During the visit, the Commissioner held discussions with the Danish authorities, national human rights structures, civil society and other interlocutors. This report focuses on two issues raised during the visit: the rights of refugees, asylum seekers and migrants as well as the rights of persons with disabilities.

Refugees, asylum seekers and migrants

The Commissioner is concerned about the consequences of a paradigm shift in Denmark, towards the provision of protection, in principle, only on a temporary basis, and with a view to returning individuals to their country of origin as soon as possible, rather than integrating them into Danish society. This has been accompanied by a range of legislative amendments and practices which impact on many aspects of the lives of refugees, asylum seekers and migrants, and which are causing both distress and uncertainty. Among these practices are the introduction of very short-term durations of residence permits, frequent reassessments of the need for protection, and in some cases, a lowered threshold for revocation of protection. The Commissioner notes the impact that this policy is having upon, *inter alia*, Syrian protection-holders, with the authorities having determined that it is now safe for those originating from several different areas in Syria to return.

The Commissioner moreover urges the authorities to abandon plans to externalise aspects of the asylum process to a third country, in light of doubts about their compatibility with international human rights standards, and because they may set a troubling precedent in shifting responsibility within the global system of international protection.

The Commissioner notes that rejected asylum seekers and others who have lost protection, or otherwise do not have a residence permit, may be subject to a number of measures aimed at ensuring cooperation on their return, some of which appear to be essentially punitive in nature. This includes placement in a return centre with duties to reside there and regularly report to the authorities, as well as the loss of access to many services and other entitlements. The Commissioner finds it to be particularly problematic that those who cannot be returned, including families with children, may find their lives suspended and in a state of limbo for years. This deeply impacts mental health and well-being, but also life-long opportunities and outcomes. The Commissioner further notes a number of human rights concerns with regard to the use of administrative detention for rejected asylum seekers and others.

Regarding family reunification, the Commissioner considers it as an improvement that the waiting time for temporary subsidiary protection status holders has been reduced in response to a judgment of the European Court of Human Rights (the Court). She nevertheless calls on the authorities to take further steps to ease family reunification for protection holders, including for temporary subsidiary protection status holders and older children. The Commissioner also notes that the requirements for obtaining permanent residency and Danish citizenship have been tightened over many years. She is concerned about the particular difficulties faced in this regard by children and young people who were born or grew up in Denmark and the rising number of persons who are stateless.

The rights of persons with disabilities

Persons with disabilities in Denmark continue to face obstacles in accessing and enjoying numerous human rights, and have worse outcomes, compared to persons without a disability, in almost all major spheres of life, including education, employment and participation, as well as freedom from discrimination and violence. The Commissioner notes positively the fact that Denmark has, for many years, collected data on the lives of persons with disabilities, which allows tracking of progress. She notes, however, that there do not appear to have been significant improvements over the years and in some areas, there are even indications that the situation is worsening.

The Commissioner welcomes the government's recognition of the challenges in this area, and the numerous legislative, policy and other initiatives which have been taken or are planned. At the same time, she recommends a number of broad steps that would foster a structural approach to improving the human rights situation of persons with disabilities; in particular, the introduction of general legal obligations for accessibility and reasonable accommodation, as well as a comprehensive national action plan on persons with disabilities. She also considers that Denmark could step up its international human rights commitments in this field, through ratification and/or incorporation of a number of instruments.

The Commissioner elaborates on a number of concerns regarding the right to independent and community-based living for persons with disabilities, particularly those in residential facilities. In particular, she finds reports of residents' exposure to violence and abuse, including sexual abuse, deeply worrying. She also notes the continuing use of relatively large residential facilities, and of the limited opportunities for persons with disabilities to choose their living arrangements. The Commissioner is further concerned by reports about an increasing number of children and young people with severe mental health conditions being placed in closed care institutions, as well as the conditions within those institutions.

A number of reforms have been implemented in the past years with regard to legal capacity and the right to vote, including the introduction of a system of partial guardianship. The Commissioner nevertheless considers that there is a need to increase focus on supported decision-making, and away from all forms of substituted decision-making. She urges the authorities to abolish the system of full guardianship, and with it the attendant disenfranchisement of persons deprived of their legal capacity. As an interim step, the authorities are called upon to consider ways of ensuring that measures are in place aimed at fostering greater take-up of partial guardianship. Regarding the acquisition of citizenship, the Commissioner calls on the authorities to ensure that procedures are fully accessible to persons with disabilities and that they include provisions of reasonable accommodation.

There are longstanding challenges in Denmark with regard to the use of coercion in psychiatric institutions, including recourse to belt restraints for extended periods of time. While recognising the authorities' ongoing efforts to address this, the Commissioner underlines the need to drastically reduce the use of all forms of coercion. She is also concerned by an apparent increase in coercive measures being used against children, and including in contexts outside the field of psychiatry.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), carried out a visit to Denmark from 30 May to 2 June 2023. The visit focused on the rights of refugees, asylum seekers and migrants (chapter 1 of this report) and the rights of persons with disabilities (chapter 2).
2. During the visit, the Commissioner met with the Minister for Justice Peter Hummelgaard and the Minister for Immigration and Integration Kaare Dybvad Bek; representatives of the Ministry for Foreign Affairs, Ministry for the Interior and Health, and Ministry for Social Affairs, Housing and Senior Citizens; the Parliamentary Ombudsman Dr Niels Fenger, the Danish Institute for Human Rights (DIHR), the Danish Disability Council (DCH) and National Integration Council (DNIR). The Commissioner also met with human rights defenders and other representatives of civil society. In the framework of the visit, the Commissioner visited Avnstrup Return Centre, the House of Disability Organisations (*Handicaporganisationernes Hus*) and Sofiebo Residential Unit for children with autism.
3. The Commissioner would like to thank the Danish Permanent Representation and the authorities in Copenhagen for their assistance in organising her visit. She expresses her gratitude to all interlocutors in Denmark for sharing with her their knowledge and experiences.¹

1. THE RIGHTS OF ASYLUM SEEKERS, REFUGEES AND MIGRANTS

1.1 THE OVERALL CONTEXT

4. The Commissioner notes that there have been far-reaching changes in asylum and immigration law and policy since her predecessor's visit to Denmark in 2013, encapsulated by what is generally referred to as a "paradigm shift". This shift has been towards a policy of providing protection only on a temporary basis: residence permits should be revoked or not extended whenever possible, unless it is in direct conflict with Denmark's international obligations to do so. Although a legislative package² from 2019 is usually attributed to the paradigm shift, already since 2015, a series of measures have been taken which have wide-ranging effects on the lives of refugees and asylum seekers, as well as those whose request for protection has been denied, or whose protection status has been withdrawn.
5. This approach as a whole, and measures relating to it, have been subject to criticism by numerous national and international human rights actors, including the United Nations High Commissioner for Refugees (UNHCR).³ The Commissioner's predecessor raised concerns about a number of legislative changes in a letter to the authorities in 2016, regretting that these "run counter to the aim of promoting a speedy and effective integration of these persons in Denmark".⁴
6. The issues raised below should be seen within this overall context. In addition, the Commissioner wishes to underline the general impact of such an environment. Based on her discussions with

¹ This report was finalised on 24 October 2023. All online documents quoted in the report were last accessed on that date.

² See [Lov om ændring af udlændingeloven, integrationsloven, repatrieringsloven og forskellige andre love](#) (Act amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws – in Danish), including amendments on further access to withdrawal of residence permits for refugees, ceiling on the number of family reunifications, increased punishment for violation of entry ban and violation of residence, notification and reporting obligations, reduction of benefits for dependants, among others.

³ See e.g. UNHCR, [Observations](#) on the proposed amendments to the Danish Aliens Legislation, 18 January 2019.

⁴ See Council of Europe Commissioner for Human Rights Nils Muižnieks, [Letter](#) to the Danish Minister for Immigration, Integration and Housing, CommDH(2016)4, 12 January 2016.

interlocutors, as well as her own observations, the Commissioner concludes that such an approach is causing a profound sense of uncertainty and mental anguish among those who need protection, and is hindering efforts to integrate this group into society.

1.2 THE ASYLUM PROCESS

1.2.1 REASSESSMENT AND WITHDRAWAL/NON-RENEWAL OF RESIDENCE PERMITS

7. The Commissioner recognises several positive developments in the area of protection. Legislation has been introduced to specifically cover those who have fled Ukraine since the outbreak of the war. At the end of August 2023, 38,899 residence permits had been granted under the Special Act on displaced persons from Ukraine.⁵ The Commissioner also welcomes a change in practice announced by the Refugee Appeals Board in early 2023,⁶ according to which women and girls from Afghanistan are to be granted protection solely on the basis of their gender. She further welcomes that the Board has committed to reopening applications from this group which had been rejected since August 2021.
8. However, many other elements of the current Danish protection policy give cause for concern. All residence permits granted to those receiving protection in Denmark are now provided for short periods of time (1-2 years, depending on the kind of protection status),⁷ with a periodic review of the continuing need for protection. While there may be a legitimate reason for states to periodically reassess protection statuses, the frequent reassessments applied in Denmark has led to a situation where protection-holders may feel that they are being constantly reviewed and threatened with (yet another) fundamental life upheaval. This is further compounded by the fact that requirements for obtaining permanent residence have been tightened over the years, meaning that individuals can be subject to reassessment for very long periods of time. The Commissioner notes in this regard that long-term or permanent residence has been recognised as an important factor in ensuring full enjoyment of social and economic rights, and in facilitating integration in host societies.⁸ Over the course of the Commissioner's visit, interlocutors recounted the distress experienced by those subjects to these reviews, and of the consequent impossibility of feeling truly settled in Denmark.
9. The Commissioner also notes that subsidiary and temporary subsidiary protection status may be lost if the relevant authorities find that there have been improvements of the general conditions in the country of origin if not just of a temporary nature, even if conditions remain serious and the security situation remains fragile and unpredictable. She notes in this regard that the Refugee Convention requires changes of a fundamental and durable nature to permit the loss of refugee status.⁹ UNHCR has expressed that a similar principle should be applied also to subsidiary statuses,

⁵ National Integration Barometer, [Fordrevne fra Ukraine](#) (Displaced persons from Ukraine – in Danish).

⁶ Refugee Appeals Board, [Flygtningenævnet giver asyl til kvinder og piger fra Afghanistan](#) (The Refugee Appeals Board grants asylum to women and girls from Afghanistan – in Danish), 30 January 2023.

⁷ According to section 7 of the Aliens Act ([Udlændingeloven](#) – in Danish), temporary residence permits are granted to those covered by the Refugee Convention 1951 (section 7(1) of the Act – “refugee status”, two year residence permit); those who risk the death penalty or being subjected to torture or inhuman or degrading treatment or punishment upon returning to their home country (section 7(2) – “subsidiary protection status”, one-year residence permit); where the risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment is based on a particularly serious situation in the home country, characterised by arbitrary violence and assaults on citizens (section 7(3) – “temporary subsidiary protection status”, one-year residence permit); and those who come to Denmark as part of an agreement with the UNHCR or a similar international agreement and who are covered by the Refugee Convention (Article 8 – notably “UNHCR resettlement refugees”, two-year residence permit).

⁸ See Council of Europe Commissioner for Human Rights, [Time for Europe to get migrant integration right](#), Issue Paper, CommDH(2016)2, May 2016, chapter 2.

⁹ See further UNHCR, [Guidelines on International Protection No. 3: Cessation of refugee status under Article 1C\(5\) and \(6\) of the 1951 Convention relating to the Status of Refugees](#), 10 February 2003.

a position which the Commissioner supports.¹⁰ The Commissioner further considers that premature returns to such situations significantly increase the risk of Denmark violating its obligations under Article 3 of the European Convention on Human Rights (ECHR).

10. The Commissioner was moreover informed of Denmark's recent practice of systematically reassessing residence permits for protection-holders from certain countries where the conditions are deemed to have changed, which has had a particular impact on Syrian and Somali protection-holders. With regard to the former, from 2019, the Danish Immigration Service has systematically reviewed the residence permits of those originating from Damascus and Rif Damascus, which are now considered by the Danish authorities to be safe for return. According to the authorities, between 2019 and the beginning of 2023, 158 Syrian protection holders lost their residence permits.¹¹ In March 2023, moreover, the Immigration Service further announced that it now considers the areas of Tartous and Latakia to be safe for return. A number of international and national actors have raised concerns that this may amount to a violation of the principle of *non-refoulement*, in the light of the reported risks that may be faced upon return to such areas.¹² The Commissioner further observes that this practice with regard to Syrian protection holders seems out of step with that of other member states. In light of the absence of diplomatic ties between Denmark and Syria, Syrians who have lost their residence permits are not forcibly deported at present. They may nevertheless be subject to various measures aimed at encouraging their departure from the country, as detailed in section 1.3.
11. Interlocutors raised with the Commissioner a number of procedural concerns about the authorities' frequent reassessments. In particular, they pointed to the fact that a very high number of revocation decisions made by the Danish Immigration Service in respect of Syrian protection-holders in 2022 were overturned on appeal.¹³ This has led to concerns about the current interpretation and application of criteria at the first instance, and is causing uncertainty for protection holders. The Commissioner was further informed of long waiting times for decisions, with many experiencing a total processing time of more than one year. Individuals reportedly are also not always adequately informed and consulted throughout the process, in part due to language barriers. These factors have led to stress, insomnia, depression and anxiety among those subject to assessment.¹⁴
12. The Commissioner was further informed of the results of research conducted by the DIHR, which identifies issues within the assessment process of Syrian protection-holders that may violate the right to respect for private and family life under Article 8 ECHR.¹⁵ In particular, the DIHR has raised concerns that the current process does not adequately assess attachment to Denmark in a number of ways: first and foremost, the assessment is based on the Court's case-law relating to the expulsion of criminal foreign nationals. Secondly, the DIHR considers that the proportionality of

¹⁰ UNHCR, [Recommendations](#) to Denmark on strengthening refugee protection in Denmark, Europe and Globally, November 2022, page 4; see also (in the context of family reunification) Commissioner for Human Rights, [Third party intervention](#) under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 6697/18 *M.A. v. Denmark*, 31 January 2019, paras 20, 23-32; Parliamentary Assembly of the Council of Europe (PACE) [Resolution 2243\(2018\)](#) on family reunification of refugees and migrants in the Council of Europe member States, para 6.

¹¹ [Udlændinge- og Integrationsudvalget 2022-23 \(2. samling\), endeligt svar på spørgsmål 15](#) (Immigration and Integration Committee 2022-23 (2nd session), final answer to question 15 – in Danish), 13 February 2023.

¹² See e.g. UN Committee on the Elimination of Racial Discrimination (CERD), [Concluding observations](#) on the combined twenty-second to twenty-fourth reports of Denmark, 1 February 2022, para 32. See also above-mentioned [Recommendations](#) of UNHCR from 2022, section 2.2; and sources cited in European Council on Refugees and Exiles (ECRE), [Denmark: MEPs confront Danish minister on rogue asylum policies as Syrians flee to other Member States](#), 14 January 2022.

¹³ In the case of Syrians, see e.g. DIHR, [You can never feel safe: An analysis of the due process challenges facing refugees whose residence permits have been revoked](#), 2022, page 31; DR, [Syriske tvillinger er langt fra de eneste: 77 procent af sagerne omgøres i Flygtningenævnet](#) (Syrian twins are far from the only ones: 77 percent of the cases are reversed by the Refugee Board – in Danish), 2 March 2023.

¹⁴ See further above-mentioned [report](#) of DIHR from 2022.

¹⁵ *Ibid*, chapter 3.

when parents and their (young) adult children can be separated is not adequately assessed, nor is the independent attachment of children to Denmark. The Commissioner has received recent reports that guidance has been prepared with the aim of clarifying practice in this area, and that since her visit, there have been some positive developments in the practice of the Refugee Appeals Board's assessments where children are involved. The Commissioner invites further information on these developments.

13. During the previous visit to Denmark, the Commissioner's predecessor raised as an issue the treatment of unaccompanied minors whose asylum applications have been rejected. While this group can be granted temporary residence permits under certain circumstances, these expire once they reach the age of majority. They are usually returned to their country of origin, unless they can meet the high requirements for permanent residency. The Commissioner echoes the concerns of her predecessor, namely that the prospect of return, as soon as they reach the age of 18, places these children in a situation of uncertainty, which is harmful to their development, and which limits their willingness and capacity to integrate into Danish society.¹⁶

1.2.2 THIRD COUNTRY ASYLUM PROCESSING (EXTERNALISATION)

14. In June 2021, legislative amendments¹⁷ were passed, which provide the legal framework for Denmark to transfer asylum seekers to a third country for the purpose of assessing their asylum claim. Subsequently, Denmark and Rwanda have been "jointly exploring the establishment of a program through which spontaneous asylum seekers arriving in Denmark may be transferred to Rwanda for consideration of their asylum applications and protection, and the option of settling in Rwanda."¹⁸ No formal agreement for transfer of asylum seekers to Rwanda has been concluded to date. The Commissioner understands that since the formation of a new government at the end of 2022, Denmark has turned its focus towards garnering support across Europe for a joint third-country processing scheme.
15. The Commissioner has previously raised concern at a scheme for transferring asylum seekers to Rwanda in another member state of the Council of Europe.¹⁹ In her view, externalisation schemes pose a significant risk to key legal protections and to compliance with states' obligations under international instruments, in particular the Refugee Convention. Moreover, such attempts to shift responsibility for the assessment of asylum claims and the reception of asylum seekers to a third country set a troubling precedent, as they have the potential to fundamentally undermine the global system for international protection. She further notes that the Danish scheme has been questioned from a human rights perspective by the UNHCR and the European Commission, as well as other actors.²⁰

¹⁶ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, para 31.

¹⁷ [Lov om ændring af udlændingeloven og hjemrejseloven](#) (Indførelse af mulighed for overførsel af asylansøgere til asylsagsbehandling og eventuel efterfølgende beskyttelse i tredjelande) (Act amending the Aliens Act and the Return Act (Introduction of the possibility of transferring asylum seekers for asylum case processing and possible subsequent protection in third countries) – in Danish).

¹⁸ Ministry of Foreign Affairs and International Cooperation of the Republic of Rwanda and Ministry of Foreign Affairs of Denmark, [Joint Statement on Bilateral Cooperation](#), 9 September 2022.

¹⁹ See Commissioner for Human Rights, [Report](#) following her visit to the United Kingdom from 27 June to 1 July 2022, CommDH(2022)27, 18 November 2022, para 37; Commissioner for Human Rights, [Statement](#): United Kingdom government's intention to offshore asylum processing to Rwanda sends a worrying signal, 14 April 2022. She also notes that the UK's scheme is currently subject to litigation as regards deficiencies in the asylum system of Rwanda and the risk of *refoulement* of individuals.

²⁰ See e.g. UNHCR, [Observations](#) on the Proposal for amendments to the Danish Alien Act (Introduction of the possibility to transfer asylum-seekers for adjudication of asylum claims and accommodation in third countries), 8 March 2021; African Union, [Press statement](#) on Denmark's Alien Act provision to externalize asylum procedures to third countries, 2 August 2021; European Parliament, [Parliamentary question P-003626/2021: Answer given by Ms Johansson on behalf of the European Commission](#), 14 September 2021; DIHR, [Consultation response](#) regarding the draft law on amending the Aliens Act, 3 March

16. Territorial asylum provides a fundamental building block of the contemporary protection system, and responsibility for ensuring that the rights of anyone arriving on its territory and seeking protection are observed remains fully with Denmark. The Danish legislative framework allowing for an externalisation scheme does not determine its precise content, making it difficult to assess its compatibility with the full gamut of human rights standards. Nevertheless, the Commissioner takes note of a number of practical and procedural concerns, as expressed by national actors. In the first place, the legislative framework does not determine whether a reception centre, established under such a scheme, would fall under Danish jurisdiction, or that of the third country. The answer to this question will significantly impact the content of Denmark's obligations for ensuring human rights compliance. In this connection, significant questions remain as to how Denmark would ensure, in practice, sufficient safeguarding and oversight of human rights compliance, including respect for the principle of *non-refoulement*. The Commissioner is concerned that, in practice, transferring asylum seekers to a third country, which is not a contracting state of the ECHR, will inevitably create gaps in human rights protections. The Commissioner further observes that any externalisation scheme would foreseeably lead to an increase in coercion and deprivation of liberty, including in Denmark prior to and during transfer, further increasing the risk of various human rights violations.
17. In their discussions with the Commissioner, the Danish authorities expressed the view that the current global asylum system faces significant challenges, and that many people risk and lose their lives on dangerous routes in an attempt to enter Europe. The Commissioner nevertheless considers that externalisation mechanisms of this nature present numerous and significant risks to human rights compliance and, as such, do not present an appropriate solution. She also considers that such schemes are driven by unsubstantiated assumptions that they would have a deterrent effect: she has repeatedly reiterated her concern, including in her discussions with the Danish authorities, about the risks presented by asylum and migration policies which mainly focus on deterrence, rather than on ensuring appropriate human rights protection.²¹ In her view, deterrence-focused approaches, rather than encouraging people to take fewer risks and reducing loss of life, as the Danish authorities seem to suggest, generally have the opposite effect as people take ever more desperate measures to circumvent restrictive migration controls.
18. The Commissioner calls on Denmark to shift its focus of international asylum co-operation from externalisation to improved responsibility-sharing. All member states should open more safe and legal routes for people seeking protection and strengthen their commitment to resettlement schemes, in order to reduce the number of people subject to dangerous journeys and human smugglers.²² In that regard, the Commissioner notes positively that Denmark has resumed the UNHCR resettlement programme after a period of temporary suspension, and that the current government intends to allocate funds to receive up to 500 quota refugees per year, thereby increasing its previous commitment to resettle up to 200 refugees annually.²³ At the same time, the Commissioner notes the highly restrictive criteria used by Denmark for the purpose of its resettlement programme,²⁴ as well as information provided by interlocutors that Denmark has, in past years, fallen significantly short of fulfilling its quota.

2021 – in Danish and [press release](#), 4 March 2021 – in Danish; Danish Refugee Council, [Undvigelse af ansvar for verdens mest sårbare](#) (Evading responsibility for refugee protection – in Danish), October 2022.

²¹ See e.g. Commissioner for Human Rights, [Tolerance of human rights violations against refugees has reached alarming levels in Europe](#), 19 June 2023.

²² See e.g. Commissioner for Human Rights, [Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean](#) Recommendation, June 2019, chapter 5, recommendation 34.

²³ See The Office of the Prime Minister, [Regeringsgrundlag 2022](#): Ansvar for Danmark (Government basis 2022: Responsibility for Denmark – in Danish), December 2022, chapter 5.4.

²⁴ UNHCR, [Recommendations](#) to Denmark on strengthening refugee protection in Denmark, Europe and Globally, November 2022, November 2022, section 4.2.

1.2.3 CONCLUSIONS AND RECOMMENDATIONS

19. The Commissioner is concerned by the human rights risks and the long-term harms, both to wellbeing and to integration prospects, which appear to be arising out of Denmark's shift on asylum policy. She stresses the need for the authorities to refocus on providing greater certainty and security to refugees and other protection holders. In particular, the Commissioner calls on authorities to reconsider the practice of regular reassessment of the protection needs of protection holders. She further recommends that protection statuses, including temporary subsidiary protection, are withdrawn only in case of a fundamental and durable change in circumstances in line with the Refugee Convention.
20. The Commissioner invites the authorities to provide the same length of residence permit for all protection holders, and to extend this period beyond two years, drawing, *inter alia*, on recommendations made by UNHCR in this regard, and with a view to improving the stability and integration prospects of protection holders.
21. The Commissioner further calls on the authorities to review current procedures for reassessments, with a view to ensuring, among other things, that they fully comply with human rights standards, particularly Article 8 ECHR, that they are not excessive in length, and that sufficient safeguards are in place to ensure that concerned individuals are adequately informed throughout the process.
22. In light of the Committee of Ministers' Recommendation CM/Rec(2007)9 on life projects for unaccompanied minor migrants,²⁵ the Commissioner encourages the authorities to develop, in close consultation with youth services, durable solutions for unaccompanied minors whose asylum claims have been rejected, and who face expulsion once they turn 18.
23. In view of the potential human rights implications, as well as of the wider impact on the global system of international protection, the Commissioner calls on Denmark to abandon attempts to circumvent and externalise its responsibility for dealing with asylum claims and to refrain from further pursuit of an agreement to transfer asylum seekers to Rwanda for this purpose. While commending Denmark for its willingness to strengthen European-wide cooperation on migration-related matters, she urges the authorities to redirect and step up focus on greater and fairer responsibility-sharing among European states and globally.
24. In this vein, the Commissioner welcomes the government's intention to increase their annual quota of UNHCR resettlement refugees, and urges it to consider making such an increase a substantial one, in line with the increasing global needs for resettlement, and to take steps to ensure that such a quota is met.

1.3 THE RETURNS PROCESS

25. Rejected asylum seekers and other foreigners without a residence permit must cooperate with the authorities in securing their return. The Commissioner notes that Denmark has, in recent years, intensified the use of measures aimed at ensuring that individuals cooperate with their own return, which range from relocation to a return centre, to possible deprivation of liberty in a detention centre. Further, while all rejected asylum-seekers and foreigners without a residence permit have comparatively limited socio-economic entitlements, these can be further restricted for those who do not cooperate with their return.
26. The Commissioner is concerned about the pressure individuals are put under to ensure their own return, in light of the above-mentioned focus on reassessment, and the lowered threshold for

²⁵ Recommendation [CM/Rec\(2007\)9](#) of the Committee of Ministers to member states on life projects for unaccompanied migrant minors. See also [Report](#) of the UN High Commissioner for Human Rights on Youth and Human Rights, 28 June 2018, para 59.

revoking protection even where the situation in the country of origin remains fragile. She underlines that the fact that a person might take up voluntary return, which results from a legal obligation to leave which may be enforced by the authorities, does not relieve a state of their obligations to prevent *refoulement*.²⁶ She also notes that, in addition to having a significant negative impact on the well-being of those subjected to them, the application of these measures raises a number of human rights concerns, as explained in further detail below.

1.3.1 RETURN CENTRES

27. Avnstrup Return Centre, which was visited by the Commissioner during her visit, accommodates families with children. A number of groups typically stay at the centre, including rejected asylum seekers who are considered not to be cooperating with their departure; foreign nationals court-ordered to leave Denmark; and foreign nationals ordered to leave but who cannot be deported, a situation which the authorities refer to as “tolerated stay”. The Centre is run by the Red Cross who offer a number of services and activities to residents. The Commissioner met with staff and residents at the Centre and was provided a tour of its facilities, which include a health clinic and school for children up to the age of 16. She was informed that, at the time of her visit, there were 161 people in the Centre, among them 72 children, including notably Iranian Kurds on “tolerated stay”, as well as one Syrian family. Regarding the length of stay at the Centre, the Commissioner was informed that this could range from just one week (for those who actively cooperated and could be returned), to four or even more years.
28. While the Centre is open, residents have a duty to report twice a day to the Return Agency,²⁷ and to spend the night there subject to a limited number of exceptions. The Commissioner learned that, given its relatively remote location, travelling to and from the Centre during the day could prove practically difficult. While the Red Cross offered a range of services at the Centre, such as a cafeteria and various educational and social activities, these were only available to adult residents who were currently cooperating with the authorities on their return, as assessed by the Return Agency, whilst those not cooperating did not have access to these services. The Commissioner is concerned about the essentially punitive nature of depriving people who are not cooperating on their return from these fairly basic services. Medical care for adults is limited to urgent treatment and pain relief. Children, on the other hand, could access all activities and services as well as full healthcare services. However, it was pointed out to the Commissioner that there is a gap in the provision of services for children over 16, particularly with regard to schooling.
29. The Commissioner observed that staff at the Centre appeared to be genuinely committed to their work and to contributing towards the welfare of the residents. She was also informed that a number of improvements had been made at the Centre in recent years, including the introduction of nursery services and an area where residents can cook for themselves. She takes note of the government’s view that return centres, such as Avnstrup, at least ensure that individuals without legal residence in Denmark are provided with a place to stay and access to essential services. The Commissioner acknowledges the importance of ensuring that those who are faced with a legal obligation to return,

²⁶ See, in this respect, for example *M.S. v. Belgium*, Application No. [50012/08](#), judgment of 31 January 2012, paras 124-125. In this case, the Court found that the voluntary return of a rejected asylum seeker, being faced with the choice between staying in the host country “without any hope of ever obtaining the right to reside legally and without any concrete prospect of living there in freedom” and returning to his country of origin to face risks, could not be regarded as signifying consent to waive his rights under Article 3 ECHR.

²⁷ An agency under the Ministry of Immigration and Integration which, among other things, is tasked with determining whether or not a foreign national is obliged to reside at a return centre, ensuring that foreign nationals abide by those residence requirements, and determining whether or not a foreign national is cooperating with the immigration authorities on their departure.

even when not cooperating with the return process, are guaranteed their basic needs.²⁸ In the Commissioner's view, however, the return centres are not a solution to the problem of families languishing in a state of limbo, sometimes for indefinite periods of time.

30. The Commissioner was particularly struck by reports of poor mental wellbeing among the children residing at the Centre. She was informed of a general atmosphere of desperation and uncertainty among the adults there, which inevitably impacted the children. Some of them had, moreover, witnessed upsetting incidents, such as families being forcibly taken away by police. Staff at the Centre report a number of symptoms among children residing at the Centre, including sleep and eating disorders, stomach problems, impaired learning, anxiety and insecurity in the form of increased alertness, among others. In interviews conducted among older children, significant recurring sentiments included feelings of hopelessness and resignation due to a lack of opportunities, as well as concerns about the risk of becoming involved in crime and abuse.²⁹
31. The Commissioner notes the government's view that it is in the hands of the residents to, in the first place, cooperate with their return and to thereby move on from the Centre and with their lives. She was also informed of the possibility to obtain a humanitarian permit if, after 18 months of cooperation, return to the country of origin is considered by the relevant authorities to be impossible. Her interlocutors, however, pointed out that in practice, such permits are very rarely granted, with the authorities continuing to try and secure return for many years, in some cases. The Commissioner echoes the position of her predecessor that the willingness to incite return or to punish refusal to return should never result in arrangements that impinge on the human rights of the persons concerned and the members of their families. In her view, forced long-term stays within return centres for individuals who cannot be forcibly removed creates certain human rights risks. Given its impact upon the wellbeing of the children concerned, moreover, she is of the opinion that this practice cannot be considered to be in their best interests.
32. During the Commissioner's visit, another Return Centre, Kærshovedgård, was roundly criticised by interlocutors, including for its harsh conditions.³⁰ This Centre usually hosts single rejected asylum seekers who have been court-ordered to leave Denmark, and people on tolerated stays. While the Centre is open, residents are subject to a number of requirements, including a duty to reside at the Centre and regular reporting to the authorities. Repeated breach of requirements can lead to criminal conviction and imprisonment. Residents' failure to meet these duties appeared to be a particular issue at Kærshovedgård. The Commissioner's interlocutors stressed that the Centre's remote location made it difficult in practice for people to meet their residential duties, particularly for those who had been separated from family members living elsewhere in Denmark. In that regard, the Commissioner was informed that there was a lack of appropriate facilities for family visitation at the Centre. While the Commissioner did not personally visit the Centre, she observes that these factors, when considered together, appear to present significant obstacles to maintaining contact and relations among family members, and may raise issues under Article 8 ECHR (right to respect for family life).³¹ On the other hand, the Commissioner notes positively that, at the time of her visit, the authorities were actively considering removal of the small number of

²⁸ See Commissioner for Human Rights, [Migrants in limbo in Europe have the right to live in dignity](#), Human Rights Comment, 15 November 2016; see also European Committee of Social Rights, *Conference of European Churches (CEC) v. the Netherlands*, complaint no. [90/2013](#), decision on the merits of 1 July 2014.

²⁹ See further Red Cross, [Rapport om børnenes trivsel på udrejsecenter avnstrup: Et øjebliksbillede](#) (Report on the wellbeing of children at Avnstrup Return Centre: A snapshot – in Danish), April 2023.

³⁰ The Parliamentary Ombudsman carried out a visit along with DIGNITY and the DIHR in 2017, which supports these concerns. See Parliamentary Ombudsman, [Tilsynsbesøg i Udrejsecenter Kærshovedgård, personer på tålt ophold med opholdspligt](#) (Supervisory visit of Kærshovedgård Return Centre, persons on tolerated stay with compulsory residence – in Danish), 2018.

³¹ See, *mutatis mutandis*, *Mengesha Kimfe v. Switzerland* Application No. [24404/54](#), judgment of 29 July 2010.

remaining women at Kærshovedgård, and encourages the implementation of this as soon as possible.

1.3.2 ADMINISTRATIVE DETENTION

33. Under a repatriation law for foreigners without legal residence, which came into force in 2021, police must “as far as possible” detain rejected asylum seekers and other foreign nationals without a right to stay in the country, if other measures are not sufficient to ensure their removal. Asylum seekers whose applications are being processed may also be administratively detained in certain circumstances, for example where they are considered not to be participating in the processing of their case. The authorities have previously noted that the purpose of administrative detention is to motivate foreign nationals to cooperate on their return or case.³² The Commissioner notes the numerous and enduring human rights risks arising from practices of immigration detention across Europe, detailed, for example, by the Parliamentary Assembly of the Council of Europe (PACE) in its 2010 Resolution.³³ In that connection, she underlines that emphasis should be placed, in the first instance, on the development and implementation of effective alternatives to administrative detention.³⁴ Beyond being an essential tool to ensure that the rights of rejected asylum seekers or irregular migrants are respected, properly implemented alternatives to detention also help build trust, communication and engagement between migrants and the state in return procedures, and can therefore contribute to their effectiveness (whilst also allowing for financial savings compared to expensive detention systems).³⁵ In recent years, the Council of Europe has developed significant guidance to help member states move towards return policies that put alternatives to detention, rather than deprivation of liberty, at their heart.³⁶
34. Ellebæk Immigration Centre, which is run by the Prison and Probation Service, is used *inter alia* to administratively detain rejected asylum seekers awaiting deportation. According to information provided by the DIHR, 450 administrative detentions were carried out in Ellebæk Immigration Centre in 2022.³⁷ The Commissioner’s predecessor identified a number of concerns, including the length of administrative detention, while underlining that detention will be considered arbitrary if it is not closely connected to the ground of detention, for example if a person is detained for the purpose of expulsion although it cannot reasonably be carried out.³⁸ The Commissioner understands that individuals can still be administratively detained for up to 18 months by law. While the average stay is much shorter, the Commissioner received reports of a number of cases where rejected asylum seekers had remained there for many months. The Commissioner’s predecessor also raised concerns about the risk of persons in situations of particular vulnerability being detained

³² See e.g. [Response](#) of the Danish Government to paragraph 117 of the report of the CPT on its visit to Denmark from 3 to 12 April 2019, 3 March 2020, page 2.

³³ PACE [Resolution 1707\(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe. The priority for alternatives is also reiterated in the Council of Europe’s Committee of Ministers’ [Twenty Guidelines on Forced Return](#), September 2005; and in other international texts, such as the [New York Declaration for Migrants and Refugees](#), adopted by heads of state and government on 19 September 2016.

³⁴ Regarding the Court’s case-law on when administrative detention of asylum seekers and rejected asylum seekers is considered arbitrary and in violation of Article 5 ECHR, see European Court of Human Rights, [Guide](#) on Article 5 of the European Convention on Human Rights (Right to liberty and security), updated 31 August 2023, chapter F Detention of a foreigner.

³⁵ Commissioner for Human Rights, [High time for states to invest in alternatives to migrant detention](#), Human Rights Comment, 31 January 2017.

³⁶ See, Council of Europe Steering Committee for Human Rights (CDDH), [Legal and practical aspects of effective alternatives to detention in the context of migration](#), 7 December 2017; CDDH, [Practical guide: alternatives to immigration detention: fostering effective results](#), adopted at the 91st CDDH meeting on 18-21 June 2019.

³⁷ See DIHR, [Beretning til Folketinget: Menneskerettigheder i Danmark 2022](#) (Report to the Danish Parliament: Human rights in Denmark 2022 – in Danish), 25 May 2023, page 17.

³⁸ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, paras 68, 71.

in the Centre.³⁹ During her visit, the Commissioner did not receive any reports of children being having been detained in the Centre, which is to be welcomed. She was, however, informed that there remains a lack of systematic and comprehensive screening of detainees upon their arrival at the Centre, which can be important for identifying potential victims of torture, as well as persons vulnerable due to other physical or mental health conditions.⁴⁰ Although individuals are screened for torture upon their arrival in Denmark, interlocutors noted that this information was not passed on in a coordinated manner to the relevant actors, and throughout a person's stay in Denmark.

35. During their visit to the Centre in 2019, the European Committee on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) found, among other things, that rooms and sanitary facilities in the Centre were in a poor state of repair and that material conditions overall were clearly inappropriate for the administrative detention of migrants.⁴¹ The Commissioner notes the government's response to the CPT report, detailing a number of planned and implemented renovations to the Centre.⁴² She further notes that the Parliamentary Ombudsman found that material conditions had been improved markedly during his monitoring visit in 2022.⁴³ Nevertheless, the Centre apparently continues to be run in a prison-like⁴⁴ manner, with extensive restrictions on its residents' daily lives. The Commissioner further regrets reports of the use of disciplinary solitary confinement within Ellebæk which lasted up to 15 days or more.⁴⁵ She notes in this regard findings by the CPT that disciplinary confinement in any regime should be imposed only in exceptional cases and for the shortest possible duration – no more than 14 days and preferably less.⁴⁶ Noting the damaging effect of solitary confinement on mental and physical wellbeing, and the fact that most of the people detained in Ellebæk have been placed there for reasons unconnected to crime, the Commissioner considers the application of strict prison rules and punishment, particularly through long periods of isolation, to be inappropriate.

1.3.3 CONCLUSIONS AND RECOMMENDATIONS

36. The Commissioner reiterates that the fact of voluntary return does not negate Denmark's obligation to uphold the principle of *non-refoulement*. She strongly encourages the authorities to consider whether the current system and application of measures aimed at ensuring that individuals cooperate in returning to their country of origin may be creating a risk of non-compliance with this principle.

37. With regard to return centres, the Commissioner:

- Urges the authorities to fundamentally reconsider their use, particularly in the case of families with children, so that they can no longer be places where people reside long-term and potentially for indefinite periods of time;
- Calls, in the meantime, on the authorities to consider introducing a more flexible approach to residential and reporting duties;

³⁹ Ibid, para 69.

⁴⁰ See in a similar vein CPT, [Report](#) to the Danish Government on the visit to Denmark from 3 to 12 April 2019, 7 January 2020, paras 60 and 132.

⁴¹ Ibid, paras 116-117.

⁴² See above-mentioned [response](#) of the Danish Government from 2020.

⁴³ Parliamentary Ombudsman, [News: The Ellebæk Centre for Foreigners is in better condition but there is still a need for improvement](#), 6 December 2022.

⁴⁴ See above-mentioned [report](#) of the CPT from 2020, page 6.

⁴⁵ Supported by data retrieved from the Prison and Probation Service by the DIHR. See also [Reply](#) of the Minister of Justice to question no. 1766 of the Parliamentary Legal Committee on 8 September 2020 from 6 October 2020 – in Danish, indicating that penal detention in Ellebæk can be given for up to 4 weeks.

⁴⁶ Above-mentioned [report](#) of the CPT from 2020, para 81.

- Calls on the authorities to ensure that rejected asylum seekers and others without a residence permit are provided continued access to meaningful activities and opportunities, regardless of whether they are considered to be actively cooperating with their return. She also urges the authorities to ensure that children over 16 are, in particular, guaranteed access to education;
- Encourages authorities to consider more frequent use of practical solutions for those who cannot be returned after a certain period of time, such as the greater use of humanitarian permits. This could serve as a more humane alternative to the prospect of indefinite stay in a return centre.

38. With regard to administrative detention, the Commissioner calls on the authorities to ensure that:

- Efforts in developing and implementing alternatives to detention are prioritised, drawing on relevant international guidance;⁴⁷
- In practice, administrative detention of rejected asylum seekers and other migrants is always exceptional, for the shortest possible length, and only after first reviewing all other alternatives and finding that there is no effective alternative.⁴⁸ In particular, she underlines that the feasibility of return should be continuously assessed by the relevant authority – where return is not currently feasible, the person in question should no longer be detained on this ground;
- No vulnerable persons are detained, including victims of torture. She invites the authorities to consider ways of further strengthening screening processes, including ensuring the systematic and comprehensive screening upon arrival at detention centres, as well as the coordinated sharing of information among relevant actors, while ensuring full compliance with data protection obligations;
- Strict prison-like rules and regimens are not implemented against those in administrative migration detention, and in particular, that use of solitary confinement as a disciplinary measure for breaches of such rules is avoided.

1.4 SELECTED INTEGRATION ISSUES

1.4.1 FAMILY REUNIFICATION

39. The Commissioner regrets that legislative changes over the course of many years have made it progressively more difficult to seek family reunification in Denmark. One notable example has been the introduction in 2015 of statutory waiting periods for people subject to temporary subsidiary protection status. In *M.A. v. Denmark*,⁴⁹ the Grand Chamber of the Court found that Denmark had violated the right to respect for family life (Article 8 ECHR) for refusing to grant family reunification for a person with temporary subsidiary protection status, on the basis that he had not yet met a statutory three-year waiting period. The authorities have since reduced the waiting period for this group to two years, which the Commissioner considers an improvement, and the supervision of the case by the Committee of Ministers has recently been closed.⁵⁰

40. The Commissioner nevertheless considers that a number of further steps could be taken to strengthen protection of the right to family life in this area. In particular, the Commissioner wishes to underline the importance of prompt family reunification, in the light of the need to re-establish

⁴⁷ See e.g. Steering Committee for Human Rights (CDDH), [Human rights and migration: Legal and practical aspects of effective alternatives to detention in the context of migration](#), adopted on 7 December 2017; CDDH, [Practical guide – Alternatives to immigration detention: Fostering effective results](#), adopted on 18-21 June 2019.

⁴⁸ On this, see PACE [Resolution 1707\(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe.

⁴⁹ Application No. [6697/18](#), judgment of 9 July 2021.

⁵⁰ Resolution [CM/ResDH\(2023\)119](#) on the execution of the judgment of the European Court of Human Rights *M.A. against Denmark*, adopted on 7 June 2023.

family life after flight, and the damaging effects of family separation which the Commissioner and her predecessors have documented extensively,⁵¹ as well as the vulnerability of the applicant, and potentially also of the family members left behind.⁵² She further emphasises that actual periods of family separation will often be considerably longer than statutorily-established waiting periods. Family reunification is an essential human right. It can also constitute an important alternative legal pathway for migration, which could usefully serve as part of efforts to tackle dangerous and irregular migration to Europe. For all of these reasons, the Commissioner considers that waiting times of more than one year for family reunification should, in principle, be considered inappropriate.⁵³

41. The Commissioner moreover continues to be concerned at the differential treatment of temporary subsidiary protection status holders and other protection status holders, the latter not being subject to any waiting period requirements in Denmark. As already mentioned, the Commissioner is of the view that these groups are in an analogous or sufficiently similar situation and should therefore be subject to the same rules with regard to family reunification.⁵⁴ She notes that the PACE has also warned, in the context of family reunification, that “subsidiary or temporary protection status must not be considered as an ‘alternative refugee status with fewer rights’”.⁵⁵ Finally, she notes with concern that this policy appears to have had a disproportionate impact upon Syrian protection-holders.
42. During the Commissioner’s visit, interlocutors reported concerns over the documentation required by authorities for demonstrating the existence of established family life, for the purpose of family reunification. The Commissioner was informed that the authorities usually require proof of marriage or other legally-recognised partnership, or proof that the couple have been cohabiting for a certain period of time. In particular, LGBTI asylum-seekers and refugees may often be fleeing countries where marriage is not possible, and where living with a partner, or otherwise leaving proof of a relationship, could lead to persecution. It is therefore important for the authorities to take into account the situation as regards persecution of LGBTI people when established family life is being assessed.
43. Under the relevant legislation, children must usually be under the age of 15 in order to qualify for family reunification. The Commissioner is of the view that all children under the age of 18 should be presumed to be dependent upon their parents and thereby entitled to reunite with them. As pointed out by interlocutors, moreover, this differential treatment of children aged 15-18 does not appear to be aligned with the international human rights definition of a child, namely, someone who is under the age of 18 (Article 1 UN Convention on the Rights of the Child (CRC)).⁵⁶ The Commissioner echoes the call of her predecessor for the Danish authorities to extend the right to family reunification to this group of older children.⁵⁷ She also joins UNHCR in calling for a more

⁵¹ See e.g. Commissioner for Human Rights, [Realising the right to family reunification of refugees in Europe](#), Issue Paper, June 2017, chapter 1.1; and Commissioner for Human Rights, [Third party intervention](#) under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 12510/18 *Dabo v. Sweden*, CommDH(2019)19, 24 May 2019.

⁵² Commissioner for Human Rights, [Third party intervention](#) under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 6697/18 *M.A. v. Denmark*, CommDH(2019)4, 31 January 2019, paras 33ff.

⁵³ Above-mentioned [Issue Paper](#) of the Commissioner for Human Rights from 2017, page 8, recommendation 15.

⁵⁴ See above-mentioned [Third party intervention](#) of the Commissioner for Human Rights from 2019, para 20.

⁵⁵ PACE [Resolution 2243\(2018\)](#) on family reunification of refugees and migrants in the Council of Europe member states, para 6.

⁵⁶ Pursuant to Article 10(1) of the CRC, state parties have an obligation to ensure that applications by a child or his or her parents to enter the country for the purpose of family reunification shall be dealt with in a positive, humane and expeditious manner.

⁵⁷ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, para 18,

flexible definition of family which extends to other close family members outside the nuclear family, in situations of dependency.⁵⁸

1.4.2 ACCESS TO CITIZENSHIP

44. Denmark has ratified the European Convention on Nationality, which contains rules and principles relating to all aspects of nationality, including respect for the rights of persons habitually resident on the territory, non-discrimination and prevention of statelessness. The Commissioner notes that more than 10% of residents in Denmark do not have Danish citizenship, with the percentage having increased significantly over the past decades.⁵⁹ She also notes that the requirements for obtaining permanent residency and citizenship in Denmark have been progressively tightened over the course of many years. Her attention was drawn, in particular, to difficulties faced by children and young people born and/or growing up in Denmark, people who are stateless and persons with disabilities (see further section 2.3.2).
45. Until amendments to the Citizenship Act, beginning in 2004, young people (between the ages of 18 and 23) who were born or grew up in Denmark could obtain Danish citizenship through a simplified declaratory procedure. Following legislative changes, however, this group must now show that they meet the same requirements for citizenship as migrants arriving in Denmark as adults. The Commissioner was informed that these young people may grow up feeling Danish, and having a stronger attachment to Denmark than any other country. Yet subjection to a stringent citizenship process could be an alienating experience, which made them feel that they were having to prove that attachment and their sense of identity. This may, moreover, negatively impact on their integration, while at the same time having a knock-on effect on a number of other rights, such as freedom of movement and the right to vote. Interlocutors further raised as an issue the length of the process, which means that, in practice, these individuals often have to wait many years after turning 18 before finally obtaining citizenship. For children under the age of 18, moreover, it was pointed out that there are few options to obtain citizenship. It can usually only be done through a parent obtaining Danish citizenship. Yet at the same time, the average length of stay before adult immigrants acquire citizenship has risen significantly over the years – reaching 19 years in 2019.⁶⁰ Consequently, it is of little surprise that less than half of all descendants of immigrants under the age of 18 had Danish citizenship at the beginning of 2023.⁶¹
46. When considering these matters in the aggregate, the Commissioner has doubts as to whether Danish law and practice currently sufficiently facilitates the acquisition of nationality for people born in Denmark and for children growing up there, as required by the European Convention on Nationality (Article 4(e) and (f)) and elaborated in the Recommendation of the Committee of Ministers on the nationality of children.⁶²
47. Statelessness has a particularly egregious impact on numerous human rights and freedoms of the person affected, from freedom of movement to access to education, healthcare and other socio-economic entitlements. Numerous international standards underline that everyone has a right to a nationality, among them the Universal Declaration of Human Rights (Article 15) and the aforementioned European Convention on Nationality (Article 4(b)). Denmark has ratified both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the

⁵⁸ UNHCR, [Recommendations](#) to Denmark on strengthening refugee protection in Denmark, Europe and Globally, November 2022, page 6.

⁵⁹ DIHR, [Nyhed: Stadigt flere børn og unge har ikke dansk statsborgerskab](#) (News: More and more children and young people do not have Danish citizenship – in Danish), 20 February 2023.

⁶⁰ On these issues, see further e.g. DIHR, [Fremmed i eget land? Adgang til dansk statsborgerskab for børn og unge, der er født og/eller opvokset i Danmark](#) (Stranger in your own country? Access to Danish citizenship for children and young people who were born and/or raised in Denmark – in Danish), 8 February 2021.

⁶¹ According to the above-mentioned [news](#) item of DIHR from 2023 – in Danish.

⁶² Recommendation [CM/Rec\(2009\)13](#) of the Committee of Ministers to member states on the nationality of children.

Reduction of Statelessness, the latter of which states, in particular, that a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless (Article 1). The Commissioner and her predecessor, along with other bodies such as PACE, have also underlined the need to reduce statelessness of children, in particular.⁶³

48. The Commissioner is concerned about a reported rise in the number of stateless people in Denmark. According to Statistics Denmark, in 2022, there were 8,351 stateless people living in Denmark. 1,888 were children, of whom more than 500 were born in the country. Children born in Denmark who would otherwise be stateless can obtain Danish nationality through application, although the parents may not always be aware that their children are entitled to Danish citizenship. The Commissioner also joins the calls of her predecessor, UNHCR, and several other international and national actors, for the automatic granting of citizenship at birth to children born in Denmark who would otherwise be stateless.⁶⁴
49. Following her visit, the Commissioner was made aware of the particular situation of stateless Bhutanese refugees resettled under the UNHCR resettlement programme from camps in Nepal. The Commissioner notes reports of very low rates of permanent residency and citizenship among this group, despite many having been resettled in Denmark for over a decade: according to one report, out of 1,010 individuals, only 155 have so far been granted citizenship⁶⁵ (the vast majority of whom were children born in Denmark). Interlocutors informed the Commissioner that the group consists of many elderly people, those who are illiterate and/or have health issues, and who are simply unable to pass the stringent requirements for permanent residency and citizenship. The Commissioner would appreciate receiving more information from the authorities about the issue.

1.4.3 CONCLUSIONS AND RECOMMENDATIONS

50. The Commissioner calls on the authorities to consider further easing aspects of family reunification for protection holders. In particular, she:
- Urges the authorities to ensure that persons with temporary subsidiary protection status can benefit from family reunification in the same way as those having received protection under the Refugee Convention, and to ensure that any waiting periods do not interfere with the right to respect for family life;
 - Invites the authorities to ensure that current practices for proof of established family life sufficiently account for the particular situation of certain groups, including LGBTI people;
 - Calls on the authorities to ensure that all children up to the age of 18 are entitled to family reunification in line with the UN CRC; and
 - Further invites the authorities to consider greater flexibility in family reunification criteria, which permits reunification for extended family members where there is a situation of dependency.
51. The Commissioner invites the authorities to consider reintroducing an eased mechanism for obtaining citizenship for all young people who have grown up in Denmark, in order to ensure that they have facilitated access. She further invites the authorities to consider other mechanisms for

⁶³ Commissioner for Human Rights, [Report](#) following her visit to Albania from 21 to 25 May 2018, CommDH(2018)15, 13 September 2018, chapters 1.6-1.7; Commissioner for Human Rights, [Governments should act in the best interest of stateless children](#), Human Rights Comment, 15 January 2013; PACE [Resolution 2099\(2016\)](#) on the need to eradicate statelessness of children.

⁶⁴ See above-mentioned [Human Rights Comment](#) of the Commissioner for Human Rights from 2013; UNHCR, [Mapping statelessness in Denmark](#), 10 November 2020, page 79.

⁶⁵ Association of Bhutanese Communities in Denmark (ABC Denmark), [Statistical Data Report](#) on permanently resettled Bhutanese refugees in Denmark, April 2023, page 10. See also [Open Letter](#) to the Government of Denmark, June 2023.

expediting and easing access to permanent residency and citizenship for children and young people born and/or raised in Denmark.

52. The Commissioner further calls on the authorities to consider whether the current citizenship requirements, and practice in granting dispensations (exemptions), sufficiently takes account of the needs of and reality for other groups, including, the aforementioned group of stateless UNHCR resettlement refugees.
53. The Commissioner invites the authorities, in the first place, to introduce a mechanism for the automatic granting of citizenship, at birth, to children born in Denmark who would otherwise be stateless. More broadly, she calls on the authorities to consider taking measures to step up efforts to combat statelessness, drawing on the recommendations made by the UNHCR in this regard.⁶⁶

2. THE RIGHTS OF PERSONS WITH DISABILITIES

2.1 ACCESS TO AND ENJOYMENT OF RIGHTS

2.1.1 LEGISLATIVE AND POLICY FRAMEWORK

54. According to the international framework on the rights of persons with disabilities, states must take appropriate measures to ensure access, on an equal basis to others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public.⁶⁷ While Denmark is bound to this framework, as a signatory to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), the Commissioner notes a number of steps that could be taken in order to further strengthen Denmark's international commitments. In particular, Denmark has not incorporated the CRPD into national law.⁶⁸ She further notes that Denmark has not yet ratified the Revised European Social Charter of 1996, which contains several provisions of particular importance to the access and enjoyment of the rights of persons with disabilities, nor acceded to its collective complaints mechanism. The Commissioner is of the view that these steps may serve to further raise awareness of the rights of persons with disabilities, and to strengthen the oversight of implementation of those rights.
55. With regard to Denmark's national legislative framework, in his report on Denmark from 2014, the Commissioner's predecessor regretted a lack of comprehensive legislation against discrimination on grounds of disability.⁶⁹ The Commissioner therefore welcomes certain important legislative changes, including greater protection of persons with disabilities against hate speech, a law on accessibility requirements for products and services, and the Act on Prohibition of Discrimination on Grounds of Disability, adopted in 2018, which applies to all public and private activities in all areas. While there remains no general obligation to ensure reasonable accommodation in Denmark, some improvements have been made in this area, with legislative amendments passed in 2020 which provide for reasonable accommodation in primary school and day-care. The Commissioner also takes note of the so-called principle of sector accountability, which entails that all public authorities are responsible for making their facilities and services accessible to persons with disabilities, as well as the task of the Parliamentary Ombudsman in monitoring accessibility of public spaces. Nevertheless, she is concerned at a number of continuing difficulties in this area, and

⁶⁶ Above-mentioned [mapping](#) of UNHCR from 2020, pages 78-80.

⁶⁷ UN Convention on the Rights of Persons with Disabilities, Article 9 – Accessibility.

⁶⁸ It is noted that Denmark has a general practice of not incorporating international human rights treaties, with the exception of the European Convention on Human Rights.

⁶⁹ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, para 107.

remains convinced that a general legal obligation could contribute to improving accessibility and the provision of reasonable accommodation overall. This would ensure that complaints on this matter are justiciable, and moreover, it may contribute to raising awareness and engraining a culture which fully respects reasonable accommodation and accessibility of services and spaces for persons with disabilities. The Commissioner further welcomes that the government is currently in the process of evaluating the 2018 Act on Prohibition of Discrimination on Grounds of Disability, with the process expected to be concluded in 2024.

56. There is no current, or foreseen, comprehensive national action plan on disability, despite consistent calls for this over the years by civil society organisations.⁷⁰ The Commissioner notes that the government have, or intend to elaborate on, a number of area-specific plans, including in education, employment and specialisation of social services. She nevertheless is of the view that a comprehensive plan would be an optimal approach to what are complex and multi-faceted issues, and which require coordination across numerous sectors and stakeholders.

2.1.2 OUTCOME GAPS

57. Since 2012, the Survey of Health, Impairment and Living Conditions in Denmark (SHILD) has been carried out by the national research institute VIVE in four-year waves (2012, 2016, 2020), while an Inclusion Survey is carried out in interim years (including in 2022). The Commissioner notes positively this collection of valuable data which permits an analysis of the outcome gaps between persons with and without disabilities in the enjoyment of a number of human rights, and any changes over time. Analyses of this data confirm not only the existence of significant gaps across various areas of life, but also a lack of progress in narrowing these gaps over the years.⁷¹ A number of these key areas are elaborated in the remainder of this section.
58. **Discrimination and violence:** Approximately one-third of responders with “significant intellectual disabilities” and one-fifth of those with “significant physical disabilities” reported experiencing discrimination due to their disability in the 2020 SHILD. There have been no major changes in the proportion of persons reporting experiencing discrimination between 2012 and 2020.⁷² Persons with disabilities also run a significantly higher risk of being subjected to all types of violence, compared to persons without disabilities: the probability is almost twice as great for persons with “significant physical disabilities”, and almost three times as great for persons with “significant intellectual disabilities”.⁷³
59. **Transport:** Persons with disabilities experience problems using public transport to a significantly greater extent than persons without disabilities; in fact, according to information provided by the authorities, the percentage of individuals with significant physical disabilities who can use public transportation appears to have declined over the years, from 66% in 2016 to 57% in 2020.
60. **Buildings:** The Commissioner was further informed of significant difficulties in accessibility, particularly of old buildings. She regrets that an amendment to building regulations, which came into force in 2017, loosens accessibility requirements for single-family houses.⁷⁴ During her visit, the Commissioner visited the “House of Disability Organisations” (*Handicaporganisationernes Hus*),

⁷⁰ See DIHR, [Nyhed: Organisationer i fælles opråb til regeringen: Danmark mangler en handicappolitisk handlingsplan](#) (News: Organisations in joint appeal to the government: Denmark lacks a disability policy action plan – in Danish), 5 September 2018.

⁷¹ See Det Nationale Forsknings- og Analysecenter for Velfærd (VIVE), [Mennesker med handicap – Hverdagsliv og levevilkår 2020](#) (Persons with disabilities – everyday life and living conditions 2020 – in Danish), 28 October 2021; VIVE, [Levevilkår blandt mennesker med handicap – Opgørelser baseret på Inklusionsmåling 2022](#) (Living conditions among persons with disabilities – Data based on the Inclusion Survey 2022 – in Danish), 28 September 2023. See also <https://handicapbarometer.dk/> (the Disability Barometer developed by the DIHR – in Danish), which draws on the SHILD data, alongside other sources.

⁷² See above-mentioned [report](#) of VIVE from 2021, pages 10-11.

⁷³ *Ibid*, page 11.

⁷⁴ See further DIHR, [Report](#) to the CRPD Committee prior to the adoption of list of issues, February 2019, page 12 and commentary from resources cited in page 29, footnote 12.

described as “the world’s most accessible office building”.⁷⁵ The House was constructed in close cooperation with stakeholders and according to principles of universal design, with the aim of being accessible to everyone, regardless of disability. The Commissioner was impressed in particular with the simplicity and low cost of some of the solutions to ensuring accessibility, and at the possibilities brought out by a shift towards an inclusive perspective in design and construction. She considers that such solutions and approach, as put into practice at the House, may serve as best example models and as a source of inspiration both within Denmark and beyond.

61. **Participation in social life:** The Commissioner wishes to underline the connections between accessibility and participation in other aspects of everyday life. The aforementioned interim inclusion surveys found that participation in social life, cultural activities, and community engagement is strongly correlated with physical disability. Persons with physical disabilities tend to have less frequent interactions in close relationships, such as with family and friends, than those without disabilities. As recognised by the authorities, one possible explanation is that visiting friends and families is likely more challenging for individuals with physical disabilities. The 2020 SHILD also found that good physical access was particularly important for persons with significant physical disabilities in terms of choice of cultural offerings or places to go in the local area.⁷⁶ Overall, persons with disabilities, and especially those with significant intellectual disabilities, are lonely to a greater extent than persons without disabilities.
62. **Education:** Since the visit of the Commissioner’s predecessor in 2013, positive legislative steps have been taken to ensure greater inclusion of children with disabilities within school, including notably provision for reasonable accommodation. Nevertheless, persons with disabilities continue to have, on average, a lower level of education than persons without disabilities. A significantly lower number of persons with significant physical and intellectual disabilities receive secondary education, while their drop-out rate is higher.⁷⁷ The reasons provided for dropping out include a lack of assistance or materials which adequately take account of the person’s disability. Interlocutors also highlighted that there is a lack of knowledge among many teachers around disability, funding issues, and that children with disabilities continue to be exempted from certain subjects at school. The Commissioner welcomes in this regard the government’s stated intention to develop an action plan with measures aimed at students with disabilities. She also acknowledges that some of the legislative changes in this area are relatively new, and that it may therefore take some time to see their full effect.
63. **Employment:** Barriers faced in education may follow persons with disabilities throughout the rest of their lives. According to the Danish umbrella organisation for persons with disabilities, *Danske Handicaporganisationer* (DH/DPOD), persons with disabilities are significantly overrepresented among the number of young people not engaged in education, employment or training (NEET).⁷⁸ The Commissioner was also informed by interlocutors that there are comparatively long transition gaps between leaving education and entering the labour market, in the case of persons with disabilities. According to information provided by the authorities, in 2020, respectively 28% and 17% of individuals with significant physical and intellectual disabilities were employed in regular jobs. This contrasts with nearly 72% of individuals without disabilities who were employed in regular jobs. The Commissioner was informed that stereotypes, particularly around intellectual disabilities, and a lack of knowledge, formed barriers to inclusion in the workplace. Since 2012, there has been a greater uptake of flexible employment by persons with disabilities, and lower rates of absence

⁷⁵ <https://handicap.dk/huset> – in Danish. See also [Magazine about the House of Disability Organisations](#), 2023 - in English.

⁷⁶ Above-mentioned [report](#) of VIVE from 2021, page 9.

⁷⁷ *Ibid*, page 7.

⁷⁸ 40% of this group had one or more disabilities at the end of 2018. See further Economic Council of the Labour Movement (AE), [Unge med handicap star ofterer uden job og uddannelse](#) (Young people with disabilities are often without jobs and education – in Danish), 24 April 2022, analysis prepared for DPOD.

due to sickness, which appear to be positive developments.⁷⁹ Nevertheless, the Commissioner was informed of difficulties in the current flexi-job system, designed for people who are found to have permanently reduced capacity for work, including long periods of time to transfer into flexible work in the event of developing a disability. She notes that there has, for some time, been a legal right to reasonable accommodation in the context of employment, and was pleased to hear of the many planned and taken initiatives which aim at improving the participation of persons with disabilities in the labour market, including an action plan. She also welcomes that this is a key area of focus for the work of the Danish Disability Council (DCH).

64. **Health:** Persons with disabilities have a number of lower health indications, including more frequent reports of pain, poor sleep, and higher Body Mass Index (BMI) than the rest of the population.⁸⁰ The Commissioner's interlocutors also raised the issue of healthcare for persons with psychiatric disorders, which was described as fragmented and differing in quality to other forms of healthcare in the country. In that regard, the Commissioner notes positively the government's prioritisation of this important area.
65. During her meetings with authorities, the Commissioner was satisfied with the open recognition of continuing outcome gaps between persons with disabilities and those without. The authorities further provided information of numerous initiatives aimed at improving outcomes and increasing inclusion of persons with disabilities in a number of key areas. At the same time, a number of interlocutors, while acknowledging the government's genuine intentions and efforts in this area, were concerned about current methods of implementation. In particular, they reported a "silo" approach to the human rights of persons with disabilities across ministries and indeed between municipalities and regions. More specifically, some criticised the need for better information-sharing and guidance handed down from the ministries, while others believed that stronger follow-up on non-implementation by municipalities of their obligations towards persons with disabilities would be helpful. As pointed out, some persons with disabilities may have difficulty in bringing forward a complaint with regard to a municipality, rendering a complaints-based method of oversight less effective for ensuring compliance.

2.1.3 CONCLUSIONS AND RECOMMENDATIONS

66. The Commissioner invites the government to consider incorporating the UN CRPD into national law, as the key international standard on the rights of persons with disabilities. She further encourages the authorities to ratify the Revised European Charter and accede to its collective complaints mechanism.
67. The Commissioner strongly encourages the authorities to amend legislation in order to introduce a general legal obligation for provision of reasonable accommodation to persons with disabilities. The ongoing evaluation of the Act on Prohibition of Discrimination on Grounds of Disability may provide a useful opportunity to consider this step.
68. The Commissioner encourages the development of a comprehensive and cross-cutting national action plan on the rights of persons with disabilities, in consultation with stakeholders, and using identified good practices.⁸¹ The plan should be fully budgeted, contain measurable objectives based on quality, disaggregated data and focus on reducing current outcome gaps in the enjoyment of rights of persons with disabilities across key areas, such as violence, discrimination, education, employment and health.

⁷⁹ See above-mentioned [report](#) of VIVE from 2021, pages 7-8.

⁸⁰ Ibid, page 9.

⁸¹ See e.g. DIHR, [Handicappolitisk handlingsplan: Notat om en handlingsplan, der kan skabe forandring](#) (Disability policy action plan: Memorandum on an action plan that can create change – in Danish), 2019.

69. The Commissioner invites the authorities to promote and encourage replication of the good practice solutions for ensuring accessibility that are already in place in certain organisations in the country, and which may serve as a model both within and beyond Denmark.

2.2 INDEPENDENT AND COMMUNITY-BASED LIVING

70. The Commissioner underlines that ensuring that persons with disabilities can live independently and are included in the community is a precondition for the full enjoyment of their rights and fundamental freedoms.⁸²

71. Denmark was one of the early actors to abolish large-scale institutions for persons with disabilities. Municipalities are by law responsible for providing assistance and care services to persons who require them due to a disability, and for providing accommodation for persons with a disability who require extensive assistance, care, attention or treatment. The Commissioner notes that the purpose of assistance provided under the relevant legislation is to improve individuals' independence, or to facilitate their daily life and enhance quality of life. She further takes note of the government's position that having an arsenal of housing units for this purpose is a strength: namely, that it enables better specialisation in order to cater to individuals' needs.

72. During her country visit, the Commissioner visited Sofiebo Residential Unit for children with autism. The Commissioner was informed that, increasingly the centre received applications for children with very severe autism – other solutions were found for children with less severe forms of autism, including foster care placements. At the time of visiting, the centre housed 16 children. Facilities at the unit are modern, with the building having been constructed in 2019. The unit is situated in a residential area and the children attend external schools, fostering contact within their respective communities. The Commissioner observed that staff were highly committed, while significant investment had been made in ensuring high levels of training in pedagogical tools aimed at enhancing the autonomy of the children. Children were provided with individualised plans and risk assessments, developed by multi-disciplinary teams and which were revised at regular intervals.

73. Regarding inclusion and participation of persons with disabilities who reside in group housing, the Commissioner was informed that the "Social Supervision" authority assesses autonomy and relations of residents as part of their overall quality assessment of the facility. That includes an analysis of whether residents participate in social activities in the surrounding community. More broadly, the Commissioner notes positively the numerous initiatives in place which aim at fostering inclusion and participation for persons with disabilities, including entitlements to a certain number of hours' funded accompaniment to external activities.

74. The Commissioner nevertheless notes that Denmark's policy and practice on assisted living may limit the right of persons with disabilities to choose their living arrangements, including with whom and where they want to live. She takes note of a 2021 study, which found that persons with disabilities who required support services in practice sometimes had little freedom of choice in where to live; their support needs were a significant factor in determining where they were housed. Other factors, including the limited availability of places, and certain limitations on gaining housing outside their current municipality, also served to reduce their freedom of choice.⁸³ In support of this, interlocutors informed the Commissioner of difficulties for young people with autism

⁸² See Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), Issue Paper, June 2012; PACE [Resolution 2431\(2022\)](#) on deinstitutionalisation of persons with disabilities. Article 19 CRPD requires state parties to facilitate full enjoyment by persons with disabilities of their right to live in the community, with choices equal to others, and their full inclusion and participation in the community, including by ensuring that they can freely choose their living arrangements and have access to a range of in-home, residential and other community support services to prevent isolation and segregation from the community.

⁸³ DIHR, [Boligvalg og retten til et selvstændigt liv for mennesker med handicap](#) (Housing choice and the right to an independent life for people with disabilities – in Danish), June 2021.

transitioning into adult residential units, including long waiting lists for places, and the use of very different pedagogical approaches, which could be disorienting and disruptive for them.

75. The Commissioner's predecessor moreover raised concerns over a trend of municipalities and regional authorities towards building relatively large clusters of housing units to provide accommodation for persons with disabilities.⁸⁴ These concerns were echoed by the CRPD Committee in 2014, who noted the increased construction, with state-guaranteed loans, of large institution-like residences housing thirty to sixty or even more residents, and often in remote places outside city centres.⁸⁵ The Commissioner was informed by interlocutors that a number of relatively large housing unit clusters continued to be used and even built. According to figures provided by the authorities, there are currently 1,527 housing units which accommodate persons with disabilities in Denmark. In 2019, 86% of housing units contained accommodation for fewer than 21 individuals, and approximately one-quarter contained accommodation for fewer than 6. Overall, each housing unit accommodated 22 persons on average. The Commissioner reiterates that larger numbers of people living in the same residence is not conducive to promoting the right to autonomy and independent living, nor to ensuring interaction with outside contacts and broader participation in the community.
76. The Commissioner was deeply concerned by reports that persons with disabilities and living in residential care facilities were significantly overrepresented among victims of sexual abuse – according to one study, they are five times more likely to be sexually assaulted, and seven times more likely to be raped, than those who do not live in residential facilities.⁸⁶ In the Commissioner's view, accommodating and providing assistance and services to persons with disabilities within grouped residences, particularly larger institution-like facilities, carries with it an inherently higher risk of ill-treatment and abuse. The Commissioner also refers to the specific findings and concerns by national actors, such as a lack of visibility of sexual abuse of persons with disabilities, including intra-resident violence; low staffing levels and knowledge or training among staff in some facilities; instances of shortcomings in procedures, including registration and reporting of incidents to the police, as well as carrying out regular risk assessments with regard to patients; poor sexual health and knowledge among residents; unequal access to trauma and rehabilitation services; and shortcomings within official data collection.⁸⁷
77. The Commissioner was also concerned to hear that children and young people with severe mental health conditions were increasingly placed in closed (secure) institutions, including on social/welfare grounds, and under conditions which were described as prison-like.⁸⁸ She is also worried about the reported lack of consideration of the children's particular situations in these institutions (in which children are placed on various grounds, including immigration status and crime).⁸⁹

⁸⁴ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, para 111.

⁸⁵ CRPD, [Concluding observations](#) on the initial report of Denmark, 30 October 2014, para 42.

⁸⁶ DIHR, [Seksuelle overgreb på botilbud: analyse af udsathed for mennesker med handicap](#) (Sexual assaults in housing: analysis of the vulnerability of persons with disabilities) – in Danish), November 2022, page 17.

⁸⁷ See for example Parliamentary Ombudsman, [Temarapport 2017: Socialpsykiatrien – sikkerhed for beboere på botilbud og sektorovergange](#) (Thematic report 2017: Social psychiatry – safety for residents in residential care and sector transitions – in Danish); DIHR, above-mentioned [analysis](#) of the DIHR from 2022, pages 8-10 – English summary.

⁸⁸ See DIHR, [Sociale anbringelser på sikrede institutioner i et menneskeretligt perspektiv](#) (Social placements in secure institutions from a human rights perspective – in Danish), September 2020, pages 15-16 and 80-82. See also Parliamentary Ombudsman, [Thematic Report 2021: Children and young people in secure residential institutions](#), 2 July 2022, which focuses on the use of force within these institutions.

⁸⁹ Above-mentioned [report](#) of the DIHR from 2020, page 82.

2.2.1 CONCLUSIONS AND RECOMMENDATIONS

78. The Commissioner strongly encourages the authorities to explore ways to strengthen persons with disabilities' freedom to choose where and with whom they live. In this regard, useful guidance can be found in the Commissioner's Issue Paper on [The right of people with disabilities to live independently and be included in the community](#).⁹⁰ The Commissioner further calls on the authorities to ensure that large, institution-like facilities are no longer being built, and to take steps conducive to reducing the use of larger residences, including the development of sufficient and adequate community-based services.
79. The Commissioner emphasises that these steps are also crucial in addressing the inherently higher risk of abuse and ill-treatment within residential facilities. More immediately, and noting the detailed recommendations provided by national human rights institutions in this regard, she calls on the authorities to ensure that comprehensive measures are in place in order to prevent and respond to instances of abuse and violence in residential facilities, including:
- Improved knowledge and awareness-raising among staff in residential centres of relevant rules and procedures, and empowering residents through access to information on their rights and sexual health and education;
 - Ensuring that incidents are duly reported and effectively investigated, that barriers faced by persons with disabilities in accessing justice and support are identified and addressed;⁹¹ and to this end, that relevant personnel are provided with adequate training, including those working in the health and medical sector, the police force and the judiciary; and
 - Ensuring collection of disaggregated data on reports of abuse and violence by persons with disabilities, and on their outcomes.
80. With regard to closed (secure) care institutions, the Commissioner urges that children who are – under current legislation – placed in institutional care for social or welfare reasons are not subject to prison-like conditions and regimes. She invites further information on the facilities, particularly with regard to reports of children with severe mental health conditions being placed there. The Commissioner wishes to stress, however, the importance for any alternative care measures to be tailored to the individual situation and needs of the child in question and for the best interests of the individual child to be a primary consideration in all decisions in this field.

2.3 CIVIL AND POLITICAL RIGHTS

2.3.1 LEGAL CAPACITY AND THE RIGHT TO VOTE

81. As highlighted by the Commissioner on various occasions, legal capacity reforms are crucial to ensure that persons with disabilities can live independently and are fully included in the community.⁹² Furthermore, mechanisms providing for full incapacitation and plenary guardianship should be abolished, the ultimate goal being the replacement of all forms of substituted decision-making with supported decision-making systems.⁹³

⁹⁰ Commissioner for Human Rights, [The right of people with disabilities to live independently and be included in the community](#), Issue Paper June 2012.

⁹¹ See further DIHR, [Voldsofre med psykiske og kognitive handicap: En undersøgelse af barrierer i straffesager](#) (Victims of violence with mental and cognitive disabilities: An examination of barriers in criminal proceedings – in Danish), September 2020.

⁹² Commissioner for Human Rights, [Reform of mental health services: an urgent need and a human rights imperative](#), Human Rights Comment, 7 April 2021; Commissioner for Human Rights, [Addressing the invisibility of women and girls with disabilities](#), Human Rights Comment, 21 April 2022.

⁹³ Commissioner for Human Rights, [Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities](#), Issue Paper, CommDH(2012)2, 20 February 2012, pages 7-8.

82. The case law of the Court establishes that the non-recognition of a person's legal capacity severely limits their human rights. In particular, the Court has held that the full deprivation of legal capacity is a very serious interference with the right to respect for private life under Article 8 ECHR, which secures to individuals a sphere within which they can freely pursue the development and fulfilment of their personality.⁹⁴ Furthermore, as a party to the CRPD, Denmark must safeguard the right of persons with disabilities to equal recognition before the law, and in particular, their right to enjoy legal capacity on an equal basis with others in all aspects of life.⁹⁵
83. The Commissioner's predecessor expressed concern that Danish legislation permits full deprivation of legal capacity of persons with disabilities, which, among other things, entails loss of the right to vote. He urged the authorities to replace substituted decision-making with supported decision-making, and called on them to amend legislation to ensure that persons with disabilities enjoy, in practice, their right to vote.⁹⁶
84. The Commissioner notes a recent judgment of the Court against Denmark concerning the right to vote for persons with disabilities,⁹⁷ in which the Court considered that, in the circumstances, Denmark had not overstepped the margin of appreciation afforded to it, through partial disenfranchisement of this group. The Commissioner notes that the judgment does not prevent the authorities from taking steps to further advance human rights protection in this area. Ensuring the right to vote for all persons with intellectual and psychosocial disabilities would promote the implementation of Articles 12 and 29 of the CRPD and other international standards,⁹⁸ and help to counter the negative effects that disenfranchisement has on the persons concerned, on society and on democracy.⁹⁹
85. Since the visit of the Commissioner's predecessor in 2013, there have been a number of important legal changes in this field. In 2016, persons deprived of their legal capacity were granted the right to vote in European Parliament, local and regional elections. Moreover, in 2019, the Danish legislature introduced the possibility of partial deprivation of legal capacity, with a person subject to this mechanism retaining the right to vote in general elections.
86. The Commissioner was nevertheless informed by interlocutors that many persons with disabilities remain under full guardianship, and thereby continue to be disenfranchised. Interlocutors emphasised a possible lack of awareness, among relevant actors, of the possibility to move to partial deprivation of legal capacity. In light of the above-mentioned international standards, the Commissioner remains convinced that the optimal human rights solution ultimately lies in the authorities amending legislation, so as to remove guardianship, both full and partial, and instead recognise the equal legal capacity of persons with disabilities and their right to vote. At the same time, she is cognisant of the fact that this may necessitate an amendment to section 29 of the Danish Constitution, which could prove practically challenging.
87. In addition to ensuring enfranchisement, the Commissioner draws attention to the need to ensure effective access to the right to vote, which encompasses physical accessibility and accessible

⁹⁴ See *Shtukaturov v. Russia*, Application No. [44009/05](#), judgment of 27 March 2008, paras 83 and 90; *N. v. Romania* (2), Application No. [38048/18](#), judgment of 16 November 2021, para 53.

⁹⁵ See Article 12 CRPD. See also CRPD Committee, [General Comment No. 1\(2014\)](#), Article 12: Equal recognition before the law, paras 4, 9 and 26.

⁹⁶ [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Denmark from 19 to 21 November 2013, CommDH(2014)4, 24 March 2014, paras 12ff, 129-130.

⁹⁷ *Strøbye and Rosenlind v. Denmark*, Application Nos. [25802/18](#) and [27338/18](#), judgment of 2 February 2021: The Court found that deprivation of the right to vote did not constitute a violation of Article 3 of Protocol No. 1 (right to vote).

⁹⁸ See e.g. Recommendation [CM/Rec\(2011\)14](#) of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life and its Appendix, chapter 3.

⁹⁹ See Commissioner for Human Rights, [Third party intervention](#) under Article 36, paragraph 3, of the European Convention on Human Rights, Application No. 43564/17 *María del Mar Caamaño Valle v. Spain*, CommDH(2018)16, 9 July 2018; above-mentioned [Issue Paper](#) of the Commissioner for Human Rights from 2012, pages 7-8.

information and documents for all, including electoral information and campaign material in the lead-up to elections. The Commissioner was informed that persons with disabilities face a number of practical barriers in that regard.¹⁰⁰

88. More broadly, the Commissioner remains concerned at the continued emphasis on substituted decision-making, despite the fact that the more recent system of partial deprivation of legal capacity introduces a more nuanced approach. In this connection, the Commissioner was worried at a number of reported cases where individuals struggling with mental health issues had applied for guardianship, due to feeling overwhelmed by everyday decisions and duties, and particularly when faced with financial difficulties. As pointed out by interlocutors, the increase in support systems, including pathways for supported decision-making, may alleviate such situations. They would further ensure closer alignment with the aforementioned international and regional standards on ensuring that people with disabilities can live independently.

2.3.2 ACCESS TO CITIZENSHIP

89. The Commissioner has noted that many people with a significant physical or intellectual disability may be unable to fulfil a number of the requirements for obtaining citizenship, such as employment or language requirements. Where this is the case, they can apply for a dispensation (exemption). Dispensations are decided upon by a parliamentary committee, which makes its decisions *in camera* and is not required to provide reasons. There are also limited options for judicial review, which can essentially only be made on human rights grounds. Against this background, there has been a significant drop in the number of dispensations granted by the committee – in 2022, approximately 10% of applicants with a long-term disability were successful, compared to well over 90% of cases in 2014.¹⁰¹ The Commissioner is concerned that the current system and practice for obtaining citizenship may not reasonably accommodate persons with disabilities to a sufficient degree, and thereby may not ensure their right to acquire a nationality on an equal basis with others (Article 18 CRPD). The Commissioner was moreover informed that the dispensation procedure was important for a number of other groups, including refugees or other protection holders who are older, may have received very limited formal education in their country of origin, or those who suffer from serious trauma.¹⁰²

2.3.3 CONCLUSIONS AND RECOMMENDATIONS

90. The Commissioner calls on the authorities to continue to move away from full guardianship and substituted decision-making, in particular by developing mechanisms for supported decision-making. As an interim step, the authorities may consider ways to encourage transitions from full to partial guardianship, including through increased awareness-raising for this relatively new mechanism.
91. The Commissioner invites the authorities to identify and address practical barriers to the right of persons with disabilities to vote and participate in political/democratic life, ensuring accessibility and reasonable accommodation.

¹⁰⁰ For recent information, see further DIHR,

[Barrierer for valgdeltagelse for personer med handicap – Gør demokratiet tilgængeligt](#) (Barriers to voting for people with disabilities – Making democracy accessible – in Danish), August 2023.

¹⁰¹ See, respectively, [Reply](#) of the Ministry of Immigration and Integration to question no. 7 of 19 January 2023 of the Immigration Rights Committee – in Danish, 13 February 2023; and [Reply](#) of the Minister of Immigration and Integration to question no. 80 of 29 September 2017 of the Citizenship Committee – in Danish, 27 October 2017.

¹⁰² See e.g. DIGNITY, [Psykolog: Derfor skal PTSD-ramte have dispensation fra prøvekrav til statsborgerskab](#) (Psychologist: This is why PTSD sufferers must be exempted from test requirements for citizenship – in Danish), 9 February 2023.

92. The Commissioner invites the authorities to carry out a review of the system for acquiring Danish nationality, with a view to ensuring that citizenship acquisition procedures are fully accessible to persons with disabilities and that they include provisions of reasonable accommodation.

2.4 USE OF FORCE/COERCION

93. In 2014, the Commissioner's predecessor raised concern about the long-standing problem of the excessive use of coercion in Denmark's psychiatric institutions, including involuntary placement in psychiatric hospitals, forced treatment and the use of physical restraints. Several other bodies, including the CRPD, the CPT and national actors have expressed similar concerns over the years.¹⁰³
94. The Commissioner reiterates her position that the effective protection of the rights of persons with disabilities requires a systemic change which moves away from involuntary measures and towards the provision of healthcare on the basis of free and informed consent.¹⁰⁴ In relation to belt restraints, moreover, she regards this as a particularly intrusive form of coercion, and recalls the position of the CPT that fixing psychiatric patients for days on end cannot have any justification and may amount to ill-treatment. She also notes that the CRPD Committee have previously recommended that Denmark amend its laws in order to abolish the use of physical, chemical and other medical non-consensual measures, with regard to persons with psychosocial disabilities in institutions.¹⁰⁵
95. The Commissioner recognises the efforts that have been made by the authorities over a number of years to reduce the use of physical restraints. These include numerous legislative changes and an Action Plan, adopted in 2014, with the goal of reducing the number of physical restraints, as well as those which last more than 48 hours, by 50% each by 2020, overseen by the Taskforce for Psychiatry. According to the Danish Health Authority, between 2011 and 2022, the number of persons subjected to belt fixations nationally has decreased by approximately 42% to 1,177, while the number of belt fixations lasting over 48 hours has more than halved in this time, to 340 incidents.¹⁰⁶ While a significant improvement, resort to fixations, particularly for longer periods of time, remains a matter of concern for the Commissioner. In that regard, she takes note of the criticism of the CPT, in its 2020 report, of the fact that there were still many instances of belt restraint lasting longer than 24 or 48 hours and with reports of some patients being held for several months. The Commissioner further notes that a number of applications have been submitted to the Court in the past several years, which involve belt restraints lasting for several days to more than a week.¹⁰⁷ She was, moreover, concerned to learn that the incidence of belt restraint use has, since 2021, begun to rise once more.¹⁰⁸
96. With regard to safeguards around the use of belt restraints, the Commissioner notes the 2020 judgment in the case of *Aggerholm v Denmark*,¹⁰⁹ in which the Court found a violation of Article 3

¹⁰³ CRPD, [Concluding observations](#) on the initial report of Denmark, 30 October 2014, para 38; CPT, [Report](#) to the Danish Government on the visit to Denmark carried out from 3 to 12 April 2019, 7 January 2020, page 7, para 158 noting also improvements, and para 179.

¹⁰⁴ Commissioner for Human Rights, [Reform of mental health services – an urgent need and a human rights imperative](#), Human Rights Comment, 7 April 2021. See also, PACE [Resolution 2291\(2019\)](#) on ending coercion in mental health: the need for a human rights-based approach.

¹⁰⁵ Above-mentioned [Concluding Observations](#) of the CRPD from 2014, para 39.

¹⁰⁶ Danish Health Authority, [Monitorering af tvang i psykiatrien 2022: Opgørelse for perioden 1. januar 2022 – 31. december 2022](#) (Monitoring coercion in psychiatry: Statement for the period 1 January 2022-31 December 2022 – in Danish), 1 May 2023, pages 5-6.

¹⁰⁷ See recently e.g. *Makki v. Denmark*, Application No. [10297/23](#), communicated on 16 March 2023 (restrained for approximately 11 days); *Ahmadi v. Denmark*, Application No. [26597/23](#), communicated on 14 August 2023 (restrained for approximately 11 days).

¹⁰⁸ Above-mentioned [report](#) of the Danish Health Authority from 2023, page 6 – an increase was recorded in all but one of Denmark's regions.

¹⁰⁹ Application No. [45439/18](#), judgment of 15 September 2020.

ECHR after the applicant was restrained to a bed for 23 hours using a belt. Following the judgment, several actions have been taken at national level, including amendment of relevant legislation to introduce or strengthen safeguards. The Commissioner notes, however, reports of difficulties in implementing safeguards across psychiatric institutions, including the Parliamentary Ombudsman's report of July 2022, which found that several of the wards visited by his Office had not succeeded in implementing relevant initiatives.¹¹⁰ The Commissioner further points to data, provided by interlocutors, indicating that in nearly half of the complaints received by the Danish Psychiatric Patients Complaints Board in 2022, the initiation of belt restraint use and of the length of restraint, respectively, were found to be unlawful.¹¹¹

97. Despite the relatively high success rate of belt restraint complaints before the Board, interlocutors also raised concerns as to whether the current complaints procedure, at all levels, fully takes into account Article 3 ECHR considerations when reviewing the legality of initiation and length of belt fixations. The Commissioner notes that in *Aggerholm v. Denmark*, the Court found that the domestic courts had been silent on several issues crucial for the assessment of whether the restraint measures had remained necessary.¹¹²
98. The Commissioner welcomes efforts to develop and foster good practices aimed at reducing the use of mechanical restraints, including through the creation of experimental belt-free psychiatric units. She regrets, however, findings to the effect that good practices for reducing coercion are not systematically collected, evaluated or shared.¹¹³ Moreover, the Commissioner notes that there has not been a significant reduction in the overall number of adults exposed to other forms of coercion within psychiatry; in fact, the total number of coercive measures against adult patients has slightly increased over the past several years.¹¹⁴ There is therefore concern that belt restraints are being substituted for alternative forms of coercion, such as detention and forced long-term medication.¹¹⁵ Finally, she takes note of the recent findings of the Danish National Audit Office that government initiatives to reduce the use of coercion in psychiatry, which were proposed in response to a 2021 report by the Office, have not been followed up. These initiatives include the determination of new indicators for coercion and a new model for monitoring its use, as well as an analysis into the significant differences in use of different forms of coercion across the regions.¹¹⁶
99. The Commissioner is deeply concerned by the reported significant increase in exposure of children to coercion.¹¹⁷ She notes, in this respect, the recent statements of the Minister for the Interior and Health that prevention of the use of coercion on minors must be strengthened.¹¹⁸ The Commissioner is also concerned about reports showing that the number of children being involuntarily hospitalised has increased significantly.¹¹⁹ She therefore welcomes the authorities'

¹¹⁰ Parliamentary Ombudsman, [Thematic Report: Force and non-statutory interventions in the psychiatric sector](#), 6 July 2022, pages 3-4. The Commissioner notes that the report is based on monitoring visits which took place in 2021, before the entry into force of amendments made in the wake of *Aggerholm v Denmark*.

¹¹¹ In 50 out of 111 complaints, initial restraint was found to be unlawful; in 31 out of 75 complaints, the length of restraint was found to be unlawful. Data retrieved from the Psychiatric Complaints Board on 17 March 2023: see [Communication](#) from DIGNITY, DIHR and Bedre Psykiatri in the case of *Aggerholm v. Denmark*, DH-DD(2023)1198, 28 September 2023, page 3.

¹¹² Application No. [45439/18](#), para 110.

¹¹³ See Danish National Audit Office, [Beretning om indsatsen for at nedbringe brug af tvang i psykiatrien](#) (Report on efforts to reduce the use of coercion in psychiatry – in Danish), 12 February 2021, page 3 and chapter 2.3.

¹¹⁴ See above-mentioned [report](#) of the Danish Health Authority from 2023, page 6 – from 5,444 adults subjected to one or more coercive measures in 2021, to 5,631 adults in 2022.

¹¹⁵ See above-mentioned [report](#) of the CPT from 2020, para 158.

¹¹⁶ National Audit Office, [Notat om beretning om indsatsen for at nedbringe brug af tvang i psykiatrien](#) (Memorandum on the report on efforts to reduce the use of coercion in psychiatry – in Danish), August 2023.

¹¹⁷ See above-mentioned [report](#) of the Danish Health Authority from 2023, page 8 – 359 children were subjected to coercion in psychiatry in 2022.

¹¹⁸ Reported by Politiken, [Ny »umenneskelig« fikseringssag ser dagens lys. Nu reagerer minister](#) (New "inhumane" fixation case sees the light of day. Now the Minister reacts – in Danish), 18 May 2023.

¹¹⁹ See above-mentioned [report](#) of the Danish Health Authority from 2023, page 8.

recognition of and concern at this increase, and of the broad-ranging complexity of tackling the issue.

100. Interlocutors informed the Commissioner of issues of staffing and other resource shortages within psychiatric units and mental healthcare services, as well as a lack of focus on prevention and early intervention, among other things,¹²⁰ all of which may be contributing to the ultimate recourse to coercion. The Commissioner was further informed of a certain fragmentation between mental healthcare, which is provided by the municipalities, and psychiatric care, which is handled at the regional level. She notes with interest the government's intention to implement a long-term plan on psychiatry and mental health, with the aim of long-term, comprehensive development of care and increased funding in psychiatry, the implementation of which will be monitored by a new national council.¹²¹
101. Finally, during her visit, the use of coercion outside the field of psychiatry, and particularly against children in residential facilities, was raised as an issue of concern. The Commissioner notes the Parliamentary Ombudsman's findings on the use of force in small private accommodation facilities for children and young people, and in particular his recommendations for increasing awareness among staff of the rules regarding force, including deadlines for recording and reporting its use.¹²² During her visit to Sofiebo residential unit for children with autism, the Commissioner heard with interest various methods used by the staff to avoid escalation and manage conflict, for the purpose of avoiding coercion unless considered strictly in their best interest, such as where there was an immediate risk to their safety. They also discussed safeguards in place, including an in-house safety manager and committee which focus on the prevention of coercion. The Commissioner commends such efforts, and encourages sharing and implementation of good practices.

2.4.1 CONCLUSIONS AND RECOMMENDATIONS

102. The Commissioner urges the authorities to continue to prioritise and step up action to drastically reduce the use of all forms of coercion, and end the use of any coercion that may amount to ill-treatment, including in relation to the use of long-term belt restraints. There should be no form of coercion used against children unless it is used strictly in their best interests.
103. The Commissioner encourages the authorities to review whether the current standards, practice and review of safeguards around belt restraint initiation and duration are fully aligned with Article 3 ECHR and other international standards and guidance.¹²³
104. The Commissioner further invites the authorities to continue to foster initiatives which focus on non-coercive approaches and good practices in the area, which are regularly collected, assessed, disseminated and replicated.
105. The Commissioner recalls, in the context of psychiatric and mental healthcare, that efforts to tackle coercion should be accompanied with a broader focus on prevention and early intervention, as well as free and informed consent. She welcomes the authorities' commitment to a long-term plan on psychiatry and mental health and calls on them to ensure that it is implemented, assessed and – as

¹²⁰ See further Danish Health Authority, [Strengthening mental health care: Recommendations for a 10-year action plan in Denmark – short version](#), 13 January 2022, chapter 2.3 Current Challenges.

¹²¹ See Ministry for Health, [Aftale om en 10-årsplan for psykiatrien og mental sundhed](#) (Agreement on a 10-year plan for psychiatry and mental health – in Danish), September 2022; and Danish Health Authority, [Nyt nationalt råd skal følge 10-årsplanen for psykiatri og mental sundhed](#) (New national council must follow the 10-year plan for psychiatry and mental health – in Danish), 17 May 2023.

¹²² Parliamentary Ombudsman, [Annual Report 2022](#), page 43. See also Parliamentary Ombudsman, [Thematic Report 2021: Children and young people in secure residential institutions](#), 2 July 2022.

¹²³ E.g. the UN Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, [Revised CPT standards](#) on means of restraint in psychiatric establishments for adults, 21 March 2017.

and when necessary – amended, in close consultation with relevant stakeholders, including persons with mental health conditions and persons with disabilities.