

DENMARK
Reporting for The UN Committee of Human Rights 2011
from
Refugees Welcome/The Committee for Underground Refugees (NGO)

Introduction

As a voluntary and independent organization working with refugees, we have been selected to submit an individual report. The report is based on our previous contribution to the UPR examination of Denmark, from May 2011, but with updates from the recent changes in the Danish legislation from November 2010 until today.

Refugees are particularly susceptible to a wide range of human rights abuses in Denmark. Our Committee has a comprehensive knowledge of the situation: we provide individual counseling for refugees during the process of seeking asylum and as new residents. We also carry out outreach work in asylum centers and are actively involved in the current Danish debate on immigration.

Background

Since 2001, the present government has implemented a number of changes in the legislation that concern refugees and migrants, the most recent major change was the total revision of the Law on Immigration in the summer of 2010 (“Service eftersyn” presented in March 2010). Almost all of the amendments are aimed at limiting immigration to Denmark, particularly refugees and family members from non-European countries.

The government has deliberately legislated on the brink of international law and shown a disquieting lack of respect for human rights and the agencies trying to uphold them. Laws are frequently set up as theoretically affecting native Danes but in practice they only create a problem for refugees and immigrants. Similarly, laws are often described as promoting better integration but in reality they create more exclusion and discrimination. Racist and intolerant statements by members of Parliament are becoming increasingly more offensive and accepted by the general public and media. Even to be bilingual is seen as negative and immigrants are consistently linked to problems, crime, and radical Islam.

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Our concerns primarily refer to various forms of **discrimination**. The guiding principle of The Universal Declaration of Human Rights is that all men are born equal with access to equal rights without discrimination. And this principle is endorsed in a number of conventions. ICCPR Articles 2 and 26 stipulate that there may be no distinction such as to race, color, sex, language, religion and property. These articles are relevant for most of our topics and therefore not mentioned every time.

Other articles violated or at risk to be so are mentioned in the following, however there might be more articles relevant than the ones we mention.

RC: Convention on the Status of Refugees 1951

UDHR: Universal Declaration of Human Rights 1948

CEDAW: Convention to Eliminate Discrimination Against Women 1979

CAT: Convention Against Torture 1984

CRC: Convention on the Rights of the Child 1989

ICCPR: Convention on Civil and Political Rights 1966

CRPD: Convention on the Rights of Persons with Disabilities 2007

CESCR: Convention on Economical, Social and Cultural Rights

1. Permanent residency and citizenship

(RC art. 34, UDHR art.15)

A new point system to obtain permanent residency introduced in 2010 (in a way retroactively enacted, as those who were close to obtaining the status are now set back in the process) requires qualifications such as: a specific proficiency in the Danish language impossible to achieve for large groups of refugees and immigrants, no matter how much effort they put into it; continuing full-time employment during the most recent four years or a long higher education in Denmark. The government's own comments on the law acknowledge that not everyone would be equipped to meet the requirements which constitutes a deliberate denial of the rights (including the right to vote) of the weakest group of applicants. To date, Denmark has Europe's most stringent requirements for citizenship and permanent residency. There is no particular provision for refugees in spite of Article 34 of the Refugee Convention, which stipulates easy access to citizenship for refugees.

Language requirements are so unrealistically high that they discriminate against a vast number of new citizens who have difficulty learning Danish at such levels: for example, due to psychological problems, PTSD, limited schooling in the home country, age, or dyslexia. Even before the latest change of law an increasing number of refugees were rejected when applying for permanent residency – from 5.3% in 2003 to 54,2% in 2009, a steeper fall than for foreigners in general. After implementing the new point system in 2010 only 4.3% of all the applications have turned out positive (76 out of 1.751, numbers from June 2010 until February 2011, including all foreigners, not only refugees)¹.

Employment requirements are equally unrealistic and inflexible so that even well integrated persons with a history and experience in the labour market are excluded. This is discrimination in practice taking into account that the employment rate for refugees and immigrants is lower than the average among the population at large and that the Danish labour market is highly specialized.

Permanent residency is required before applying for citizenship, which is even more difficult to obtain. As some of the points developed below demonstrate permanent residency is a requirement for access to many services, and so the barriers to acquiring permanent residency also act to deprive immigrants of their rights in other areas. The right to citizenship for stateless persons has during many years consistently been violated as the Danish newspaper Information has documented.² The State has promised to bring this in order in the future.

As long as permanent residency or citizenship is not granted, the person is living on temporary residency which has to be prolonged at certain intervals, depending on the grounds of the stay. It is

¹ Answer from the Minister to a member of Parliament:

<http://www.ft.dk/dokumenter/tingdok.aspx?samling/20101/almdel/UUI/spm/188/index.htm>

² More than 60 stateless palestinians are bringing their case to the Danish court. A series of articles in Danish newspaper Information. <http://www.information.dk/telegram/272986>

usually prolonged without problems - unless the application is sent just one day too late, the fee is not paid or if the person receives an order to leave the country (administratively or by a court order), for example because of a criminal act or on suspicion of terrorism.

2. Marriage and family life (ICCPR Art.23, 24)

(UDHR art. 16. CRC art. 3, 9, 10. CRPD art. 5)

Reunification of spouses:

In order for a spouse to be allowed to stay in Denmark for the purpose of reuniting with their partner they must fulfill the following conditions: The local inhabitant must have had permanent residency for at least three years; be self-sufficient and independent of public support for three years; have a home of suitable size at his/her disposal; and put up a bank guarantee equivalent to 14.285 € in a closed account for seven years. The newly arrived spouse must, within 3 months, pass a comprehensive computer-based test in Danish language and culture (fee of 500 €), which requires about 600 hours of study, no courses are provided. Both must have reached the age of 24 and both have stronger ties to Denmark than to any other country (where each party can attain maximum 50 per cent). Refugees are exempted from certain requirements but only as long as they are still in actual need of protection. An additional point system for the incoming spouse came into force in 2011, where the points needed are given for work experience, international languages skills, education and self-sufficiency.

Family reunification of children:

Allowed only until a child reaches the age of 15, even if the legal age in Denmark is 18 (except for criminal offences, where the lower limit is now 15 years). Children as young as ten years old can be rejected if they are considered too old for successful integration. In 2010 206 children younger than 12 years were not allowed to stay in Denmark with one or both parents, half of them because of "low chance of successful integration".³

Fees and location of application:

A fee of 1.051 € per person has to be paid just for submitting an application for reunification. In addition applications must be made from the incoming's home country.

These innumerable requirements are highly discriminatory and for many constitute a real obstacle to the free exercise of marriage and family life. In particular, the requirements for ties to Denmark and permanent residency can be impossible for a couple ever to comply with, consequently separating families or forcing one spouse to live irregularly in Denmark. Nationals who have been citizens for 28 years are exempt, making this a law deliberately targeting new citizens.

Children should be classified as dependents until the age of 18 and guaranteed, by law, the right to stay with their parents.

The newly introduced fee and requirements for self-sufficiency and bank guarantee are economically discriminating in particular because refugees and immigrants are generally known to have less economic resources than the rest of the population.

Also the access to permanent residency/citizenship is so difficult that it constitutes a real hindrance for family reunification in itself.

3. Discrimination in access to health and welfare

(CRC art. 2, 3, 22, 27. UDHR art. 22, 25, RC art. 23, 24, CESC art. 2, 9)

³ Paragraph 9, 13 in the Danish Alien Act. See more facts in the article from Danish news paper MetroXpress: <http://www.metroxpress.dk/nyheder/brn-i-hobet-angtes-familiesammenfring/KObkfb!C4PJ6NiGjGZ/>

There are several alarming issues concerning a number of recent initiatives in the legislations on access to social benefit and health services:

”Start help”, introduced 2002:

Those who have been living in Denmark for less than seven years and have not been fully employed for the last two and a half years are eligible to only receive about half of a native Dane’s social assistance entitlement. This means that a considerable number of families, including children born in Denmark of non-Danish parents, grow up in poverty without the opportunities of their Danish neighbours. Researchers have documented that this law has led to a clear increase of severe poverty and limits the possibilities for integration.⁴

Health services:

A particular health care system is available in the asylum centres only for emergencies or relief of pain during the process of seeking asylum and when refused asylum. (The centres are open, but asylum seekers are forced to live in the centre chosen by Immigratin Service). This is particularly problematic for trauma sufferers and asylum seekers who have to live in centres for many years. ”Undocumented” persons living irregularly do not have any access to health services: they do not have access to the public health system and there are no specific clinics for them. Neither are refugees/immigrants with residency for over seven years provided with free translation services at the physician or in hospitals regardless of their level of Danish proficiency. This constitutes economic discrimination and, because of misunderstandings due to language, could potentially be life threatening.⁵

”Family Check”:

All parents in Denmark receive child support every 3 months. However since 2011 this no longer applies to newly arrived families, who now only will receive one quarter of the amount gradually rising to the full amount after 2 years. Refugees are also subject to this discrimination, which mainly targets children.

Pension:

Residents are entitled to a monthly pension from the state when they reach the age of 65 and have lived in Denmark for 40 years. Until 2010, the 40-year rule has not applied for refugees, as many of them will not have stayed 40 years in Denmark when reaching the age of retirement. However from now on refugees will have to live-up to the same rules as everybody else, a measure which the government calls ”equality”.

4. Vulnerable groups (ICCPR Art. 2, 3, 7, 8, 24, 26)

(CEDAW, CRC, CRPD – various art.)

Many of the above mentioned preconditions particularly affect the following vulnerable groups:

Women: Immigrant women frequently have shorter schooling, are more tied to the home because of small children and have fewer opportunities to access the labour market than their Danish counterparts. In reality even Danish women do not enjoy equal rights and generally earn 20 per cent less than Danish men. Another concern is that in many cases battered family reunified female spouses lose their residence status if they chose to leave a violent husband, as she will lose the grounds on which she got her permit to stay. Her attachment to Denmark will often be considered too weak, as these women are often held in isolation by their husbands.

Children of refugees/immigrants are often affected by poverty or denied a life in Denmark with a parent (see our chapter 2 and 3). The law deprives the child of its residence status if parents send

⁴ Source: [Rockwool Fondens Nyhedsbrev juni 2009](#); [Flygtninge på langvarig starthjælp](#), 2010

⁵ Source: [Indvandrermedicinsk klinik, 2011](#) and article: <http://www.information.dk/249353>

it to the home country for "reeducation" – Denmark just lost a case on this issue at the European Court of Human Rights⁶. Possible individual grounds for children of refugee families to seek asylum are not taken into consideration, as children are not heard and the child's own motive is never looked into – the child doesn't even have it's own registration number. The child's welfare is seldom taken into account in decisions having to do with residency permits. Applications on humanitarian grounds are only judged by medical diagnoses for adults, it is not possible to apply for the child alone on basis of a child diagnosis – or with refence to risk of development problems or the lack of access to basic needs in the home country.

The literacy challenged have no chance whatsoever of obtaining permanent residence excluding them from the right to family reunification and citizenship.

The elderly have particular difficulty in meeting language and self-sufficiency requirements, and will in the majority of cases not qualify for retirement benefit.

The mentally and physically ill and **victims of trauma or torture** are unlikely to qualify for permanent residency, citizenship and family reunification. Refugees/immigrants eligible for pensions due to permanent disability are not allowed to claim dispensation from the full employment condition although even people with relatively minor health problems have difficulty maintaining a full-time job in the Danish labour market.

- **Victims of trafficking/human smuggling** have no possibility of obtaining asylum in Denmark whether or not they cooperate with the police in their work to identify racketeers, as being exposed to trafficking is not considered a ground for asylum or protection status.

5. Torture (ICCPR Art.7)

(CAT art x. CRPD art. 5, 18)

The concept of torture is not inscribed in Danish law but is perceived as aggravated assault. In addition torture victims are not provided with treatment prior to residency permits and often endure long waits for treatment. For example, there are no dispensations when applying for citizenship on grounds of PTSD or other after-effects of torture. Torture victims are sent to prison like other asylum seekers (described under the Rule of law).

6. Rule of law/legal certainty (ICCPR Art. 9, 10, 14, 15)

(UDHR art. 8. RC art. 31. UDHR art. 7)

Many laws in the immigration area are in fact adopted retroactively because they are often applied from the day the law is suggested in Parliament – this means that nobody can adjust to the new rules in time. Changes are made so often that even lawyers find it difficult to keep up with these, and often the laws are tightened up even before effects of earlier changes have been evaluated. Most evident regarding permanent residency and family reunification demands. This is very unusual compared to other areas of Danish law. There is a list of concerns:

- A rejection by the Refugee Board cannot be appealed to a court of law.
- Even though cases are usually decided within a year, a ten or twelve year stay in the asylum system is not unusual. Applications might be rejected but repatriation cannot be implemented either due to the situation in the home country or doubt about an asylum seeker's identity. A formula for residency should be proffered after a certain period in order to secure this group's human rights. It is well documented that the uncertainty of life in refugee camps – including no right to work or to education - result in serious health problems deteriorating over time for both adults and children.

⁶ Osman vs Denmark: <http://www.airecentre.org/news.php/27/press-release-osman-v.-denmark>

- Persons accused of terrorism are completely outside the rule of law and not even their personal lawyers are privy to knowledge of the grounds for prosecution or allowed to be present during a trial. (The “Terror Law” was applied in 2002 and the “Riot Package” in 2009).
- Persons granted ”sanctioned residence” administratively (for example if suspected of terrorism) have to report daily to a specific centre. This is tantamount to sentencing without trial, open-ended sentencing, restriction of personal freedom, denial of the right to work and, frequently, constitutes a real obstacle to family life.
- Asylum seekers can be imprisoned for unlimited periods alone on suspicion of intending to go underground or on suspicion of a false identity. Many for up to a year. In addition, asylum seekers are sentenced to imprisonment for document falsification if they present false passports on arrival – directly contravening Refugee Convention Article 31.

7. Proportionality (ICCPR Art. 13, 14)

- A Danish national might be fined or sentenced to prison for breaking the law, a non-Danish resident is subject to disproportionately serious consequences on top of the sentence. For example, deportation for taking part in a non-violent sit-down strike (despite permanent residency). A two-month jail sentence could defer access to citizenship by eight years and the two months could be followed by permanent deportation depending on the sentence.
- A Danish national faces certain economic consequences when dismissed or resigning from his job. For a refugee/immigrant with limited residence permit the consequences could be enormous and the family’s future and access to various rights jeopardized. Even a short period as unemployed could mean going back to square one in the process of applying for permanent residence.

8. Democracy and citizenship (ICCPR Art.25)

(UDHR art 15, 21. RC art. 34)

An increasing number of people will come to live their lives in Denmark with no influence on government decisions because only nationals are eligible to vote and run for Parliament. A number of offices and duties of trust similarly require citizenship. Even children of non-Danish citizens born in Denmark must apply for citizenship when reaching eighteen and then on various conditions. There is a serious risk of such a group without influence or rights in their own country turning against a society that does not accept them or feel powerless. The legislations thus create a group of second class citizens with no democratic voice. Even the right to vote at local elections was limited recently, for citizens from outside EU only. It was heightened from three to four years of legal stay in Denmark,

Conclusion

As indicated in our list of concerns above, refugees and immigrants are punished by a series of laws that, unfortunately, in many cases are discriminatory on the government's side due to its narrow, nationalistic mentality promoting assimilation. Even though discrimination is forbidden by Danish law, recent Danish legislation incorporates a regrettably materialistic approach to the rights of new citizens: rights should be "earned" by means of successful participation in the labour market, knowledge of the Danish language, and adopting a traditional Danish way of life. But with objectives so unachievable for many this amounts to discrimination. In our opinion the situation is particularly acute in that it is not solely a question of unplanned, deplorable discrimination but deliberate rejection of the basic principles of human rights and a limitation of rights that have formerly been ensured to all residents in our country.



Contact:

Refugees Welcome/The Committee for Underground Refugees

c/o Michala Bendixen

Valhøjvej 12, DK-2500 Valby, Denmark

Phone +45 - 3379 1916

www.flygtningeunderjorden.dk

kontakt@flygtningeunderjorden.dk