

## HUMAN RIGHTS IN DENMARK

The Status Report reviews bills, decisions, opinions and government initiatives made within the field of human rights in Denmark in 2002. The Status Report is divided according to the general rights safeguarded in the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition to these rights, the Status Report also includes general social, economic and cultural rights as well as the special rights applicable to women, children and refugees.

Status 2002 has been prepared by the Danish Centre for Human Rights. The Danish Centre for Human Rights was established by a parliamentary decision in 1987. The Centre is a Danish entry point for the gathering and dissemination of knowledge about human rights in Denmark, in Europe and internationally. Its mandate includes research, information, education and documentation on to Danish, European and international conditions.

HUMAN RIGHTS IN DENMARK · STATUS 2002

# *HUMAN RIGHTS IN DENMARK*

*STATUS  
2002*

ISBN 87-90744-68-3



THE DANISH CENTRE FOR HUMAN RIGHTS

The Danish Centre for Human Rights

# Human Rights in Denmark Status 2002



The Danish Centre  
for Human Rights

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## PREFACE

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Welcome as a reader of this year's Status Report. A new feature of this report is that it has been structured according to categories of rights. The purpose is to offer the reader a comprehensive overview of all Bills, decisions, opinions and government initiatives made within the particular field of rights. In addition to the presentation of the rights, the Status Report also lists several new publications on human rights and introduces relevant websites where the reader can find more information.

The Incorporation Committee (Inkorporeringsudvalget), set up by the Ministry of Justice, completed its Report on Incorporation of Human Rights Conventions into Danish Law in October 2001. This report is essential because it lists advantages and disadvantages of the suggested incorporation of international conventions into Danish law and makes recommendations as to which conventions to incorporate. Therefore the Committee's considerations and recommendations have been summarised in a separate section on Implementation of Human Rights Conventions in Danish Law. Further to the Report from the Incorporation Committee, it is worth mentioning that the number of proceedings before Danish Courts in which the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) has been relied upon and applied has fallen from 44 cases in 1999 to 19 cases in 2002 at the close of the editorial work.

Focusing on agenda-setting subjects of the human rights debate in 2002, we will see that the terror attack on New York and Washington on 11 September 2001 has played a major part. The discussion of the limits for what society may do to protect itself against terrorism has influenced the public debate, and it was also the reason for the Government's comprehensive legislative package to combat terrorism, which was adopted in June 2002. The anti-terrorism package affects several human rights fields, such as the prohibition of torture and inhuman or other degrading treatment or punishment, the right to respect for private life, the right to a fair trial and the freedom of expression. The Danish Centre for Human Rights (DCHR) prepared a comprehensive reply in November 2001 to the consultation papers on the anti-terrorism package, including an assessment of the effects of the legislative package on human rights. The aftermath of the terror attack still influences the debate concerning human rights, and it will certainly affect new national and international legislative initiatives – also in the coming years. The analyses made by the DCHR in relation to the Danish

anti-terrorism package are presented under the various rights in the Status Report.

Another vital area in 2002 has been the immigration field. In February 2002 the Government introduced the Bill amending the Aliens Act, the Marriage Act and other Acts, involving abolition of the *de facto* refugee concept, streamlining of the asylum proceedings, more stringent conditions for the issue of permanent residence permits and tightening of the conditions for family reunification, etc. The immigration field was also in focus when the UN Committee on the Elimination of Racial Discrimination (CERD) examined Denmark in March 2002. Some of the subjects considered by the CERD in its examination of Denmark were the Integration Act, municipal integration councils, housing for refugees, the housing dispersal policy, the quota system in relation to minority children and the Commission on Self-Government (Selvstyrekommisionen) concerning Greenland. The observations and comments of the CERD are summarised under the section on Prohibition of Discrimination. They will indicate the direction of continued and developmental work of the DCHR in relation to discrimination in 2003.

In September 2002 the Equal Treatment Committee (Ligebehandlingsudvalget), which had a representative of the DCHR, submitted its recommendations on implementation of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. These recommendations include the proposal for a new bill on equal treatment irrespective of ethnic origin and recommendations in the mediation field. A majority of the Committee members did not for the time being want to decide the issue of establishment of an administrative body for the promotion of equal treatment, but a minority – including the DCHR representative – recommended the establishment of such complaints body. The Committee established that the DCHR will be responsible for the implementation of Article 13 of the Directive, which concerns partly independent surveys and recommendations concerning discrimination, partly assistance to victims of discrimination in pursuing their complaints about discrimination. The DCHR looks forward to carrying out these tasks in the field of equal treatment, not least to testing new conflict resolution methods.

Also the conditions of Danish police establishments, prisons and psychiatric units have been on the human rights agenda in 2002. The European

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) inspected some police establishments and prisons, including the Sandholm Centre north of Copenhagen, and psychiatric units all over Denmark from 28 January to 4 February 2002. In May the UN Committee against Torture (CAT) examined the most recent report of the Danish Government to CAT. These two Committees considered cellular accommodation at Danish police establishments, conditions and practices in prisons and psychiatric institutions, the Criminal Code and the Aliens Act. The observations and recommendations of the Committees, which have been reviewed in the section on Prohibition of Torture, provide the DCHR with a good tool for monitoring the field and for launching follow-up activities.

Discrimination against women is the field in which Denmark has been examined most recently by an international monitoring body. In June 2002 the UN Committee on the Elimination of Discrimination against Women (CEDAW) examined the Danish policy and practices in this field. Some of the things examined by CEDAW were the Danish gender mainstreaming policy, violence against women, the wage gap between women and men, representation of women in executive positions and the situation of foreign women in Denmark. The DCHR intends to monitor the Danish fields of concern according to CEDAW in the coming years and to conduct relevant analyses in the field. The concluding comments of CEDAW are summarised in the section on the Rights of Women.

Finally it should be mentioned that as of 1 January 2003 the DCHR will continue its activities as the Danish Institute for Human Rights, based on Act No. 411 of 6 June 2002 on the Danish Centre for International Studies and Human Rights. The Act points out the role of the Institute as a national and independent human rights institution established in accordance with the UN Paris Principles, and mandates the Institute to act as a national player in the discrimination and equal treatment fields. The Institute will be an independent unit under the Danish Centre for International Studies and Human Rights and have its own board. This new structure involves institutional cooperation between the existing Danish Institute of International Affairs (Dansk Udenrigspolitisk Institut), Centre for Development Research (Center for Udviklingsforskning), Copenhagen Peace Research Institute (Center for Freds- og Konfliktforskning) and the Danish Centre for Holocaust and Genocide Studies (Dansk Center for Holocaust- og Folkedrabsstudier), which will all form part of the Danish Centre for International Studies and Human Rights.

The DCHR looks forward to its new tasks and challenges, and hopes that the readers will enjoy this year's Status Report.

*Professor Claus Hagen Jensen*  
Chairperson of the Board

*Morten Kjærum*  
Executive Director

## READER GUIDELINES

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The Bills, decisions, opinions and initiatives of relevance to human rights reviewed in this Status Report have been classified by rights. The rights included in the 2002 Status Report reflect the fundamental rights protected by the ECHR. In addition to these fundamental rights, the Status Report also describes other fields of rights in which independent rules have been laid down. They are social, economic and cultural rights, rights of the child, rights of women and rights of refugees.

The background material of Status 2002 comprises bills, but not existing statutes and subordinate legislation. Therefore the Report is not a complete examination of Danish legislation and its adaptation to and compliance with the human rights conventions.

Status 2002 only mentions EU initiatives of relevance to human rights if they have been mentioned in the consultation papers issued by Danish authorities. For further details see the subsection on Bills below.

### **Bills**

The Danish ministries make increasing use of the option to involve expert organisations in the preparatory work through consultations. Being one of the organisations normally consulted, the Danish Centre for Human Rights receives a large number of consultation papers from ministries each year.

Most consultation papers are related to a bill amending existing Danish legislation or establishing new law, but some concern legislative acts from the EU to be implemented in Danish law.

The DCHR replies to the consultation papers by describing the human rights concerns raised by a bill or a legislative act. These replies are summarised briefly under the individual rights.

### **National control mechanisms**

Denmark has no special institutions or agencies mandated to deal with complaints about human rights violations. If a person believes that the State has violated his or her rights, he or she must institute proceedings under the general complaints system. First and foremost this applies to courts of general jurisdiction. In addition, the Parliamentary Ombudsman often considers complaints about human rights violations. This may be in connection with complaints about administrative decisions or in relation to

how citizens are treated by public authorities in general.

Apart from the human rights enshrined in the Danish Constitution, the ECHR is the only human rights instrument which is directly applicable as Danish law. The Incorporation Committee, set up by the Ministry of Justice, recommended in October 2001 that three UN human rights conventions signed by Denmark should be incorporated into Danish law. The recommendations of the Committee are summarised in the section on Implementation of Human Rights Conventions in Danish Law.

### **Danish court decisions**

All Danish courts of law, that is, district courts, the Eastern and Western High Courts and the Supreme Court, hear cases involving issues of compatibility with or violation of the human rights conventions. The convention invoked mostly before the courts is the ECHR, and only in rare situations UN human rights conventions.

The following review of human rights only includes judgments published in the Danish Weekly Law Reports (Ugeskrift for Retsvæsen) in which a party has relied upon a human right and the court has applied such right. The judgments have been selected on the basis of a review of the Weekly Law Reports as from November 2001 (No. 39) until October 2002 (No. 40). The summary of the judgments is an exact reproduction of the summary printed in the Weekly Law Reports. The summaries of the judgments have been reproduced with the permission of the publishing house of Thomson.

The editors of Status 2002 have inserted a few square brackets in the summaries of the judgments with explanations of abbreviations, human rights provisions, etc. In connection with a couple of the summaries an explanatory note has been added to specify the court's treatment of the relevant human rights issue.

### **Opinions of the Parliamentary Ombudsman**

Not only Danish courts pay attention to potential human rights violations. Also the Parliamentary Ombudsman takes human rights related questions into consideration in his decisions from time to time. From 1 October 2001 to 1 October 2002 the Ombudsman closed five cases involving the consideration of provisions of the ECHR. However, the Ombudsman has not considered any cases involving alleged violations of the UN human rights conventions.

Two of the cases mentioned were published in the 2001 Report of the Parliamentary Ombudsman, and two other cases will presumably be published in the 2002 Report. Brief summaries of these cases are given in Status 2002 together with a brief summary of the fifth, unpublished opinion.

### **Judgments and decisions of the European Court of Human Rights**

Complaints of human rights violations in Denmark can be submitted to the European Court of Human Rights in Strasbourg. A condition precedent is, however, that the violation complained of has been examined before a Danish court of law or an administrative body which has made a final decision in the matter. Few Danish applications are submitted to the Court every year. Some of these are declared inadmissible or struck out of the list following a friendly settlement, and only very few – in the period under review two cases – are decided by judgment.

Under the individual human rights captions, the cases brought before the Court from 1 October 2001 to 1 October 2002 are mentioned. Denmark is the respondent in all cases mentioned.

### **Opinions of and concrete cases before the Committees**

Committees have been set up under the UN human rights conventions to monitor implementation of the human rights in the individual states and to deal with complaints about individual violations. Further details on this system of committees are given in the section on Implementation of Human Rights Conventions in Danish Law.

The Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Committee on the Elimination of Discrimination against Women have all examined Denmark in the period under review. The opinions and recommendations of these Committees are quoted in Status 2002 under the relevant human rights.

To the extent that the Committees have considered complaints of human rights violations in Denmark, summaries of such proceedings are given under the individual human rights.

In addition to the UN Committees, some committees have been set up under the Council of Europe to monitor compliance with and implementation of human rights in the member States of the Council of Europe. One of these committees, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

(CPT), visited Denmark early in 2002. The report of the CPT is summarised under the section of Prohibition of Torture.

**Government initiatives**

Status 2002 mentions a number of Government initiatives of relevance in a human rights context. These initiatives are committee work in fields where contemplated legislation or other regulation is presumed to have human rights consequences.

## IMPLEMENTAION OF HUMAN RIGHTS CONVENTIONS IN DANISH LAW

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### *The European Convention on Human Rights*

The European Convention on Human Rights was incorporated into Danish law by Act No. 285 of 29 April 1992. Consequently the Convention is part of Danish national law in force.

### *UN conventions*

The Incorporation Committee (Inkorporeringsudvalget), set up by the Ministry of Justice, completed its Report on Incorporation of Human Rights Conventions into Danish Law in October 2001 (Report No. 1407).

The Report describes how international conventions are implemented in Danish law and what status they have in Danish law. It is emphasised that even conventions not implemented independently can be invoked before and applied by Danish courts and other law-applying authorities. Also non-incorporated conventions are therefore relevant sources in Danish law. The report reviews the application of human rights conventions and the ECHR by Danish courts after the implementation of the ECHR in 1992. It is pointed out that no other human rights conventions are invoked or applied to the same extent as the European Convention on Human Rights. While there were 12 published judgments and orders relating to other human rights conventions, there were 158 decisions concerning the European Convention on Human Rights.

The Report also examines how the Parliamentary Ombudsman and some central administrative bodies (the Directorate of Private Law (Civilretsdirektoratet), the National Social Appeals Board (Den Sociale Ankestyrelse), the social boards (sociale nævn) and the Danish Immigration Service (Udlændingestyrelsen)) apply international human rights conventions. One conclusion is that the Parliamentary Ombudsman has found in his practice that specific decisions must comply with the rules of general legislation, and that the authorities have a duty to involve criteria derived from human rights on their own initiative, and to impute special importance to these criteria in their discretionary decisions. Concerning the essential administrative authorities it is emphasised that there are several examples of international human rights conventions being involved in the administrative processing of cases. The Report also examines how the international human rights conventions are involved in connection with the legislative process in Denmark.

A vital element of the Report is the list of advantages and disadvantages of any incorporation of the conventions into Danish law. It is emphasised that incorporation can be seen as a strengthening of the citizens' legal position in that it is made clear that the citizens have an independent possibility of invoking the provisions of the conventions directly before the courts and other law-applying authorities. In this way, incorporation can be seen as a supplement to the assessment made by the Government and Parliament in connection with adoption of bills and by administrative authorities in connection with the administration of legislation. Such incorporation will create a statutory basis for the application of the incorporated conventions by the courts and other law-applying authorities, and it will also result in increased attention and greater consciousness about the incorporated conventions. The Committee found no significant disadvantages which are decisively against incorporation.

The report also discusses what criteria should be emphasised when assessing what conventions should be incorporated into Danish law. According to the report, a very central criterion should be whether the provisions of a convention are "suitable" for use as a legal basis for the resolution of concrete disputes pending before the courts or other law-applying authorities. Furthermore, importance should be attached to the question whether monitoring or enforcement bodies have been established to construe and apply the conventions and, in the affirmative, whether any case-law exists from these bodies that clarifies the contents and scope of the provisions of the conventions.

On the basis of these criteria, the Incorporation Committee has assessed whether the following conventions should be incorporated into Danish law: (1) the International Covenant on Civil and Political Rights with pertaining protocols (ICCPR), (2) the International Covenant on Economic, Social and Cultural rights (ICESCR), (3) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (4) the International Convention on the Elimination of All Forms of Discrimination against Women with pertaining protocol (ICEDAW), (5) the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT), and (6) the International Convention on the Rights of the Child (ICRC).

The Committee recommends *incorporation of the ICCPR into Danish law*, emphasising that the ICCPR is a "general convention", and that it must be

considered “central” to the protection of human rights. The Incorporation Committee finds that the Covenant must also be considered “suitable” for application as a legal basis for the resolution of concrete disputes pending before the courts or administrative authorities. Moreover, the Committee emphasises that an individual right of complaint has been established.

As regards the ICESCR, the Committee members agree that the Covenant must be considered “central” to the protection of human rights as it provides protection for everyone as well as numerous very different rights of great societal relevance. The ICESCR and the ICCPR are of equal standing and interconnected, which has been recognised in international resolutions approved by Denmark. Moreover, together with the Universal Declaration of Human Rights, these two Covenants constitute the nucleus of the global human rights protection. In the assessment of whether the ICESCR should be incorporated, some of the Incorporation Committee members place decisive emphasis on the fact that the Covenant contains many so-called policy statements and thus differs from the ICCPR on several, essential points. Thus, many provisions of the Covenant are of such nature that the contents of the rights depend to a great extent on their implementation in national legislation as they impose positive obligations on the States Parties of a far-reaching economic and social nature. Other Committee members, by contrast, attach decisive importance to the fact that the civil and political rights on the one side and the economic, social and cultural rights on the other side are indivisible and interconnected. These members find that the political signal given in relation to both the Danish and the international community on the value attributed to human rights strongly favours incorporation also of this Covenant, and that this fact can make up for its possibly poorer applicability in practice for the resolution of concrete legal disputes. The Committee members agree – despite these differences in opinion concerning the weighing of the criteria for incorporation – *not to recommend incorporation of the ICESCR into Danish law at present.*

The Incorporation Committee recommends *incorporation of the ICERD into Danish law.* Although the Convention is a “special convention”, the Committee emphasises that it is “central” as it protects an absolutely fundamental human right in all social affairs. The Committee finds that the majority of the convention provisions must be considered “suitable” for application as a legal basis for the resolution of concrete disputes. In this connection the Committee also emphasises that an individual right of complaint has been established although so far the Committee on the Elimination of Racial Discrimination has only determined a limited number

of complaints.

On the basis of the same arguments, the Incorporation Committee also *recommends incorporation of the ICAT into Danish law*. The comprehensive and detailed case-law of the Committee against Torture in individual cases of complaints means that the convention provisions will be “suitable” for application as a legal basis for the resolution of concrete disputes pending before the courts or administrative authorities. The Incorporation Committee attaches importance to the fact that it cannot be excluded that the ICAT offers better protection than the ECHR on certain points, including possibly in respect of the evidence required to prove that an alien risks being exposed to torture, if returned.

Despite the fact that the ICRC must be considered “central” to the protection of human rights, the Incorporation Committee finds that *it cannot at present recommend incorporation of the ICRC into Danish law*. At first an incorporation should only comprise a limited number of conventions. Moreover the Incorporation Committee emphasises that at present no individual right of complaint has been established, and so far the Committee on the Rights of the Child has not adopted general recommendations on the substantive rights of the Convention.

On the basis of the same arguments as quoted in connection with the ICRC, the Incorporation Committee recommends that the *ICEDAW should not be incorporated*. In the opinion of the Incorporation Committee, importance should be attached to the fact that the individual right of complaint introduced in December 2000 has not existed for so long that the Committee on the Elimination of Discrimination against Women has had the opportunity to clarify the contents and scope of the obligations of the States Parties and the resulting rights for the citizens through decisions of individual complaints.

Finally the Incorporation Committee has discussed how incorporation of the ICCPR with pertaining protocols, the ICAT and the ICERD should take place, and what legal effects such incorporation should have. The Incorporation Committee recommends that these Conventions be made part of Danish law by enactment, and that the statute should expressly list the conventions comprised by the incorporation.

The Report includes a bill with explanatory notes.

## INTERNATIONAL CONTROL MECHANISMS

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### **The European Court of Human Rights**

The European Court of Human Rights (the Court) was set up in pursuance of the European Convention on Human Rights (ECHR). It is an actual court which is presided over by judges and hands down judgments within the framework of the ECHR and the appurtenant protocols. Both individuals and the various Contracting Parties may submit applications concerning violations of the ECHR. It is, however, mainly individuals who submit applications to the Court, claiming violation of their rights. Applications are made directly to the Court, which then decides whether the case is to be examined on its merits (admission).

A judgment of the Court against a Contracting Party concerning violation of the ECHR is transmitted to the Council of Europe Committee of Ministers, which supervises its execution. The Committee of Ministers cannot force a State to abide by the decision of the Court if a State refuses to recognise such judgment, but as the end consequence, the Committee of Ministers can exclude the State from the Council of Europe.

## INTERNATIONAL COMMITTEES

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Committees have been set up under most of the various international and European human rights conventions to monitor whether the contracting states live up to the obligations they have undertaken in the individual conventions.

These committees differ from the European Court of Human Rights in the sense that they cannot hand down final judgments against contracting states. When a state has ratified a convention without any reservations, the state is usually under an obligation to submit reports to the relevant committee on the human rights situation within the given convention area. Moreover, a few of these committees pay visits to the contracting states with a view to examining the conditions themselves. Afterwards the committees may present their official criticism of legislation, case-law, etc, of the particular states, just as they may ask the states to improve particular circumstances or provide further information.

Some committees are also mandated to deal with complaints from individuals or other private parties against contracting states. The right of

individuals to complain constitutes a strengthening of such committee and also reflects a political upgrading of the specific area. A common feature of the committees is that their members are experts with special knowledge within the area covered by the individual committee. Moreover, efforts are being made to ensure that the committees consist of representatives from the various countries or continents and of experts in the various types of legal systems. Normally, committee members are nominated by the individual contracting states and are finally appointed by the relevant UN or European body. A committee member must, however, be independent of the nominating state.

Below is a brief presentation of the individual committees, including the dates when Denmark is to submit its next reports to these committees.

## UN COMMITTEES

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### *Human Rights Committee (HRC):*

The United Nations Human Rights Committee was set up in 1977 in pursuance of Article 28 of the International Covenant on Civil and Political Rights (ICCPR). The Committee can deal with complaints from a State which claims that another State fails to fulfil its obligations arising from the Covenant. In addition, States Parties shall submit reports in which they account for measures taken to implement the Covenant and for the progress made. Based on these reports, the Committee presents comments and recommendations. Finally, pursuant to an Optional Protocol to the ICCPR, the Committee has jurisdiction to deal with complaints from private individuals. Complaints can only be submitted to the Committee if no similar complaints are submitted to other committees within the international system. The Committee has 18 members.

The Committee's most recent examination of Denmark is summarised in Status 2000, pp. 101-103. Denmark is to submit its fifth report to the Committee on 31 October 2005.

### *Committee on Economic, Social and Cultural Rights (CESCR):*

The CESCR was set up by the Economic and Social Council (ECOSOC) in 1987 for monitoring the implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee enters into dialogue with the States Parties to ensure full compliance with the Covenant and to ensure that the rights arising from the

Covenant can actually be enjoyed by the relevant people. Moreover, the Committee monitors and assists States Parties in drafting new rules of law. States Parties submit periodic reports to the Committee, which presents its comments and recommendations on the basis of the reports. So far the Committee does not deal with individual complaints, but a draft Optional Protocol establishing such right to submit communications (complaints) is being considered. The Committee has 18 members.

The Committee's most recent examination of Denmark is summarised in Status 1999, pp. 95-96 (Danish edition). Denmark was to submit its fourth report to the Committee in the autumn of 2002. The report had not been published yet at the close of the editorial work. The fifth report is to be submitted on 30 June 2006.

*Committee on the Elimination of Racial Discrimination (CERD):*

The Committee was set up in pursuance of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Committee has jurisdiction to consider complaints from private individuals against a State Party, just as it receives reports from the States Parties on legislative, administrative or other measures which they have adopted to give effect to the provisions of the Convention. Based on these reports, the Committee presents its comments and recommendations. The Committee has 18 members, one of them being Morten Kjærum, Director of the Danish Centre for Human Rights. The Committee's most recent examination of Denmark's report of January 2001 is summarised under the section on Prohibition of Discrimination.

Denmark is to submit its 16<sup>th</sup> and 17<sup>th</sup> reports to the Committee on 8 January 2005.

*Committee against Torture (CAT):*

The Committee was set up in pursuance of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ICAT). Apart from dealing with complaints from States Parties which claim that another State has violated the Convention, the Committee also deals with complaints from private individuals against a State Party. Finally the Committee also receives reports from States Parties in which they account for measures taken with a view to implementing the provisions of the Convention, as well as other reports requested by the Committee from time to time. Based on these reports, the Committee presents its comments and recommendations. The Committee has ten

members, including the Danish doctor Ole Vedel Rasmussen. The Committee's most recent examination of Denmark's report of August 2000 is summarised under the section on Prohibition of Torture.

Denmark is to submit its fifth report to the Committee on 25 June 2004.

*Committee on the Elimination of Discrimination against Women (CEDAW):*

The Committee was set up in 1982 in pursuance of the International Convention on the Elimination of All Forms of Discrimination against Women (ICEDAW). The Committee receives reports from the States Parties in which they account for measures taken to observe the Convention. The reports give rise to regular reviews of domestic legislation, focusing in particular on rules which may give rise to direct or indirect discrimination of women. Some countries, such as Denmark, also include the comments of non-governmental organisations in the reports. Based on these reports, the Committee presents its comments and recommendations. The Committee has been mandated since December 2000 to receive and consider communications from individuals concerning violation of the Convention rights, but it has not yet had the opportunity to deliver any opinions in specific matters.

The Committee's most recent examination of Denmark's report of May 2001 is summarised under the section on Rights of Women. Denmark is to submit its sixth report to the Committee in May 2004.

*Committee on the Rights of the Child (CRC):*

The Committee was set up in pursuance of the 1989 International Convention on the Rights of the Child (ICRC). The Committee receives regular reports from the States Parties, which shall submit reports every five years with an account of the conditions of children in the country and of measures taken to implement the provisions of the Convention. Individuals cannot submit complaints, but the Committee has authority to call attention to national conditions which it finds incompatible with the Convention and to make proposals and recommendations. The Committee has 10 members.

The Committee's most recent examination of Denmark of September 1998 is summarised in Status 2001, pp. 83-84. Denmark is to submit its third report to the Committee on 17 August 2003.

## COMMITTEES OF THE COUNCIL OF EUROPE

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### *European Committee of Social Rights (ECSR):*

The Committee was set up in pursuance of the 1961 European Social Charter. The task given to the Committee is to supervise whether the individual Contracting Parties fulfil the obligations undertaken by them in the Charter. The Committee makes conclusions and recommendations on the basis of reports submitted by the Contracting Parties. Individuals cannot submit complaints concerning the Social Charter, but the 1995 Second Additional Protocol provides for a system of collective complaints. Denmark has signed, but not ratified this Additional Protocol.

Denmark submitted its 21<sup>st</sup> report to the Committee in November 2001. The report concerns Articles 1, 5, 12, 13 and 16 of the European Social Charter. In May 2002 Denmark submitted its 22<sup>nd</sup> report to the Committee, which concerns Articles 2, 3, 4, 9, 10 and 15 of the European Social Charter. The Committee examined Denmark in October 2002. The conclusions of the Committee had not been published yet at the close of the editorial work.

### *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT):*

The Committee was set up in pursuance of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The task of the Committee is to examine the treatment of detainees, *i.e.* typically people who have been arrested or remanded in custody or prison inmates, to strengthen the protection of such persons from torture and from inhuman or degrading treatment or punishment. The Committee has a number of members corresponding to the number of countries which have acceded to the Convention. The Committee issues official recommendations on the basis of regular visits to the institutions of the Contracting States. Individuals cannot submit complaints.

The Committee visited Denmark from 28 January to 4 February 2002. The Committee's examination of Denmark is summarised under the section on Prohibition of Torture.

### *European Commission against Racism and Intolerance (ECRI):*

The ECRI was set up in 1994 at the first summit of heads of state and government of the member States of the Council of Europe with a view to counter racism, xenophobia, anti-Semitism and intolerance. The task given to the Commission is to review the legislation of the member States, take

other initiatives to counter racism and intolerance and suggest additional measures at local, national and European level. The Commission gathers information from public authorities, relevant institutes and non-governmental organisations. Individuals cannot submit complaints.

The latest visit paid by the Commission to Denmark was in April 2000. The Commission's most recent examination of Denmark is summarised in Status 2001, pp. 76-78.

*Advisory Committee on the Framework Convention for the Protection of National Minorities:*

The Committee was set up in pursuance of the 1994 Framework Convention of the Council of Europe for the Protection of National Minorities. The Committee is to consider whether national legislation of Contracting Parties is in conformity with the framework Convention. To do so the Committee receives periodic reports from the Contracting Parties, but it can also gather information from others, such as non-governmental organisations and individuals. The Committee presents its conclusions on the basis of these reports. Individuals cannot submit complaints.

The Committee's examination of Denmark's first report of 6 May 1999 is summarised in Status 2001, pp. 79-80.

## GENERAL RIGHTS

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### RIGHT TO LIFE

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Convention provisions: Article 2 of the ECHR and Article 6(1) of the ICCPR.

#### 1. Bills

No bills concerning the right to life have been introduced in the period under review.

#### 2. Danish court decisions

*Eastern and Western High Courts:*

No judgments concerning the right to life have been published in the period under review.

*Supreme Court:*

No judgments concerning the right to life have been published in the period under review.

#### 3. Opinions of the Parliamentary Ombudsman

No opinions concerning the right to life have been published in the period under review.

#### 4. Judgments and decisions of the European Court of Human Rights

##### Cases declared inadmissible:

*Bankovic and Others v. Denmark and the other NATO member countries*

Articles 2, 10 and 13 of the ECHR – Declared inadmissible on 19 December 2001.

The European Court of Human Rights was not satisfied that the applicants came within the concept of jurisdiction under Article 1 of the Convention. The Court refused any violation of Articles 2, 10 and 13.

## 5. Opinions of and concrete cases before the Committees

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to life have been considered in the period under review.

## 6. Government initiatives

No relevant Government initiatives have been launched in the period under review.

## PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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Convention provisions: Article 3 of the ECHR, Article 7 of the ICCPR and Article 3 of the ICAT.

### 1. Bills

Title:

**Draft Bill amending the Aliens Act, the Marriage Act and other Acts (abolition of the *de facto* refugee concept, streamlining of the asylum proceedings, more stringent conditions for the issue of permanent residence permits and tightening of the conditions for family reunification, etc.)**

Elements of the Bill:

The Bill abolishes the *de facto* refugee concept so that in future residence permits will only be issued to asylum-seekers who have a right to protection under international conventions. Moreover the time condition related to the issue of permanent residence permits will be tightened so that the future requirement will be seven years' residence against previously three years, and it is specified that a temporary residence permit can be revoked if conditions change for the better in the alien's country of origin. The Bill also

implies changes in the rules on family reunification, two of them being that the qualifying age for family reunification will be increased from 18 to 24 years and that generally a financial security of DKK 50,000 will be required. The right to family reunification with parents over 60 years of age will also be abolished. Finally the asylum proceedings will be revised, one consequence being that the Danish Refugee Council (Dansk Flygtningehjælp) will no longer have a representative on the Refugee Board (Flygtningenævnet).

Brief summary of the comments made by the DCHR:

*Applicable law:*

Danish asylum proceedings, including any subsequent return of refused asylum-seekers, must comply with the conditions laid down in Article 3 of the ECHR, Article 3 of the ICAT and Article 33 of the Convention Relating to the Status of Refugees (the Geneva Convention).

*Assessment:*

The DCHR has found it necessary due to human and time resources and considering the complexity and scope of the Bill only to comment on selected parts of the Bill. The DCHR thus opted to focus its efforts on changes to be effected in the asylum proceedings, the abolition of the possibility to apply for asylum through a Danish diplomatic or consular mission abroad and the abolition of the *de facto* refugee concept.

The DCHR finds that the Bill has in general been worded to respect Denmark's international obligations in the human rights field, although it is immediately apparent that several items of the Bill are hardly compatible with recommendations of the Council of Europe Committee of Ministers, the UNHCR and others.

The explanatory notes of the Bill quote a number of decisions from the European Court of Human Rights which are used to delimit the protection status for asylum-seekers introduced in the Bill to replace the *de facto* refugee concept. The DCHR would point out that, in its opinion, the legislator's interpretation of *Nwosu v. Denmark*, Application No. 50359/99, cannot be taken convincingly to mean that the return of a person risking criminal prosecution due to crime will not in itself be contrary to Article 3 of the ECHR. The DCHR would therefore express scepticism against the alleged compatibility of the Bill with Article 3 of the ECHR, referring to the statements made by the legislator in the explanatory notes concerning the

scope of protection. The DCHR would also point out Recommendation Rec(2001)18 of the Council of Europe Committee of Ministers, which recommends subsidiary protection to a somewhat wider group of persons than the persons eligible for protection status according to the Bill.

Another consequence of the Bill is that an application for reopening of an asylum case cannot generally be allowed to suspend enforcement of the original decision. To this part of the Bill, the DCHR expresses scepticism as regards the compatibility of the Bill with the principle of non-refoulement in Article 33 of the Geneva Convention and the protection against return conferred by Article 3 of the ECHR and Article 3 of the ICAT.

Furthermore the Bill seeks to increase the number of cases to be examined under the manifestly-unfounded procedure. The DCHR finds reason to note that Conclusion No. 30 (XXXIV) of the UNHCR Executive Committee lays down a very narrow definition of manifestly unfounded applications for asylum, which includes only those which are clearly fraudulent or not related to the criteria for the granting of refugee status.

The Bill finally abolishes the possibility to apply for asylum through a Danish diplomatic or consular mission abroad. The DCHR finds that this part of the Bill may be in contravention of Article 3 of the ECHR if a foreigner with an undisputed great need for protection is refused by the mission with reference to these provisions.

*References:*

Act No. 365 of 6 June 2002.

Entry into force: 1 July 2002, but cf. section 8(2) to (5) of the Bill.

Bill No. L 152, introduced in writing on 28 February 2002: Supplement A, column 4091.

The Bill as adopted: Supplement C, column 678.

Draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Aliens Act, the Marriage Act and other Acts, distributed as an enclosure to the consultation papers of 15 February 2002 from the Ministry of Refugee, Immigration and Integration Affairs.

Reply of the DCHR to the Ministry of Refugee, Immigration and Integration Affairs of 27 February 2002, prepared by Kim U. Kjær.

Title:

**Draft Bill of the Ministry of the Interior amending the Aliens Act (part of the "anti-terrorism package") and draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Aliens Act (the latter Bill is substantially a result of the Bill introduced by Ministry of the Interior).**

#### Elements of the Bill:

The Bill enhances the right to refuse residence permits due to serious crime, and the rules on expulsion with reference to state security are also tightened. A new part on exchange of information between the immigration authorities and the intelligence services and the prosecutor, etc., is also inserted in the Aliens Act. Moreover the Bill tightens the prohibition against refoulement.

The reason for the Bill was the terror attack in the USA on 11 September 2001, and the major purpose of the Bill was to ensure that Danish immigration law fully complies with UN Security Council Resolution 1373 of 28 September 2001 on anti-terrorism action.

Brief summary of the comments made by the DCHR:

#### *Applicable law:*

Asylum proceedings in Denmark, including any subsequent administrative return of refused asylum-seekers, must comply with the conditions laid down in Article 3 of the ECHR, Article 3 of the ICAT and Article 33 of the Geneva Convention. Any search for and passing on of data from registers of fingerprints and personal photographs and any passing on of data among authorities are deemed by the DCHR to be in contravention of the privacy protection under human rights law as stipulated in Article 8 of the ECHR, for which reason the conditions laid down in that provision must be observed.

#### *Assessment:*

By way of introduction, the DCHR notes that the Bill reaches much further than the official aim intended, see above.

According to the explanatory notes of the Bill, the abolition of the prohibition against return of foreigners risking *de facto* persecution implies, *i.a.*, that aliens whose applications for asylum have been refused due to the exclusion grounds of the Geneva Convention can be returned from Denmark to the extent possible according to the Geneva Convention. The DCHR finds reason to note that this is an example of the legislator's unfortunate inclination to leave to the courts of law, and in particular to the public administration, the responsibility that Denmark complies with its international obligations.

In respect of the proposed provisions permitting expulsion of persons on grounds such as the general public health, the DCHR finds reason to note that the general public health is not one of the grounds according to the Geneva Convention, except for very special situations, *e.g.* if hazardous drugs are an element of genuine terrorist acts. According to the Geneva Convention, a refugee can only be expelled on grounds of national security or public order.

The DCHR also finds reason to point out that it is inexpedient that in the Bill the legislator has deviated entirely from the “step by step” principle, the result being that there is no longer necessarily some sort of proportionality between a specific sentence and the conditions of expulsion. To this end the DCHR would draw the attention to the most recent case-law of the European Court of Human Rights concerning expulsion and incompatibility with Article 3 and/or Article 8.

According to the explanatory notes, the proposed possibility of administrative expulsion in section 25 of the Bill is in accordance with the wording of Article 33(2) of the Geneva Convention. The DCHR finds that the amended wording of the Aliens Act provides for a somewhat broader scope of application of administrative expulsion than that of the Geneva Convention because the interests protected by the Convention are far weightier than the ground of “public order” laid down in the Bill. Moreover, a proposal to include a reference to public order was rejected during the genesis of Article 33 of the Convention. The DCHR therefore finds that the ground of public order cannot be read into Article 33(2) of the Convention, and generally that provision must be interpreted in a restrictive way. Against this background the DCHR finds occasion to express scepticism of the compatibility with Article 32(1) of the Geneva Convention, particularly as regards administrative expulsion of refugees.

According to section 10(1)(iii) of the Bill, a residence permit must be refused if the alien is deemed to fall within Article 1 F of the Geneva Convention. It is of concern to the DCHR that the legislator thereby reduces the quality required of evidence to deem an alien to fall within Article 1 F. A Convention requirement is a “serious reason for considering”, whereas the Bill stipulates that an alien cannot be issued with a residence permit if the alien *is deemed* to fall within Article 1 F.

The Bill also contains a proposed amendment of sections 40a and 40b of the Aliens Act concerning search and passing on of personal photographs and

information from the Central Fingerprint Register of Offenders and of Asylum-seekers and Unidentified Aliens. According to the DCHR it is a moot point whether this amendment accords with the principle of self-determination, which forms the basis of both the human rights protection of privacy and the protection of individuals with regard to automatic processing of personal data, cf. Article 8 of the ECHR.

The Bill also provides for passing on information about an alien from the immigration authorities to the intelligence services and the prosecutor, etc., without procuring the applicant's consent and without performing a specific assessment of the necessity of such disclosure. The DCHR finds that passing on information under these provisions of the Bill would be contrary to Article 8 of the ECHR.

Finally the DCHR finds reason to note that, since the purpose of section 45b(2) of the Bill is to ensure secrecy of any state security information or the like disclosed in connection with immigration proceedings – and thus prevent access to records – this provision may in certain cases be contrary to Article 8 of the ECHR.

*References:*

Act No. 362 of 6 June 2002.

Entry into force: 7 June 2002.

Bill No. L 32, introduced in writing on 13 December 2001: Supplement A, column 806.

The Bill as adopted: Supplement C, column 653.

Draft Bill of the Ministry of the Interior amending the Aliens Act, distributed as an enclosure to the consultation papers of 30 October 2001 from the Ministry of the Interior as well as the consultation papers of 30 October 2001 from the Ministry of Refugee, Immigration and Integration Affairs.

Reply of the DCHR to the Ministry of Justice and the Ministry of the Interior of 23 November 2001 and reply of the DCHR to the Ministry of Refugee, Immigration and Integration Affairs of 4 February 2002, prepared by Kim U. Kjær.

**Title:**

**Draft Bill amending the Aliens Act (Proposed Council Directive defining the facilitation of unauthorised entry, movement and residence and abolition of the right to suspension of enforcement at appeal of certain decisions on administrative expulsion of EU/EEA nationals and others)**

**Elements of the Bill:**

The Bill is intended to implement the proposed Council Directive defining the facilitation of unauthorised entry, movement and residence and it amends the wording of the Aliens Act provision on trafficking in human

beings, making intentional facilitation of unauthorised entry, etc., a criminal offence, whether or not such facilitation is provided for the sake of gain. The Bill also implies that appeals against decisions on administrative expulsion of persons covered by the EC rules will not suspend the time-limit for departure if the person in question is only staying in Denmark for a short period.

Brief summary of the comments made by the DCHR:

*Applicable law:*

The individual's right to asylum has been laid down in Article 14 of the Universal Declaration of Human Rights, Article 33 of the Geneva Convention and, as regards subsidiary protection, in Article 3 of the ECHR. Moreover, freedom of assembly, including the right to assemble for a demonstration, is protected, *i.a.*, by section 79 of the Danish Constitution and Article 11 of the ECHR.

*Assessment:*

The Bill comprises two elements, which are discussed individually below.

(a) According to the proposed Directive, any Member State may decide *not* to impose sanctions for intentional actions to facilitate unauthorised entry by applying its national law and practice for cases "where the aim of the behaviour is to provide humanitarian assistance to the person concerned".

According to the explanatory notes of the Bill, "[i]t is not the intention of the Bill to change that. The courts may thus still take into consideration at the sentencing whether the assistance was provided due to such considerations".

The right to apply for and enjoy asylum is a recognised fundamental human right. The DCHR finds that the possibility to effectively enjoy the human rights often depends on individual persons' efforts, and this is increasingly recognised by the international community. The DCHR believes that it is best effected if it is not a punishable offence to facilitate the entry of a family member or a person of the same religious faith – even if the person in question does not have the requisite entry documents.

A consequence of the phrase of the explanatory notes quoted above is that in such situations the courts may in future take into account such considerations in connection with the sentencing. But such facilitation is not

exempt from punishment according to the Bill.

To improve concordance between the said human rights principles, the DCHR finds that the Bill ought to exempt such situations expressly from the criminal field.

(b) The second part of the Bill suggests that appeals from EU/EEA nationals and family members on short-term stay in Denmark who have been administratively expelled will no longer suspend the time-limit for departure, which is generally fixed at “immediately”. This provision of the Bill aims particularly at possible riots in connection with the Danish EU Presidency in the second half of 2002.

As regards expulsion from a Convention State of a person who claims that in such case he or she will experience an infringement falling within Article 3, the European Court of Human Rights has concluded in several cases that an appeal must suspend the enforcement if the appeal remedy is to be deemed efficient.

In view of this, the DCHR finds that it complies best with the fundamental human rights principles that an appeal of the expulsion of such EU/EEA nationals – just like appeals from such persons on long-term stay in Denmark – must still suspend enforcement of the decision.

*References:*

Act No. 367 of 6 June 2002

Entry into force: 8 June 2002, but cf. section 2, second sentence, of the Act.

Bill No. L 182, introduced in writing on 20 March 2002: Supplement A, column 4773.

The Bill as adopted: Supplement C, column 615.

Draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Aliens Act, distributed as an enclosure to the consultation papers of 21 March 2002 from the Ministry of Refugee, Immigration and Integration Affairs.

Reply of the DCHR to the Ministry of Refugee, Immigration and Integration Affairs of 12 April 2002, prepared by Kim U. Kjær.

## **2. Danish court decisions**

*Eastern and Western High Courts:*

Danish Weekly Law Reports 2001, p. 2264, Eastern High Court (U.2001.2264/2 Ø)

A Nigerian national, A, who was sentenced in 1999 to five years' imprisonment for violation of section 191 of the Criminal Code and expelled

permanently, claimed revocation of the expulsion order. A had resided in Denmark since February 1992 and had a son born on 27 June 1996 with a Danish woman with whom A had resumed relations during his incarceration. A claimed that circumstances had changed significantly and that expulsion would be contrary to Article 8 of the ECHR. Moreover the expulsion would be contrary to Article 3 of the ECHR because A would be punished in Nigeria for having discredited the country due to the drug-related judgment and because the sentence would have to be served under life-threatening conditions. No such significant changes were found to have occurred in A's situation since the judgment date that the expulsion order had to be revoked in pursuance of section 50, cf. section 26(1)(iv) and (v), of the Aliens Act. Nor could Article 3 of the ECHR or the information provided on Nigerian law lead to revocation of the expulsion order.

Danish Weekly Law Reports 2002, p. 1160, Eastern High Court (U.2002.1160 Ø)

T, a 30-year-old man with a clean criminal record, who was an Iraqi national granted asylum in Denmark in 1999 under section 7(2) of the Aliens Act, was found guilty of violation of section 119 of the Criminal Code, having threatened a caseworker by telephone, *i.a.* by threatening to kill her. T was also found guilty of forgery, partly attempted forgery, having produced and supplied false passports and driving licences to an unknown extent. Finally T was found guilty of violation of section 125a, cf. section 23, partly cf. section 21, of the Criminal Code, having produced and supplied false passports to an unknown extent, the intention being that the orderers could enter Denmark or another country illegally. T's mother and his four siblings lived in Denmark. He also had a sister in Lebanon. T himself had stayed in Denmark since November 1998. He did not master the Danish language. He had lived on cash benefits most of the time. He only associated with his family and other Iraqis. T was sentenced to two years' imprisonment. The crime committed justified expulsion in pursuance of section 22(ii), (v) and (vi) of the Aliens Act because of T's short-term and limited ties with Denmark and since the considerations laid down in section 26(1), cf. subsection (2), of the Aliens Act did not constitute a decisive argument against expulsion. T was expelled with a prohibition against re-entry for ten years. Article 3 of the ECHR and the principle not to expose T to the risk of double punishment could not lead to any other result because T still had the right to rely on section 31 of the Aliens Act [T still had the option to request reopening of the expulsion case when he had served his sentence].

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 555, Supreme Court order (U.2002.555 HK)

In August 2000 the Danish Ministry of Justice J received a request from the Brazilian authorities B for extradition of a Brazilian and German national S for prosecution. S had been charged before a Brazilian jury in 1989 for homicide committed in 1987, and already in 1987 he was wanted for the homicide. The penalty under the Brazilian Criminal Code for this kind of homicide for which he was provisionally charged was imprisonment for 12 to 30 years. S was arrested and remanded in custody in Denmark in September 2000 on the basis of the request for extradition. The decision made by the Ministry of Justice to grant B's request was taken to the district court, which ordered that the extradition was lawful. The case was appealed to the High Court, which reversed the district court order, whereas the Supreme Court upheld the district court order. The Supreme Court stated in that connection that extradition of S, who had lived in Denmark since 1992 and had become well integrated in society, would undoubtedly interfere seriously with his personal and social life. This was, however, a very serious offence, and there was no reason to assume on the basis of the material available that S would not have a fair trial when extradited, cf. Article 6 of the ECHR. Nor could humanitarian reasons justify non-extradition, cf. section 7 of the Extradition Act.

Additional comments by the DCHR:

It appears from the comments to the order that the Supreme Court assessed the relevance of the extradition to S's personal and social life in the light of Article 8 of the ECHR. Referring to the seriousness of the offence, the Supreme Court found, however, that extradition would not be contrary to the proportionality requirement according to Article 8(2). The Supreme Court also assessed whether extradition of S would expose him to the risk of torture contrary to Article 3 of the ECHR, but found that the material available on conditions in Brazil did not provide a sufficient basis for assuming that such risk existed.

### **3. Opinions of the Parliamentary Ombudsman**

In the period under review, the Parliamentary Ombudsman has visited at his own initiative:

The psychiatric unit at Vejle Hospital on 26 November 2001.

The Psychiatric Hospital of Frederiksborg County on 28 January 2002.

The psychiatric unit in Randers on 20 August 2002.

The Ombudsman's reports of the visits to the psychiatric unit in Vejle and the Psychiatric Hospital of Frederiksborg County are not yet publicly available. The report of the visit to the psychiatric unit in Randers was published in October 2002 and can be ordered from the Ombudsman's Office.

Moreover, on 19 December 2001 the Ombudsman published a report on his visit to the psychiatric unit at Frederiksberg Hospital on 27 February 2001. The report can be ordered from the Ombudsman's Office.

#### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the prohibition of torture and inhuman or degrading treatment or punishment have been published with Denmark as a party to the case in the period under review.

#### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Committee against Torture (CAT) and the Human Rights Committee (HRC).

Opinions:

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Pursuant to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT shall pay periodic visits to the State Parties. The CPT visited Denmark from 28 January to 4 February 2002, which was the Committee's third visit to Denmark. The CPT inspected some police establishments and prisons, including the Sandholm Centre north of Copenhagen, and psychiatric units all over Denmark.

In its report of 25 September 2002, the CPT makes the following observations and recommendations to Denmark, cf. CPT/Inf(2002) 18:

*Police establishments*

The CPT found no proof of the occurrence of torture or degrading or inhuman treatment at Danish police establishments. However, the CPT invites the Danish authorities to remind police officers in an appropriate manner, at regular intervals, that no more force than is strictly necessary should be used when effecting an arrest.

The CPT found that the cellular accommodation met the criteria set out by the CPT. The Committee found, however, that two of the holding rooms at Horsens Police Headquarters are too small and have no access to natural light and that they generated an unacceptably intimidating atmosphere. The CPT recommended that the said holding rooms be withdrawn from service. The CPT welcomed the fact that the Danish authorities have issued instructions to the police and the prosecution service designed to reinforce the rights of detained persons. The CPT found, however, that the formal safeguards against ill-treatment presented to the Committee are not wholly effective in practice. The CPT found that the police frequently delays notification of custody to relatives. In most cases detained persons were only allowed access to a lawyer from the moment when they were first questioned by the police, or when first brought before a judge.

The CPT found a need to give a firmer legal basis to the provisions relating to the rights of detained persons. The CPT recommended that all persons detained by the police have a formal right to inform a third party of their choice of their situation as from the outset of the detention, and that any exceptions to this right be expressly provided for by law. Furthermore, access to a lawyer must be fully effective as from the very outset of custody. Finally the CPT recommended that steps be taken to ensure that detained persons are informed of their rights.

*Prisons*

One of the concrete measures adopted by Denmark to address inter-prisoner intimidation, exploitation and violence has been to create special units for inmates classified as “negatively strong”, which are subject to a higher degree of supervision and enhanced security. Only a small number of inmates are accommodated in each unit. The CPT recommended that a decision to classify a prisoner as “negatively strong” be reviewed at regular intervals. Another tool used has been to offer voluntary solitary confinement to prisoners who feel at risk of assault or intimidation. In contrast to their potential aggressors, the vulnerable prisoners are offered material conditions and a regime which are far less favourable, which is due

to limited human resources. Many prisoners continue to feel threatened in spite of the above initiatives, and therefore the CPT recommended that further steps be taken to ensure humane conditions for vulnerable prisoners.

The CPT was pleased with the legal provisions on placement in solitary confinement. Nevertheless, it would be desirable for the Administration of Justice Act to include a maximum limit for the duration of solitary confinement of remand prisoners by court order. The CPT recommended the Danish authorities to provide prisoners subject to court-ordered solitary confinement with access to increased human contact and activities. The CPT was concerned that the restrictions on remand prisoners are so widely applied and that they lie within the sole discretion of the police, who have received no instructions in this field. The CPT recommended that the police be given detailed instructions as regards recourse to restrictions concerning prisoners' correspondence and visits. Furthermore the reasons for such measure must be stated in writing, and, in the context of each periodic review by a court of the necessity to continue remand in custody, the question of the necessity for the police to continue to impose particular restrictions should be considered as a separate issue.

Generally, the CPT was satisfied with the prison conditions. The CPT found that the conditions of detention at Sandholm were acceptable, but the Committee pointed out that a prison by definition is not a suitable place in which to detain asylum-seekers. The CPT also noted that women deprived of their liberty should only be accommodated together with men at their express consent. At several establishments this requirement was not met, *e.g.* at the Sandholm Centre. The CPT was concerned about long-term solitary confinement and had very serious misgivings about the fact that remand prisoners remain locked in their cells for up to 21 hours a day. The CPT recommended that the authorities take steps to develop adequate programmes of activities for all prisoners, including outdoor exercise. The CPT found that generally the prison health-care services are acceptable. However, the situation was not satisfactory at Sandholm. The CPT recommended that the situation be reviewed without delay. The CPT recommended that all newly arrived inmates be interviewed and medically examined by a doctor, and that psychiatric and psychological services be strengthened in general.

#### *Psychiatric establishments*

The CPT is concerned about the frequent recourse to physical

immobilisation (fixation). The CPT finds, although it may sometimes be necessary to restrain a patient physically, that applying instruments of physical restraint for days cannot have any medical justification, and that this practice amounts to ill-treatment. Consequently, the CPT recommended that the practice of immobilising patients be reviewed as a matter of urgency. The CPT also recommended that all patients who are subject to immobilisation benefit from the appointment of a patient adviser as from the outset of that measure and that immobilisation of patients never take place in sight of other patients. The CPT was concerned about the inadequate number of psychiatrists and nurses attached to units, but on the whole the material conditions offered were of a high standard. The CPT recommended that all patients benefit from at least one hour of outdoor exercise every day. The CPT paid particular attention to the practice of close or constant supervision or “shielding” of patients. The practice of shielding is a therapeutic tool prescribed by a doctor which may involve everything from the situation that the staff should know where the patient is at all times to strapping the patient to a bed. The CPT found treatment to be sufficient and suggested that national standards be drawn up to govern the practice of shielding. The CPT also recommended that the transforming of voluntary stay in hospital into involuntary retention require an opinion from a doctor who is independent of the hospital. The CPT recommended the establishment of an independent body to systematically review involuntary placements. The CPT also requested the Government of Denmark to provide within six months a response giving a full account of the action taken to implement the above recommendations.

#### Committee against Torture (CAT)

Pursuant to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture considered the fourth periodic report of Denmark on 2, 3 and 10 May 2002.

In its report of 28 May 2002, CAT makes the following observations and recommendations to Denmark, cf. CAT/C/CR/28/1:

The Committee commends Denmark for maintaining a high level of respect for human rights and for its obligations under the Convention. It also commends the active role the state plays internationally in the fight against torture. The Committee welcomes the recommendation made by the Incorporation Committee (Inkorporeringsudvalget) set up by the Ministry

of Justice to incorporate the ICCPR, the ICERD and the ICAT into Danish domestic law. The Committee notes with satisfaction the initiatives taken to tighten controls over the use of solitary confinement and that matters pertaining to access by family to detainees, medical examination and access to a lawyer and an interpreter have been improved. Finally the Committee appreciates the adoption of legislation granting a more protective status to asylum-seekers, the efforts made in educational programmes for the police, the multidisciplinary treatment of persons living in Denmark who have been victims of torture, the increase in Denmark's contribution to the United Nations Voluntary Fund for Victims of Torture and the continued support to national rehabilitation centres for torture victims.

The Committee is concerned about the lack of a definition of torture in the Danish penal legislation, as recommended in Article 1 of the Convention, and the lack of a specific offence of torture or attempted torture punishable by appropriate penalties, as required by Article 4(2) of the Convention. The Committee is also concerned about the lack of effective recourse procedures against decisions imposing solitary confinement upon persons serving sentences. The Committee also expresses its concern about the proposed amendment to the Aliens Act which may imply that aliens who have been refused a residence permit must leave the country immediately after the rejection of their application. If strictly applied, this will frustrate the effectiveness of Article 22 of the Convention concerning the competence of the Committee to receive and consider communications. The provision will reduce aliens' possibilities of submitting a communication to the Committee concerning matters in Denmark.

The Committee recommends that Denmark ensure the speedy implementation of the recommendations with regard to incorporating the Convention into Danish domestic law and to establish adequate penal provisions to make torture a punishable offence. The Committee also recommends that Denmark continue to monitor the effects of solitary confinement and the effects of the new provisions of the Administration of Justice Act which have reduced the number of grounds that can give rise to solitary confinement and its length. It is also recommended to establish adequate review mechanisms in connection with the Administration of Justice Act relating to the determination on and duration of solitary confinement.

In relation to the Aliens Act, the Committee recommends that Denmark ensure that the proposed amendment to the Aliens Act, according to which

aliens whose applications for a residence permit have been refused are ordered to leave the country immediately, does not frustrate effective recourse by aliens to the Committee as provided in Article 22 of the Convention. Finally Denmark should widely disseminate the Committee's conclusions and recommendations in the country.

Human Rights Committee (HRC)

The Committee has not examined Denmark in the period under review.

**Concrete cases:**

*Committee against Torture (CAT)*

*E.T.B. v. Denmark*

Communication No.146/1999, decision of 24 May 2002.

*Decision: No violation of Article 3 of the Convention against Torture.*

E.T.B. and her two children are Georgian citizens of Mengrel ethnic origin, and she and her husband had worked for the former Georgian President, Gamsakhurdia, and his political party, the Zviadists.

In November 1993, E.T.B. was arrested while participating in a demonstration against the existing Government and received a death penalty sentence. In the prison she was subjected to torture and other inhuman treatment. However, in December 1993, the partisans managed to liberate her and the other political prisoners. In August 1994, her husband was captured by the army, and thereafter executed.

In February 1996, E.T.B. and her children fled to Denmark illegally to request asylum. A year later, her father also arrived in Denmark. The Danish Immigration Service rejected the application for asylum in May 1998, but E.T.B. appealed to the Refugee Board, which rejected the application finally in August 1998 on the ground that E.T.B. would not be persecuted if returned to Georgia. E.T.B. applied for reopening of the case several times, which was refused finally by the Refugee Board in January 1999.

On 9 August 1999, E.T.B. submitted a complaint to the Committee, claiming that her return to Georgia after dismissal of her refugee claim would constitute a violation by Denmark of Article 3 of the Convention, which lays down a prohibition against returning a person to any country in which such

person is in danger of being subjected to torture or where there is a consistent pattern of gross, flagrant or mass violations of human rights. She claimed that she would be subjected to torture and inhuman treatment upon return due to her political affiliation. On 10 December 1999, Denmark decided to comply with the Committee's request not to expel E.T.B. and her children while their complaint was under consideration by the Committee.

The Committee found that E.T.B.'s complaint and allegations surmounted the threshold of admissibility, and that the Committee would therefore proceed with the examination of the merits of the communication in accordance with Article 3. The Committee determined whether E.T.B. would be personally at risk of being subjected to torture after return to Georgia. The existence of violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a person would be in danger of being subjected to torture. The person concerned must also be personally at risk.

Denmark pointed to inconsistencies in the complainant's statements, which cast doubt on the veracity of her allegations. To this the Committee reaffirmed its jurisprudence that torture victims cannot be expected to recall entirely consistent facts relating to events of extreme trauma. But they must be prepared to advance such evidence as there is in support of such a claim. The Committee found that the political activities that the complainant claimed to have carried out, were not of such a nature as to conclude that she risked being tortured upon her return. Nor did any of the information provided reveal that she risked being subjected to torture because of her husband's political activities. This view is further supported by the fact that the complainant was not the object of interest by Georgian authorities after she was released from detention in 1993, and until she left the country in 1996.

The Committee considered that the complainant had not sufficiently substantiated her claim that she risked being subjected to torture or other inhuman treatment upon return to Georgia.

Removal of the complainant to Georgia would not constitute a breach of Article 3 of the Convention.

*Foud Farag Zeew v. Denmark*

Communication No. 180/2001, decision of 24 May 2002.

*Decision: No violation of Article 3 of the Convention against Torture.*

The complainant grew up in Libya and supported the Islamic movement Al Jama'a while he lived there. In 1989, Al Jama'a members clashed with the authorities in Libya, and in that connection F.F.Z. was arrested, blindfolded and taken to an unknown place, where he underwent interrogation. During the interrogation, which lasted two hours, he was subjected to violence and forced to confess that he was involved in the Islamic movement. After nine days in detention, he was released after having been ordered to cut his links with Al Jama'a.

On 21 May 1996 his cousin was executed for his participation in Al Jama'a. The following day, F.F.Z. was arrested in his home, handcuffed and brought to the police station where he was confined to a cell. He was exposed to threats and verbal abuse and was forced to stand upright for several hours. During the inquiry about his political activities he was subjected to different kinds of violence and verbally harassed. After the inquiry, he was brought back to his cell, blindfolded and handcuffed. He was detained until 15 July 1996, and during his detention he was interrogated several times and subjected to heavy-handed treatment. He was released on the condition that he spy on members of the Al Jama'a movement.

On 22 August 1996 he left for Tripoli where he waited for a visa for Denmark to visit his brother. He arrived in Denmark on 27 August 1996. In January 1997, he was granted a residence permit because of his marriage with a Danish woman contracted in October 1996. They divorced in 2000.

In April 1997, he applied for asylum. The Danish Immigration Service rejected his application for asylum, the reason being he was not a member of a political party, nor had he participated in any political activities. With regard to his arrest, there were general arrests of many people and not an individual persecution of him. The Danish Immigration Service attached importance to the fact that the violence and heavy-handed treatment to which he had been subjected was not in itself a foundation for asylum. The Refugee Board confirmed the decision of the Danish Immigration Service on 2 March 1999. The date of deportation was set for 17 March 1999.

On 16 March 1999, F.F.Z.'s application for a residence permit on humanitarian grounds was rejected.

However, he was granted a temporary residence permit upon resumption of cohabitation with his former spouse. When the cohabitation later ceased,

the Danish Immigration Service refused to extend his residence permit, and the time limit for departure from Denmark was fixed at 9 May 2001.

On 1 March 2001 he submitted a complaint to the Committee, claiming that his return to Libya would constitute a violation by Denmark of Article 3 of the Convention because he would be in danger of being subjected to torture if he returned to Libya. Article 3 lays down a prohibition against returning a person to any country in which such person is in danger of being subjected to torture if there is a consistent pattern of gross, flagrant or mass violations of human rights.

On 12 June 2001, Denmark confirmed that F.F.Z. would not be returned while his complaint was pending.

The Committee considered that the complainant had sufficiently substantiated for the purpose of admissibility his claim that he risked being subjected to torture.

The Committee was to determine whether F.F.Z. would be personally at risk of being subjected to torture after return to Libya. The existence of a consistent pattern of violations of human rights in a particular country does not in itself constitute a sufficient ground for concluding that a person would be in danger of being subjected to torture. The person concerned must also be personally at risk.

Denmark pointed out that none of the arrests to which the complainant was subjected were related to his political activities, and that he – had he really been exposed to persecution – would have been prevented from leaving Libya legally.

The Committee found that the political activities that the complainant claimed to have carried out were not of such nature as to conclude that he ran a real risk of being tortured upon his return to Libya. In this connection it was emphasised that, according to a statement from the Danish Ministry of Foreign Affairs, Libyan citizens who return to Libya are frequently detained and questioned, but then released after some hours.

Therefore the Committee considered that the complainant had not proved his claim that there were substantial grounds to support his claim that he would risk torture if returned to Libya.

Removal of the complainant to Libya would not constitute a breach of Article 3 of the Convention.

Human Rights Committee (HRC)

The Committee has not considered any complaints against Denmark in the period under review.

## **6. Government initiatives**

No relevant Government initiatives have been launched in the period under review.

## **7. Miscellaneous**

Statement of 30 September 2002 from the Director of Public Prosecutions on the development in the application and duration of solitary confinement following the entry into force on 1 July 2000 of Act No. 428 of 31 May 2000 amending the Administration of Justice Act and the Criminal Code (solitary confinement of remand prisoners, etc.). Submitted to the Legal Affairs Committee on 3 October 2002 (Legal Affairs Committee, General Part – Schedule 29, prison service).

## **PROHIBITION OF SLAVERY AND FORCED LABOUR**

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Convention provisions: Article 4 of the ECHR and Article 8 of the ICCPR.

### **1. Bills**

No bills concerning the prohibition of slavery and forced labour have been introduced in the period under review.

### **2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments concerning the prohibition of slavery and forced labour have been published in the period under review.

*Supreme Court:*

No judgments concerning the prohibition of slavery and forced labour have

been published in the period under review.

### **3. Opinions of the Parliamentary Ombudsman**

No opinions concerning the prohibition of slavery and forced labour have been published in the period under review.

### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the prohibition of slavery and forced labour have been published with Denmark as a party to the case in the period under review.

### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the prohibition of slavery and forced labour have been considered in the period under review.

### **6. Government initiatives**

No relevant Government initiatives have been launched in the period under review.

## **RIGHT TO LIBERTY AND SECURITY**

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Convention provisions: Article 5 of the ECHR and Article 9 of the ICCPR.

The Danish Constitution: Section 71.

### **1. Bills**

No bills concerning the right to liberty and security have been introduced in the period under review.

## 2. Danish court decisions

*Eastern and Western High Courts:*

No judgments concerning the right to liberty and security have been published in the period under review.

*Supreme Court:*

No judgments concerning the right to liberty and security have been published in the period under review.

## 3. Opinions of the Parliamentary Ombudsman

No opinions concerning the right to liberty and security have been published in the period under review.

## 4. Judgments and decisions of the European Court of Human Rights

### Cases declared inadmissible:

*Yapo Nazaire Agnissan v. Denmark*

Article 5 of the ECHR – Declared inadmissible on 4 October 2001.

The Court found in pursuance of Article 5(1)(f) that the detention was effected with a view to deportation of the applicant. Moreover the Court found that the measures taken during the detention were decisive to ensure enforcement of the deportation order.

## 5. Opinions of and concrete cases before the Committees

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to liberty and security have been considered in the period under review.

## 6. Government initiatives

### Ministry of Justice

*Mandate for the Standing Committee on the Criminal Code (Straffelovrådet) to consider an overall modernisation of the penalties stipulated in the Criminal Code (30 November 2001):*

The Standing Committee on the Criminal Code is to evaluate the minimum and maximum penalties in the light of the proposed tightening of sentences and the considerations mentioned in the Government policy. The evaluation of the Committee must aim at a general modernisation of the penalties. The purpose is to introduce penalties for the individual offences which accord better with today's conception of justice. In connection with the review of the penalties, the Committee is to review the general rules of the Criminal Code on sentencing.

According to its mandate, the Committee should aim at completing this work prior to 1 July 2002. The work has not been completed yet.

*Committee on Economic and Computer Crime (Udvalget om økonomisk kriminalitet og datakriminalitet):*

The Committee is to propose bills which take into account the development following from changes in economic crime patterns and modern technology. With a view to suggesting enhanced efforts against modern crimes, the Committee is to review the offences against property listed in the Criminal Code and evaluate the need for an increase in the level of penalties for economic crime, also compared with other kinds of offences. The Committee is further to consider special legislation, and in particular the need for amendments to the legislation on taxes and duties so as to counter economic crime.

The Commission was appointed on 21 October 1999. In September 2002 the Committee submitted Report No. 1416, which is at present in the consultation phase.

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### RIGHT TO A FAIR TRIAL

Convention provisions: Article 6 of the ECHR and Article 14 of the ICCPR.  
The Danish Constitution: Section 65.

## 1. Bills

Title:

**Draft Bill amending the Act on Extradition of Offenders (the Extradition Act) (part of the “anti-terrorism package”).**

Elements of the Bill:

The purpose of the Bill is to implement the changes necessary for Denmark’s ratification of the International Convention for the Suppression of the Financing of Terrorism. The Bill also contains the amendments necessary in order to observe the requirements and calls of UN Security Council Resolution 1373.

Concretely, the amendments to the Extradition Act imply that in future Danish nationals can be extradited to another country for criminal prosecution on certain conditions.

Brief summary of the comments made by the DCHR:

*Applicable law:*

Before extraditing offenders, Denmark must ensure that the receiving state observes the conditions laid down in Article 6 of the ECHR on a fair trial. An additional precondition of extradition is that it is guaranteed in each individual extradition case that the conditions of Article 3 of the ECHR, according to which no one may be subjected to torture or to inhuman or degrading treatment or punishment, will be observed.

*Assessment:*

The provisions on extradition of Danish nationals are subject to discretion, one of the discretionary criteria mentioned in the explanatory notes being the relevant person’s *ties* with Denmark. According to the explanatory notes of section 2 of the Bill on Extradition of Offenders, p. 121, it may thus be an element in favour of extradition that the relevant person has “only limited ties with Denmark”.

However, according to the opinion of the DCHR, any person of Danish nationality – whether the nationality is acquired by birth, marriage, adoption, submission of declaration or naturalisation – has by definition ties with Denmark which cannot be characterised as being limited. Typically, nationality is acquired by nationalisation when it has been ascertained that the person concerned has close ties with Denmark after at least seven years’

residence and when the person has evidenced his or her Danish language abilities.

According to section 5(3) of the Bill, extradition as a consequence of a political offence cannot be refused if the crime relates to acts comprised by the European Convention on the Suppression of Terrorism, the International Convention for the Suppression of the Financing of Terrorism or the International Convention for the Suppression of Terrorist Bombing. According to p. 101 of the explanatory notes, the Bill aims to implement Article 13 (rightly Article 14) of the International Convention for the Suppression of the Financing of Terrorism, according to which a request for extradition on the basis of “the offences set forth in Article 2” cannot be refused “on the sole ground” that it concerns a political offence. The wording seems to imply that extradition can be refused if for *other* reasons it might give rise to concern to extradite a person for criminal prosecution, *e.g.* because the state in question does not observe fundamental democratic principles, including the principle of a fair trial, *cf.* Article 14 of the ICCPR and Article 6 of the ECHR.

The DCHR notes that this issue has to be adjudicated differently depending on the party requesting extradition. When extradition to Nordic countries and EU member states and to the international war crimes tribunals for the former Yugoslavia and Rwanda does not give rise to any concern, one reason is that Denmark is very certain that the requirement of a fair trial is observed. However, Denmark does not have such certainty in relation to a number of states.

According to sections 6 and 7 of the current Extradition Act, a person may not be extradited if there is a risk that such person will be subjected to persecution, or if extradition would be contrary to humanitarian considerations. These provisions correspond partly to the provision of the International Convention for the Suppression of the Financing of Terrorism, although the Convention has no provision to the effect that extradition may be refused due to non-observance of the principle of a fair trial. The proposal on increased access to extradition is motivated, *i.a.*, by the difficulties which may arise in criminal proceedings concerning crime committed in another country. The DCHR finds that such difficulties must be compared with the right of the accused to a fair trial and that (in any circumstances) a provision ought to be inserted in the Extradition Act to the effect that a person cannot be extradited if there are reasons for fearing that this requirement will not be met.

Already under section 10 of the current Extradition Act, a person can only be extradited on the condition that no death penalty will be enforced for the act in question. Considering that the intention of the Bill is that persons can be extradited to a greater extent than so far – including for political offences – the DCHR finds reason for the legislator to reconsider what kind of guarantee will be sufficient for future extradition to states otherwise using the death penalty. In that connection the DCHR would also point out that there might be a reason to request guarantees on incarceration conditions for the offenders who are to serve a (life) sentence as an alternative to the death penalty. The DCHR refers in this respect to Article 3 of the ECHR according to which no one may be subjected to torture or to inhuman or degrading treatment or punishment.

*References:*

*It is noted that the reply of the DCHR to the consultation papers concerns the original Bill on Anti-Terror Measures prepared by the preceding Social Democratic/Social Liberal Government. The Bill was reintroduced by the new Liberal/Conservative Government, following a few adjustments, which did not cause the DCHR to amend its original reply.*

Act No. 378 of 6 June 2002.

Entry into force: 8 June 2002.

Bill No. L 35, introduced in writing on 13 December 2001: Supplement A, column 808.

The Bill as adopted: Supplement C, column 657.

Draft Bill of the Ministry of Justice for amending the Act on Extradition of Offenders, distributed as an enclosure to the consultation papers of 1 November 2001 from the Ministry of Justice.

Reply of the DCHR to the Ministry of Justice of 23 November 2001, prepared by Ida Elisabeth Koch.

## **2. Danish court decisions**

### *Eastern and Western High Courts:*

Danish Weekly Law Reports 2002, p. 1363, Eastern High Court (U.2002.1363 Ø)

T1 and T2 were charged with fraud of a particularly aggravated nature and tax fraud of particular gravity in connection with some investors' purchase of shares with subsequent immediate depreciation for tax purposes on rights in particular films. The indictment concerned the period from August 1993 to the autumn of 1994. In pursuance of section 804 of the Administration of Justice Act, cf. Article 6 of the ECHR, counsel for the defence requested discovery of two memoranda on tax depreciation produced in April and August 1993 by the Attorney to the Danish Government to the Central Customs and Tax Administration (the Ministry

of Taxation) in connection with civil tax proceedings. The Central Customs and Tax Administration objected. Neither T1 and T2 nor the prosecutor had had a copy of the said memoranda. It was found that the said memoranda did not, according to the information submitted to the High Court, contain any evidence of the actual circumstances of the pending criminal case against T1 and T2. The High Court also found that it had not been rendered probable that production of the said memoranda involved such interests of due process that the claim of the Central Customs and Tax Administration for confidentiality should be set aside because non-production of the said memoranda in connection with the criminal proceedings did not prevent T1 and T2 from defending their cases. Consequently the conditions of discovery as laid down in section 804(1) of the Administration of Justice Act were found not to have been satisfied, nor was Article 6 of the ECHR found to justify any other outcome.

Danish Weekly Law Reports 2002, p. 1931, Eastern High Court (U.2002.1931 Ø)

T was found guilty of violation of section 149(8), cf. section 82, of the Air Navigation Act, cf. sundry subordinate legislation, having as pilot-in-command conducted a flight with a passenger, during which he disregarded material considerations of flight safety because he failed to acquaint himself with all available information of relevance to the flight, including making a detailed calculation of the remaining fuel quantity of the plane, the consequence being that the engine failed due to lack of fuel at an altitude of about 2,500 feet, and he had to make a forced landing in a field. T was sentenced to a fine of DKK 5,000 and conditionally disqualified from serving on board an aircraft in pursuance of section 150(1)(i), cf. subsection (2), of the Air Navigation Act. It was found not to be contrary to the right against self-incrimination laid down in Article 6 of the ECHR that the mandatory safety report from T filed at a time when the authorities suspected no criminal offence was used in the criminal proceedings.

Danish Weekly Law Reports 2002, p. 898, Eastern High Court (U.2002.898 Ø)

A and B, who received cash benefits, accepted an offer from the local authority K of activation with individual work-based training in connection with a local project pursuant to the Act on an Active Social Policy. An employment letter drafted by K listed information such as employment period, working hours and that the salary would amount to the current cash benefits with the addition of an occupation allowance of currently DKK 10.85 per hour. A and B instituted proceedings against K claiming

compensation under section 6 of the Act on Employers' Duty to Notify Employees of Employment Terms. K claimed dismissal of the proceedings with reference to an agreement of 1993 between the National Association of Local Authorities in Denmark (Kommunernes Landsforening) and the Association of Local Government Employees' Organisations (Kommunale Tjenestemænd og Overenskomstansatte (KTO)) about notification of the terms of employment, according to which any dispute must be settled by industrial arbitration. It was deemed doubtful whether the employment of A and B was subject to this agreement. Irrespective of whether the employment was subject to this agreement, it would be contrary to the right that non-union employees are normally assumed to have to institute proceedings before the courts against their employer concerning a dispute relating to their employment if any disagreements concerning the employer's obligation to notify could not be brought before the courts, and it would also be contrary to Article 8 of Council Directive 91/533/EEC on an employer's obligation to notify employees of the terms applicable to the contract or employment relationship and to Article 6(1) of the ECHR. Therefore the court did not find for the claim for dismissal. Since none of the employment letters stated which collective or other agreements governed A's and B's employment, which is required according to both section 2(2)(x) of the Act on Employers' Duty to Notify Employees of Employment Terms and the 1993 agreement, which was to be interpreted in accordance with Article 2(2)(j)(i), cf. paragraph (3), of the Directive, K had not observed its obligation to notify the terms of the employment. For this reason A and B were found to be entitled to compensation under section 6 of the Act on Employers' Duty to Notify Employees of Employment Terms. Considering the nature of their employment and the other particulars produced in the proceedings concerning the background of the action, DKK 5,000 for each of them was deemed a suitable compensation.

Danish Weekly Law Reports 2002, p. 468, Eastern High Court (U.2002.468 Ø)

T had been remanded in custody charged with violation of section 191 of the Criminal Code, having smuggled 18,000 ecstasy tablets to Denmark together with A, who was remanded in custody in Austria for the offence. The prosecutor wanted a judicial examination of A before an alternative court in Austria in pursuance of section 747 of the Administration of Justice Act for perpetuation of the testimony made by A to the Austrian police. Counsel objected to this. The charge against A was based mainly on A's statement to the Austrian police. Although there was no specific information on threats against A, it could not be ruled out considering the

nature and scope of the case, as feared by the prosecutor, that A would make use of his right to oppose a transfer to Denmark or that he would refuse to make a statement in a trial against T or refuse to confirm his extra-judicial statement made to the Austrian police. Considering the importance of the requested testimony as potential evidence in a trial against T, the conditions laid down in section 747, second sentence, of the Administration of Justice Act for requesting a judicial examination of A in Austria for the purpose of perpetuation of the testimony were deemed to be satisfied. Since Article 6(3)(d) of the ECHR was deemed not to prevent the examination of A either, the court found for the prosecutor's request.

Danish Weekly Law Reports 2001, p. 2530, Western High Court (U.2001.2530 V)

T was charged with driving under the influence of alcohol on 30 March 2000 while disqualified from driving, cf. sections 53(3) and 117(6) of the Road Traffic Act. On 7 February 2000 T had accepted a two-year disqualification period until 6 February 2002, and on 6 September 2000 he had accepted a fine for driving during the disqualification period, both sanctions without having been to court. T, who is a foreigner, pleaded guilty before the district court, but stated that he was not aware that the sanction accepted by him on 7 February 2000 was a disqualification order. T was punished with simple detention for 20 days and disqualified from driving for five years as from 7 February 2002. T appealed the sentence, claiming acquittal of the charge for driving during the disqualification period. T did not reject having previously driven under the influence of alcohol, but he stated, *i.a.*, that he had not understood the paragraph of the order about something with "unconditionally" and that he had taken no action to have the rest of the letter translated [according to Article 6(3) of the ECHR, everyone charged with a criminal offence must be informed promptly of the nature of the accusation against him. The cause of the accusation must also appear expressly and all material must be supplied to the suspect in a language which he understands]. The High Court stated that T had not contacted the police, requesting a translation of the order into German or Vietnamese, although he had only understood parts of the order according to his own statement. Nor had T indicated to the police in any other way that he did not fully understand the charge and the suggested sanction. Since T had signed the order unconditionally, thereby accepting the fine and the disqualification order, had returned it to the police and paid the fine, the Chief Constable had found no reason to request a translation of the order and the charge for T, who had provided a Danish address, nor to take the case to court. In the said circumstances, it was found to be negligence on the

part of T that he did not fully understand the fine imposed and the disqualification order although he had signed and returned the order and paid the fine and the legal costs. T's mistake as to his understanding of the disqualification order from the police could consequently not exempt him from criminal liability for driving on 30 March 2000. The High Court then upheld the judgment, although the sentence was fixed at imprisonment for 20 days.

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 607, Supreme Court order (U.2002.607/3 HK)

By order of 3 April 2001 the Supreme Court upheld a High Court decision according to which a psychiatrist S was not exempt from testifying as a witness as a consequence of his public statement that five of his patients had been subjected to police violence on five different occasions in connection with questionings at the local police station. When S maintained his refusal to testify as a witness, the district court and the High Court made decisions on custody, cf. section 178(1) of the Administration of Justice Act. The Supreme Court ruled that S had maintained all the time that he had the desired information in his possession and that it was accessible in the form of case records. The Supreme Court therefore allowed it as a fact that he was able to comply with the order to appear as a witness and that there was no reason to assume that by doing so S would incriminate himself in connection with the pending libel action instituted by a police union. As S's testimony was still assumed to be the only possibility of the prosecutor to investigate the allegations of such serious matters, the Supreme Court allowed the claim for use of coercive measures towards S [the Supreme Court found no grounds for assuming that such use would result in infringement of either Article 5, Article 6 or Article 10 of the ECHR, as otherwise submitted by S]. Considering that the offences apparently described in the information allegedly took place between 1995 and 1998, and that it could not be ruled out that the information concerned some patients' dramatisation of certain – unverified – rumours, the Supreme Court found no basis for ordering custody. S was therefore ordered to pay a fine of DKK 500 each day for up to three months or until he had testified in accordance with the order to appear as a witness.

Danish Weekly Law Reports 2002, p. 549, Supreme Court (U.2002.549 H)  
When a jury had found T guilty of passing on not less than 1,000 g of heroin, which verdict had been allowed by the professional judges, the High Court

determined that the case was to be heard by another jury because it had turned out that one of the jurors was disqualified. The trial was scheduled for hearing two months ahead, and T was remanded in custody in pursuance of section 762(1)(iii) of the Administration of Justice Act. In connection with a subsequent extension of the custody period, T objected to continued custody. Since it was anticipated that T would get a long sentence and since continued custody would not be contrary to the principle of proportionality of section 762(3) of the Administration of Justice Act or the provisions [Article 6] of the ECHR, an order was issued for continued custody in pursuance of section 762(2)(i) of the Administration of Justice Act.

Danish Weekly Law Reports 2002, p. 18, Supreme Court (U.2002.18 H)

A trade union O instituted an action against the Ministry of Science, Technology and Innovation F and the University of Aarhus U, claiming as unlawful the unsolicited dismissal of a union member M. In support of its claim, O submitted partly that the dismissal had not been objectively justified by the conditions of either M or U, partly that the decision giving rise to the dismissal was materially deficient under administrative law. F and U claimed dismissal of the dispute concerning the objectivity of the dismissal by the High Court, submitting that such dispute was to be determined by industrial arbitration according to the collective agreement between O and the Ministry of Finance. To this O submitted that it had abstained from referring this part of the dispute to arbitration. Before the High Court O maintained its claim that the dismissal was not objectively justified. The High Court and the Supreme Court found for the claim of F and U that no such concrete circumstances existed that M was entitled in pursuance of section 11(2) of the Labour Court Act to have the dispute concerning the objectivity of the dismissal determined by the ordinary courts of law irrespective of the collective agreement provision on arbitration.

Additional comments by the DCHR:

It appears from the judgment that O had submitted that it would be contrary to Article 6(1) of the ECHR to prevent M from having the said dispute adjudicated by the ordinary courts because a court hearing involved better due process protection than settlement of the dispute by industrial arbitration. The High Court and the Supreme Court found that determination of disputes concerning unfair dismissal by arbitration as stipulated in the collective agreement involved a legal determination of the dispute free of charge, which fully complied with the principle of due process and was not contrary to Article 6 of the ECHR.

Danish Weekly Law Reports 2002, p. 15, Supreme Court (U.2002.15 H)

A 41-year-old woman T was found guilty of large-scale drug-related crime, having arranged the smuggling of cocaine on 11 occasions of a total of about 12 kg of cocaine. The sentence was fixed at 12 years' imprisonment. During the jury trial, the High Court permitted that the statement made by T's half-brother B in connection with his own case, which formed part of the same complex, be read aloud in court in pursuance of section 877(2)(ii) and (iii) of the Administration of Justice Act notwithstanding that he did not want to testify during the jury trial. The Supreme Court ruled that reading aloud the statement could not be deemed to be comprised by the said provisions and that the entries from the court records could therefore only be used as evidence under section 877(3) of the Administration of Justice Act. It had to be considered a fact that B's statement had not been the only or decisive evidence leading to the conviction, and the Supreme Court found on the basis of the case in general that reading aloud the statement could be permitted in pursuance of section 877(3) for which reason it was in accordance with this provision and not contrary to Article 6 of the ECHR. Consequently T's claim for revocation and remittal due to a procedural error was not allowed.

Danish Weekly Law Reports 2001, p. 2345, Supreme Court (U.2001.2345 H)

By a district court judgment of 8 September 1998 and a High Court judgment of 15 May 2000 T was found guilty of intentional VAT evasion of about DKK 30 million in connection with gold trading and was sentenced to imprisonment for two years and an additional fine of DKK 30 million. The offences had been committed in 1990-91, and he had been indicted on 8 September 1992. Before the Supreme Court T claimed acquittal, or in the alternative a more lenient sentence, whereas the prosecutor claimed that the sentence be upheld. The limitation period for violation of the VAT Act was suspended by filing the indictment, cf. section 94(4), first sentence, of the Criminal Code, even though T had been charged with fraud for the very same offences. Prosecution had not been suspended for an indeterminate period after filing of the indictment, cf. section 94(5), second sentence.

(1) Even though criminal proceedings lasting more than ten years must generally be assumed to imply violation of the requirement in Article 6(1) of the ECHR providing for a "hearing within a reasonable time", no violation was found to exist in the present case in which the lengthy proceedings were to a considerable extent due to T and the co-accused. (2) The fact that the indictment did not include any reference to section 88(1), second sentence, of the Criminal Code was found not to prevent any application of

the provision in the present situation where T was charged with fraud according to the indictment. The Supreme Court took into account that the lengthy proceedings had been taken into consideration when the sentence was meted out, and the Supreme Court found no basis for reducing the sentence any further or for suspending the sentence in full or in part.

### 3. Opinions of the Parliamentary Ombudsman

*File No. 2001-0925-611 (published in the 2001 Report, p 147).*

A regional public prosecutor suspended the examination of a case pending before the police complaints board until the criminal case against the complainants had been decided. The Ombudsman found no basis for criticising the decision to suspend the examination of the case before the police complaints board.

Nor did the Ombudsman find a sufficient basis for assuming that the provisions on grounds set out in the Public Administration Act applied to the decision on suspension, but he stated that in his opinion it would have accorded best with good administration practices had the regional public prosecutor stated the reason for his decision according to the principles of sections 22 and 24 of the Public Administration Act to the parties to the case.

Finally the Ombudsman stated that considerations for the parties to a case as the present one calls for particular awareness on the part of the regional public prosecutor that the outcome of the case awaited is not unnecessarily delayed to the detriment of the suspended case. If the criminal case is considerably delayed, the regional public prosecutor has to consider regularly his decision to suspend the case before the police complaints board.

Additional comments by the DCHR:

In connection with the issue of the lawfulness of the suspension of the case before the police complaints board, attorney A, who represented two police officers, claimed that this very firm practice on the part of the regional public prosecutor, resulting in suspension of the case, was contrary to Article 6 of the ECHR. In respect of this the Ombudsman stated that he "had not found any basis either for commencing an investigation of whether the requirement of a trial within a reasonable time in Article 6(1) of the European Convention on Human Rights had been set aside. In this connection I emphasised, *i.a.*, that calculation of the time-limit under the

provision will normally only commence on the day when the person in question has been 'charged' ...".

#### 4. Judgments and decisions of the European Court of Human Rights

##### Cases decided:

*Hamdi Sari v. Turkey and Denmark*, application No. 21889/93, judgment of 8 November 2001.

*Decision: No violation of Article 6(1) of the ECHR.*

The Turkish national Hamdi Sari submitted a complaint to the Commission on 9 April 1993 concerning violation of Article 6(1) of the ECHR, claiming that the Danish and Turkish authorities had not considered his case within a reasonable time.

On 4 March 1998 the Commission declared the case admissible. On 1 November 1998 the case was brought before the Court.

Hamdi Sari was born in 1945 in Turkey. On 23 February 1990 he fled from Denmark because he had been charged with wilful murder of a Danish national.

On 26 February 1990 the District Court of Gentofte issued an arrest and detention order for Sari. At the same time the Interpol office in Copenhagen requested the Turkish authorities to arrest and question him. In March 1990 and again in May of the same year the Danish Minister for Justice requested extradition of Sari.

On 15 June 1990 the Turkish Minister of Justice requested the prosecutor of Sivas to commence an examination of Sari. The Court of Sarkisla then issued an arrest warrant. On 29 June 1992 Sari was arrested in Istanbul and remanded in custody. The Danish authorities were informed of the arrest the following day and were simultaneously requested to transfer documents and evidence.

On 1 July 1992 the Interpol office in Copenhagen notified the Interpol office in Ankara that it intended to transfer a reproduction of Sari's fingerprints to Ankara, but that it had not been done yet because the Turkish authorities had not guaranteed that they would not claim the death penalty during the trial.

On 22 July 1992 the prosecutor of Kartal commenced criminal proceedings against Sari for wilful murder. In August of the same year the Court of Kartal requested the Danish authorities to transfer the case documents and the opinion of the Danish Medico-Legal Council (retslægerådet). The request was not forwarded to Denmark until 13 October 1992.

On 7 December 1992 the Danish public prosecutor notified the Danish Minister for Justice that the documents which were to make possible the decision on extradition had been handed over to the Turkish Government.

On 6 January 1993 the Danish authorities were notified that the Turkish authorities had not yet made a determination on the request for extradition. At the same time it was pointed out that according to the Turkish Criminal Code Sari risked the death penalty.

The Court of Kartal repeated its request for a transfer of the case documents on 18 January and 15 February 1993. On 27 January 1993 the Turkish Minister of Justice once more requested Denmark to transfer the documents.

On 12 March 1993 the Court of Kartal decided to suspend the matter because it had not yet received any reply from the Danish authorities.

By letter of 25 March 1993, notified on 20 April 1993, the Danish Government pointed out to the Turkish Government that the latter's request for transfer of the case documents had been interpreted to mean a refusal of the request for extradition of Sari. As a precondition of transfer of proceedings to Turkey, the Danish Government requested information on the anticipated sentence as a consequence of the Turkish criminal proceedings and requested a guarantee from Turkey that Sari would not be sentenced to death.

On 8 November 1993 the Turkish authorities stated that no death penalty would be claimed in the case against Sari.

On 4 January 1994 the Danish Government notified the Turkish Government that the Danish Government considered transferring the proceedings against Sari to Turkey, provided that the Turkish authorities permitted an interview of Sari in Turkey by Danish police officers. On 9 February 1994 the Danish Ministry of Justice forwarded an official request to the Turkish Ministry.

On 7 April 1994 the Turkish authorities stated that Danish police officers would be allowed to interview Sari.

On 13 April 1994 Sari was interviewed in Istanbul in the presence of a lawyer and the Danish police, and he was notified of the charge against him for violation of section 237 of the Danish Criminal Code on wilful murder.

On 13 July 1994 the Danish Ministry of Justice forwarded a translation of section 237 of the Danish Criminal Code and stated at the same time that it would take about three months to translate all the case documents.

As a consequence of the correspondence between the two governments, the Court of Kartal suspended several court hearings in 1993 and 1994.

On 7 February 1995 the Danish Embassy of Ankara handed over the case to the Turkish Ministry of Foreign Affairs.

Sari made several requests for release in 1992 and 1993. All requests were refused with reference to the circumstances of the case and the nature of the crime. At the court hearing on 21 July 1993 Sari was, however, released on bail due to the delays caused by the fact that documents had not been transferred.

By judgment of 1 April 1997 Sari was sentenced to 12 years' imprisonment for wilful murder according to the Danish Criminal Code. Sari appealed the decision to the Court of Cassation, which upheld the first instance judgment as to substance by judgment of 25 February 1998. But it overruled the length of the sentence. On 20 November 1998 Sari was finally sentenced to five years' imprisonment by the Court of Kartal.

#### *The Court*

In criminal cases the time period "within a reasonable time", cf. Article 6(1), starts from the moment a person is deemed to be "charged" with an offence. Therefore the "time period" may start from a date prior to the determination of jurisdiction. "Charged with" within the meaning of Article 6 may in general be defined as the official notification from the competent authority of a criminal offence.

As regards the "time period" in criminal cases, the period referred to in Article 6(1) comprises the entire proceedings, including any appeals.

The Court noted in the present case that the period to be assessed pursuant to the requirement of Article 6(1) of “within a reasonable time” commenced when Sari was charged before the District Court of Gentofte on 26 February 1990 and ended by pronouncement of the judgment on 20 November 1998 before the Court of Kartal. The total period thus amounted to eight years, seven months and 22 days.

According to the Danish Government, the length of the proceedings/case should be reckoned only from 29 June 1992, the date of Sari’s arrest in Turkey, until 6 January 1994, the date of the Danish request to Turkey to the effect that the Turkish authorities should assume responsibility for the proceedings against Sari. The Danish Government recalled that it was only a request *de jure* because the *de facto* proceedings against Sari had commenced in Turkey on 29 June 1992.

The Court found that the proceedings in Denmark had lasted from 26 February 1990, the date when the District Court of Gentofte issued the arrest and detention order in respect of Sari, until 7 February 1995, the date when the case was transferred to the Turkish authorities. A period of four years, eleven months and three weeks.

The Court then assessed the reasonableness of the length of the proceedings in the light of the circumstances of the case, the criteria applied as a consequence of case-law and, in particular, the complex nature of the case and the conduct of Sari and the authorities. Finally it was also relevant to include the impact on Sari of the protracted case.

The Court pointed out in this respect that it had already ruled that custody of an accused is an element to be taken into consideration in the determination of whether a decision on the justification of the charges has been made within a reasonable time.

*Complexity of the case:*

Sari claimed that the case was not complex in itself and that the Danish and Turkish authorities were to blame because they had complicated the matter by their conduct.

The Danish authorities maintained that Sari’s flight to Turkey had made proceedings in Denmark more complex.

The Court noted that the actions for which Sari had been charged had

occurred in Denmark. Consequently the evidence had been gathered by the authorities in Denmark. Because of Sari's flight to Turkey it became impossible for the Danish authorities to perform questioning, a crucial element of criminal prosecution.

The case was not merely a criminal case; it was also an extradition case and a case on transfer of jurisdiction between two countries. In the opinion of the Court, such procedures are relatively complicated. Denmark, where the offence had been committed, requested extradition of Sari, while Turkey, where Sari was detained, was more occupied by transfer of jurisdiction. It was impossible for Denmark to arraign Sari in court, and Turkey was unable to get hold of the evidence.

The Court found that the present case had become complex in the very moment when Sari fled from Denmark.

Sari's (the applicant) conduct:

Sari disclaimed any responsibility on his part for the lengthy proceedings. The Danish Government found, on the contrary, that Sari had contributed greatly to the length of the proceedings by fleeing from Denmark.

The Court emphasised that the applicant's conduct constitutes an objective element which cannot be ascribed to the defendant States and which must be taken into consideration in the determination of a possible violation of "within a reasonable time" of Article 6(1).

The Court ascertained that, as regards the calculation of the delays ascribed to each of the three parties, the period of two years, four months and six days from 23 February 1990, the date of Sari's flight from Denmark, until 29 June 1992, the date of his arrest in Istanbul, can exclusively be ascribed to Sari, who intentionally avoided the authorities. The Court found that the duty to appear before the court is an important element of a trial, except in case of force majeure or legitimate excuses.

In its case-law the Court has pointed out that it is an essential principle of law that an accused appears before the court, which principle follows from both the right to be heard and the necessity to verify the correctness of claims and confront them with the victim's statements.

The Court found that the applicant had not in any way justified his failure to appear before the court after the international arrest warrant on him had

been issued. In the assessment of the Court, Sari's conduct had contributed significantly to the length of the proceedings.

Conduct of the Danish authorities:

Sari blamed the Danish authorities in particular for having protracted the proceedings and for not having transferred the investigation proceedings in their entirety to the Turkish authorities; the Danish authorities only transferred the case after four years.

During this period criminal investigations were still going on in Denmark.

The Danish Government pointed out that a criminal investigation was set up in Denmark immediately after the murder and that a request for extradition was directed at the Turkish authorities. However, they did not make a clear reply to the request; the request for transfer of the case had thus been refused implicitly. Moreover the Danish Government mentioned that the investigation proceedings in Denmark had been brought to a halt in the initial phase until the case was submitted to the Turkish authorities. The public prosecutor had not yet indicted Sari.

The Danish Government submitted that the case could not be transferred in its entirety and the jurisdiction could not be transferred to the Turkish authorities until it had been clarified that such transfer would not be contrary to the *ne bis in idem* principle because the Turkish procedure had to be added to the one already started in Denmark and that Sari would not be sentenced to death. The Danish authorities also had to question Sari before they could transfer the jurisdiction to the Turkish legal bodies.

The Court found that neither Denmark nor Turkey could be blamed for the inactive periods. The Court found, though, that the international cooperation procedure does not work sufficiently efficiently at all stages. The Court thus found that the delays could not be attributed to any act or omission on the part of the Danish authorities, but that they followed from a mutual legal system as it works in several countries according to which the individual government is dependent on the cooperation with the government of another country.

For these reasons the Court found that Denmark had not violated Article 6(1).

**Friendly Settlements:**

*Kirsten Normann v. Denmark.*

Article 6(1) of the ECHR – Settlement of 20 December 2001.

On 30 October 1991 the Copenhagen City Court granted Kirsten Normann a divorce. The division of the property was not decided in the judgment. Kirsten Normann and her former husband were not able to reach an agreement on the division of the property, and therefore the probate court was asked, in the beginning of 1992, to decide the matter. The probate court pronounced its decision in 1999.

Normann appealed against the decision to the Eastern High Court, before which the case ended on 13 November 2000 subsequent to a friendly settlement between the parties.

On 23 February 1998 Kirsten Normann submitted an application to the European Court of Human Rights, claiming that the length of the civil proceedings on the division of property exceeded the reasonable time requirement set out in Article 6(1) of the ECHR, which safeguards the right to “a fair and public hearing within a reasonable time by an independent and impartial tribunal”.

On 1 November 2001 the Government of Denmark declared that it was prepared to pay DKK 45,000 covering pecuniary and non-pecuniary damage and DKK 40,000 plus VAT covering costs.

On 5 November 2001 Normann accepted the offer of the Government of Denmark, which constituted a final settlement of the case.

*Leif Jensen v. Denmark*

Article 6(1) of the ECHR – Settlement of 14 February 2002.

On 10 October 1994 Leif Jensen was charged with a criminal offence. By judgment of 11 June 1998 from the District Court of Frederikssund he was convicted and sentenced to two years' suspended imprisonment, and in addition deprived of his right to practice law. On appeal, on 26 November 1998 the Eastern High Court altered the sentence to one year's imprisonment. The request for leave to appeal to a third instance was rejected by the Board of Appeal (Procesbevillingsnævnet) on 1 February 1999.

On 29 March 1999 Leif Jensen submitted an application to the European Court of Human Rights, complaining, under Article 6(1) of the ECHR, that the criminal charge against him was not determined within a reasonable time.

On 20 September 2001 the Court declared the case admissible. By declaration of 28 November 2001 the Government of Denmark offered, with a view to securing a friendly settlement, to pay DKK 30,000 covering pecuniary and non-pecuniary damage. Leif Jensen accepted the offer of the Government of Denmark, which constituted a final settlement of the case.

#### **Cases declared inadmissible:**

##### *Aage Slots v. Denmark*

Article 6(1) of the ECHR – Declared inadmissible on 4 October 2001.

The European Court of Human Rights declared the application inadmissible for the reason that the bankruptcy proceedings involving the applicant's estate did not exceed the reasonable time requirement set out in Article 6, as regards procedures and time.

##### *Søren Lavrsen v. Denmark*

Article 6(3) and Article 6(1) of the ECHR – Declared inadmissible on 28 February 2002.

The European Court of Human Rights found that the prosecutor's failure to disclose his internally prepared note about witnesses in his case and other matters was not contrary to the requirement of a fair trial within the meaning of Article 6. The Court stated as reasons for the dismissal that the note provided no information on the witnesses not already known to the applicant during the criminal proceedings and that the applicant was only convicted on the basis of evidence produced in court.

##### *Anders Wejrup v. Denmark*

Article 6(1) of the ECHR – Declared inadmissible on 7 March 2002.

The European Court of Human Rights found that, although the proceedings had lasted over five years from commencement of proceedings to the final judgment, they did not go beyond what may be considered reasonable according to Article 6. The Court stated as a reason for its decision that there were no unacceptable periods of inactivity before the Danish courts.

*Britta Strømberg v. Denmark*

Article 6(1) of the ECHR – Declared inadmissible on 20 June 2002.

The European Court of Human Rights found that, although the proceedings had lasted almost seven years from commencement of proceedings to the final judgment, they did not go beyond what may be considered reasonable according to Article 6. The Court stated as a reason for its decision that there were no unacceptable periods of inactivity before the Danish courts. Finally the Court found that no procedural guarantees had been disregarded in the proceedings before the Danish courts.

*Ingelise Andersen v. Denmark*

Article 6(1) of the ECHR – Declared inadmissible on 5 September 2002.

The European Court of Human Rights found that, although the proceedings had lasted over six years from commencement of proceedings to the final judgment, they did not go beyond what may be considered reasonable according to Article 6. The Court stated specifically as a reason for its decision that the prolonged proceedings could mainly be attributed to the applicant's conduct.

## **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to a fair trial have been considered in the period under review.

## **6. Government initiatives**

### **Ministry of Justice**

*Legal Rights Commission (Retssikkerhedskommissionen):*

The Legal Rights Commission has been entrusted with the task of making proposals for amendments enhancing the legal rights of the public. In this connection the Commission has to examine and consider relevant

considerations for statutory provisions which authorise public authorities acting outside the field of criminal justice to gain access to private homes and companies without obtaining a prior court order or to make other coercive measures falling within section 72 of the Danish Constitution.

Moreover the Commission is to prepare a draft for comprehensive regulations stipulating the guidelines for the conduct of the authorities in connection with coercive measures of such nature, and the Commission is also to prepare draft regulations clarifying the legal position of and the procedural guarantees for the individual citizen applicable in case a suspicion emerges in connection with the activities of a public authority that the citizen has committed an offence that may result in a fine or another punishment.

The Commission was set up in February 2002. The work of the Commission must be completed by the end of 2002.

## **RIGHT TO RESPECT FOR PRIVATE LIFE AND FAMILY, HOME AND CORRESPONDENCE**

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Convention provisions: Article 8 of the ECHR and Article 17 of the ICCPR.  
The Danish Constitution: Section 72.

### **1. Bills**

Title:

**Draft Bill amending the Act on Prohibition against TV Monitoring, etc. (TV monitoring of cash dispensers, change dispensers and armoured vehicles).**

Elements of the Bill:

The Bill permits private parties to monitor other private parties in the immediate proximity of cash dispensers, change dispensers and armoured vehicles.

Brief summary of the comments made by the DCHR:

*Applicable law:*

The DCHR finds that TV monitoring of cash dispensers, change dispensers and armoured vehicles and storage of such recordings must be deemed to

interfere with the privacy protection under human rights law as stipulated in Article 8 of the ECHR and Article 17 of the ICCPR. Any storage of TV recordings must also satisfy the requirement of data quality set out in the Act on Processing of Personal Data.

*Assessment:*

Interference with the right to respect for private life set out in Article 8(2) of the ECHR may only take place if the requirement of a legitimate interest and the requirement of being in accordance with the law, as mentioned in Article 8(2), are satisfied. The DCHR finds that this Bill satisfies both requirements.

The third condition of interference under Article 8(2) is the requirement of necessity. The requirement of the necessity of the interference in relation to TV monitoring of armoured vehicles seems to be legitimised by acute investigative considerations.

However, the Bill provides no statistical data on the number of robberies and offences against property at cash and change dispensers, and therefore it is difficult to establish whether there is really an urgent societal need which can legitimise constant TV monitoring of everybody using cash and change dispensers. The balancing in the Bill of investigative interests and the consideration of the individual citizen's right to respect for his or her private life seems not – convincingly – to satisfy the requirement of proportionality under human rights law in relation to this type of TV monitoring. The DCHR therefore finds reason to express scepticism as to the compatibility of the Bill with Article 8 of the ECHR.

The DCHR finds that the requirement of the Bill that the monitoring equipment must be directed exclusively at persons in the immediate proximity of the relevant cash dispenser, change dispenser or armoured vehicle gives rise to uncertainty as to the scope of the TV monitoring.

If the majority of the Danish banks set up TV monitoring, the individual user's actual possibility of avoiding a TV monitored dispenser will be limited. The protection intended with the mandatory signs of TV monitoring will not be real in such circumstances.

The use of available technology in the market, which verifies the identity of persons by means of fingerprints or iris patterns – the so-called biometric identification – makes it possible to prevent payment card fraud by a far less interfering measure than TV monitoring.

*References:*

Act No. 257 of 8 May 2002.

Entry into force: 9 May 2002.

Bill No. L 138, introduced in writing on 27 February 2002: Supplement A, column 3296.

The Bill as adopted: Supplement C, column 312.

Draft Bill of the Ministry of Justice amending the Act on Prohibition against TV Monitoring, etc., distributed as an enclosure to the consultation papers of 21 January 2001 from the Ministry of Justice.

Reply of the DCHR to the Ministry of Justice of 26 February 2002, prepared by Birgitte Kofod Olsen.

**Title:**

**Draft Bill amending the Administration of Justice Act and the Act on Competitive Conditions and Consumer Interests in the Telecommunications Market (part of the “anti-terrorism package”).**

**Elements of the Bill:**

The purpose of the Bill is to implement the changes necessary for Denmark’s ratification of the International Convention for the Suppression of the Financing of Terrorism. The Bill also contains the amendments necessary in order to observe the requirements and calls of UN Security Council Resolution 1373.

Concretely the proposed amendments to the Administration of Justice Act imply additional options to interfere with the right to respect for private life. The Bill suggests an extension of section 786 of the Administration of Justice Act imposing a duty on telecommunication providers to record and store (log) data on telecommunication and Internet traffic. Moreover the Bill entails amendments enabling the police to decide itself on discovery, that is, access to subscription data of the number information database without obtaining a prior discovery order, provided always that it is subject to *periculum in mora* in the particular situation.

**Brief summary of the comments made by the DCHR:***Applicable law:*

According to the DCHR, the protection provided by Article 8(1) of the ECHR must be deemed to cover retrieval and use, which includes recording, of personal data and the combining of such data to create a profile disclosing a person’s conduct, preferences and habits. The conditions of interference with this protection are given in Article 8(2) of the ECHR. They are that it must be in accordance with the law, serve a legitimate interest and be necessary in a democratic society.

These three conditions of interference must be satisfied at two levels: the general level and the concrete level.

The general level refers to the statutory authority itself. When legislation authorising interference with a human right is adopted, it is necessary to ensure that such interference can only be initiated to accommodate a legitimate interest and that, at a level of abstraction, it must be deemed necessary in a democratic society. As an example, it must generally be deemed necessary for the police and intelligence service to have access to various suitable and efficient investigation tools for crime prevention purposes.

Satisfaction at the concrete level becomes relevant when a statutory provision authorising interference with a human right is applied in connection with a specific case. In such situations it must be examined once more whether the conditions of interference are satisfied. Here substantiation of the proportionality of the interference plays an important part. In the concrete case the interference must therefore appear as the least interfering measure that can reasonably be applied in the specific situation.

*Assessment:*

The DCHR finds that the duty of telecommunication providers to log traffic data, such as A and B numbers, the transmitter masts/cells used, call times and call duration, IP addresses, times of logon and logoff, connection period and corresponding electronic tracks, provides a possibility of creating a profile of a certain person's communication pattern. Such logging as proposed must be deemed in itself to constitute a measure affecting the protection of such person's informational private life.

Therefore the duty of logging according to the proposed provision and its impact on the individual person have to be considered within the scope of Article 8 of the ECHR. The question is now whether the quality requirements of the statutory provision applicable to interference with the right to private life have been satisfied. Particularly the requirement of predictability as regards the consequences of making use of the provision is relevant. As the provision is worded in the Bill, a person can only predict that traffic data will be recorded. The specific scope and contents of the logging and the period such log data is stored have not been stipulated by the Act.

Moreover the wording of the provision "for use at investigation and

prosecution of criminal offences” is vague as to the consequences of the logging, including the use for investigation purposes. Therefore it is not sufficiently clear whether only the use for investigation purposes which satisfies the conditions of section 781 makes procurement of log data justified, or whether the scope of application of this new provision must be deemed an extension of the existing rules.

It also contributes to the ambiguity of the application of the provision that use of log data involving non-suspects for investigation purposes has not been taken into account. This problem is of relevance to the persons who are logged as B numbers, *i.e.* numbers called. If the caller is suspected of an offence and if that provides authority for procuring log data, non-suspected third parties recorded in connection with the logging will experience interference with their private lives when data on their telecommunication and Internet use is exposed during an investigation.

Also, the human rights requirement of necessity in relation to interference with private life can hardly be deemed to be satisfied. Hence it must be deemed doubtful whether logging of traffic data – which indeed affects all users – is a proportionate measure that can be used to fulfil the aim of combating terrorism.

For this reason the DCHR finds that less interfering measures must be applied, *viz.* by logging traffic data on the basis of court orders against persons suspected of criminalised terrorist activities.

The DCHR therefore sees two problems in relation to the proposed provision on the logging duty for telecommunication providers. At the general level it is problematic that the duty has been worded without any acknowledgement of the fact that observing the provision will cause interference with all users’ private lives (secrecy of communication). Thereby both the quality requirement under human rights law in respect of the statutory authority of the interference and the requirement of proportionality appear to be unsatisfied. At the concrete level, *i.e.* when the statutory authority is applied in specific situations, it is problematic that it has not been taken into consideration that non-suspects and other persons of irrelevance to the investigation will be included in the log data used for investigation purposes. To the extent that such persons communicate with a suspect whose traffic data is used by the police, they will be included in the investigation material of the police in the specific case because of the recording of B numbers and thus experience invasion of their privacy.

Therefore this provision ought to be worded as an independent interference with the right to private life, *i.e.* by being added to the list in section 780(1) of measures interfering with the secrecy of communication, and at the same time inserted as a duty for telecommunication providers in the statutes governing these service providers. In spite of such insertion, the latter provision will still give rise to doubt as to the compliance with the human rights requirement of proportionality and thus with its compatibility with Article 8 of the ECHR.

The proposed amendment of section 806(3), first sentence, of the Administration of Justice Act will authorise the police to decide itself on discovery and thus grant the police general and unlimited access to all data in the number information database.

The DCHR finds that the data recorded in the number information database can hardly be characterised as sensitive data although such data comprises a person's choice of telecommunication means and is basically not publicly available.

Procurement of such data, combined with the subsequent possibility of procuring traffic data between phone numbers, causes the DCHR to deem it doubtful that such cumulation of data on a person's choice of communication means and communication conduct can be effected without interfering with the right to respect for private life granted by human rights law.

For this reason the DCHR proposes that access to the number information database be made subject to a discovery order or to a decision on discovery of such data made by the police itself, as authorised by the proposed amendment of section 806 of the Administration of Justice Act.

*References:*

*It is noted that the reply of the DCHR to the consultation papers concerns the original Bill on Anti-Terror Measures prepared by the preceding Social Democratic/Social Liberal Government. The Bill was reintroduced by the new Liberal/Conservative Government, with few adjustments, which did not cause the DCHR to amend its original reply.*

Act No. 378 of 6 June 2002.

Entry into force: See section 7 of the Act.

Bill No. L 35, introduced in writing on 13 December 2001: Supplement A, column 808.

The Bill as adopted: Supplement C, column 657.

Draft Bill of the Ministry of Justice amending the Administration of Justice Act and the Act on

Competitive Conditions and Consumer Interests in the Telecommunications Market, distributed as an enclosure to the consultation papers of 1 November 2001 from the Ministry of Justice.

Reply of the DCHR to the Ministry of Justice of 23 November 2001, prepared by Birgitte Kofod Olsen.

For details on the reply of the DCHR to the following Bill, which also includes a reference to Article 8 of the ECHR, please refer to the section on Prohibition of Torture:

Draft Bill of the Ministry of the Interior amending the Aliens Act (part of the “anti-terrorism package”) and draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Aliens Act.

## 2. Danish court decisions

*Eastern and Western High Courts:*

Danish Weekly Law Reports 2001, p. 2264, Eastern High Court (U.2001.2264/2 Ø)

A Nigerian national, A, who was sentenced in 1999 to five years’ imprisonment for violation of section 191 of the Criminal Code and expelled permanently, claimed revocation of the expulsion order. A had resided in Denmark since February 1992 and had a son born on 27 June 1996 with a Danish woman with whom A had resumed relations during his incarceration. A claimed that circumstances had changed significantly and that expulsion would be contrary to Article 8 of the ECHR. Moreover the expulsion would be contrary to Article 3 of the ECHR because A would be punished in Nigeria for having discredited the country due to the drug-related judgment and because the sentence would have to be served under life-threatening conditions. No such significant changes were found to have occurred in A’s situation since the judgment date that the expulsion order had to be revoked in pursuance of section 50, cf. section 26(1)(iv) and (v), of the Aliens Act. Nor could Article 3 of the ECHR or the information provided on Nigerian law lead to revocation of the expulsion order.

Danish Weekly Law Reports 2001, p. 2121, Western High Court (U.2001.2121 V)

M, born in 1972, was sentenced by judgment in 1999 to imprisonment for nine months for violation of section 191 of the Criminal Code and expelled with a prohibition against re-entry for five years. M had cohabited with E since 1997, and on 28 July 2000 he got a child with her. M was born and raised in Lebanon, but came to Denmark in 1988. E had come to Denmark

from Bosnia as a refugee in 1994 and was unable to take up residence in Lebanon with the child. Expulsion of M would be so onerous to E and the child that the decision on expulsion was revoked due to considerations of proportionality, cf. section 50 of the Aliens Act.

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 555, Supreme Court order (U.2002.555 HK)

In August 2000 the Danish Ministry of Justice J received a request from the Brazilian authorities B for extradition of a Brazilian and German national S for prosecution. S had been charged before a Brazilian jury in 1989 for homicide committed in 1987, and already in 1987 he was wanted for the homicide. The penalty under the Brazilian Criminal Code for this kind of homicide for which he was provisionally charged was imprisonment for 12 to 30 years. S was arrested and remanded in custody in Denmark in September 2000 on the basis of the request for extradition. The decision made by the Ministry of Justice to grant B's request was taken to the district court, which ordered that the extradition was lawful. The case was appealed to the High Court, which reversed the district court order, whereas the Supreme Court upheld the district court order. The Supreme Court stated in that connection that extradition of S, who had lived in Denmark since 1992 and had become well integrated in society, would undoubtedly interfere seriously with his personal and social life. This was, however, a very serious offence, and there was no reason to assume on the basis of the material available that S would not have a fair trial when extradited, cf. Article 6 of the ECHR. Nor could humanitarian reasons justify non-extradition, cf. section 7 of the Extradition Act.

*Additional comments by the DCHR:*

It appears from the comments to the order that the Supreme Court assessed the relevance of the extradition to S's personal and social life in the light of Article 8 of the ECHR. Referring to the seriousness of the offence, the Supreme Court found, however, that extradition would not be contrary to the proportionality requirement according to Article 8(2). The Supreme Court also assessed whether extradition of S would expose him to the risk of torture contrary to Article 3 of the ECHR, but found that the material available on conditions in Brazil did not provide a sufficient basis for assuming that such risk existed.

Danish Weekly Law Reports 2002, p. 58, Supreme Court (U.2002.58 H)

T1, who was 29 years old at the time of the crime, was found guilty of smuggling and attempted smuggling of about 8.2 kg of heroin and cocaine in total and attempted insurance fraud on two occasions. The Supreme Court found no basis for varying the sentence of nine years' imprisonment imposed by the High Court. The then 27-year-old T2 was found guilty of smuggling and attempted smuggling of about 9 kg of heroin and cocaine in total. He was deemed to be mentally ill at the time of the conviction, but the jurors had answered a question on punishment exemption in pursuance of section 16 of the Criminal Code in the negative. The High Court had sentenced T2 to prison for nine years and ruled in pursuance of section 73 of the Criminal Code that he was to be committed to a hospital for the mentally ill until the sentence could be enforced. The Court had not – as provided by section 73 – decided the issue of remission of punishment because the jurors had not been asked this specific question. The parties agreed, however, that the issue was to be adjudicated by the Supreme Court. In any case, in these circumstances the Supreme Court could not be deemed to be barred from such adjudication. Due to the nature and gravity of the offences and the information provided on T2's state of mind, the Supreme Court did not find a sufficient basis for remitting the punishment. The sentence of nine years' imprisonment imposed by the High Court was deemed appropriate. The Supreme Court also endorsed the decision to commit T2 to a hospital for the mentally ill for the time being and to fix the maximum period of hospitalisation at five years in pursuance of section 68a of the Criminal Code as section 68a also applies in cases where, in pursuance of section 73, a decision is made on measures under section 68. The then 31-year-old T4 was found guilty of attempted smuggling from Argentina of an unknown quantity of cocaine, but less than 1 kg, having paid DKK 20,000 to T3 for the financing. The Supreme Court found no basis for varying the sentence of three years' imprisonment imposed by the High Court. Considering the fact that T4 was sentenced in accordance with his guilty plea, which he had made prior to the jury trial, it was held that he was only to pay DKK 50,000 of the legal costs pertaining to his defence before the High Court. The then 24-year-old T5 was found guilty of attempted smuggling of about 1 kg of heroin from Montenegro, which he was supposed to have collected by agreement with T1 and T2. The Supreme Court found no basis for varying the sentence of four years' imprisonment imposed by the High Court. T5 was of Bosnian origin and came to Denmark in 1996 when he was 20. In 1997 he married a Danish woman, whom he had not lived with since 1998. The Supreme Court upheld the High Court decision on expulsion.

### 3. Opinions of the Parliamentary Ombudsman

No opinions have been published concerning the right to respect for family and private life, home and correspondence in the period under review.

### 4. Judgments and decisions of the European Court of Human Rights

#### Cases decided:

Case: *Davood Amrollahi v. Denmark*, application No. 56811/00, judgment of 11 July 2002.

*Decision: Violation of Article 8 of the ECHR.*

By judgment of 1 October 1997 the District Court of Hobro found Davood Amrollahi guilty of drug trafficking contrary to section 191 of the Criminal Code. He was sentenced to three years' imprisonment and, pursuant to sections 22 and 26 of the Aliens Act, was expelled from Denmark with a life-long ban on his return.

On 14 July 1998, pursuant to section 50 of the Aliens Act, he instituted proceedings in the District Court of Hobro claiming that material changes in his circumstances had occurred on account of which he requested the court to review the expulsion order. He referred to his family situation and alleged that it could not be ruled out that he would risk severe punishment in Iran for having deserted from the army. He might also risk a life sentence for the narcotics crimes committed in Denmark. Both the District Court and the High Court found that the applicant's situation had not changed to such extent that there was a reason to revoke the expulsion order. On 17 December 1998 Amrollahi had served two-thirds of his sentence and was due to be released on parole and returned. In this connection he invoked section 31 of the Aliens Act, according to which an alien may not be returned to a country in which he or she will risk persecution on the grounds set out in Article 1 A of the Convention of 28 July 1951 concerning the Status of Refugees. Both the Danish Immigration Service and the Refugee Board found that there was no risk of persecution in Iran of any kind.

In February 2000, relying on section 50 of the Aliens Act for the second time, Amrollahi claimed that material changes in his circumstances had occurred, and the District Court revoked the decision to expel the applicant. The High Court quashed the District Court decision since an expelled alien is only entitled to one judicial review of an expulsion order pursuant to section 50

of the Aliens Act. On 7 September 2000 the Supreme Court upheld this decision.

Davood Amrollahi lodged an application with the European Court of Human Rights, complaining of violation of Article 8 of the ECHR, which protects the right to family life. He submitted that, as a result of his expulsion from Denmark, he would be separated from his wife and children, who could not be expected to follow him to Iran.

The European Court of Human Rights recalled that no right for an alien to enter or to reside in a particular country is as such guaranteed by the ECHR. However, the removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8.

Davood Amrollahi is an Iranian national. He has resided in Denmark since 1989. In 1994 he was granted a permanent residence permit. He is married to a Danish woman, and the couple has two children. The expulsion order interfered with the applicant's right to respect for his family life. It was therefore crucial whether such infringement could be motivated by one or more of the legitimate aims set out in Article 8(2).

"In accordance with the law": The Court found that the expulsion fully satisfied the provisions of the Aliens Act.

"Legitimate aim": The expulsion was ordered for the prevention of disorder and crime. The measure therefore satisfied the considerations set out in Article 8(2).

"Requirement of necessity": The Court found that the expulsion order was based on a serious offence. The Court also found that the applicant had strong family ties with Denmark. The applicant's wife had no ties with Iran. The Court found that it would be very onerous to his wife and children to move with him to Iran.

Conclusion: As a consequence of the expulsion of the applicant the family would be separated, since it was *de facto* impossible for his wife and children to continue their family life outside Denmark. Expulsion of the applicant would be disproportionate to the aims pursued of preventing disorder and crime. It therefore constituted violation of Article 8 of the ECHR.

## 5. Opinions of and concrete cases before the Committees

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to respect for family and private life, home and correspondence have been considered in the period under review.

## 6. Government initiatives

### Ministry of Justice

*National Security Service Commission (PET-kommissionen):*

This commission of inquiry has been set up to examine and give an account of the activities of the National Security Service (Politiets Efterretnings-tjeneste) from 1945 to 1989 in relation to Danish political parties, trade union conflicts, and groups and movements with certain political and ideological attitudes as well as the nature of the activities of the political parties subject to the intelligence activities of the National Security Service in the said period.

The commission of inquiry is also to assess the intelligence activities of the police in the said field as regards the period from 1968 to 1989, including to clarify whether the activities were made in accordance with the rules and guidelines stipulated by the Danish Parliament or Government.

The Commission was appointed on 2 June 1999. The commission of inquiry is to submit a report on the results of its examination work to the Minister of Justice, who is to publish the report.

*Legal Rights Commission (Retssikkerhedskommissionen):*

The Legal Rights Commission has been entrusted with the task of making proposals for amendments enhancing the legal rights of the public. In this connection the Commission has to examine and consider relevant considerations for statutory provisions which authorise public authorities acting outside the field of criminal justice to gain access to private homes

and companies without obtaining a prior court order or to make other coercive measures comprised by section 72 of the Danish Constitution.

Moreover the Commission is to prepare a draft for comprehensive regulations stipulating the guidelines for the conduct of the authorities in connection with coercive measures of such nature, and the Commission is also to prepare draft regulations clarifying the legal position of and the procedural guarantees for the individual citizen applicable in case a suspicion emerges in connection with the activities of a public authority that the citizen has committed an offence that may result in a fine or another punishment.

The Commission was set up in February 2002. The work of the Commission must be completed by the end of 2002.

Working group of the Ministry of Justice as a follow-up on the new provision in section 786 of the Administration of Justice Act (inserted in connection with the adoption of the "anti-terrorism package" on 31 May 2002):

The working group of the Ministry of Justice has been requested, following negotiations with the Minister for Science, Technology and Innovation, to draft an executive order providing rules on recording and storing of traffic data for investigation and law enforcement purposes in connection with criminal offences, cf. section 786(4) of the Administration of Justice Act.

The working group has also been requested, following negotiations with the Minister for Science, Technology and Innovation, to draft an executive order laying down rules on the practical assistance of providers of telecommunications networks and services to the police in connection with invasions of the secrecy of communication, cf. section 786(5) of the Administration of Justice Act.

The working group commenced its work in September 2002. The executive order is expected to be ready by the end of May 2003.

### **Ministry of Science, Technology and Innovation**

*Committee on Civil IT Rights (Udvalget om Borgernes IT-rettigheder):*

The Committee has been requested to prepare a catalogue of the information technology rights of the public and make recommendations for improvement of fields with a need for adjustment of civil rights based on

the ongoing development of information technology. The Committee is to apply a practical civil rights approach and point to ways to increase familiarity with the existing rules and rights. One of the tasks given to the Committee is workplace monitoring and protection of the right to private life on the Internet, *e.g.* in connection with Internet service providers' recording of traffic data.

The Committee started working in September 2002 and is expected to complete its work by the end of 2002.

## **FREEDOM OF RELIGION**

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Convention provisions: Article 9 of the ECHR and Article 18 of the ICCPR.  
The Danish Constitution: Section 67.

### **1. Bills**

No bills concerning the freedom of religion have been introduced in the period under review.

### **2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments concerning the freedom of religion have been published in the period under review.

*Supreme Court:*

No judgments concerning the freedom of religion have been published in the period under review.

### **3. Opinions of the Parliamentary Ombudsman**

No opinions concerning the freedom of religion have been published in the period under review.

However, attention is drawn to the unpublished opinion of the Parliamentary Ombudsman (file No. 2001-1707-654), which concerns a dispute regarding access to a child, the father being a member of the religious community of Hara Krishna. The Ombudsman did not have powers to examine or evaluate the assessment made by the authorities in

this particular case, and he found no reason to instigate an examination at his own initiative.

#### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the freedom of religion have been published with Denmark as a party to the case in the period under review.

#### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the freedom of religion have been considered in the period under review.

#### **6. Government initiatives**

No relevant Government initiatives have been launched in the period under review.

### **FREEDOM OF EXPRESSION AND INFORMATION**

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Convention provisions: Article 10 of the ECHR and Article 19 of the ICCPR.  
The Danish Constitution: Section 77.

#### **1. Bills**

Title:

**Draft Bill amending the Criminal Code (part of the “anti-terrorism package”).**

Elements of the Bill: The purpose of the Bill is to implement the changes necessary for Denmark’s ratification of the International Convention for the Suppression of the Financing of Terrorism. The Bill also contains the amendments necessary in order to observe the requirements and calls of UN Security Council Resolution 1373.

One consequence of the amendments to the Criminal Code is the insertion of a special section on terrorism. It is also made an offence to provide or arrange for financial support to a terrorist organisation or otherwise to contribute to the promotion of its criminal activities.

Brief summary of the comments made by the DCHR:

*Applicable law:*

Protection of the individual person's freedom of expression – including the right to provide and receive information – has been laid down in Article 10 of the ECHR. Exceptions to the freedom of expression can only be made if the conditions of Article 10(2) have been satisfied.

*Assessment:*

According to the proposed section 114a, participation in a group of persons or an association that commits or intends to commit terrorist acts comprised by section 114 is made punishable. The same applies to financial assistance, collection of money and other kinds of direct and indirect financing of such acts, cf. the proposed section 114a(2). According to the explanatory notes, the provision also comprises financing of organisations involved in *both* humanitarian tasks *and* terrorist acts, irrespective of whether the relevant contribution was made as a contribution to the humanitarian activities of the organisation. The requirement of intention has therefore been fulfilled if the contributor knows or must be assumed to know that the group also commits or intends to commit terrorist acts in addition to its humanitarian activities.

Some of the activities aimed at by this Bill are done precisely by groups with such dual objectives, and according to the DCHR it is not evident that the provision is necessary to satisfy the requirement of Article 2 of the International Convention for the Suppression of the Financing of Terrorism. Article 2 of the Convention calls for criminalisation of collection of funds if made "with the intention that they should be used or in the knowledge that they are to be used, in full or in part, ...". The activities to be criminalised according to the Convention are therefore no doubt terror financing, but not necessarily the financing of humanitarian activities. The DCHR further refers to Article 2(2)(c) of the EU Framework Decision on combating terrorism, according to which the Member States are to ensure that supporting of a terrorist group to commit terrorist offences is punishable. The DCHR fears that adoption of the proposal may contribute to uncertainty among the public as to the lawfulness of the purpose of a collection – which uncertainty may be fatal to humanitarian organisations

for whose work collections are vital.

The same goes for proposed section 114b, which applies a very extensive contribution concept according to Danish legal tradition. This concept deserves independent consideration by the Standing Committee on the Criminal Code (Straffelovrådet) in the opinion of the DCHR. The Bill aims at criminalising acts which are even very far from concrete terrorist acts, and even the Ministry of Justice has found that the proposal “may give rise to concerns of principle”.

The DCHR also notes to both provisions that they may raise questions concerning the freedom of expression because the elements of the crime described may, depending on circumstances, be in the nature of statements – including statements supporting humanitarian aims. To criminalise statements which are unambiguously aimed at humanitarian aid, maybe even also condemning terrorism, can hardly, in the opinion of the DCHR, be comprised by provisions such as Article 10(2) of the ECHR, according to which the freedom of expression can be limited by interests of national security, territorial integrity, public safety, public order, etc.

*References:*

*It is noted that the reply of the DCHR to the consultation papers concerns the original Bill on Anti-Terror Measures prepared by the preceding Social Democratic/Social Liberal Government. The Bill was reintroduced by the new Liberal/Conservative Government, following few adjustments, which did not cause the DCHR to amend its original reply.*

Act No. 378 of 6 June 2002.

Entry into force: 8 June 2002.

Bill No. L 35, introduced in writing on 13 December 2001: Supplement A, column 808.

The Bill as adopted: Supplement C, column 657.

Draft Bill of the Ministry of Justice amending the Criminal Code, distributed as an enclosure to the consultation papers of 1 November 2001 from the Ministry of Justice.

Reply of the DCHR to the Ministry of Justice of 23 November 2001, prepared by Ida Elisabeth Koch.

## **2. Danish court decisions**

*Eastern and Western High Courts:*

Danish Weekly Law Reports 2002, p. 1586, Western High Court (U.2002.1586 V)

A member of a county council, T, was charged with violation of section 152(1) of the Criminal Code, having, without authority, passed on confidential information from a closed Social Services Committee meeting

to a news reporter, J, of the Danish Broadcasting Corporation (Danmarks Radio (DR)), or to one or more unidentified persons, because T allegedly handed out documents with personal details on two hard-to-place boys. The prosecutor claimed that T, who pleaded not guilty, should be sentenced to a fine. The DR had broadcast a radio programme produced by J about placing of children with severe social problems and allocation of public funds. J had been summoned as a witness during the district court trial to give evidence of her sources, but the district court ordered her to testify (one judge dissenting). The High Court held that the purpose of J's radio broadcast was to disclose information of significant relevance to society. Based on a comprehensive evaluation of the wording of section 172(6) of the Administration of Justice Act, the *travaux préparatoires* of the provision and the significant importance of source protection to provide satisfactory information about subjects of interest to society, the High Court found no reason to balance the consideration of elucidation of the case or concealment of confidential information against the consideration of source protection. The High Court therefore quashed the order and referred also in this respect to Article 10 of the ECHR and case-law of the European Court of Human Rights.

Additional comments by the DCHR:

According to the *ratio decendi*, the High Court found that an extensive right of the media to protect their sources must be deemed to exist in pursuance of Article 10 of the ECHR.

*Supreme Court:*

No judgments concerning the right to freedom of expression and information have been published in the period under review.

### **3. Opinions of the Parliamentary Ombudsman**

*File No.: 2001-0057-701 (published in the 2001 Report, p 504).*

A newspaper asked the Ministry of Education for access to proficiency and examination mark reports from schools of primary and lower secondary education. The Ministry refused the request, claiming that the reports were for statistical purposes and that the information was not used in connection with administrative casework. The Ministry also referred to the fact that the reports contained information on individuals' purely private circumstances.

The Ombudsman found that the Ministry of Education had no authority

under section 4(1), first sentence, and section 10(v) of the Freedom of Information Act to refuse the request for access to files. The Ombudsman considered it dubious to what extent the data could be referred to specific persons. The Ombudsman pointed to the possibility of anonymising identifiable data. The Ombudsman also found that the Ministry of Education should have considered whether they could have offered extended access to records. The Ombudsman suggested that the Ministry should reconsider its decision.

Additional comments by the DCHR:

In connection with the question of whether the principle of extended access to records should have been applied, the Ombudsman stated that “the guidelines of the Ministry of Justice on the 1968 Freedom of Information Act also emphasised that the Act was not a barrier to extended access to records and that the principle of open administration is of particular importance to the news service of the press. A non-restrictive regime for passing on and providing information which is only subject to weighty social considerations is also the regime being best in harmony with Article 10 of the ECHR. In this connection I also refer to the fact that section 2(2) of the Act on Processing of Personal Data expressly provides that the right of access, etc., must be administered in accordance with Article 10 of the ECHR”.

*File No.: 2001-0619-501.*

It is expected that the case will be quoted in the 2002 Report of the Parliamentary Ombudsman, which will presumably be published in September 2003.

The news reporter A complained to the Parliamentary Ombudsman that the Ministry of Transport had refused his request for access to documents concerning the Danish Aircraft Accident Investigation Board (Havarikommissionen for Civil Luftfart).

A had petitioned for access to all documents pertaining to the Investigation Board for the period 1 January 1996 to 19 January 2001. The Ministry of Transport only granted A access to one case file concerning organisational matters of the Danish Aircraft Accident Investigation Board. A petitioned once more, and in addition he asked for access to documents on the structure of the filing system of the Ministry. A’s petition was refused again, the reason given being that the petition for access to documents was not sufficiently individualised, which was a requirement under the Freedom of

Information Act.

Additional correspondence led to A's decision to complain to the Ombudsman against being refused access to documents, including that the Ministry of Transport had not listed the documents exempt from the right of access to documents and that he had not been informed on how to complain of the decision made by the Ministry.

The Parliamentary Ombudsman then assessed the matter under the rules of Danish law on public access to documents.

In connection with the issue of the identification requirement, the Ombudsman criticised the examination of the case by the Ministry of Transport in his final opinion. The Parliamentary Ombudsman refers, *i.a.*, to the principle of extended access to records of the public administration, the existing duty of guidance and the guidelines of the Ministry of Justice to the Freedom of Information Act. The latter stipulates that restraint should be exercised in connection with refusals of petitions from the press for an opportunity to peruse all cases of a specific nature. In his preliminary report the Parliamentary Ombudsman also refers to Article 10 of the ECHR, which safeguards to a certain extent, according to the Ombudsman's assumptions, the possibility of the press to access information from the public administration. It cannot be seen that the provision has been applied directly in connection with this specific problem.

The Parliamentary Ombudsman urged the Ministry of Transport to reopen the case and provide A better guidance to enable A to assess which records he wanted to peruse.

#### **4. Judgments and decisions of the European Court of Human Rights**

##### **Cases declared inadmissible:**

*Bankovic and Others v. Denmark and the other NATO member countries*

Articles 2, 10 and 13 of the ECHR – Declared inadmissible on 19 December 2001.

The European Court of Human Rights was not satisfied that the applicants came within the concept of jurisdiction under Article 1 of the Convention. Consequently the Court considered it unnecessary to assess whether Articles 2, 10 and 13 had been violated.

## 5. Opinions of and concrete cases before the Committees

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to freedom of expression and information have been considered in the period under review.

## 6. Government initiatives

### Ministry of Justice

*Freedom of Information Commission (Offentlighedskommissionen):*

The Commission is to prepare a comprehensive revision of the Freedom of Information Act, and shall to this end describe the existing law in the field and consider the extent to which amendments are required. In that connection the Commission is to assess the economic and administrative consequences of such amendments. The overall aims must be to expand the fundamental legal principle of openness and democratic control of the public administration and also to adjust the Act to suit conditions today, including in relation to recent development in connection with publicly owned companies, contracting-out, digitalisation and new, revised collaboration structures in the public administration.

The Commission was set up in May 2002. No completion date for the Commission's work has been fixed yet.

### Ministry of Science, Technology and Innovation

*Committee on Civil IT Rights (Udvalget om Borgernes IT-rettigheder):*

The Committee has been requested to prepare a catalogue of the information technology rights of the public and make recommendations for improvement of fields with a need for adjustment of civil rights based on the ongoing development of information technology. The Committee is to apply a practical civil rights approach and point to ways to increase

familiarity with the existing rules and rights. One of the subjects to be examined by the Committee is freedom of expression on the Internet.

The Committee started working in September 2002 and is expected to complete its work by the end of 2002.

## FREEDOM OF ASSEMBLY AND ASSOCIATION

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Convention provisions: Article 11 of the ECHR and Articles 21 and 22 of the ICCPR.

The Danish Constitution: Sections 78 and 79.

### 1. Bills

No bills concerning the right to freedom of assembly and association have been introduced in the period under review.

### 2. Danish court decisions

*Eastern and Western High Courts:*

No judgments concerning the right to freedom of assembly and association have been published in the period under review.

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 1020, Supreme Court (U.2002.1020 H) Following the adoption of the Act on Legal Protection and Administration in Social Matters, the local authority K set up a coordination committee to coordinate and promote local preventive initiatives for persons finding it difficult to perform in the labour market. As stipulated by section 24 of the Act, some of the committee members were to be representatives of the Danish Employers' Confederation (Dansk Arbejdsgiverforening (DA)), the Danish Confederation of Trade Unions (Landsorganisationen i Danmark (LO)) and the Salaried Employees' and Civil Servants' Confederation (Funktionærernes og Tjenestemændenes Fællesråd (FTF)). When the local council had resolved that the Christian Trade Union (Kristelig Fagforening) F was also to be on the committee, the DA, LO and FTF made known that they did not want to be involved in the committee work. K then reversed its decision so that F was not to be represented. F submitted that the revocation

was contrary to the principle of equality before the law, Article 11 of the ECHR and the requirement to apply objective and lawful criteria in the public administration. The High Court and the Supreme Court said that K had emphasised with reasonable cause in connection with its revocation that the committee could not work as intended, considering the nature of its tasks, if the major social partners were absent, and that there was no reason to assume that members of F had special needs or problems which could only be solved by F being represented on the committee. For this reason the revocation was objective, and since it was not contrary to the principle of equality before the law and the ECHR either, the courts found for K. (Dissenting judge(s))

### **3. Opinions of the Parliamentary Ombudsman**

No opinions concerning the right to freedom of assembly and association have been published in the period under review.

### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the right to freedom of assembly and association have been published with Denmark as a party to the case in the period under review.

### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to freedom of assembly and association have been considered in the period under review.

## 6. Government initiatives

### Ministry of Employment

*Report No. 1419/2002 on prohibition of closed shop agreements:*

In January 2002 the Government set up the Committee on Closed Shop Provisions (udvalget om eksklusivbestemmelser). The objective of the Committee is to identify and describe the areas of society where membership of certain associations or organisations, in particular closed shop provisions in the labour market, is a condition of employment or continued employment.

The Committee completed its work in June 2002, submitting a report which maps the use of closed shop agreements where employees or employers are forced to become members of specific trade associations to become eligible for a job or for doing business. In the report the Committee points to various circumstances which favour an intervention in the use of closed shop provisions in the labour market. Based on this report, the Government intends to introduce a bill prohibiting closed shop agreements in this parliamentary year.

### Ministry of Justice

*National Security Service Commission (PET-kommissionen):*

This commission of inquiry has been set up to examine and give an account of the activities of the National Security Service (Politiets Efterretnings-tjeneste) from 1945 to 1989 in relation to Danish political parties, trade union conflicts, and groups and movements with certain political and ideological attitudes as well as the nature of the activities of the political parties subject to the intelligence activities of the National Security Service in the said period.

The commission of inquiry is also to assess, as regards the period from 1968 to 1989, the intelligence activities of the police in the said field, including to clarify whether the activities were made in accordance with the rules and guidelines stipulated by the Danish Parliament or Government.

The Commission was appointed on 2 June 1999. The commission of inquiry is to submit a report on the results of its examination work to the Minister of Justice, who is to publish the report. No completion date for the Commission's work has been fixed yet.

## RIGHT TO AN EFFECTIVE REMEDY

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Convention provisions: Article 13 of the ECHR and Article 2(3) of the ICCPR.

### 1. Bills

No bills concerning the right to an effective remedy have been introduced in the period under review.

### 2. Danish court decisions

*Eastern and Western High Courts:*

No judgments concerning the right to an effective remedy have been published in the period under review.

*Supreme Court:*

No judgments concerning the right to an effective remedy have been published in the period under review.

### 3. Opinions of the Parliamentary Ombudsman

No opinions concerning the right to an effective remedy have been published in the period under review.

### 4. Judgments and decisions of the European Court of Human Rights

#### Cases declared inadmissible:

*Bankovic and Others v. Denmark and the other NATO member countries*

Articles 2, 10 and 13 of the ECHR – Declared inadmissible on 19 December 2001.

The European Court of Human Rights was not satisfied that the applicants came within the concept of jurisdiction under Article 1 of the Convention. Consequently the Court considered it unnecessary to assess whether Articles 2, 10 and 13 had been violated.

### 5. Opinions of and concrete cases before the Committees

Relevant Committees:

The Human Rights Committee (HRC).

Opinions:

The Committee has not examined Denmark in the period under review.

Concrete cases:

No complaints against Denmark for violation of the right to an effective remedy have been considered in the period under review.

## 6. Government initiatives

No relevant Government initiatives have been launched in the period under review.

## PROHIBITION OF DISCRIMINATION

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Convention provisions: Article 14 of the ECHR, Articles 2 and 26 of the ICCPR and Article 5 of the ICERD.

The Danish Constitution: Section 70.

### 1. Bills

Title:

**Draft Bill amending the Act on an Active Social Policy and the Integration Act (amendment of the rules on eligibility for cash benefits, introduction allowance, etc.)**

Elements of the Bill:

This Bill introduces a new allowance, the so-called start assistance, which is payable to persons who have not resided lawfully in Denmark for at least seven of the last eight years. The amount of the start assistance is significantly lower than the cash benefits.

The Bill amending the Act on an Active Social Policy affects both Danish nationals and foreigners, but not Nordic nationals and EU/EEA nationals in general to the extent that they are entitled to the assistance under EU law. The rules of the Integration Act on the introduction allowance are consequently amended so that foreigners who are entitled to introduction allowance will receive an allowance corresponding to the amount of the start assistance.

Brief summary of the comments made by the DCHR:

*Applicable law:*

The DCHR finds that the Bill constitutes indirect discrimination of foreigners. In the opinion of the DCHR, indirect discrimination is comprised by the prohibition against discrimination as set out in Article 26 of the ICCPR and Articles 1(1) and 2(1)(c) of the ICERD. Furthermore Article 23 of the Geneva Convention is relevant because the States have a duty under this Convention to accord to refugees lawfully staying in their territory the same treatment as is accorded to their own nationals. The introduction of the concept of start assistance must also, according to the DCHR, be seen in the light of Article 2 of the ICESCR, according to which the States undertake “to take steps [...] with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

*Assessment:*

According to the Bill, an applicant will only be eligible for cash benefits provided that he or she has resided in Denmark for at least seven years in total of the last eight years. This rule applies to both Danish nationals and foreigners with a few exceptions.

According to the DCHR there is reason to anticipate that *in practice* immigrants, including refugees, will be affected much more severely by the Bill than Danish nationals. As can also be seen from the explanatory notes of the Bill, the influx of immigrants to Denmark must be restricted, and the introduction of the “start assistance” has been deemed a suitable means to reach this goal. The DCHR notes in this respect that, in pursuance of Article 23 of the Geneva Convention, Denmark must accord to refugees lawfully staying in its territory the same treatment as is accorded to Danish nationals.

However, the DCHR is not aware of any general conclusions or individual decisions of the UN committees on indirect discrimination as regards social security benefits. For this reason it is not entirely predictable how the proposed legislation will be evaluated if submitted to the committees for assessment. The concept of indirect discrimination is, however, recognised by international law, cf. the *Bhinder* case from the Human Rights Committee, as also several judgments from the European Court of Justice emphasise the actual effects. The concept has also been introduced to Danish law; see e.g. the Act on the Prohibition of Differential Treatment on the Labour Market covering “any direct or indirect differential treatment”.

According to the Bill, the amount of the start assistance is to be significantly lower than that of cash benefits. This causes the DCHR to point out that the expression in Article 2 of the ICESCR on “tak[ing] steps” is interpreted to mean that there is a requirement for certain national minimum qualitative standards of statutory benefits. So far the European Committee of Social Rights has been very reluctant in assessing national standards, and therefore it is hard to predict the outcome of any assessment by the Committee of the proposed provisions. The Committee has, however, on previous occasions considered the relationship between the rate of inflation and the amount of the benefits, cf. most recently Conclusions XV-1, the paragraph on Article 13. The DCHR would point out that in practice the Committee assesses the extent of the assistance in relation to the number of family members, the level of minimum wages and the amount of old age pension.

*References:*

Act No. 361 of 6 June 2002.

Entry into force: 1 July 2002, but cf. section 3(2) to (4) of the Bill.

Bill No. L 126, introduced in writing on 1 March 2002: Supplement A, column 4124.

The Bill as adopted: Supplement C, column 668.

Draft Bill of the Ministry of Employment amending the Act on an Active Social Policy and the Integration Act, distributed as an enclosure to the consultation papers of 1 March 2002 from the Ministry of Employment.

Reply of the DCHR to the Ministry of Employment of 12 March 2002, prepared by Ida Elisabeth Koch.

## **2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments concerning the prohibition of discrimination have been published in the period under review.

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 1789, Supreme Court (U.2002.1789 H)  
 In 1997 the Act on Taxi Driving was amended, a requirement of Danish nationality being introduced as a condition of a licence for commercial passenger transportation. This requirement was repealed in 1999. In June 1998 the Public Taxi Council of Greater Copenhagen (Storkøbenhavns Taxinævn) advertised taxi licences for sale. One of the applicants refused was the taxi owner V, who was a Pakistani national already holding six licences. Only in June 1999 did he get the seventh licence. V instituted an action against the Ministry of Transport T claiming that the use of the

nationality requirement of the Act on Taxi Driving against him was contrary to Article 14 of the ECHR, compared with Article 1 of the 1952 Protocol. He also claimed damages of just over DKK 70,000. T claimed dismissal of the case or in the alternative judgment in its favour. Neither the High Court nor the Supreme Court found for the claim for dismissal. The Supreme Court stated in that connection that, although a decision on V's claim for a declaration would not affect his legal position in other aspects than the claim for damages, it was inadvisable to determine that V did not have sufficient legal interest in an examination of the claim for a declaration. Contrary to the High Court, the Supreme Court found that T was not liable in damages. In that connection the Supreme Court stated that V had had no legal right to another licence in addition to the six he already had. Therefore his possibility to get a public licence for a commercial activity did not enjoy protection under Article 1 of the Protocol, and therefore it was not contrary to Article 14 of the ECHR to apply the nationality requirement in connection with the decision in 1998. Differential treatment due to nationality did not, in itself, infringe Article 5 of the ICERD or Article 26 of the ICCPR.

Danish Weekly Law Reports 2001, p. 2493, Supreme Court (U.2001.2493 H) When the local authority of Copenhagen Municipality sold a property in the Valby district in 1918-19, a restrictive covenant was accepted and registered according to which the local authority became entitled in 1980, and subsequently every ten years, to repurchase the property at the original land value – DKK 2,915 – with the addition of the value of the buildings. The local authority did not exercise its reversion right in 1980. At the end of 1980 E purchased the property. In 1985 the local authority gave notice of its intention to exercise the reversion right in 1990. Based on the general guidelines on administration of reversion rights of the local authority, E was offered suspension of the reversion right until 2060 against payment of DKK 93,000 in cash, or in the alternative E could purchase an exemption from the reversion right against payment of an additional amount of about DKK 18,000. When E had disputed the validity of the reversion right, the local authority instituted an action claiming that it was entitled to repurchase the property in accordance with the restrictive covenant. The local authority had not transgressed its powers or any other public law rules by the agreement on and the registration of the restrictive covenant in 1918-19. The restrictive covenant was not a tax and therefore not contrary to section 43 of the Danish Constitution. When E purchased the property in 1980, E was aware of the restrictive covenant and had no reason to assume that the reversion right would only be exercised for planning purposes. Considering also the contents of the local authority's offer of purchasing an exemption or

suspending the repurchase date and the consequences of the reversion covenant in general, there was found to be no basis for setting aside the restrictive covenant under section 36 of the Contracts Act or other sources of contract law. In accordance with its terms, the restrictive covenant was not comprised by the Rentcharges Act. Finally it was not contrary to the ECHR. The Supreme Court then found for the local authority's claim.

### **3. Opinions of the Parliamentary Ombudsman**

No opinions concerning the prohibition of discrimination have been published in the period under review.

### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the prohibition of discrimination have been published with Denmark as a party to the case in the period under review.

### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC).

#### **Opinions:**

*Committee on the Elimination of Racial Discrimination (CERD):*

Pursuant to the International Convention on the Elimination of all Forms of Racial Discrimination, the Committee considered the fifteenth periodic report of Denmark on 12, 13 and 21 March 2002.

In its report of 21 May 2002 the Committee has the following concluding observations and comments to Denmark, cf. CERD/C/60/CO/5:

The Committee welcomes the recommendation by the Incorporation Committee (Inkorporeringsudvalget) to incorporate the Convention into Danish law. The Committee welcomes the positive steps taken to implement the Act on Integration of Aliens (1998), including the survey carried out to evaluate the implementation of the Act. The Committee also appreciates the efforts made by Denmark to facilitate the implementation of Article 2 of the Convention through section 266b of the Danish Criminal Code and other

measures to prohibit the dissemination of racist statements and propaganda and to prosecute offenders. The Committee welcomes the improvement of employment opportunities for minorities and refugees, the creation of municipal integration councils, and the relative success in procuring housing for refugees. The Committee also welcomes Denmark's favourable attitude towards the application of Article 14 of the Convention on the competence to receive and consider communications from individuals. With respect to Greenland, the Committee welcomes the establishment of the Commission on Self-Government (Selvstyrekommisionen) to submit proposals for amending the Home Rule Act.

The Committee is concerned about the following matters:

While the Committee welcomes the efforts by the central Government to monitor the local authorities carefully in connection with the transfer of responsibility for aliens' integration from the central to the local authorities, the Committee considers it important to pay particular attention to the geographical distribution, which must be organised on the principle of equity.

In connection with the increase in the number of reported incidents of discriminatory and other hate speech, the Committee recommends that the Danish Government monitor such speech for possible violations of Articles 2 and 4 of the Convention. In this regard, the Committee refers to paragraphs 85 and 115 of the Durban Declaration and Programme of Action, which highlight the key role of politicians and political parties in combating racism. The closure of Radio OASEN, which is owned by a neo-Nazi organisation, makes the Committee ask the Danish Government to consider the prohibition of similar organisations in accordance with Article 4(b) of the Convention. The Committee is also concerned that policies and practices such as the housing dispersal policy, the quota system for the admission of minority children to certain crèches and nurseries, and the reported prohibition of the use of the mother tongue may lead to indirect discrimination.

The Committee commends the Danish investments in human rights institutions and in a number of non-governmental organisations, but is concerned by plans to reduce the level of funds. The Committee urges the Danish Government to ensure that the organisational restructuring of the Board for Ethnic Equality (Nævnet for Etnisk Ligestilling) and the Danish Centre for Human Rights will strengthen the overall work on human rights and in particular the protection of the rights of ethnic minorities. The

Committee reiterates that equal attention should be paid to economic, social and cultural rights of minorities and expresses concern about the amendments to the Aliens Act (May 2000) which abolished the statutory right to reunification of spouses under the age of 25 years, the right to family life for all persons being emphasised by the Committee. The Committee commends Denmark for the changes in the Danish language training programme and the strengthening of the Public Employment Services placement activities in relation to refugees and immigrants, but it is concerned about the disproportionately high level of unemployment among foreigners, particularly among certain groups of immigrants, and it finds that the Danish Government ought to monitor that these groups are not discriminated against in their access to employment.

The Committee is concerned about reports of a considerable increase in reported cases of harassment of people of Arab and Muslim backgrounds since 11 September 2001. The Committee recommends that Denmark monitor the situation carefully. The Committee is also concerned about the introduction of new, more stringent asylum and refugee regulations, and encourages Denmark to maintain its standards and ensure that all cases of asylum-seekers are decided on merit. The Committee reiterates its concern regarding the delay in resolving the claims of the Inuit with respect to the Thule Air Base. It is seriously concerned about the claims of denials by Denmark of the identity and continued existence of the Inuit as a separate ethnic or tribal entity and recalls its general recommendation on indigenous peoples. The Committee refers to the Durban Declaration and Programme of Action and recommends Denmark to implement the relevant parts of these two documents. Finally the Committee recommends that Denmark publish both the Danish reports and the concluding observations and recommendations of the Committee.

*Human Rights Committee (HRC):*

The Committee has not examined Denmark in the period under review.

**Concrete cases:**

*Committee on the Elimination of Racial Discrimination (CERD):*

*M.B. v. Denmark*, communication No. 20/2000, decision of 15 March 2002.

*Decision: No violation of the ICERD.*

M.B., a Brazilian citizen with permanent residence in Denmark, was refused

at a restaurant on 20 August 1999. On 16 September 1999, the Documentary and Advisory Centre for Racial Discrimination (Dokumentations- og Rådgivningscentret for Racediskrimination) reported the incident to the Danish Police on behalf of M.B. Since both the police and the Regional Public Prosecutor dismissed the case, the petitioner submitted a complaint with reference to Article 2(1)(d) and Article 6 of the ICERD.

The petitioner argued that the Danish authorities had failed to conduct a proper investigation. To this Denmark contended that the investigation carried out in the case fully satisfied the requirements that can be inferred from the Convention as interpreted by the Committee's practice, and therefore the Convention had not been violated.

Following the examination of the merits of the communication the Committee concluded that, due to the specific circumstances of the case, the police had not been able to accomplish a complete and in-depth investigation of the case. Therefore, the Convention had not been violated.

However, the Committee wished to emphasise the importance it attaches to the duty of a State party to observe Article 5(f) on the right of everyone, without distinction as to nationality, of access to any place or service intended for use by the general public.

*Human Rights Committee (HRC):*

The Committee has not considered any complaints against Denmark in the period under review.

## **6. Government initiatives**

### **Ministry of Refugee, Immigration and Integration Affairs**

*Equal Treatment Committee (Ligebehandlingsudvalget):*

On 8 June 2001 the Ministry of the Interior set up the Equal Treatment Committee. The Committee was assigned to prepare a proposal for the most expedient implementation in Danish law of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Race Directive).

In September 2002 the Equal Treatment Committee submitted Report No. 1422 on Implementation of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The

Committee proposes implementation of the Directive in Danish law by means of a new act on equal treatment irrespective of ethnic origin.

*Plan of Action for the Promotion of Diversity and Tolerance*

As follow-up on the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, the Ministry of Refugee, Immigration and Integration Affairs has commissioned the preparation of a national Plan of Action for the Promotion of Diversity and Tolerance. The aim of this Plan of Action is a coherent effort partly to strengthen the feelings of citizenship and fellowship concerning fundamental values of a democratic welfare society, partly to strengthen the ability of society to accommodate diversity and turn this diversity to an advantage to society. The Plan of Action builds on the integration policy of the Government of 5 March 2002.

The work on a national Plan of Action was commenced in September 2002. No final date for the preparation of the Plan of Action has been fixed yet.

## **RIGHT TO PROTECTION OF PROPERTY**

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Convention provisions: Article 1 of the First Protocol to the European Convention of Human Rights.

The Danish Constitution: Section 73.

### **1. Bills**

No bills concerning the right to protection of property have been introduced in the period under review.

### **2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments concerning the right to protection of property have been published in the period under review.

*Supreme Court:*

Danish Weekly Law Reports 2002, p. 1789, Supreme Court (U.2002.1789 H)  
In 1997 the Act on Taxi Driving was amended, a requirement of Danish nationality being introduced as a condition of a licence for commercial

passenger transportation. This requirement was repealed in 1999. In June 1998 the Public Taxi Council of Greater Copenhagen (Storkøbenhavn Taxinævn) advertised taxi licences for sale. One of the applicants refused was the taxi owner V, who was a Pakistani national already holding six licences. Only in June 1999 did he get the seventh licence. V instituted an action against the Ministry of Transport T claiming that the use of the nationality requirement of the Act on Taxi Driving against him was contrary to Article 14 of the ECHR, compared with Article 1 of the 1952 Protocol. He also claimed damages of just over DKK 70,000. T claimed dismissal of the case or in the alternative judgment in its favour. Neither the High Court nor the Supreme Court found for the claim for dismissal. The Supreme Court stated in that connection that, although a decision on V's claim for a declaration would not affect his legal position in other aspects than the claim for damages, it was inadvisable to determine that V did not have sufficient legal interest in an examination of the claim for a declaration. Contrary to the High Court, the Supreme Court found that T was not liable in damages. In that connection the Supreme Court stated that V had had no legal right to another licence in addition to the six he already had. Therefore his possibility to get a public licence for a commercial activity did not enjoy protection under Article 1 of the Protocol, and therefore it was not contrary to Article 14 of the ECHR to apply the nationality requirement in connection with the decision in 1998. Differential treatment due to nationality did not, in itself, infringe Article 5 of the ICERD or Article 26 of the ICCPR.

Danish Weekly Law Reports 2001, p. 2493, Supreme Court (U.2001.2493 H) When the local authority of Copenhagen Municipality sold a property in the Valby district in 1918-19, a restrictive covenant was accepted and registered according to which the local authority became entitled in 1980, and subsequently every ten years, to repurchase the property at the original land value – DKK 2,915 – with the addition of the value of the buildings. The local authority did not exercise its reversion right in 1980. At the end of 1980 E purchased the property. In 1985 the local authority gave notice of its intention to exercise the reversion right in 1990. Based on the general guidelines on administration of reversion rights of the local authority, E was offered suspension of the reversion right until 2060 against payment of DKK 93,000 in cash, or in the alternative E could purchase an exemption from the reversion right against payment of an additional amount of about DKK 18,000. When E had disputed the validity of the reversion right, the local authority instituted an action claiming that it was entitled to repurchase the property in accordance with the restrictive covenant. The local authority had not transgressed its powers or any other public law rules by the

agreement on and the registration of the restrictive covenant in 1918-19. The restrictive covenant was not a tax and therefore not contrary to section 43 of the Danish Constitution. When E purchased the property in 1980, E was aware of the restrictive covenant and had no reason to assume that the reversion right would only be exercised for planning purposes. Considering also the contents of the local authority's offer of purchasing an exemption or suspending the repurchase date and the consequences of the reversion covenant in general, there was found to be no basis for setting aside the restrictive covenant under section 36 of the Contracts Act or other sources of contract law. In accordance with its terms, the restrictive covenant was not comprised by the Rentcharges Act. Finally it was not contrary to the ECHR [Article 14 compared with Article 1(1) of the First Protocol to the ECHR]. The Supreme Court then found for the local authority's claim.

### **3. Opinions of the Parliamentary Ombudsman**

No opinions concerning the right to protection of property have been published in the period under review.

### **4. Judgments and decisions of the European Court of Human Rights**

No judgments or decisions concerning the right to protection of property have been published with Denmark as a party to the case in the period under review.

### **5. Opinions of and concrete cases before the Committees**

Relevant Committees:

The right to protection of property is not laid down in the UN conventions. Therefore the UN committees have no power to consider cases concerning alleged violations of this right. Nor has any committee under the Council of Europe power to supervise the right to protection of property.

### **6. Government initiatives**

No relevant Government initiatives have been launched in the period under review.

## ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Convention provisions: The International Covenant on Economic, Social and Cultural Rights (ICESCR), the European Social Charter.

### 1. Bills

For a brief summary of the reply of the DCHR to the following Bill, which concerns the social rights, please refer to the section on Prohibition of Discrimination:

Draft Bill amending the Act on an Active Social Policy and the Integration Act (amendment of the rules on eligibility for cash benefits, introduction allowance, etc.).

### 2. Danish court decisions

*Eastern and Western High Courts:*

No judgments with reference to the economic, social and cultural rights have been published in the period under review.

*Supreme Court:*

No judgments with reference to the economic, social and cultural rights have been published in the period under review.

### 3. Opinions of the Parliamentary Ombudsman

No opinions with reference to the economic, social and cultural rights have been published in the period under review.

### 4. Opinions of and concrete cases before the Committees

Relevant Committees:

The Committee on Economic, Social and Cultural Rights (CESCR) and the European Committee of Social Rights (ECSR).

Opinions:

*Committee on Economic, Social and Cultural Rights (CESCR):*

The Committee has not examined Denmark in the period under review.

*European Committee of Social Rights (ECSR):*

Denmark submitted its 22<sup>nd</sup> report to the European Committee of Social Rights in May 2002. The report concerns Articles 2, 3, 4, 9, 10 and 15 of the European Social Charter. The Committee will examine Denmark in October 2002.

*Concrete cases:*

Individuals cannot submit complaints to the Committee on Economic, Social and Cultural Rights and the European Committee of Social Rights.

## **5. Government initiatives**

### **Ministry of Justice**

*Incorporation Committee (Inkorporeringsudvalget):*

The Incorporation Committee recommended in report No. 1407/2001 that the ICESCR should not be incorporated into Danish law. For further details see the section on Implementation of Human Rights Conventions in Danish Law.

**SPECIAL RIGHTS:**

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**RIGHTS OF WOMEN**

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Convention provisions: The International Convention on the Elimination of All Forms of Discrimination against Women (ICEDAW).

**1. Bills**

No bills with reference to the ICEDAW have been introduced.

**2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments with reference to the ICEDAW have been published in the period under review.

*Supreme Court:*

No judgments with reference to the ICEDAW have been published in the period under review.

**3. Opinions of the Parliamentary Ombudsman**

No opinions with reference to the ICEDAW have been published in the period under review.

**4. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Committee on the Elimination of Discrimination against Women (CEDAW).

Opinions:

Pursuant to the International Convention on Elimination of All Forms of Discrimination against Women (ICEDAW) the Committee considered the fourth and the fifth periodic reports of Denmark on 12 June 2002. Denmark has accepted the amendment to Article 20, paragraph 1, of the Convention and has also ratified the Optional Protocol to the Convention.

In its report of 21 June 2002, the Committee makes the following observations and recommendations to Denmark, cf. CEDAW/C/2002/-II/CRP.3/Add.3:

The Committee commends Denmark for its efforts to strengthen the promotion of gender equality and women's rights through a wide range of laws, policies and programmes within the context of the provisions of the Convention and the Beijing Platform for Action. The Committee also commends the realisation of *de jure* equality of men and women in many areas of the Convention, especially with regard to economic and social benefits and marriage and family life. Denmark is also commended for appointing a Minister for Gender Equality and for establishing the Gender Equality Board (Ligestillingsnævnet). By doing so, Denmark has incorporated gender mainstreaming into its overall policy framework.

The Committee commends Denmark for having formulated an action plan for 2002-2006 for the Danish inter-ministerial gender mainstreaming project, while at the same time implementing women-specific programmes to encourage gender equality. Furthermore the Committee welcomes Denmark's action plan to stop violence against women. Finally the Committee welcomes Denmark's cooperation with the other Nordic and Baltic countries under the Nordic Council of Ministers with regard to trafficking in women and Denmark's signing of the United Nations Convention against Transnational Organized Crime and its Protocols.

Areas of concern and recommendations: The Committee is concerned that Denmark has not incorporated the ICEDAW into domestic legislation. The Committee also notes that the Danish Constitution does not contain a specific provision on discrimination against women.

The Committee recommends that Denmark take steps to incorporate the Convention into domestic law and report on the progress made in this regard in its next periodic report, including whether the Convention has been invoked before domestic courts.

The Committee urges Denmark to place emphasis on the Convention as a legally binding instrument and to view the Beijing Platform for Action as a complementary policy document to the Convention. Furthermore Denmark is urged to take proactive measures to raise awareness about the Convention.

The Committee is concerned at the closure of the Board for Ethnic Equality (Nævnet for Etnisk Ligestilling) and the Knowledge Centre for Gender Equality (Det Danske Videnscenter for Forskning og Information om Ligestilling). The Committee recommends that the decision to close these two institutions be reconsidered and that Denmark continue to earmark funds for their activities if those will be undertaken under other institutional arrangements, to enable them to continue their independent contribution to the achievement of gender equality. The Committee is concerned at the persistence of the wage gap between women and men in the Danish society. The Committee urges Denmark to develop policies and adopt proactive measures to accelerate the eradication of pay discrimination against women, including job evaluations, further study of the underlying causes for the wage gap and provision of increased assistance for social partners in collective wage bargaining, in particular in determining wage structures in sectors dominated by women.

While commending Denmark for having surpassed the critical 35 per cent threshold in terms of representation of women in decision-making in Parliament, the Committee expresses concern that women's representation remains low in executive and decision-making positions in municipalities and counties as well as in the private economic sector. The Committee urges Denmark to take measures to increase the representation of women in such decision-making positions. Moreover the Committee recommends that Denmark take steps to facilitate the options available to women in the private sector, *inter alia*, through the implementation of temporary special measures in accordance with Article 4(1) of the Convention. The Committee expresses concern about the low level of representation of women in the higher levels of the Foreign Service, in particular in ambassadorial posts. The Committee recommends Denmark to introduce special temporary measures in accordance with Article 4(1) of the Convention to increase the representation of women in such posts.

The Committee expresses concern that there are distressingly few women professors in the universities and that there is an apparent imbalance in the access of women academics, as compared with men academics, to research grants and other resources. The Committee urges Denmark to adopt policies to ensure that women professors are not discriminated against in this way and to increase the number of women in senior positions in universities.

The Committee is concerned about persistence of stereotypical attitudes

towards women, which threaten to undermine their rights and make them vulnerable to violence. The Committee calls upon Denmark to take additional measures to eliminate stereotypical attitudes about women, including through campaigns directed at both men and women and at the media. Denmark is also called upon to assess the impact of its measures to identify shortcomings and to adjust and improve these measures accordingly.

The Committee is concerned that Danish residents who arrange for female genital mutilation abroad are not liable to prosecution in Denmark unless female genital mutilation is a crime in the country in which it is performed. The Committee urges Denmark to penalise all Danish residents who arrange for female genital mutilation regardless of where it is performed. The Committee expresses concern that, despite the efforts to address the issue of trafficking in women, trafficking in women and girls continues to exist. For this reason the Committee encourages Denmark to continue efforts to combat trafficking in women.

The Committee is concerned that the Aliens Act, which although gender-neutral, indirectly discriminates against women. The Committee recommends that Denmark review the Aliens Act and revoke those provisions that are incompatible with the provisions of the Convention, particularly Article 2 (which prohibits direct and indirect discrimination).

The Committee expresses concern about the situation of foreign women in Denmark, including the discrimination in education and employment, etc., that they experience. Another concern expressed is about the gender-based discrimination and violence. The Committee encourages the Government to take effective and proactive measures to prevent this discrimination within their own communities and in society at large, to combat violence against the women and increase their awareness of the availability of social services and legal remedies.

The Committee regrets the amendment to the Aliens Act increasing the age limit for spousal reunification from 18 years to 24 years of age. The Committee urges Denmark to revoke this provision and explore other ways of combating forced marriages.

The Committee is concerned that the amendment to the Aliens Act, which increases the required number of years of residence from three to seven before a permanent residence permit may be obtained, will worsen the

situation of foreign married women with temporary residence permits who experience domestic violence because these women's fear of expulsion will be a deterrent to their seeking assistance or taking steps to seek separation or divorce. The Committee recommends that revocation of temporary residence permits of foreign married women who experience domestic violence, and legislative changes on residence requirements should not be undertaken without a full assessment of the impact of such measures on these women.

The Committee is also concerned that, under the amended Aliens Act, some women might be forcibly repatriated to where they had been subjected to rape and/or other atrocities and may face the threat of further persecution. The Committee urges Denmark to refrain from forcibly repatriating such women and to ensure that repatriation in these circumstances is voluntary.

Concrete cases:

No concrete cases with reference to the ICEDAW have been published in the period under review.

## **5. Government initiatives**

### **Ministry of Justice**

*Working Group on Combating Violence against Women and Trafficking in Human Beings (arbejdsgruppe om bekæmpelse af vold mod kvinder og menneskehandel):*

An inter-ministerial working group has been set up to find national initiatives to combat violence against women and trafficking in human beings. On 8 March 2002 the working group published an action plan to combat violence against women. An action plan on trafficking in human beings will be published at the end of the year. This action plan will suggest the insertion of a new provision in the Criminal Code to penalise trafficking in human beings.

*Incorporation Committee (Inkorporeringsudvalget):*

The Incorporation Committee recommended in report No. 1407/2001 that the ICEDAW should not be incorporated into Danish law. For further details see the section on Implementation of Human Rights Conventions in Danish Law.

## RIGHTS OF THE CHILD

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Convention provisions: The Convention on the Rights of the Child (ICRC) and Article 24 of the ICCPR.

### 1. Bills

Title:

**Draft Bill amending the Nationality Act (amendment of the rules on Nordic nationals' acquisition of nationality by declaration, and limitation of the legal effects under the Nationality Act of a person's plurality of marriages in force at the same time)**

Elements of the Bill:

A consequence of the Bill is that Nordic nationals acquiring Danish nationality by declaration still have to prove that they will consequently lose their current nationality. The Bill also limits the legal effects under the Nationality Act of a person's plurality of marriages in force at the same time.

The DCHR has no comments on the provisions of the Bill concerning Nordic nationals' acquisition of Danish nationality by declaration, the aim being to maintain the principle of reducing dual nationality as much as possible. It is noted in this respect that the 1997 European Convention on Nationality recognises that the member States have different opinions on multiple nationality.

Brief summary of the comments made by the DCHR to the other provisions of the Bill:

*Applicable law:*

Article 7 of the ICRC grants to all children the right to acquire a nationality, and Article 2 of the Convention establishes that the States Parties must respect and ensure this right and other rights of any child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's status. Corresponding provisions are laid down in Article 24(3), cf. Article 2, of the ICCPR.

The European Convention on Nationality (1997), which Denmark has signed and intends to ratify, states in Article 6(1)(a), first sentence, that a State Party must provide for its nationality to be acquired *ex lege* by children whose father or mother has the nationality of the said State Party. An

exception to this main rule may be children born abroad. The Convention builds on the general principle that everyone has the right to a nationality, cf. Article 15 of the Universal Declaration of Human Rights. The right to a nationality can be seen as a positive wording of the duty to avoid statelessness, which is deemed to be part of international law.

*Assessment:*

The DCHR has based its comments on the presumption that the amendment, according to which children born in bigamous marriages abroad will no longer automatically be granted Danish nationality after a Danish father, is in accordance with Article 6(1)(a) of the European Convention, which permits, in relation to children born abroad, an exception from the main rule that a State Party must grant nationality to children whose father or mother has the nationality of the said State Party.

The DCHR finds, however, that there is a need for clarification of any consequences that the amendment might have in contravention of other convention provisions or nationality principles.

The problem is whether the Bill might involve a risk of statelessness for some children born abroad (if the legislation of the mother's country lets the father's nationality decide the nationality of children born in wedlock). The DCHR is aware that problems raised by the Bill and related to statelessness could be solved by the possibility of obtaining Danish nationality by naturalisation, as stated in the explanatory notes of the Bill. It seems to be necessary to clarify whether any problems related to statelessness can be solved in all situations. Reference is made in this respect to Article 6(4)(b) of the European Convention on the duty to facilitate the acquisition of nationality for children falling under the exception of Article 6(1)(a). Reference is further made to Council of Europe Recommendation No. R (99) 18 of the Committee of Ministers on the avoidance and reduction of statelessness, which recommends particularly the use of the principle of avoiding statelessness at birth.

The DCHR finds reason to consider whether differential treatment of the children affected by the Bill will be in the nature of discrimination.

Finally the DCHR has taken the opportunity to suggest that a committee should be set up to consider a general nationality reform in line with the recent reforms in Sweden, Norway, Finland and other countries.

*References:*

Act No. 366 of 6 June 2002.

Entry into force: 1 July 2002.

Bill No. L 160, introduced in writing on 13 March 2002: Supplement A, column 4222.

The Bill as adopted: Supplement C, column 614.

Draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Nationality Act, distributed as an enclosure to the consultation papers of 1 March 2002 from the Ministry of Refugee, Immigration and Integration Affairs.

Reply of the DCHR to the Ministry of Refugee, Immigration and Integration Affairs of 11 April 2002, prepared by Eva Ersbøll.

For details on the reply of the DCHR to the following Bill, please refer to the section on Rights of Refugees:

Draft Bill amending the Aliens Act and other Acts (examination of cases relating to unaccompanied minors seeking asylum).

## **2. Danish court decisions**

### *Eastern and Western High Courts:*

No judgments with reference to the ICRC have been published in the period under review.

### *Supreme Court:*

No judgments with reference to the ICRC have been published in the period under review.

## **3. Opinions of the Parliamentary Ombudsman**

*File No.: 2000-2541-656.*

It is expected that the case will be quoted in the 2002 Report of the Parliamentary Ombudsman, which will presumably be published in September 2003.

The man B and the woman C had the child S in 1990. In 1993 B and C were legally separated, one term being that C was granted custody of S. By the decision made by the County Governor of Frederiksborg in 1993, B was granted access to S. B and C were divorced in 1994 according to the terms of the separation. In July 1998 B applied for extended access to S. In the case file there is a declaration dated September 1998 which appears to be signed by B. According to this declaration, B consents to the adoption of S by C's new husband D, and B accepts the rules applicable in this field as reproduced in the enclosed guidelines from the County Governor. Two days after the date of this certificate, D applied for permission to adopt S. At a meeting with the

County Governor of Copenhagen the following month, C consented to the adoption and she also said that S consented to the adoption. In the meantime B and the County Governor exchanged letters concerning the pending case of access. By the adoption grant of November 1998, D was granted permission to adopt S. B and the County Governor of Frederiksborg were notified of the adoption grant the same day.

Subsequently B complained to the Ombudsman, submitting that the adoption grant was invalid. He based his submission on various circumstances, some of them being that S had never been summoned for a special interview with the County Governor and that B had not received sufficient guiding. B also submitted that he had never signed the declaration in the case file.

The Ombudsman cannot decide any evidential issues. It is therefore deemed a fact that B has signed the declaration. The question of S not being summoned for an interview was assessed by the Ombudsman on the basis of the Danish rules on adoption concerning involvement of children under 12 years of age. In this respect the Ombudsman refers to Article 12 of the ICRC, on which the relevant Danish rules are based. The Ombudsman considered the relevance of both the ICRC, Article 8 of the ECHR and the case-law of the European Court of Human Rights. On the basis of an overall assessment of the matter, the Ombudsman found no basis for criticising the County Governor for not having interviewed S before he granted the adoption. He based his decision on S's age at the time of the decision (eight years) and the fact that C had notified the County Governor that S consented to the adoption.

As regards the insufficient guidance, the Ombudsman criticised various elements of the proceedings. Based on an overall evaluation, the Ombudsman did not find sufficient basis for taking further action.

On 19 December 2001 the Ombudsman published a report on his visit to the psychiatric unit at Frederiksborg Hospital. The report describes, *inter alia*, conditions of children and young people. It can be ordered from the Ombudsman's Office.

#### **4. Opinions of and concrete cases before the Committees**

Relevant Committees:

The Human Rights Committee (HRC) and the Committee on the Rights of the Child (CRC).

Opinions:

The HRC and the CRC have not examined Denmark in the period under review.

Concrete cases:

The CRC has not been granted powers to consider complaints from individuals.

The HRC has not considered any complaints against Denmark in the period under review.

#### **5. Government initiatives**

##### **Ministry of Justice**

*Incorporation Committee (Inkorporeringsudvalget):*

The Incorporation Committee recommended in report No. 1407/2001 that the ICRC should not be incorporated into Danish law. For further details see the section on Implementation of Human Rights Conventions in Danish Law (page 14).

#### **6. Miscellaneous**

The DCHR will launch a project in 2002 to improve the assessment of the conditions of children in Denmark based on the ICRC. This will be done by developing indicators to evaluate partly the status of fields covered by the Convention, partly the fluctuation in the level of protection over time. The need for developing such indicators was emphasised in the most recent recommendations of the CRC to Denmark.

The project will be launched on 20 November 2002 and is expected to finish in the autumn of 2003.

## RIGHTS OF REFUGEES

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Convention provisions: The Convention Relating to the Status of Refugees (the Geneva Convention).

### 1. Bills

Title:

**Draft Bill amending the Aliens Act and other Acts (examination of cases relating to unaccompanied minors seeking asylum)**

Elements of the Bill:

This Bill concerns cases relating to unaccompanied minors seeking asylum in Denmark. One element of the Bill is the proposal that in future a guardian ad litem should be appointed to promote the interests of the child and issues pertaining to the child's right to examination of his or her application for asylum.

Brief summary of the comments made by the DCHR:

*Applicable law:*

Pursuant to the Geneva Convention, a person must be recognised as a refugee as soon as the conditions of Article 1 A have been satisfied. A person's recognition as a refugee is therefore not subject to recognition by a state. This also applies to unaccompanied minors. The right to apply for asylum and to have such application examined on its merits follows from Article 33 of the Geneva Convention, which also comprises unaccompanied minors in the opinion of the DCHR.

A refugee can be granted a residence permit on the basis of an application in pursuance of section 7 of the Aliens Act. In this connection the refugee has a legal right to a residence permit. This means that a foreigner will become eligible for a residence permit immediately when he or she is recognised as a Convention refugee. This is an absolute right, which cannot be modified or deviated from by an administrative decision.

*Assessment:*

The DCHR commends that the Bill provides for an improvement of the conditions of unaccompanied minors seeking asylum, such as the appointment of a guardian ad litem.

However, as regards the asylum procedure, the Bill provides for a codification of the current practice according to which the asylum applications of many unaccompanied minors will not be examined on the merits of the case.

The DCHR finds that this practice is not in accordance with section 7 of the Aliens Act. According to the wording of this provision it does not authorise the refusal of residence permits to minors, merely by omitting an examination of the merits of the application.

It appears from the explanatory notes of the Bill that in such cases the application for asylum must be deemed “to have been abandoned”, which is not in line with the nature of section 7 as a provision granting a legal right. This means that applications for asylum from children under 15 years of age, which must now as the predominant main rule lead to resident permits under section 9a(i), can still be deemed “to have been abandoned”. It is stated in that context, though, that the child must be informed of his or her possibility of renewing the application for asylum, but in reality the protection as a refugee is made subsidiary to the right to a residence permit under section 9a.

The Bill is also in contravention of the right stipulated by the Geneva Convention for every asylum-seeker, including minors, to have his or her application examined on the merits of the case.

To obtain better compatibility with the international obligations and standards, the DCHR recommends that the scheme be structured so that the immigration authorities will carry out asylum procedures at their own initiative to the greatest extent possible, without minors necessarily having to expressly renew their applications.

*References:*

The Bill has not been adopted yet. Following the first reading, the Bill was referred to the Committee on Immigration and Integration Policy (Udvalget for Udlændinge og Integrationspolitik).

Bill No. L 23, introduced in writing on 2 October 2001: Supplement A, column 425.

Draft Bill of the Ministry of the Interior amending the Aliens Act and other Acts, distributed as an enclosure to the consultation papers of 24 October 2001.

Reply of the DCHR to the Ministry of the Interior of 29 November 2001, prepared by Kim U. Kjær.

For a brief summary of the reply of the DCHR to the following Bill, which concerns the rights of refugees, please refer to the section on Prohibition of Torture:

Draft Bill amending the Aliens Act, the Marriage Act and other Acts.

Draft Bill of the Ministry of the Interior amending the Aliens Act (part of the “anti-terrorism package”) and draft Bill of the Ministry of Refugee, Immigration and Integration Affairs amending the Aliens Act.

Draft Bill amending the Aliens Act (Proposed Council Directive defining the facilitation of unauthorised entry, movement and residence and abolition of the right to suspension of enforcement at appeal of certain decisions on administrative expulsion of EU/EEA nationals and others).

## **2. Danish court decisions**

*Eastern and Western High Courts:*

No judgments with reference to the Geneva Convention have been published in the period under review.

*Supreme Court:*

No judgments with direct reference to the Geneva Convention have been published in the period under review.

## **3. Opinions of the Parliamentary Ombudsman**

No opinions with reference to the Geneva Convention have been published in the period under review.

## **4. Opinions of and concrete cases before the Committees**

Relevant Committees:

No monitoring body has been set up in connection with the Geneva Convention.

## **5. Government initiatives**

No relevant Government initiatives have been launched in the period under review.

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ISBN 90-5095-195-3

**Banning, Theo R. G. van:**

The Human Right to Property

Antwerp: Intersentia, 2002 (445 pp.)

ISBN 90-5095-203-8

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On-line Rights for Employees in the Information Society, Use and Monitoring of E-mail and Internet at Work

The Hague: Kluwer Law International, 2002 (280 pp.)

ISBN 90-411-1626-5

**Blanpain, Roger and Frank Hendrickx (eds.):**

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The Hague: Kluwer Law International, 2002 (388 pp.)

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Codex: International Labour and Social Security Law

The Hague: Kluwer Law International, 2002 (434 pp.)

ISBN 90-411-1720-2

**Brownlie, Ian and Guy S. Goodwin-Gill:**

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Oxford: Oxford University Press, 2002 (896 pp.)

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The Hague: Kluwer Law International, 2002 (250 pp.)

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The Hague: Kluwer Law International, 2002 (484 pp.)

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Singulær lovgivning – når lovgiver dømmer (Singular legislation – when the legislator judges)

Copenhagen: DJØF Publishing, 2002 (520 pp.). Gold medal thesis

ISBN 87-574-0813-0

**Fitzpatrick, Joan (ed.):**

Human rights protection for refugees, asylum seekers, and internally displaced persons: a guide to international mechanisms and procedures

Ardsley, N.Y: Transnational, 2002 (665 pp.)

ISBN 1-57105-061-2

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Håndbog om procedurer og kriterier for fastlæggelse af flygtningestatus (Danish translation of: Handbook on Procedures and Criteria for Determining Refugee Status)

Copenhagen: DJØF Publishing, 2002 (96 pp.)

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Folketinget og EU's charter om grundlæggende rettigheder: spørgsmål og svar (The Danish Parliament and the EU Charter of Fundamental Rights: Questions and Answers)

Copenhagen: Folketingets EU-oplysning, 2002 (146 pp.)

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The Sixth International Conference for National Human Rights Institutions, Copenhagen and Lund 10-13 April 2002. Hosted and organised by the Danish Centre for Human Rights and the Swedish Ombudsman Against Ethnic Discrimination

Copenhagen: The Danish Centre for Human Rights, 2002 (198 pp.)

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The Work and Practice of Ombudsman and National Human Rights  
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Copenhagen: Danish Ministry of Foreign Affairs, 2002 (237 pp.)  
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Menneskerettens udfordring – ideologi eller videnskab? (Human Rights  
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Strasbourg: Council of Europe Publishing, 2002 (495 pp.)  
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**With the collaboration of Robin Clapp**

Human Rights and Good Governance, Building Bridges  
The Hague: Kluwer Law International, 2002 (261 pp.)  
ISBN 90-411-1776-8

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Aarhus: Aarhus University Press, 2002 (187 pp.)

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**Winter, Jane:**

Human Wrongs, Human Rights: A Guide to the Human Rights Machinery of the United Nations

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Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining

Oxford: Oxford University Press, 2002 (710 pp.). The book has a chapter on “The Emphasis on Public Participation in Energy Resource Development in Denmark, and the Rights of Greenland and the Faroe Islands”.

ISBN 0-19-925378-1

**All the above books are available at the DCHR library**

Information about publications, leaflets, brochures and various reports from the DCHR can be found at [www.humanrights.dk](http://www.humanrights.dk). Furthermore the library of the DCHR is open for personal inquiries all weekdays from 11 a.m. to 3 p.m., or it is possible to search the library database: [www.humanrights.dk/afdelinger/dokumentation/soegbib/](http://www.humanrights.dk/afdelinger/dokumentation/soegbib/).

## HUMAN RIGHTS ON THE INTERNET

[www.coe.int](http://www.coe.int)

The website of the Council of Europe provides information about the structure, activities and official documents of the Council, including information about the European Court of Human Rights at [www.echr.coe.int](http://www.echr.coe.int). The case-law relating to the ECHR can be searched at [www.echr.coe.int/-Hudoc.htm](http://www.echr.coe.int/-Hudoc.htm).

[www.europa.eu.int](http://www.europa.eu.int)

The website of the European Union gives access to official EU documents, information about EU institutions, information sources, activities, etc. The website is available in 11 languages.

[www.humanrights.dk](http://www.humanrights.dk)

The website of the Danish Centre for Human Rights has both a Danish and an English version. The website informs about the fields of work carried out by the DCHR, its departments, publications, conferences, etc. It is also possible to get information about the merger between the DCHR and other institutions at 1 January 2003 and find links to other relevant websites.

[www.humanrightsbusiness.org](http://www.humanrightsbusiness.org)

On this website the Human Rights & Business Project informs of companies' responsibilities for human rights abroad. Moreover there are some indicators that companies can use to determine to what extent they comply with the human rights standards according to the conventions. This project is based on a cooperation between the Danish Centre for Human Rights, the Confederation of Danish Industries (Dansk Industri) and the Industrialization Fund for Developing Countries (Industrialiseringsfonden for Udviklingslandene).

[www.menneskeret.dk](http://www.menneskeret.dk)

This website is produced by the Danish Centre for Human Rights and is intended to inform of human rights in Europe. The website gives information about the European Court of Human Rights in Strasbourg and some easily accessible resources for themes such as freedom of religion,

rights of the disabled, freedom of expression, rights of the child, racism and protection of personal data. At [www.menneskeret.dk/menneskeretieuropa/domstolen/](http://www.menneskeret.dk/menneskeretieuropa/domstolen/) searches can be made for judgments and decisions in cases where somebody has complained of Denmark to the European Court of Human Rights. Several major newspapers and the Danish Broadcasting Corporation (Danmarks Radio) contribute news to the site.

[www.nhri.net](http://www.nhri.net)

This is the official website of 50 national human rights institutions. The website offers information on human rights activities at regional and national level and was developed in cooperation between the Danish Centre for Human Rights and the United Nations High Commissioner for Human Rights.

[www.nordichumanrights.dk](http://www.nordichumanrights.dk)

The website is the outcome of a cooperation project between the five Nordic human rights institutes in Denmark, Sweden, Norway, Finland and Iceland. The website displays various human rights themes and information about publications, seminars, conferences and other events staged in a Nordic country.

[www.un.org](http://www.un.org)

The official UN website gives a lot of data about member states, documents, activities, conferences, etc. One way of keeping updated is to access [www.un.org/News/](http://www.un.org/News/), or [www.un.org/Depts/dhl/resguide/spechr.htm](http://www.un.org/Depts/dhl/resguide/spechr.htm) for documentation on the structure of and relations between conventions and committees. Information about the International Court of Justice is available at [www.icj-cij.org/](http://www.icj-cij.org/).

[www.unhchr.ch](http://www.unhchr.ch)

The website of the United Nations High Commissioner for Human Rights gives access to information about conventions, conferences, committee meetings, general recommendations, recent and forthcoming meetings and a lot of other subjects related to human rights. The English version of the Universal Declaration of Human Rights can be found at [www.unhchr.ch/udhr/lang/eng.htm](http://www.unhchr.ch/udhr/lang/eng.htm). All reports submitted by the states to the various UN Committees can be searched at [www.unhchr.ch/tbs/doc.nsf](http://www.unhchr.ch/tbs/doc.nsf).

Further information about the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban can be found at [www.unhchr.ch/html/racism](http://www.unhchr.ch/html/racism).

[www.youthhumanrights.net](http://www.youthhumanrights.net)

In connection with the 50<sup>th</sup> anniversary of the European Convention on Human Rights, the Danish Youth Council (Dansk Ungdoms Fællesråd) and the DCHR agreed to invite a young man and a young woman from each European country to contribute to a plan of action for the promotion of human rights and democracy in Europe. The website has functioned as a debate forum for those invited, and it displays a list of the topics debated.

## LIST OF JUDGMENTS AND DECISIONS

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*Hamdi Sari v. Turkey and Denmark*, application No. 21889/93, judgment of 8 November 2001

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*E.T.B. v. Denmark*, communication No.146/1999, decision of 24 May 2002

*Foud Farag Zeew v. Denmark*, communication No. 180/2001, decision of 24 May 2002

*Committee on the Elimination of Racial Discrimination (CERD):*

*M.B. v. Denmark*, communication No. 20/2000, decision of 15 March 2002

## Abbreviations

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DCHR	The Danish Centre for Human Rights
CPT	The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECRI	The European Commission against Racism and Intolerance
Court	The European Court of Human Rights
ECHR	The European Convention on Human Rights
H	Supreme Court
HK	Supreme Court order
HRC	The Human Rights Committee
ICAT	The International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
ICCPR	The International Covenant on Civil and Political Rights (1966)
ICEDAW	The International Convention on the Elimination of All Forms of Discrimination against Women (1979)
ICERD	The International Convention on the Elimination of All Forms of Racial Discrimination (1965)
ICESCR	The International Covenant on Economic, Social and Cultural Rights (1966)
ICRC	The International Convention on the Rights of the Child (1989)
U	Danish Weekly Law Reports
UNHCR	The United Nations High Commissioner for Refugees
V	Western High Court
Ø	Eastern High Court

## HUMAN RIGHTS IN DENMARK STATUS 2002

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Editing: Birgitte Kofod Olsen, Rikke Frank Jørgensen and Morten Kjærum (responsible)

Publishing: Klaus Slavensky

Translation: Dialog Translatørservice

Layout: Carsten Schiøler

Production: Handy-Print A/S, Skive

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Bibliographic information according to the HURIDOCS standard format:

Title: Human Rights in Denmark. Status 2002

Corporate Author: The Danish Centre for Human Rights

Personal Authors: Birgitte Kofod Olsen and Rikke Frank Jørgensen

Index Terms: Human Rights / International Law / National Law / Administration of justice / Courts / Torture / Discrimination / Women / Refugees / Anti-terror

Printed in Denmark 2003 by

Handy-Print A/S, Skive

ISBN 87-90744-68-3



