

Udsendt d. 25. marts 2014

Til pressen!

Stærk kritik af dansk asyllovgivning og praksis samt familiesammenføringspraksis for børn i Europarådets rapport

Europarådets menneskerettighedskommissær, Nils Muiznieks, var i Danmark i november 2013, og har nu publiceret sin rapport.

Han kritiserer i sin rapport om menneskerettigheder i Danmark især forholdene for asylbørn og migrantbørn, men også for asylansøgere i det hele taget.

Han opfordrer Danmark til at forbedre beskyttelsen af disse børn og sikre, at deres rettigheder bliver respekteret fuldt ud. Kommissæren siger også, at barnets tarv er vigtigere end deres integrationspotentiale, eller end forældrenes integrationspotentiale, og at også børn over 14 år har ret til at blive familiesammenført med deres forældre efter Børnekonventionen. Kommissæren er alarmeret over de konsekvenser livet i asylcentre på ubestemt tid har på børn af afviste asylansøgere, som ikke kan tilbagesendes. Han fremhæver psykosociale lidelser og udviklingsproblemer, fordi børnene har levet i uvished i lange tider, og siger at disse forhold ikke er adækvate for børns udvikling. Desuden bør myndighederne undersøge, hvad der er sket med de uledsagede flygtningebørn, der forsvinder fra centrene for disse børn, og forebygge disse forsvindinger. Menneskerettighedskommissæren kritiserer også Danmarks indespærring af asylansøgere i detentionscentre: dette bør kun bruges som en sidste udvej og kun i den kortest mulige tid, og må aldrig omfatte sårbare personer som børn, handicappede og ofre for menneskehandel. Desværre er dette ikke tilfældet i Danmark!

I resuméet i rapporten siger han om afviste asylansøgere, der ikke kan sendes hjem, at det er yderst vigtigt at stoppe deres tilstand i limbo. Ophold i asylcentre på ubestemt tid må ikke betragtes som en mulig praksis. Og myndighedernes bestræbelser for at tilskynde asylansøgerne til frivillig hjemsendelse må aldrig føre til overtrædelser af menneskerettighederne for asylansøgerne og deres familier.

Hele rapporten kan downloades herfra: <https://wcd.coe.int/ViewDoc.jsp?id=2145355>

Pressemeddelelse og resume på engelsk er gengivet nedenunder, SOS mod Racisme har indsat resuméet fra rapporten nederst

Venlig hilsen,

Anne Nielsen, næstformand, SOS mod Racisme

----- Original Message -----

From: [Commissioner](#)

To: [undisclosed-recipients:](#)

Sent: Monday, March 24, 2014 6:35 PM

Subject: NEW : Commissioner Muiznieks releases a report on his visit to Denmark

T +33(0)388413538 www.commissioner.coe.int press.commissioner@coe.int

Ref. CommDH 014(2014)

Better protection needed for migrant children in Denmark

<http://bit.ly/1qQI54J>

Strasbourg, 24/3/2014 – “The best interests of the child are not always upheld in the context of asylum and immigration in Denmark. The Danish authorities should improve the protection they provide to migrant children, by ensuring full respect of their rights” said today Nils Muižnieks, Council of Europe Commissioner for Human Rights, in releasing the [report](#) on his visit to Denmark carried out on 19-21 November 2013.

In spite of positive changes introduced in 2012, further progress is needed, in particular to ensure that family reunification proceedings involving children are dealt with in a positive and humane manner. “This includes extending the right to family reunification to children older than 14, so as to comply with the definition of a child provided in the UN Convention on the Rights of the Child”. The Commissioner also stressed that the best interests of the child should prevail over their integration potential, or the integration potential of their parents.

The Commissioner is also alarmed by the impact that life in asylum centres for indefinite periods of time has on children belonging to families of rejected asylum-seekers whose deportation order cannot be implemented. “Even though the material living conditions are adequate, many of these children suffer from psycho-social disorders and other developmental problems due to long-term uncertainty. This situation can hardly be reconciled with the right to a standard of living adequate for the child's development”. The Commissioner also calls for effective investigation into the fate of unaccompanied minor migrants who have disappeared from reception centres and for measures to protect children victims of trafficking and to prevent further disappearances.

While noting a more selective approach regarding migrant detention, the Commissioner considers that improvements are still needed. “Detention of migrants and asylum-seekers must be a measure of last resort and for the shortest possible period and it should never be applied to vulnerable persons, such as children, persons with disabilities and victims of trafficking in human beings. Regrettably, this is not yet the case in Denmark”.

Welcoming the guidance provided by the Director of Public Prosecutions on the implementation of criminal law provisions against hate speech and hate crime, the Commissioner encourages the Danish authorities to step up their efforts to combat hate speech, and in particular islamophobia, which continues to be widespread in public and political debate. “The Danish authorities should firmly condemn all instances of racist and xenophobic speech in political discourse and further raise awareness about the limits of freedom of expression in accordance with international standards”.

The Commissioner welcomes Denmark's policies promoting autonomy of persons with disabilities, but is concerned about the trend among local authorities to accommodate them in residences with 20 to 80 housing units. “This approach does not favour the independent living and inclusion in the community of persons with disabilities, a right guaranteed under the UN Convention on the Rights of Persons with Disabilities. Local authorities should be provided with guidance on the building of housing facilities which are more compliant with the principles contained in this Convention”.

Progress is also required to replace substituted decision-making with supported decision-making for persons considered incapable of managing their own matters due to psycho-social or intellectual disabilities. “As a first step to this end, full incapacitation and plenary guardianship should be abolished. Measures must also be taken to ensure that persons with disabilities can enjoy their right to vote.” The Commissioner also calls on the authorities to consider expanding protection against discrimination on the ground of disability to cover all areas of life, not only employment.

Lastly, the Commissioner calls on the Danish authorities to improve legislation and practices regarding coercion in psychiatry, including forced hospitalisation, forced treatment and the use of physical restraints. While welcoming the current plans of the Danish authorities to act in these fields, the Commissioner stresses the urgent need to reduce involuntary placement and treatment and to drastically limit the use of coercion. “The authorities should also strengthen guarantees against arbitrary or disproportionate decisions regarding forced placement, ensure respect for the consent of the patient and prevent further violations of

the right of patients to physical integrity from occurring.”

The comments of the authorities are available [here](#).

Contact presse au bureau du Commissaire :

Stefano Montanari, +33 (0)6 61 14 70 37 ; stefano.montanari@coe.int
www.commissioner.coe.int ; Twitter : [@CommissionerHR](#) ; [Facebook](#); [youtube](#).

Le Commissaire aux droits de l'homme est une institution non judiciaire indépendante au sein du Conseil de l'Europe; sa mission est de promouvoir la prise de conscience et le respect des droits de l'homme dans les 47 Etats membres de l'Organisation. Il est élu par l'Assemblée parlementaire du Conseil de l'Europe. Le Commissaire en exercice, M. Nils Muižnieks, a pris ses fonctions le 1^{er} avril 2012

Resume :

Summary

Commissioner Nils Muižnieks and his delegation visited Denmark from 19 to 21 November 2013. In the course of this visit the Commissioner held discussions with representatives of the Danish authorities and institutions and with members of civil society. The present report draws on the themes of the Commissioner's visit and focuses on the following selected human rights issues:

I. Human rights of asylum-seekers and immigrants

In recent years, the Danish authorities have adopted measures in the field of asylum, immigration and integration in order to address some of the human rights issues raised by the restrictive asylum and immigration policies implemented in Denmark since 2002. However, further improvements are required to ensure better protection of the human rights of asylum-seekers and immigrants.

1. The rights of children in the context of asylum and immigration

The Commissioner is concerned that considerations relating to migration control tend to have primacy over the best interests of the child in actions and decisions affecting children in the context of asylum and immigration. The Danish authorities should ensure that the rights protected under the UN Convention on the Rights of the Child (UN CRC) are better reflected in asylum and immigration policies and practices. In particular, requests for family reunification involving children should be dealt with in a more positive, humane and expeditious manner. Moreover, the best interests of the child should prevail over their integration potential, or the integration potential of their parents.

The Commissioner is alarmed at the impact that life in asylum centres for indefinite periods of time has on children belonging to families of rejected asylum-seekers whose deportation order cannot be implemented. He therefore notes with interest the possibility, introduced in 2013, for families with children to live outside asylum centres. Lasting solutions should be identified to ensure that these children can fully enjoy their rights as protected under the UN CRC, in particular their right to quality education on the basis of equal opportunities and their right to a standard of living adequate for their physical, mental, spiritual, moral and social development.

Unaccompanied minor migrants are in a highly vulnerable position. The Danish authorities are called upon to improve their age determination procedures and effectively investigate the fate of unaccompanied minor migrants who have disappeared from reception centres. The prospect of being returned to their country of origin as soon as they turn 18 places unaccompanied minors whose asylum claims have been rejected in a situation of uncertainty which is harmful to their wellbeing and development. Moreover, the envisaged possibility of returning children whose asylum claims have been rejected to countries of transit or origin, including to reception facilities established for this purpose, is of serious concern because of the risk of human rights violations to which these children would be exposed.

A child-sensitive approach to asylum should be in place to allow for any protection needs of children as a specific social group to be identified. In the Commissioner's opinion, the detention of minors for asylum and immigration purposes should not be allowed and should be replaced with appropriate care arrangements. Lastly, when taking return decisions affecting families, the authorities should treat the best interests of the child as a primary consideration.

2. Other human rights issues pertaining to asylum and immigration

Steps have been taken to strengthen human rights safeguards in the asylum procedure, including a more independent Refugee Appeals Board. However, the quality of interpretation provided in the initial stages of asylum procedures could be improved. The Danish authorities should also ensure that any transfers of asylum-seekers under the Dublin regulation take place in full compliance with Denmark's human rights obligations, including the obligation not to expose the persons concerned to a risk of being subjected to inhuman or degrading treatment.

Measures should urgently be taken to put an end to the "legal limbo" of rejected asylum-seekers whose deportation order cannot be implemented. Stays of indefinite duration in asylum centres cannot be considered as a viable option and the willingness of authorities to incite voluntary return should never result in arrangements that impinge on the human rights of the persons concerned and the members of their families.

When rejected asylum-seekers are returned, the utmost care should be taken to ensure that their right not to be exposed to a real risk of being subject to treatment contrary to Article 3 of the European Convention on Human Rights (hereinafter referred to as ECHR) or onward refoulement is thoroughly respected. In cases where the returnee is a person who has resided in Denmark on humanitarian grounds related to health, the effective availability and accessibility of the necessary medical treatment to the returnee in the country of destination should be considered.

Additionally, the detention of asylum-seekers and irregular migrants should remain exceptional and for the shortest possible length of time. Moreover, the authorities should not detain persons in a situation of particular vulnerability, such as children, persons with disabilities and victims of trafficking in human beings.

Permanent residence should be granted to refugees as early as possible in order to establish a stable basis for their integration in Denmark and attention should be paid to ensuring that they do not fall into destitution at retirement age.

Public discourse and hate speech targeting ethnic and religious minority groups, particularly Muslims, continue to be of concern to the Commissioner, in spite of reported improvements. Although a number of cases of hate speech have been prosecuted in recent years, the number of convictions remains limited. The authorities should firmly condemn all instances of racist and xenophobic speech in political discourse and raise awareness about the limits of freedom of expression in accordance with international standards and the case-law of the European Court of Human Rights (hereinafter: the Court). Positive steps were taken in 2011 by the Director of Public Prosecutions to provide detailed guidance to prosecutors and police officers on the processing of cases of hate speech and hate crime. Further efforts should be made to encourage the reporting of hate crimes.

The setting up of an independent police complaints authority is a particularly commendable development. In this context, it is important that law enforcement officials are easily identifiable, so as to facilitate the prosecution and sanctioning of perpetrators of abuse. The Danish authorities should examine reported practices of ethnic profiling by the police and ensure that adequate safeguards against this phenomenon are in place.

II. Human rights of persons with disabilities

Denmark has developed positive policies regarding the provision of individualised support and services in the community, in order to promote the autonomy of persons with disabilities. However, there is a worrying trend among local authorities to provide accommodation to persons with disabilities

in large residences, with around 20 to 80 housing units. This approach does not favour the independent living and inclusion in the community of persons with disabilities, a right guaranteed under the UN Convention on the Rights of Persons with Disabilities (UN CRPD). Local authorities should be provided with guidance on the building of housing facilities for persons with disabilities which are more compliant with the principles contained in the UN CRPD.

Denmark maintains a system of guardianship for persons considered incapable of managing their own matters due to psycho-social or intellectual disabilities, including full deprivation of their legal capacity. Persons under plenary guardianship are, moreover, automatically deprived of their right to vote. The Danish authorities should bring their legislation and practice in these fields in line with international standards, including the case-law of the Court and the provisions of the UN CRPD which guarantee the right for persons with disabilities to equal recognition before the law. Progress is required towards replacing substituted decision-making, including guardianship, with supported decision-making. As a first step to this end, full incapacitation and plenary guardianship should be abolished. Measures must be taken to ensure that persons with disabilities can enjoy their right to vote.

The Commissioner calls on the Danish authorities to ensure that legislation and practices regarding coercion in psychiatry, including forced hospitalisation, forced treatment and the use of physical restraints are in full compliance with human rights standards. The publication in October 2013 of a comprehensive report on the care of persons with mental health problems, commissioned by the government, is a welcome development. The report's proposals aimed at reducing involuntary placement and treatment and limiting drastically the use of coercion must be followed up swiftly through the adoption and implementation of an action plan. The authorities should strengthen guarantees against arbitrary or disproportionate decisions regarding forced placement, ensure respect for the consent of the patient and prevent further violations of the right of patients to physical integrity from occurring.