

Analytical Report on Legislation

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1. Table Of Contents

1.	Table Of Contents	2
2.	Executive summary	3
3.	Introduction	4
4.	An overview of Danish Integration, Immigration and Discrimination Policy	6
5.	Theoretical and methodological approach	7
6.	Policy and legislation	9
6.1.	Integration policy	9
6.1.1.	The Government	9
6.1.2.	Ministry of Refugee, Immigration and Integration Affairs	14
6.1.3.	Ministry of Employment	15
6.1.4.	Ministry of Social Affairs	15
6.1.5.	Other bodies	18
6.2.	Integration legislation	18
6.2.1.	Ministry of Refugee, Immigration and Integration affairs	18
6.2.2.	Ministry of Employment	19
6.2.3.	Ministry of Justice	20
6.3.	Immigration policy	20
6.4.	Immigration legislation	21
6.4.2.	National Case law on immigration issues	23
6.5.	Anti-discrimination policy	25
6.6.	Anti-discrimination legislation	25
6.6.1.	Ministry of Refugee, Immigration and Integration Affairs	25
6.6.2.	Ministry of Employment	26
6.7.	Anti-discrimination case law	27
6.7.1.	National case law on discrimination issues	27
6.7.2.	International case law	31
7.	Reduction of racism and support of diversity	33
8.	Analyses of the development within policy and legislation	34
8.1.	Human rights implications of new legislation	34
8.1.1.	Integration	34
8.1.2.	Immigration	37
8.1.3.	Discrimination	38
8.1.4.	Case law on immigration and discrimination issues	39
8.2.	General implications and explanations from a legal approach	40
8.2.1.	“The Anti-terror-package”	40
8.2.2.	“The Alien package”	41
8.2.3.	The abolishment of the concept of the so-called <i>defacto</i> status	41
8.2.4.	Reduction of the number of members of the Refugee Board	43
8.3.	Explanations from an integration perspective	45

2. Executive summary

A high priority area in the Government's policy and legislation scheme for 2003 are still issues regarding integration and immigration legislation in relation to family reunifications, conditions for asylum seekers together with an effort to motivate, economically and otherwise, the ethnic minorities to join the labour market. Furthermore, new anti-discrimination legislation has been introduced.

Thus, during the period covered by the Raxen 4 report, i.e. 1 January to 1 September 2003, the overarching principles of new policy initiatives and adopted legislative measures within the fields of integration and immigration, have been:

- Maintaining the strict immigration legislation
- Adjusting the legislation in relation to family reunification
- Self-maintenance
- Better integration
- Respect for international obligations, including the transposition of anti-discrimination legislation

These principles were introduced as the basis for the Government's strategies in two policy programmes launched in January and March 2002, respectively, as *A new Policy for Foreigners* and *Towards a new integration policy*. Descriptions and analyses of these programmes are found in the Danish Raxen 3 report on Legislation.

Supplementing policy programmes and plans of actions have been launched in 2003. Thus, *The Government's Vision and Strategies for Improved Integration*, was launched in June 2003, cf. 5.1.1. and followed by the *Plan of action: efforts in 2003-2005 against forced marriages, force-like marriages and arranged marriages in August 2003*, cf. 5.1.1.

Already in the autumn 2002, an initiative within the ambit of integration was taken by the setting up of a *Cross-Ministerial Working Group on female Circumcision*.

A general governmental policy programme on the societal development of the Danish welfare state was launched in August 2003 as *Growth, Welfare - Renewal II*. The programme aims at strengthening the responsibility of the individual, e.g. via self-maintenance requirements, and improvement of the integration of foreigners through education, language courses and supervision, cf. 5.1.1.

Legislative initiatives within integration and immigration have been concentrated on implementing the principles said forth in the basic policy programmes and responding to discussions in Parliament and media.

Within the field of discrimination, legislation has been passed in 2003 implementing the EU Race Directive, which improves the protection against discrimination and reprisal on the grounds of race or ethnic origin and provides the victims of differential treatment with

a legal remedy, i.e. a complaint mechanism within in the Danish Institute Human Rights, cf. 5.6.2.

Case law within the reporting period indicates a movement in the direction of active application of human rights standards by the courts and vague signs of an improved awareness of racial discrimination in the court system.

Legal and anthropological analyses convey that acts and policies within the period 2000-2003 are aimed at specific groups of the population, namely asylum seekers, refugees and other persons coming to Denmark from countries outside western part of the world. As a result, an imagined gap becomes real, in which an opposition between the large group of citizen who, uncontested, call themselves Danes and the growing group of “third world looking people” who are excluded from this category occurs. The current policies and legislation seems to enlarge the contrast between the dominant and the dominated, cf. 7.2.

3. Introduction

The aim of this report is to provide information on policy and legislative initiatives and measures adopted in Denmark during the period of 1 January 2003 to 1 September 2003 in the fields of integration, immigration and non-discrimination. Thus, the report should be seen as a follow-up to the Danish Raxen 3 Legislation Report covering the period 2000-2002.

The report contains identification and description of the policy programmes, plans of actions, guidelines, activities, including conferences and award events, within the respective areas that have been initiated by the Danish Government and the relevant ministries in the first part of 2003.

Included is also identification and description of relevant legislation adopted by Parliament in order to implement national policy programmes, EU Directives and international regulation, including Human Rights Conventions in the period 1 January 2003 to 1 September 2003.

Relevant case law from the Danish Courts in said period concerning integration, immigration and discrimination issues are included in both the descriptive and analytical parts of the report.

The report encompasses analyses of the human rights and discriminatory implications of new legislation. New legislation initiatives are analysed with the purpose of assessing the compliance with the principles, requirements and standards laid down in international human rights law.

As a supplement to the Raxen 3 report, this report contains a broad-spectrum legal analysis as well as an anthropological analysis of the tendencies within the societal development and their reflection in the legislation. Consequently, these analyses cover the period of 2001-2003. Last but not least the report contains an annex with a list of related publications published in the first part of 2003.

4. An overview of Danish Integration, Immigration and Discrimination Policy

The overview of the Danish integration, immigration, and discrimination policy concerns the period from 1. January 2003 to 1. August 2003.

Since the last elections to *Folketing* (Parliament) on 20 November 2001, the Prime Minister has been Mr. Anders Fogh Rasmussen who is the head of the *Venstre* (Liberal Party). The Liberals, together with *Konservativt Folkeparti* (Conservative People's Party) run – as a two-party coalition - minority Government with the support of *Dansk Folkeparti* (Danish People's Party), a nationalistic, right wing party. As mentioned in *Raxen 3¹* one of the main aims for the centre-right coalition is to tighten the rules on immigration, and to limit the influx of immigrants to Denmark in order to ensure that those already in the country find employment and improve their integration into the Danish society.

During 2002 the Danish Government launched a number of initiatives in the field of integration and immigration. The focal point for the initiatives was to ensure access to working and social life as the main integration strategy. The policies were presented in January 2002 under the headline *A new Policy for Foreigners* and in March 2002 under the headline *Towards a new integration policy*.

The policy and legislative initiatives put forward from 1. January 2003 to 1. September 2003 should, partly, be seen as follow-up measures to the main policy papers from 2002, partly as responses to specific needs and issues that have been raised in Parliament and the media during the period.

Moreover, the obligation to implement the EU Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin² and the EU Directive on establishing a general Framework for equal treatment in employment and occupation³

has led to the passing of Bills and adoption of an Act during the period covered by this report. Said legislative measures have given rise to major discussions in Parliament. Apart from the above mentioned initiatives the Government launched an Action Plan to Promote Equal Treatment and Diversity and to Combat Racism in November 2003 (not within the period under scrutiny).

The central policy paper for the current period is *The Government's Vision and Strategies for Improved Integration* from June 2003, creating a new policy agenda. According to this policy paper, "integration efforts must be improved and the link between immigration policy and integration policy must be enhanced". Also, the importance of improving "the fundamental values of society, including freedom,

¹ EUMC/Raxen Report on Legislation in Denmark on Integration, Immigration and Discrimination 2000-2002.

² 2000/43/EC.

³ 2000/78/EC.

obligations, rights and equality for everyone regardless of sex, colour and belief” is stressed in the introduction to the report. The report presents 114 concrete initiatives, some of which will later be formulated and proposed as Bills and others as Administrative Orders.

Another policy paper, which will influence the political agenda during the autumn of 2003, was launched by the Government 27 August under the title *Vækst, Velfærd, Fornyelse II* (Growth, Welfare and Renewal).⁴ The policy paper stresses, among other things, the need for better integration and points at self-maintenance and individual responsibility as key factors in the process.

The central ministries for the policy papers appearing in this report are the Ministry of Refugee, Immigration and Integration Affairs⁵, the Ministry of Social Affairs⁶ and to some extent the Ministry of Employment⁷, and the Ministry of Justice⁸. But as mentioned above Integration and Immigration issues are given a high priority on the Government’s agenda and the policy papers are often presented as the Government’s action plans.

5. Theoretical and methodological approach

As mentioned in part 2 above, the purpose of this report is divided in two basic parts: one part focuses on policy initiatives, within the areas integration, immigration and discrimination, respectively. These descriptions are found in part 5.1., 5.3., and 5.5. A second part describes legislative measures within said areas adopted as a consequence of explicit policy programmes, and are found in part 5.2., 5.4. and 5.6. A third part contains legal and anthropological analyses of the development within policy and legislation and are – as such – linked to the descriptive parts in chapter 5 of this report and the parallel descriptions found in the Raxen 3 report. When references are made to chapter 5-descriptions, the relevant report containing said descriptions is indicated in brackets by R3 and R4.

In order to draw a general picture of racism and treatment of persons with another ethnic origin than Danish in Denmark, relevant Danish case law from the High Courts and the Supreme Court is included in part 5.7. These judgments have been publicized and are accessible on the Internet.⁹ To illustrate the handling of cases concerning discrimination in the city courts, a number of judgments have been integrated. The cases are not representative, but should merely be seen as examples chosen among cases that have been publicized by the Danish Court

⁴ Available on <http://www.stm.dk/imageUpload/dokument/Regeringsgrundlag%20II.pdf> (29.08.03), In Danish only.

⁵ Minister of Refugee, Immigration and Integration Affairs: Bertel Haarder (The Liberals)

⁶ Minister of Social affairs and equality: Henriette Kjaer (Conservative People's Party)

⁷ Minister of Employment: Claus Hjort Frederiksen (The Liberals)

⁸ Minister of Justice: Lene Espersen (Conservative People's Party)

⁹ See <http://www.domstol.dk> and <http://www.thomson.dk> (subscribers only).

Administration (*Domstolsstyrelsen*), given attention by the media, and submitted to the city courts by intervention or support from the Documentation and Advisory Centre on Racial Discrimination (*Dokumentations- og Rådgivningscentret for racediskrimination*), a Danish non-governmental organisation.

A human rights approach is chosen as the theoretical basis of the legal analyses found in part 7.1. and 7.2. The analyses thus focuses on the impact of new legislation on human rights protection found in international human rights documents, and in acts incorporating or implementing human rights documents or provisions into Danish internal law.

The sources used for the analyses cover both legally binding human rights instruments containing human rights obligations for the contracting parties (hard law), and legally non-binding instruments, leaving the contracting parties with a political and moral obligation to meet the requirements laid down in the instruments (soft law).

Thus, the European Convention on Human Rights and the basic UN covenants on civil and political rights, and on economic, social and cultural rights are applied, as well as the thematic UN conventions on refugees, elimination of all forms of racial discrimination, elimination of discrimination against women, and the prohibition of torture, inhuman, cruel or degrading treatment or punishment, and are used as guiding for the assessment of the level of protection found in Danish legislation.

The anthropological analysis is based on the identification of some key patterns in the policy and legislation covered by the Raxen 3 and Raxen 4 report. These patterns or regularities are then situated within a broader socio-cultural framework and transnational process that characterize and circumscribe Danish society in the late 1990's and early 2000's. Due to the spatial limitations of this report, the analysis does not claim to systematically cover all policy and legislation efforts. Wherever possible the analysis draws on previous research.

6. Policy and legislation

6.1. INTEGRATION POLICY

Within the period covered by this report, both the Government and the ministries have taken a number of initiatives within the field of integration to fulfil the goals set up in previous policies, including especially *Towards a new integration policy* of 5 March 2002. Moreover, new initiatives have been taken, primarily in relation to education and the labour market.

6.1.1. The Government

6.1.1.1. The Government's integration and alien policy

In March 2003 the Government launched a status report on follow up initiatives to the policy initiatives from 2002: *A new Policy for Foreigners*, 17 January 2002 and *Towards a new integration policy*, 5 March 2002¹⁰ under the title *The Government's Integration and Alien Policy - Status March 2003*.¹¹

The report highlights an agreement of 24 May 2002 with the parties within the labour market on integration of refugees and foreigners in the labour market, the subsidy scheme introduced 1 July 2002 according to which a so called "start payment" is granted to persons who have not lived in Denmark for a total period of 7 out of the past 8 years, and the introduction in July 2002 of binding contracts between the municipalities and newly arrived foreigners in Denmark.

Moreover, the report explains the first phase of a reform of the Act on Integration¹² and the Act on Danish Education¹³ concerning language courses, introduction programmes and a flexible system of cooperation among the municipalities in the integration efforts and plans.¹⁴

The report also emphasizes the legislative initiatives taken in order to improve the skills of ethnic minority children in the Danish language. In this regard, the changes of the Act on Public Schools¹⁵ in June 2000 which restricted mother-tongue teaching to children from the EU- and EEA, Greenland and the Faeroe Islands are mentioned, just as the access to language stimulation to children from the age of three in stead of four.

¹⁰ Both policy papers are described in Raxen 3 Legislation in Denmark 2001-2002, part. 5.1 and 5.3.

¹¹ Available at http://www.inm.dk/publikationer/integrationspolitik_mar03/ren.htm (16.08.03)

¹² Denmark, Consolidated Act No. 792 on Integration (18.09.2002).

¹³ Denmark, Act No. 375 on Danish Courses for Adult Aliens etc. (28 May 2003).

¹⁴ The initiatives are described in Raxen 3 Legislation in Denmark 2001-2002, part 5.1. and 5.2.

¹⁵ Denmark, Consolidated Act No. 730 (21.07.2000).

6.1.1.2. Policy programmes: Vision and strategies for improved integration

In 2003, the Government took initiative to set up a Ministerial group, dealing with the improvement of integration.

In June 2003 the Ministerial group submitted the report Regeringens *vision og strategier for bedre integration* (The Government's Vision and Strategies for Improved Integration)¹⁶ presenting 114 concrete initiatives. The 114 initiatives fall into, what the Government considers as 3 main focus areas on the political agenda, enabling a better integration of foreigners in the Danish society: 1) efforts to ensure a coherent and open democratic society, 2) efforts to help persons of an ethnic background other than Danish to manage better in the educational system, and 3) effort to help more foreigners to get a job. According to the report the Government states that four fundamental principles will guide the course for new integration politics: 1) Make room for diversity and learn to use it for common advantage. 2) Abandon the so-called clientification of foreigners and show respect by imposing demands. 3) Abandon any lack of consistency in all its forms. 4) Avoid excusing suppressive family patterns by referring to "culture".

Among the 114 proposals, which according to the media include 20 "sticks" and 94 "carrots" to improve the motivation for immigrants and refugees to integrate into the Danish society, the following could be emphasized as the most controversial proposals:

- A proposal to remove child benefits from the parents if they send the children back to the country of origin for unreasonable periods of time (*Initiative No. 13*).
- A proposal to lower the age limit for family reunification of children from 18 years to 15 years of age. This means that instead of a right for the children to obtain a residence permit until they reach the age of 18, this will only persist until the child reaches the age of 15 (*Initiative No. 14*).
- A proposal to restrict cases of family reunification in cases where one parent still is living in the country of origin (*Initiative No. 15*).¹⁷
- A proposal to make it compulsory for children of ethnic minorities (where Danish is not their native tongue) from the age of three to attend language stimulation courses, if an expert has assessed that the child is not able to speak Danish at an satisfactory level (*Initiative No. 75*).
- A shared burden of proof and possibilities for mediation and assistance in relation to cases of discrimination on basis of race or ethnic origin, and to create an independent institution which will give advisory statements in cases concerning discrimination (*Initiative No. 6*).

¹⁶ Regeringen (2003) Ministergruppen om bedre integration "Regeringens vision og strategier for bedre integration", available at: http://www.inm.dk/publikationer/engelske_publicationer/integration_policy/index.htm (04.08.2003)

¹⁷ Note: Initiative No. 14 and Initiative 15 was, included in Bill No. L 171 of 20 February 2004 adopted by Parliament on 2 June 2004 and affirmed as Act No. 427 of 9 June 2004. According to the Ministry of Integration though, in situations where Denmark is internationally obligated, residence permits will still be granted.

- Make investigations and information campaigns concerning various areas where statistics shows that ethnic minorities from areas outside the EU, North America and The Nordic Countries, are over represented. This focus area will especially deal with gender equality *vis-à-vis* the problems and the discrimination women experience from their own ethnic minority group i.e. female circumcision, forced marriage, domestic violence, and the question of availability for the labour market and for education (*e.g. Initiative No. 1-5*).
- A proposal to make an information campaign aimed at teachers, nurses, day care- and social workers, informing them of their legal obligations to report to the the relevant authorities if they suspect a child has been or is about to be circumcised, together with an information campaign aimed at the groups at risk (*Initiative 31-33*).
- Make a plan of action to implement tolerance, diversity and equality into the Danish society and in particular in relation to the labour market (*Initiative No. 7*).

6.1.1.3. Plan of action: efforts in 2003-2005 against forced marriages, force-like marriages and arranged marriages

With the purpose of signaling the Governments disapproval of forced and arranged marriages, and enhancing the respect for democratic values, including gender equality, personal freedom and the freedom to choose a spouse, an action plan was adopted 15 august 2003.¹⁸

The reasons given for the need for new strategies in this field are – apart from the lack of compliance of the tradition with democratic values – the prohibition in Danish law against forced marriages, experiences with forced marriages during the past years and statistics.

Among the arguments against forced and arranged marriages, the biological consequences such as the increased risk for closely related persons of giving birth to a child with severe disabilities, is highlighted in the action plan. It is pointed out that this risk is doubled for parents with close family relations, i.e. 5 per cent to 2,5 per cent as the general risk in a European birth cohort.

Concerning statistics, the action plan stresses a survey showing that 91 per cent of young persons with a Turkish background are married to a person living in Turkey, 57 per cent of women and 67 per cent of men with a background in Ex-Yugoslavia are married to relatives or others living in the country of origin. The corresponding numbers for Pakistan are 88 per cent women and 78 per cent men. Less than 10 per cent are married to a person living in Denmark and belonging to the same ethnic group.

Also, it is mentioned that statistics from the Danish Female Crisis Shelters show that 51,6 per cent of the women with another ethnic origin than Danish approaching the shelters, are family reunited women.

The plan of action consist of 21 initiatives with the purpose of:

¹⁸ ”Handlingsplan for regeringens indsats i perioden 2003-2005 mod tvangsægteskaber, tvangslignende ægteskaber og arrangerede ægteskaber (2003)” (Danish only) available at: http://www.ligestillingsminister.dk/Files/PDF/handlingsplan_tvang.pdf (15.08.2003)

- Preventing forced marriages,
- Preventing unfortunate family reunifications on the background of arranged marriages
- Contributing to better integration and increasing the gender equality
- Increasing the focus on young people with an ethnic minority background and their possibility to make their own choice of spouse.
- Communicating the knowledge concerning the areas of effort to all in contact with ethnic minorities, e.g. doctors, social workers, nurses, teachers, nursery teachers etc.

6.1.1.4. Working group: female circumcision

In the fall of 2002 an intense media debate arose concerning female circumcision performed on children of refugees or immigrants with the consent of their parents – the debate primarily dealt with individuals of Somali origin. The Government set up a *Tværministeriel arbejdsgruppe om omskæring af piger* (Cross-Ministerial Working Group concerning female circumcision), with a mandate to assess the need for new legislation and to examine the duties for various professional groups to inform the social authorities. The conclusion of the report submitted in January 2003¹⁹ does not recommend changes in the legislation within the areas of social affairs and health service, as an obligation to inform the social authorities (and for the social authorities an obligation to act and try to prevent the violation) already exists within the present legislation, if it is known that a child is at risk being harmed. The working group could not recommend a general physical examination of all girls considering the group at risk to be too small; this would be a disproportionate measure. The working group recommended strengthening the information campaign as a preventive measure and especially targeting groups that are known to traditionally practice female circumcision. The working group did not have the mandate to assess the Criminal Code and the principle of double criminalization (see the amendment to the Criminal Code concerning female circumcision).

6.1.1.5. Growth, Welfare – Renewal II 27 August 2003 (Vækst, Velfærd – Fornylse II 27. August 2003)²⁰

The Governmental policy programme concerning new political initiatives was launched in August 2003 and is an update of the 27 November 2001 Governmental programme.

The Government points out that new demands both nationally and internationally have emerged in the fight against fundamentalist forces and opponents of the principles of western values and the democratic society.

¹⁹ Tværministeriel arbejdsgruppe om omskæring af piger (2003) ”Rapport fra tværministeriel arbejdsgruppe om omskæring af piger” (Danish only) available at: <http://www.sm.dk/netpublikationer/2003/p1kvinde1001/forside.htm> (05.08.2003)

²⁰ Vækst, Velfærd Fornylse II Supplerende regeringsgrundlag 27. august 2003 VK Regeringen, available at: <http://www.stm.dk/imagesUpload/dokument/Regeringsgrundlag%20II.pdf> (29.08.2003)

It seems that the principle *quid pro quo* serves as the basis for a reintroduction of personal responsibility. Hence, the Government mentions the Alien policy and legislation as areas where citizens are rewarded for being self-maintaining with a permanent residence permit after 5 years instead of the normal 7 years.

The Government states in the programme that too many foreigners are marginalized and not active citizens. Furthermore it is the general opinion of the Government that there are norms of behaviour among foreigners hampering the integration. Violation of fundamental principles of the society, the passivity and the lack of responsibility must be dealt with. It is the opinion of the Government that the responsibility for the integration first and foremost lies with the immigrants.

The Government states that the new integration polity is built on four fundamental principles (see the *Government's vision and strategies for a better Integration*, above).

One of the main focus areas is the strengthening of the integration on the labour market via education and language courses. Also, initiatives aimed at the children of the foreigners are, according to the Government, the key to better integration. Obligatory language courses for children of foreigners and improved supervision of the free or private basic schools are considered applicable tools for a better integration. The supervision should mainly focus on whether the students are taught in Danish and whether the school prepare them for a life in a society where freedom and democracy are core values.

It is the goal of the Government that rejected asylum seekers are returned to the country of origin quickly and consistently. Refugees on a temporary residence permit should return to their country of origin as soon as the conditions allow it.

The Government intends to tighten the rules regarding family reunification in a way that prevent a spouse in Denmark to obtain family reunification if he/she has committed an violent crime against a spouse or cohabiting partner within 10 years before the application of family reunification²¹

Finally, the Government intends to ease the restrictions of the claim of attachment for some family reunifications if criteria's are met establishing strong and durable ties with Denmark. (Government Bill No. L 6 of 8 October 2003, affirmed as act No. 1024 of 27 December 2003). The amendments implies, among other things, that a person who have been Danish nationals for 28 years and persons who were born and raised in Denmark as small children and grew up in Denmark and moreover had at least 28 years of lawful – substantially continuous – residence in Denmark need not satisfy the condition of ties as a condition for reunification with a spouse. The amendment also implies an enhanced effort against marriages contracted against a party's own desire.

²¹ Included in Government Bill No. L 171 of 20 February 2004, affirmed as Act No. 427 of 9 June of 2004

6.1.2. Ministry of Refugee, Immigration and Integration Affairs

In the period covered by this report, the Ministry of Refugee, Immigration and Integration Affairs has concentrated on initiatives directed at the integration of ethnic minorities on the labour market.

6.1.2.1. Integration on the labour market

The Integration Act covers the first three years newly arrived refugees and immigrants and the relevant ministry is therefore Ministry of Refugee, Immigration and Integration Affairs, in relation to labour market oriented initiatives. The Integration Act offers a special vocationally orientated introductory program.

6.1.2.2. Support for entrepreneurs with an ethnic background other than Danish

The Ministry has introduced three new initiatives in regard to the Governments plan of action for business entrepreneurs. These initiatives cover

- The establishment of local entrepreneur networks aimed at ethnic entrepreneurs
- The introduction of entrepreneurship as a subject in Danish language studies and social studies in the asylum centres and in the introductory integration program period in the municipalities.
- A study of existing barriers for ethnic minority's entrepreneurs to obtain the financial means to start a business.

Also the Ministry continued the campaign "All young people are needed, which was initiated in 2002 and aims at getting more young people of another ethnic origin than Danish to get an occupational orientated education. In 2003 there has been a large campaign in order to get more ethnic minority youth into the health educations.

6.1.2.3. Awards

With *Integrationspriser 2003* (Integration Awards 2003), the Ministry intends to promote successful effects within various areas of the integration by awarding a prize. The prizes are aimed at areas concerning integration on the labour market, integration in the areas of school and education, and at volunteer work or association work.

The labour market award is divided into two prizes: one aimed at employments initiatives in private companies and one aimed at employments initiatives in public companies. The initiatives areas can concern vocational training, employment, and development of qualifications, politics of equality and initiatives to make the workplace more diverse and improve the integration.

The criteria's on which the winners are chosen from are: documented results, innovative thinking, cooperation, involvement, and whether the initiative assumes to result in permanent improvements.

6.1.2.4. Funds

The Government has earmarked extra grants of approximately 160 millions DKR (21.3 million €) in the period 2003-2006 of the so-called *satspuljeaftaler* (fund agreements) to strengthen the integration of ethnic minorities in the labour market. According to the Ministry, the initiative is taken because of the low percentage of immigrants' which are active in to the labour market when compared to the rest of the Danish population. Latest figures shows that only 47 per cent of all immigrants and descendants from third countries between 16 and 66 years of age are employed, while 76 per cent of ethnic Danes are active in the work force. Municipalities and employment services can primarily apply for the funds.

The expenses of the state in 2003 on the integration of persons included under the Integration Act constituted 3, 2 billion DKR (431 million €). Furthermore, the state allocates to the municipalities

118.668 DKR (15.935 €) for each person who is under the Integration Act and participates in labour market activation and Danish education. The allocated funds cover the expenses of the local municipalities as regards the reception and guidance of newly arrived immigrants and recognized refugees and the expenses as regard labour market activation.

6.1.2.5. Database

The Ministry of Refugee, Immigration and Integration Affairs launched in May 2003 the website: www.integrationsdatabasen.dk with the aim to create a free online database presenting the collected references of research based publications concerning the integration of foreigners in Denmark seen from various perspectives.

6.1.3. Ministry of Employment

After the three-year integration period according to the Act on Integration it is the Ministry of Employment who takes over the effort to integrate refugees and immigrants on the labour market. The municipalities manage the integration efforts for individuals receiving *kontanthjælp* (social welfare benefits), whereas the employment service manages the task if unemployed the individual is insured against unemployment.

6.1.4. Ministry of Social Affairs

During the spring of 2003, the Parliament discussed how to avoid Somali parents sending back their children to their native country for a period of time to be re-educated in the traditional Somali way of living.²² The Governments position on this issue is that the

²² SKR. Nr. 9413 af 28/07/2003 Skrivelse om kommunens handlemuligheder, når forældre ønsker at sende børn til opdragelse i det oprindelige hjemland (Circular regarding re-education trips to the country of origin,) (Danish only) available at: http://www.sm.dk/lovgivning/index_mail.asp?showPage=7 (05.08.2003).

children's integration should not be disturbed by attitudes of parents whose values are not compatible with that of the Danish society. Since there are some doubts according to the present legislation whether child benefits should be paid irrespective of the children's presence in Denmark the Government plan to propose a Bill in October 2003 regarding a specification of child and family benefits.²³

The Government points out that in regard to possible actions under the present legislation, the municipalities may limit the "re-education trips" by initiating the following measures:
ANONYMOUS COUNSELLING

According to *Serviceloven* (Act on Social Service) children and youngsters risking re-education trips can receive anonymous counselling.

REMOVAL

According to *Serviceloven* (Act on Social Service) - assuming all the conditions are met - it is possible to remove the child in question from the parents without the consent of the parents.

BENEFITS

A prerequisite for receiving child benefits is the child is legally residing in Denmark. According to administrative practice, the child is considered to have his or her residence where the parents are living. This rule does not apply if the child is staying abroad for a prolonged period of time. The municipality makes the concrete assessment on whether the connection between the child and Denmark still exists, taking into consideration the age of the child, the purpose and duration of the stay outside Denmark

6.1.4.1. White book on socially marginalized Greenlanders in Denmark

In January 2003 the Ministry published a report: *Hvidbog om socialt udsatte grønlændere i Danmark* (White book on socially marginalized Greenlanders in Denmark).²⁴ The White book tries to uncover the conditions for a group of marginalized Greenlanders residing in Denmark. The group of social marginalized Greenlanders is estimated to be approx. 400-800 and many have experienced some sort of discrimination.

Many Greenlanders have on average a shorter educational background than an average Dane and are more dependent of social welfare. According to the White Book there are a lot of well-integrated Greenlanders and a "typical" Greenlander in Denmark does not exist. Many Greenlanders are satisfied with their life in Denmark and proud of their double identity as Danes and Greenlanders.

²³ Ibid. (Note: the Danish Parliament on 19 December 2003 adopted Act No. 1166 of 19 December 2003, which will enter into force on January 2004. The Act implies that the child's presence in Denmark is now a condition for getting child benefits, unless the child is staying temporary outside Denmark as part of an education which aims at improving the child's possibilities to manage during the child's future stay in Denmark.)

²⁴ Socialministeriet (2003) "*Hvidbog om socialt udsatte grønlændere i Danmark*" available at (Danish only): http://www.sm.dk/publikationer/index_udsatte.html (05.08.2003)

Many Greenlanders are married to Danes or live together with a Dane; approximately 45 percent of the Greenlanders living in Denmark come from mixed marriages. Approximately 75 percent have lived in Denmark for more than 10 years. The White Book recommends that the Danish authorities perceive the Greenlanders as an ethnic minority with special needs, thereby avoiding that their Danish citizenship becomes a disadvantage instead of an advantage. Especially language problems should be in focus as the Home Rule Government of Greenland, though not having down prioritized the Danish language training in the form of language classes, teaches all other subjects in Greenlandic as a political statement of autonomy.

6.1.4.2. Three initiatives from the Ministry of Social Affairs to combat violent crimes committed by young immigrants²⁵

Based on recent serious violent criminal incidents where young individuals with another ethnic origin than Danish have been involved, the Minister of Social Affairs has taken the following initiatives in August 2003:

REMOVAL BY FORCE

Emphasize for the municipalities the importance of the use of forcible removal of children and youngsters, also if necessary in relation to children of ethnic origin. The purpose is to make an early effort to prevent maladjusted children and youngsters from choosing a criminal career. According to the Ministry recent research has shown that social workers are reluctant to use the option of forcible removal of children in relation to immigrant families.

SPECIAL RESIDENCES

Take initiative to the establishment of two special residences designed for – among others – young offenders with another ethnic origin than Danish. The purpose is to create institutions where the personnel know the cultural background and the possible clashes that may arise in relation to the values and norms in the Danish society.

PLACEMENT

Strengthening the possibility of placing violent children and youngsters already from 12 years of age in special secured institutions. The present rules prescribe that municipal placement of a child below the age of 15 needs a special permit by the County. The purpose is to ensure a consistent sanction for children and youngsters showing violent behaviour.

INCREASE IN NUMBER OF PLACES

The Government will take initiative to increase the number of places in the secured institutions. According to the Ministry the secured institutions are not prisons but a place where the youngsters will undergo a professional resocialization treatment.

²⁵ Socialministerens 3 initiativer til at komme unge indvandreres voldskriminalitet til livs, available at: http://www.sm.dk/nyheder/index.asp?art_id=810 (13.8.2003).

6.1.5. Other bodies

Kommunernes Landsforening (The National Association of Municipalities) published a study of measures to combat unemployment among foreigners. In accordance with the Integration Act newly arrived refugees and immigrants who receive social benefits must be offered an introductory program within the first month of arrival including job training and Danish Courses.²⁶ The study shows that 51 per cent of the municipalities offer aktivering (vocational training) within the first month. 34 per cent offer vocational training within the first quarter, while 14 per cent of the municipalities offer job training within the second quarter.²⁷

6.2. INTEGRATION LEGISLATION

The legislative initiatives in the period covered by this report, concentrate on follow up measures to the integration policy launched in 2002 and other policy statements.

6.2.1. Ministry of Refugee, Immigration and Integration affairs

6.2.1.1. Act on Danish Courses for Adult Aliens, etc.²⁸

The so called phase two of the reform of the Integration Act has led to the proposal and adoption of a new Act with the purpose of improving the language skills of foreigners in Denmark.

The Act on Danish courses for adult aliens was adopted by Parliament in May 2003. The purpose of the bill is to optimise the language courses in Danish in connection with other efforts of integration and with the primary goal to promote the integration of aliens on the labour market.

Thus, the act purposes to provide courses in Danish and to assist adult aliens, on the basis of their individual backgrounds and integration goals, in acquiring the necessary Danish language proficiency and knowledge on Danish culture and society. The aim of this integration initiative is to increase the participation of persons with another ethnic background in society and to enable them to become contributory citizens on an equal footing with other citizens of the Danish society. The Danish courses should assist adult aliens in acquiring skills in understanding and using the Danish language and obtaining knowledge of the Danish labour market as soon as possible after they have been issued with a residence permit. The rationale being that they will have easier access to employment and – as a consequence – be able to support themselves. The Danish courses must also support the active use of the Danish language by adult aliens and assist them in obtaining common skills and knowledge that are relevant in relation to working life and education and life as citizens of a democratic society.

²⁶ Hjælp til iværksættere med anden etnisk baggrund end dansk available at: <http://inm.dk/Index/dokumenter.asp?o=78&n=1&h=19&t=13&d=1807&s=4> (20.08.2003)

²⁷ Den rette vej, available at: <http://inm.dk/Index/dokumenter.asp?o=78&n=1&h=19&t=13&d=1993&s=4> (20.08.2003)

²⁸ Denmark, Act No. 375 (28.05.2003). The amendment enters into force on 1 January 2004.

Residents from Greenland and the Faeroe Islands over the age of 18 who, for particular reasons, do not have sufficient mastery of the Danish language to function in the Danish society may also participate in a Danish course.

The course is free of charge for aliens falling within the scope of the Integration Act.

The intention of the Government is to implement a systematic completion of the courses within a three-year introductory period.

6.2.2. Ministry of Employment

6.2.2.1. Act amending act on active social policy, unemployment benefits, integration acts etc. No 417 of 10 June 2003.²⁹

The amendment introduces a limit concerning the benefits an individual on cash benefits or start payment can receive. The purpose of the amendment is to ensure the total money at disposal is lower on cash benefits or start payments compared to low-income jobs and thereby ensure the economical motivation for applying for jobs. The level of benefits depends on whether the receiver of benefits is married, co-habiting, is single or has a maintenance obligation. Couples where the one spouse is receiving cash benefits and the other is receiving start payments are not included by the limitation. The same exception for the limitation applies for couples where both receive start payments or where one receives cash benefits and is co-habiting with a person receiving start payments.

The benefits where the provision applies are cash benefits, special benefits according to Section 34 and housing benefits according to the Act on Individual Housing Benefits.

6.2.2.2. Extension of the possibilities for spouse supplementary payment (apron-rule)

According to the provisions, a spouse who does not choose to be available for the labour market will not receive benefits. Instead the other spouse available for the labour market will receive a spouse supplementary payment (ægtefællertillæg). It is a condition that the spouse is solely working at home. It is a voluntary arrangement stopping when the spouse working at home declares that he/she again wishes to be available for the labour market. The amendment extends the possibilities so the arrangement can be used even if the spouse on a temporary basis has been attached to the labour market.

The possibilities for spouse supplementary payment will furthermore be extended so the municipality caseworker can assess whether the spouse - to a sufficient extent - is available for the labour market. If the spouse fails to document his/her availability, the benefits will be withheld and the other spouse, who is available for the labour market, will receive the supplementary payment.

²⁹ Now Consolidated Act No. 697 (05.08.2003).

6.2.3. Ministry of Justice

6.2.3.1. Female circumcision

Linked to the political initiatives concerning female circumcision, (cf. part 5.1.1. above) is an amendment to the Aliens Act and to the Criminal Code in the spring of 2003.³⁰

Hence, the said Acts were amended in order to give access to prosecution of citizens or persons with residence in Denmark who commit aid or abet to female circumcision abroad. To achieve this, the requirement for double criminality, i.e. the offence is punishable according to Danish Law and the law of the country in which the act is carried out, was removed.

Moreover, the amendment introduces a specific provision in the chapter on physical violence in the Criminal Code, which explicitly prohibits female circumcision.

In order to improve the protection of girls and women subjected to circumcision, a new provision states that the limitation period for criminal liability runs from the 18 years birthday of the victim.

6.3. IMMIGRATION POLICY

The Government has not launched new immigration policies in 2003, but has reiterated the goals of a new Policy for Foreigners from 2002 in the report The Government's Vision and Strategies for Improved Integration – Status 2003.³¹

In the introduction, the report elaborates on the key strategies, encompassing a consequent and fair immigration policy, which enjoys the support and understanding of the Danish citizens and, thereby, provides for the basis of a successful integration of foreigners. As a second element, the limitation in the number of foreigners coming to Denmark is mentioned. This is achieved by measures ensuring an effective procedure for persons being expelled from the country – and the access to apply force in such situations. Moreover, the Government stresses that foreigners should qualify for or make special efforts to deserve Danish citizenship. These strategies should be implemented with due respect to the international obligations of the Country, including especially The European Convention of Human Rights and the UN Convention on Refugees.

The key strategy on restricting the number of foreigners in Denmark has resulted in a decreasing number of persons applying for asylum in Denmark.³² Thus, the number of applicants has fallen from 12.512 in 2001, to 6.068 in 2002 and to 2.185 in the first and second quarter of 2003.

³⁰ Denmark, Act No. 386 (28.05.2003).

³¹ Regeringen (2003) Ministergruppen om bedre integration ”*Regeringens vision og strategier for bedre integration*”, available at:

http://www.inm.dk/publikationer/engelske_publicationer/integration_policy/index.htm
(04.08.2003)

³² Danish Immigration Service, Statistical Overview, www.udlst.dk/english/statistics/default.htm
(16.08.2003)

The number of persons granted refugee status is 1.243 in the first half-year of 2003, compared to 4.069 in 2002 and 6.263 in 2001.

During the first 6 months of 2003, 2.607 persons out of 3.129 have been granted family reunitation. The decrease in the number of reunited families is significant compared to 2001 and 2002, where 15.370 and 11.250 applications, respectively, were accepted.

The number of unaccompanied children applying for asylum in Denmark is probably unchanged as the current number for 2003 is 70 compared to 137 in 2002.

6.4. IMMIGRATION LEGISLATION

As a consequence of the key strategies in the Governments policy for foreigners, amendments have been adopted to the Alien Act in the spring of 2003.

5.4.1. Ministry of Refugee, Immigration and Integration Affairs

6.4.1.1. Act on unaccompanied children seeking asylum³³

The act on unaccompanied children was adopted as an amendment to the Alien Act and the Integration Act and codifies the practice of the Danish Immigration Service.³⁴ Unaccompanied children will only be permitted to go through an asylum case examination if they are mature enough to do so. If the Danish Immigration Service assesses that a child is not sufficiently mature, the child will be granted a residence permit without examination of his or her asylum application. Children below the age of 12 and some between the age of 12 and 15 are normally considered not to possess maturity enough to go through an examination of his or her asylum application.

An unaccompanied child who is considered to be sufficiently mature to have his or her application examined will have the application examined by the Immigration Service. If a rejection is delivered, the child may, in certain cases, receive a residence permit anyway. This may be the result, for example, if the child would have inordinate difficulty surviving in his or her country of origin due to the lack of an adequate support network in the form of family, other adults, public assistance, etc. Information on the child's health and need for particular care or support will also be taken into consideration. Finally, the general situation in the child's country of origin, as for example, conditions of war, will be taken into account.

Furthermore, the amendment introduces appointment of a personal representative to observe and secure the child's interests, for all unaccompanied children registered as asylum seekers. If an unaccompanied child receives a residence permit, a person (typically the representative) will be given temporary custody of the child in accordance to relevant legislation. If a child's asylum case is decided according to the manifestly unfounded procedure, the Danish Immigration Service will appoint an attorney to

³³ Denmark, Act No. 60 (29.01.2003).

³⁴ Details available at: http://www.udlst.dk/english/Asylum/unaccompanied_children.htm (07.08.2003)

represent the child. With the consent of the child or the consent of the representative, The Danish Immigration Service will launch an investigation of the child's parents.

6.4.1.2. Act on tightening the measures of expulsion etc. 35

The Act tightens the sanctions and the procedure to encourage the departure of the rejected applicant. A final rejection means that an applicant does not have any more avenues available to appeal the decision. Rejections delivered by the Refugee Board or by the Immigration Service in so-called 'manifestly unfounded' cases are regarded as final. If a rejected asylum seeker will not leave Denmark voluntarily, it is the responsibility of the police to ensure the applicant's departure.

When an applicant receives a final rejection of asylum in Denmark, he or she must leave the country immediately, but will be granted adequate time to prepare for the departure from the country. Special circumstances, such as acute illness and the like will be taken into consideration.

The sanctions will intensify over a period of time – from giving information of the obligations of the rejected asylum seeker to leave the country, to motivation in form of an amount of 3000 DKR (400 €) for an adult and 1.500 DKR (200 €) for each child intended to help the re-establishment of their existence in their country of origin provided that they leave immediately. If the rejected asylum seeker still refuses to leave, subsidies will be denied and they will be put on a *madkasseordningen* (lunch packet scheme) under which they will receive a box every 14th day, containing food and other basic necessities. The rejected applicant will thereafter be transferred to *Centre Sandholm* – a refugee centre, enclosed with a fence and control of entrance. The police can furthermore detain a rejected asylum seeker to motivate the departure from the country. Aliens expelled by verdict will be instructed to take residence in *Centre Sandholm* with a systematic duty to report each day to the staff of the centre.

The Ministry of Refugee, Immigration, and Integration Affairs has the authority to grant a temporary residence permit on humanitarian grounds to an asylum seeker who has received a rejection of his or her application for asylum. The act tightens the possibility to apply for temporary residence permit on humanitarian grounds to avoid some applicants use it for automatic postponement of the order leave the country immediately.

6.4.1.3. Act reforming the efforts of activation and education in relation to adult asylum seekers etc. and of the system concerning payment of benefits to asylum seekers.³⁶

The purpose of the amendment is part of the implementation of the plan “*Towards a new integration policy*” and concerns the part dealing with activation of adult asylum seekers, so the waiting time for the application to be considered - according to the Minister of Integration - can be used constructively.

³⁵ Denmark, Act amending the Alien Act No 291 (30.04.2003), now Consolidated Act No. 685 (24.07.2003).

³⁶ Denmark, Act amending the Aliens Act No 292 (30.04.2003), now Consolidated Act No 685 (24.07.2003).

The amendment introduces basic working responsibilities and obligations for the asylum seeker at the refugee centres and furthermore introduce means for motivation to take part in activation and education. The asylum seeker signs at the arrival a contract with the centre where he/she commits him/herself to certain obligations.

In the first three months, the asylum seeker signs a standard contract including the duty participate in an introductory programme and ordinary practical duties at the accommodation location.

An asylum seeker who has stayed in Denmark for more than 3 months from the date of the submission of an application for a residence permit shall, unless particular reasons make it inappropriate, attend tuition in the Danish or English language and the Danish culture and society. The contract can be supplemented by further activation and other education initiatives.

If the application for asylum is rejected a new contract will be drawn up. Rejected asylum seekers are not entitled to receive tuition.

Asylum seekers who are about to be sent out of the country cannot participate in the education programme and can only, to a limited extend, participate in the activation programme.

The cash benefits for asylum seeker are split in basic benefits and supplementary benefits. Asylum seekers with maintenance obligations for children younger than 18 years of age are paid extra benefits. The basic benefits and the maintenance obligation benefits are *in general* always paid, but the supplementary benefits are conditional and to be paid only if the asylum seeker observes the contract. Asylum seekers who are not registered yet or who are in the so-called expulsion phase will receive significant lower supplementary benefits, than an asylum seeker whose application has not yet been dealt with.

6.4.2. National Case law on immigration issues

6.4.2.1. Supreme Court

U.2003.1322H

A, who was 15 years of age, applied for a residence permit at the Danish General Consulate in Ethiopia. A stated that a Danish citizen who had entered Denmark in 1983, was her father. A DNA test established that there was only a very slight possibility that the Danish citizen was her father. The Danish Immigration Service therefore rejected the application.

The Court upheld the decision that biological parenthood or adoption was a condition for obtaining a residence permit, cf. the Aliens Act section 9 § 1 no. 3.

U.2003.1262H

Detention in accordance with the Aliens Act Section 36 § 3 following a decision concerning expulsion.

An alien, A, applied for asylum in Denmark. In June 2002, he was fined 600 DKR (80 €) for theft of some empty bottles and boxes of a value of 612,50 DKR (82 €). In July, the Danish Immigration Service decided that A should be expelled and prohibited entry to the country for 1 year, cf. the Aliens Act Section 25a. The police detained the person the same day. A ruling by the City Court and the High Court ruled the detention legitimate, cf. the Aliens Act Section 36 § 3 and the person was continuously detained, latest in a ruling from 29 August 2002. The Supreme Court ruled that a continuous detention after 29 of August 2002 of the individual was disproportionate to the crime committed and he should have been released at that date.

U.2003.622H

An Iraqi citizen, A, who at an earlier date had been convicted for violation of the Aliens Act, was convicted and sentenced 1-year imprisonment for forgery and human trafficking. The City Court and High Courts furthermore expelled him for a period of 5 years. The Iraqi citizen had grown up in Iraq, after military service he deserted in 1979/80 to Kuwait, where he lived for 11 years. After the Gulf War in 1990 he left Kuwait together with his wife and 4 children. In 1991 he received asylum in Denmark, he brought the wife and children to Denmark in 1993. The Supreme Court found that the Iraqi citizen had lived in Denmark for 11 years and had a spouse and children in the country that mainly had grown up in Denmark and had no significant attachment to another country and, consequently, must be considered to be integrated in the Danish society. The Supreme Court acquitted the accused for the claim of expulsion, raised in the indictment.

U.2003.56H

In a bar, A had smashed a broken bottle in the face of another guest, which resulted in serious injury (violation Criminal Code Section 245 § 1). A was a Sri Lankan citizen who had resided in Denmark for 7 years. He was sentenced 4 months imprisonment and expelled from the country for a period of 5 years.

The Supreme Court agreed with the decisions of the lower Courts. The reason for the expulsion was that the individual only had a slight attachment to the Danish society, that he had no family living in Denmark and that he had family living in Sri Lanka, where he had lived until he came to Denmark at 41 years of age. The Court upheld the verdict and argued that due to the circumstances and the fact that none of the conditions mentioned in the Aliens Act Section 26 § 1 compared with EHCR article 8, decisively could outweigh the reasoning for expulsion of A, taking the seriousness of the attack into account.

6.4.2.2. High Court

U.2003.1136Ø

A, a Danish citizen, resided in Denmark with two children, filed a civil lawsuit for divorce against his spouse who was a foreign citizen and a diplomat working at the embassy in Stockholm (Sweden), but occasionally also worked in Denmark.

The diplomatic immunity of the spouse according to the Vienna Convention on Diplomatic Relations covered therefore Denmark. According to the extritorial status

and the resulting immunity concerning the civil administration of justice, it was not possible for A to summon the spouse in a matrimonial case. The provisions in ECHR article 6 and 8 were not found to contradict this result. The High Court, therefore, upheld the rejection of the case by the City Court.

U.2003.4900

A was sentenced 8 months imprisonment for selling drugs. A had four previous accounts for violation on the Act on Drugs. The violations concerned mainly drug dealing. A had earlier been acquitted for the expulsion part of an indictment. He was acquitted again for the expulsion claim of the indictment considering his family ties to a Danish spouse and two young children.

6.5. ANTI-DISCRIMINATION POLICY

No new initiatives have been taken within the period covered by this report, however the Government launched an Action Plan to Promote Equal Treatment and Diversity and to Combat Racism in November 2003 (not within the period under scrutiny). In 2002 the Government set up a working group to prepare the action plan. The action plan contains a number of initiatives to promote equal treatment and diversity. For instance, the Government plans to launch surveys in order to promote the participation of ethnic minorities in the educational system. Furthermore, it also plans to launch a public information campaign aiming at creating awareness of the principles of equality and diversity. Besides these initiatives the Danish Ministry of Integration supported a number of projects aiming at strengthening the implementation of integration and equality policies regarding newcomers and ethnic minorities.

6.6. ANTI-DISCRIMINATION LEGISLATION

6.6.1. Ministry of Refugee, Immigration and Integration Affairs

6.6.1.1. Act on Ethnic Equal Treatment³⁷

The act contains elements that partly implement the EU Council Directive 2000/43/EC of 29 of June 2000 implementing the principle of equal treatment irrespective of racial or ethnic origin.

The Act does not cover the exercise of activities of purely private character; furthermore the Act does not cover the labour market, hence is not applicable to relations between the employer and the employees. The organised labour market is covered by another Act, the Act on Prohibition against differential treatment on the labour market, which provides protection for both union-members (to the extent that they are not protected by a collective agreement) and for non-union members.

³⁷ Denmark, Act No. 374 (28.05.2003).

The Act introduces a prohibition against direct as well as indirect differential treatment on the grounds of racial or ethnic origin. Also, the Act prohibits harassment and instructions to differential treatment on said grounds as well as reprisals in the form of unfavourable consequences as a reaction against a person who has filed a complaint regarding infringement of the principle of equality.

Furthermore the Act introduces a shared burden of proof. The principle of the shared burden of proof implies that the burden of proof lies on the accused, when the complainant has established actual circumstances that give reason to assume that direct or indirect differential treatment has been practiced.

A provision according to which an individual subjected to differential treatment or reprisals can be awarded compensation is also found in the Act on Ethnic Treatment.

In order to provide the citizens with an effective remedy against differential treatment, the Act authorizes The Danish Institute for Human Rights to deal with cases of differential treatment on basis of racial or ethnic origin and to deal with cases of reprisals.

Consequently, the Danish Institute for Human Rights has established a complaint committee. The Complaint Committee will deal with complaints and express non-legally binding opinions on whether there has been an infringement of the prohibition against differential treatment or reprisals in a certain case. The Complaint Committee may recommend that free legal aid should be granted, should the case be brought to court.

6.6.2. Ministry of Employment

6.6.2.1. Act on Prohibition Against Differential Treatment on the Labour Market etc.³⁸

On 27 May 2003, a majority in the Danish Parliament rejected the Government's Bill to amend the Act on prohibition against differential treatment on the labour market etc. The Bill was proposed as a part of the implementation of the two EU directives (Directive No. 2000/43/EC of 29 June and Directive No 2000/78/EC of 27 November 2000).

The Bill introduced among other things a shared burden of proof and a prohibition against differential treatment on the basis of faith, specification of the fact that direct as well as indirect differential treatment are prohibited and the awarding of compensation if exposed to unfavorable consequences as a result of unequal treatment.

The Social Democratic Party and the Social Liberal Party did not vote for the Bill since the Government did not support the two parties' proposal to have The Danish Institute for Human Rights complaint body to also have jurisdiction to deal with cases of differential treatment on the labour market.

As a consequence of the rejected Bill, Denmark will not be able to observe the time limit for the total implementation of EU Directive 2000/43/EC, which was set to 19 July 2003.

³⁸ Denmark, Bill No. 152 (27.03.2003) to amend Act No. 459 (12.06.1996)

6.7. ANTI-DISCRIMINATION CASE LAW

6.7.1. National case law on discrimination issues

In the following, national case law concerning discrimination issues is listed and described. The focus is on relevant provisions in the Criminal Code and the Act against Differential Treatment on the Basis of Race etc.

Cases on discrimination on the labour market are not integrated as descriptions and analyses of such cases are covered by the Danish Raxen 4 report on the Employment Sector, submitted in June 2003.

6.7.1.1. Supreme Court

PIA KJÆRSGAARD V. KAREN SUNDS ³⁹

context and the Supreme Court found, after an overall assessment, and in the context of the

Karen Sunds, a representative from the People's movement against the EU (Folkebevægelsen mod EU) had stated in a Radio News program that she could not identify herself with the *racist* viewpoints of Pia Kjærsgaard (Leader of The Danish People's Party). The representative explained that this was the reason for not making a joint campaign with the Danish People's Party against the introduction of the EURO. Pia Kjærsgaard sued Karen Sunds for defamation according to the Criminal Code Section 267.

The Supreme Court pointed out that there were 3 ways of using the word *racism* in a temporary context according to The Danish Language Board (Dansk Sprognævn); firstly, the word racism or racist could be used in relation to the prosecution of the Jews and the Nazis ideology; secondly, the word could be used in relation to the superiority of one race; thirdly, the use of the word could aim at discrimination and oppression of or dissociation from - a group of people who could be of the same race as the individual making the statement.

Karen Sunds stated that she had used the word in the third meaning, referring to the negative attitude of Pia Kjærsgaard and Danish People's Party towards immigrants. The Danish population must have known the negative attitude and furthermore it must have been known that there were no grounds for alleging Pia Kjærsgaard and Danish People's Party for racist viewpoints in the other two definitions.

The Supreme Court found that Karen Sunds had used the word *racist* in the third meaning of the word.

Whether Karen Sunds statement "*racist* viewpoints" was a violation of the honour of Pia Kjærsgaard, the Supreme Court found it was a question of whether the statement in its

³⁹ Supreme Court Judgment Case 377/2002, passed 17.06.2003 available at: <http://www.hoejesteret.dk/shownewslistnews.asp?id=335&sortfield335=&direction335=asc&doshow335=1&searchword335=377/2002&category335=42&newsid335=413> (18.08.2003).

form was improper, cf. the Criminal Code Section 267 § 1 and Section 270 § 1. The Supreme Court found that the statement had been put forward in relation to Pia Kjærsgaard's generalization concerning especially Muslim immigrants. Karen Sunds comment had been put forward in a politically relevant circumstances, that the statement of Karen Sunds was not a violation of the Criminal Code Section 267.

Furthermore, the Supreme Court found that a contrary result would be violating ECHR Article 10 concerning freedom of expression; the character of the comments was a *value judgment* in a political debate concerning important issues and therefore, it did not overstep the boundaries of freedom of expression. The Supreme Court acquitted Karen Sunds for the accusation of defamation.

6.7.1.2. High Courts

U.2003.1411Ø

A 75-years old person, former MP, expressed in radio and television broadcastings, his opinion that Muslims generally speaking were criminals who sought to destroy the world civilization, and that the only reason they wanted to come to Denmark were to exterminate and kill Danes. Among other views, he furthermore expressed his opinion that Denmark ought to be free of Muslims and the Muslims in the country who did not leave voluntarily should be caught and placed in closed camps.

The Court found that the person had violated the Criminal Code Section 266 b § 2 cf. § 1⁴⁰, as this provision must be interpreted in the light of ECHR article 10 and article 17. The statements were expressed in the media and therefore disseminated to a wider circle. The person was known for his opinions regarding foreigners, and the Court concluded that his expressions were systematic and persistent in character, with the intention to influence the public opinion. The accused was sentenced to 20 days of imprisonment.

U.2003.751/2Ø

A had established a website and on the website expressed degrading remarks aimed at Muslims.

The considerations in regard to a broad interpretation of the right to freedom of expression for politicians talking about controversial subjects could not result in acquittal. The expressions made on the website were recited in an electronic media and as part of A's political profile. The Court found, therefore, that the remarks were covered by Section 266b § 2.

⁴⁰ Section 266b concerns "Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding 2 years". According to § 2 it is an aggravating circumstance if the expression takes form as propaganda.

U.2003.1428Ø

A had disseminated a handbill containing degrading, insulting and threatening remarks about Jews. Furthermore the remarks were published on the website of the organization Hizb-ut-Tahrir.

The considerations in regard to the interpretation of the right to freedom of expression could not result in acquittal. The accused had violated Criminal Code Section 266b, § 2 cf. § 1 and Section 23 (complicity) and was sentenced to 60 days of imprisonment (suspended sentence).

U.2003.1445/1Ø

The ruling deals with whether the expenses to an interpreter for translation for a British national during a trial regarding custody of a child, should be covered by the State. The British national did not fulfill the requirements for free legal counsel and he did not understand the Danish language. The expenses could not be refunded by the State cf. the Administration of Justice Act Section 149, § 4, e contrario.⁴¹

U.2003.2435V - V.L. NR. S-0294-03⁴²

Judgement concerning statements put forward during the national congress of the Danish People's Party 2001. Two members of the Danish People's Party were indicted for violation of The Criminal Code Section 266b. The statements were put forward at the national congress of the Danish People's Party. One of the accused stated that Islam was not a religion within the traditional meaning of the word; in addition the accused stated that Islam was a terror organisation trying to obtain world supremacy by violence.

The High Court found one of the accused guilty and sentenced him 10 day fines of 500 DKR (667 €), the other was acquitted, since his statements had to be seen in context and therefore did not fulfil the criteria's of Section 266b (the provision require a certain level of rudeness).

U.2003.2438V - V.L. NR. S-1691-03⁴³

Judgement concerning the refusal of an owner of a Pizza restaurant to serve to German and French persons. Because of the politics of the German and French governments in relation to the war in Iraq, the owner had in person and on shop signs refused to serve German and French people.

⁴¹ The Section concerns the possibility for nationals from other Nordic countries to get their expenses to an interpreter refunded. Cf. circular no. 104 of 7th July 1989 expenses to an interpreter must be paid by the party using the interpreter in accordance with the Administration of Justice Act.

⁴² V.L. nr. S-0294-03 (19.08.2003)

<http://www.domstol.dk/shownewslistnews.asp?id=1696&sortfield1696=&direction1696=asc&doshow1696=0&searchword1696=&category1696=50&newsid1696=32> (21.08.2003).

⁴³ V.L. nr. S-1691-03 (20.08.2003)

<http://www.domstol.dk/shownewslistnews.asp?id=1696&sortfield1696=&direction1696=asc&doshow1696=0&searchword1696=&category1696=50&newsid1696=31> (21.08.2003).

The High Court noted that ECHR article 10 opens up for limitations on the freedom of expression according to the law and if necessary in a democratic society and furthermore noted Denmark's ratification of United Nations Declaration on the Elimination of All Forms of Racial Discrimination.

After a concrete weighing of the accused expression according to The Constitutions Section 77 (freedom of expression) and ECHR article 10, contra the considerations in The Act Against Differential Treatment on the Basis of Race etc., the High Court found the accused guilty and sentenced the owner a fine of 5.000 (667 €) for violation of the before mentioned Act⁴⁴.

Ø.L. NR. S-719-02 ⁴⁵

The accused had published very derogatory remarks concerning Muslims on a website. The Court found that the incident in character took form as propaganda on the grounds that the expressions were made accessible via the electronic media where The Progressive Party (a nationalistic right wing party not represented in Parliament) provided information regarding the party. The accused was convicted for violation of the Criminal Code section 266b and sentenced him 20 day fines of 300 DKR (800 €).

6.7.1.3. City Courts

AALBORG CITY COURT⁴⁶

The doormen refused admission to a nightclub to several persons on the sole basis of their ethnic origin. The manager had instructed the doormen on the basis of guidelines issued by the company. The company had issued guidelines to discourage any grouping of individuals of other ethnic origin than Danish and the manager and the doormen carried out the instructions. One of the doormen had refused admission with the argument that there were too many foreigners inside the nightclub.

The doormen were each fined 1000 DKR (133 €), the manager was fined 5000 DKR (666 €) and the private company was fined 10.000 DKR (1330 €) for violation of Act Against Differential Treatment on the Basis of Race etc.⁴⁷

GLOSTRUP CITY COURT⁴⁸

A doorman refused admission to a nightclub to a person of other ethnic origin than Danish. According to the statement of the doorman the individual was rejected on the basis that he was unable to show identification and the doorman thought he looked younger than the minimum age for entrance to the nightclub. The Court found no reason to disregard the statement of the doorman and acquitted the doorman and the licensee of

⁴⁴ Denmark, Consolidated Act No. 626 of 29.09.1987.

⁴⁵ Ø.L. nr. S-719-02 (24.02.2003).

⁴⁶ Aalborg City Court passed 21.01.2003 available at: <http://www.drcenter.dk/html/diskrimination/domme/antirace/21012003.html> (19.08.2003)

⁴⁷ Denmark, Consolidated Act No. 626 (29.09.1987).

⁴⁸ S 1079/02 of 09.04.2003 Glostrup City Court.

the nightclub for violation of section 1 of the Act Against Differential Treatment on the Basis of Race etc.⁴⁹

HERNING CITY COURT⁵⁰

The accused had disseminated an email to 44 members of Parliament in which the accused expressed his opinion concerning refugees and immigrants. Among other statements the accused urged the politicians to do something about the genocide on Danes, the destruction of Danish culture and the ethnic cleansing of Danes and furthermore referred to immigrants and asylum seekers as semi-criminals and subversive individuals.

The Court found that the accused was member of the board of a political party and had put forward the statements as part of the political debate concerning immigrants. The statements were a gross insult to a group of people on basis of their race, colour, national or ethnic origin. Therefore the statement was found to be in violation of the Danish Criminal Code Section 266b.

The accused was sentenced to 10 day fines of 400 DKR (530 €).

6.7.2. International case law

6.7.2.1. Committee on the Elimination of Racial Discrimination (CERD) 63rd session

Under the individual complaints procedure established by article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, the Committee adopted two decisions in respect of petitions concerning Denmark.

QUERESHI V DENMARK⁵¹,

The decision dealt with whether a member of the executive board of the Progressive Party (a nationalistic right wing party not represented in Parliament) should have been held criminally liable by the State for complicity to racist's remarks put forward at the Progressive Party's annual meeting. The individuals who themselves put forward the remarks were reported to the police and some of them were later convicted of violation of the Danish Criminal Code section 266(b). The Committee found that without additional evidence a member of a party's executive board could not be held liable in respect of statements made by third parties. The Committee found no violation of the Convention.

THE DOCUMENTATION AND ADVISORY CENTRE ON RACIAL DISCRIMINATION V DENMARK⁵²,

⁴⁹ Denmark, Consolidated Act No. 626 (29.09.1987).

⁵⁰ Herning City Court 19 June 2003.SS 1-556/2003 available at: www.domstolsstyrelsen.dk/showpage.asp?ID=8586 (19.08.2003)

⁵¹ Communication No. 27/2002, CERD/C/63/D/27/2002, 19 August 2003, available at: http://www.ohchr.org/tbrucerd/Quereshi_v_Denmark.pdf (30.082003).

⁵² Communication No. 28/2003, CERD/C/63/D/28/2003, 26 August 2003, available at: http://www.ohchr.org/tbrucerd/DACRD_v_Denmark.pdf (30.082003).

The decision dealt with a job advertisement where a company was seeking a “Danish foreman”, the petitioner reported the incident, considering it to be a violation of section 5 Act No. 459 of 12

June 1996 on prohibition against discrimination in respect of employment and occupation etc. on the labour market. The police dismissed the complaint after an investigation, stating that the company meant a Danish resident, which could easily be a person of an ethnicity other than Danish. According to the Chief Constable in the worst case, it was a matter of an unfortunate choice of words. On the grounds that The Documentation and Advisory Centre on Racial Discrimination (DRC) had submitted the communication and that DRC did not represent identifiable victims personally affected by the allegedly discriminatory job advertisement, the Committee declared the petition inadmissible pursuant to article 14 of Convention on the Elimination of All Forms of Racial Discrimination.

6.7.2.2. Committee on the Elimination of Racial Discrimination (CERD) 62nd session

At the examination of individual communications, two decisions concerning Denmark were examined and a decision taken on their admissibility:

Sadic v. Denmark and *POEM & FASM v. Denmark*. Both were declared inadmissible on the basis of the petitioner (themselves) failed to exhaust the effective remedies in National law.

However, the Committee invited the State party in *Sadic v. Denmark* to reconsider the domestic legislation, since the restrictive condition of "broad publicity" or "wider dissemination" required by article 266 b of the Danish Criminal Code for the criminalization of racial insults did not appear to be fully in conformity with the requirements of articles 4 and 6 of the Convention.⁵³

Also, the Committee called the State party's attention in *POEM & FASM v. Denmark* to the content of paragraph 115 of the Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban (South Africa) on 8 September 2001, which "underlines the key role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance and encourages political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, inter alia by developing voluntary codes of conduct which include internal disciplinary measures for violations thereof, so their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance".⁵⁴

⁵¹ *Sadic v. Denmark* Communication No. 25/2002: Denmark. 16.04.2003, CERD/C/62/D/25/2002 available at: <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/4ea4c8df1efebc3cc1256d1d00449b91?OpenDocument> (18.08.2003).

⁵⁴ *POEM & FASM v. Denmark* Communication No. 22/2002: Denmark. 15.04.2003, CERD/C/62/D/22/2002 available at: <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/b0d9f9415342207ac1256d60004be627?OpenDocument> (18.08.2003).

7. Reduction of racism and support of diversity

The Government or the ministries have initiated no particular activities concerning reduction of racism and support of diversity, except the policy paper “The Government’s Vision and Strategies for Improved Integration” which state that all citizens no matter their ethnic origin must have equal rights and obligations and that differential treatment on grounds of ethnic or racial origin is unacceptable. In the policy paper the Government submitted several initiatives for improved integration. Some of these initiatives aim at adapting the public sector, including day-care institutions, schools and the health services to the increasing number of citizens with another background than Danish for instance through education in cultural understanding and intercultural competence.

However, the integration awards and the fund agreements set up by the Ministry of Refugee, Immigration and Integration Affairs and mentioned in part 5.1.2. above, may be seen as instrumental, also in the context of non-discrimination and diversity.

As a follow up to the Durban Conference and the existing Danish legislation on discrimination, a means to combat racism and promote diversity is planned by the Government to be launched in the autumn of 2003 in the form of a plan of action to promote diversity and equal treatment.⁵⁵ The plan will among other things contain awareness raising campaigns concerning equality and diversity.

⁵⁵ Since the Government’s action plan has not yet been published, The Documentation and Advisory Centre on Racial Discrimination and POEM have made an supplementary action plan, available at:
<http://www.drcenter.dk/html/publikationer/netboeger/handlingsplan/handlingsplan.pdf>, Danish only (19.08.2003)

8. Analyses of the development within policy and legislation

8.1. HUMAN RIGHTS IMPLICATIONS OF NEW LEGISLATION

The analyses made in the following part 7.1. correspond to the legislative measures described in part 5 (R4). A survey from 2003 examining the economic consequences of the start payment introduced in 2002 has been included in 7.1.1. (R4) as it links up to an analysis mentioned in the Danish contribution to Raxen 3.⁵⁶

8.1.1. Integration

8.1.1.1. Start payment

In 2002 a subsidy scheme, the so-called start payment, was introduced by an amendment to the Act of an Active Social Policy and the Act on Integration.⁵⁷

The risk for indirect discrimination due to disparate impact upon a group of persons distinguished by descent or ethnic origin was pointed out by, among others, the Danish Institute for Human Rights (DIHR). To be able to elaborate further on the human rights implications of the start payment scheme, the DIHR initiated, together with the Danish Social Worker's Union and the Danish Refugee Council, a survey of the economic consequences of the application of the scheme.⁵⁸

The survey examines the sum of money at disposal for singles, couples without children and families with one, two, three and four children. The amount at disposal has been found by deducting the expenses from the income. The income is the family's total income in form of start payment, cash benefits, housing benefits, child benefits etc. The amount at disposal is the net sum after taxes has been paid.

The expenses cover fixed expenses such as rent, water, heat, electricity, licence fee, day-care institution, and insurance, transportation and telephone subscription.

Status	Average disposable income
Singles above the age of 25	2.236 DKR (298 €)
Couples without children	4.129 DKR. (551 €)
Families with 1 child	5.385 DKR. (718 €)
Families with 2 children	6.556 DKR. (874 €)
Families with 3 children	6.828 DKR. (910 €)
Families with 4 children	9.693 DKR. (1292 €)

⁵⁶ See Raxen 3 Legislation Report, 2000-2002, part 5.2.2. and 7.1.1.

⁵⁷ Denmark, Act No. 361 (06.06.2002).

⁵⁸ A public hearing on basis of the survey concerning the start payment scheme and its consequences will be held 23 October 2003 at Christiansborg.

Compared to other non-insured unemployed - with or without children – the families on start payment have between 3.800 DKR (507 €) and 5.200 DKR (693 €) less than a corresponding family on cash benefits.

According to the organisation The National Consumer Information (*Forbruger Information*) a person above the age of 25 needs a minimum of 4.589 DKR (612 €) as the sum of money at disposal to cover expenses food, beverage, clothing, shoes personal hygiene and basic commodities etc.

Hence, a single person on start payment is short of 2.353 DKR (314 €) every month compared to the general standards recommended by Consumer Information. A couple will be short of 2.866 DKR (382 €), a family with one child will be short of 3.062 DKR (408 €), a family with two children will be short of 3.756 DKR (501 €), a family with three children will be short of 5.825 DKR (777 €) and a family with four children will be short of 4.856 DKR (647 €).

8.1.1.2. Danish courses for adult aliens

As mentioned in part 5.2.1 (R4), the new Act on Danish Courses for Adult Aliens is directed not only towards persons who are, traditionally, perceived as foreigners, i.e. have their origin in another country than Denmark, but also persons coming from other parts of the Danish territory, namely Greenland and the Faeroe Islands. As such, the Act represents new thinking on the treatment of especially Greenlanders. The vast majority of Greenlanders living in Denmark are well integrated, but a minority (approximately 10 per cent: 400-800) are facing major social difficulties, including lack of skills to become integrated in the Danish Society. Besides, they are not recognized as a minority and, as a consequence, they do not enjoy minority rights, including the right to use minority language when contacting public authorities. In this context, the Act may be seen as a step forward in the process of recognizing the particular problems related to persons from Greenland. However, the Danish public authorities are in general bound by the Danish Administrative Act, according to which public authorities in cases where an administrative decision will be made, must ensure that assistance in interpretation and translation is provided for.

8.1.1.3. Active social policy, unemployment benefits, spouse supplementary scheme

The Act introduced a scheme on spouse supplementary payment in June 2003, cf. 5.2.2. (R4) which has been labelled the “apron rule” due to alleged counter-productive consequences of said rule for women.

According to the Act municipalities can deny a spouse the right to cash benefit if the municipality assumes that the person in question is not likely to become an active member of the labor market. At the same time the other spouse – typically the husband - will be provided with an extra benefit.

With reference to these expected consequences, it has been pointed out by the Danish Institute for Human Rights (DIHR) that said rule may infringe the non-discrimination clauses in Article 2 and 3 of the UN Covenant on Economic, Social and Cultural Rights.

In the explanatory remarks to the Act, it is mentioned that the increased access to spouse supplementary payment, may have an impact on gender equality, as the persons potentially affected by the scheme are expected to be women. To outweigh this unbalance, it is pointed out that the possibilities for the municipalities to assist in improving the job-seeking and activating of women is extended by the introduced scheme.

8.1.1.4. Female circumcision

In connection with the passing in Parliament of the Bill introducing extended criminalization of female circumcision, cf. 5.2.3. (R4), the DIHR had the opportunity to comment on the human rights implications of the draft law.

Thus, the Institute points out in a brief from 22 April 2003⁵⁹ that the risk of incompliance with human rights standards is minimal, but does, however, highlight three areas of concern, covering questions of proportionality, discrimination and terminology.

Regarding the question of proportionality, the Institute draws the attention to the fact that not only will the young woman or girl under 18 suffer from the physical examination initiated by the public authorities, she will also experience that the parents or relatives are to be opposite parties in the form of perpetrators in a criminal case in which she is the victim. This may, eventually, lead to a temporary split up in the family and, in the long run, have social consequences, such as exclusion of the woman or girl from the social or cultural group that she belongs to.

Seen from this viewpoint, the lack of a proportionality test in which all circumstances – and especially the respect of the best interest of the child - are taken into consideration, may result in an infringement of the child's right to a family life according to the European Convention of Human Rights, art. 8 and the UN Convention of the Rights of the Child, art. 16.

The question of discrimination is linked to the suggested new provision in the Criminal Code. According to this, men or boys - who are subjected to male circumcision for cultural or religious reasons - are not covered by the explicit protection against circumcision. The institute suggests that the provision is formulated to cover mutilation of genitals without the mentioning of gender. Such gender-neutral wording is perceived by the Institute as better concordant with the principles within human rights law on the right to dignity, self-autonomy, integrity and non-discrimination and is, moreover, in compliance with gender mainstreaming initiatives in the EU.

Concerning the terminology of the Bill, the Institute points out that the term "circumcision" does not fully reflect the crudeness and cruelty that characterizes the most serious forms of circumcision. In stead the term genital mutilation, which is used by the UN, should be applied in the Danish Act.

⁵⁹ http://www.humanrights.dk/afdelinger/forskning/notat/alle/n03_21/, Danish only.

The new provision in The Criminal Code section 245 a states that any person who by an assault, with or without the consent of another person, cut away or otherwise remove, wholly or partly, female genitals shall be liable to imprisonment for any term not exceeding six years.

The Act was adopted by Parliament 28 May 2003⁶⁰ without changes reflecting the concerns brought forward by the DIHR.

8.1.2. Immigration

8.1.2.1. Act on unaccompanied children seeking asylum⁶¹

In connection with the Draft Bill on amendments to the Aliens Act and the Integration Act, concerning examination of cases relating to unaccompanied minors seeking asylum, cf. 5.4.1. (R4), the DIHR commented on the compliance of said Bill with human rights standards.

The institute noted that the Bill provided for an improvement of the conditions for unaccompanied children seeking asylum, such as the appointment of a guardian *ad litem*. In connection with the asylum procedure, it was stressed that the Bill provided for a codification of current practice only, and as such did not introduce a better protection, but maintained a system in which the applications of unaccompanied minors are not examined on the merits of the case. To that end, the DIHR stated that this practice could not be seen as in compliance with section 7 of the Aliens Act, nor in accordance with the right stipulated in the Geneva Convention for every asylum-seeker, including minors, to have his or her application examined on the merits of the case. To obtain a better compatibility with the international obligations and standards, the DIHR recommended a scheme to be structured, according to which the immigration authorities may carry out asylum procedures at their own initiative to the greatest extent possible, without minors necessarily having to expressly maintain their application.

8.1.2.2. Act on tightening the measures of expulsion etc.⁶²

Upon invitation, the DIHR forwarded a brief to the Ministry of Refugee, Immigration and Integration Affairs concerning the proposal for a Bill amending the Alien Act and introducing new measures of expulsion, cf. 5.4.1. (R4).⁶³

The Institute pointed out that the suggested preclusion of a remedy of complaint concerning decisions made by the police on denial of subsidies, would lead to incompliance with basic principles on due process of law.

⁶⁰ Denmark, Act No. 386 (28 May 2003).

⁶¹ Denmark, Act No. 60 (29 January 2003), now Consolidated Act No. 316 (28.04.2003).

⁶² Denmark, Act amending the Alien Act No 291 (30.04.2003), now Consolidated Act No. 685 (24.07.2003).

⁶³ http://www.humanrights.dk/afdelinger/forskning/notat/alle/n03_04/, in Danish only.

Concerning the “lunch packet scheme”, it was mentioned that it is unclear from the text whether a submission of a complaint to the Ministry about the application of the said scheme would lead to a stay of execution.

Moreover, the Institute stressed that access to file complaints on decisions on transferal of rejected applicants to the camp *Center Sandholm* should be granted.

Finally, it was pointed out that the extended access to detain rejected asylum seekers might not comply with recommendations from the UNHCR, cf. Executive Committee’s Conclusion No. 44 (XXXVII): Detention of refugees and asylum-seekers, 1986.

The Act was adopted by Parliament 30 April 2003⁶⁴ without changes reflecting the concerns brought forward by the DIHR.

8.1.3. Discrimination

8.1.3.1. Act on Ethnic Equal Treatment

The ministry of Refugee, Immigration and Integration Affairs invited the DIHR to comment on the Bill on ethnic equality prior to the passing in Parliament. In a brief from 11 February 2003 the DIHR welcomed the creation of access for citizens to file complaints concerning discrimination on the basis of race and ethnic origin at no cost, and the basis for establishing a complaint body with the Institute.

The institute also pointed out that the Act does not provide employees who are not members of a labor organization with efficient protection. The rationale being that members of trade unions enjoy protection against discrimination within collective agreements in the labour market and existing industrial procedures, whereas non-members only have access to the ordinary court system and hence, cannot benefit from the labour market system. However, the Act on Equal Treatment aims to implement the EU Racial Equality Directive as regards the prohibition of discrimination outside the labour market. The Act includes a protection of all persons and whether a person is a member of a union or a non-union member does not influence the protection by the Act.

The unfavourable position of non-members of labour organizations is accentuated in the context of access to a new remedy, as the major part of persons with another ethnic background than Danish are not members of trade unions.

The Act was adopted by Parliament 28 May 2003⁶⁵ without changes reflecting the concerns brought forward by the DIHR, however the scope of the Act on Equal Treatment only includes the non-employment aspects of the EU Racial Directive. The Act does not apply to the labour market. It is therefore of no importance for the application to the Act whether a person is a member of a union or not.

⁶⁴ Denmark, Alien Act No 291 (30.04.2003), now Consolidated Act No. 685 (24.07.2003).

⁶⁵ Denmark, Act No. 374 (28.05.2003).

8.1.4. Case law on immigration and discrimination issues

The overall picture that may be drawn from national case law reveals a movement in the direction of active application of human rights standards. This seems clear, especially from the cases involving expulsion from Denmark.

The awareness of racial discrimination may be deduced by statistics on violation of the Criminal Code, section 266 b and c on race discrimination etc. Hence, statistics⁶⁶ from the police shows an increased application of said provision both in reported cases and in indictments in 2000 and 2001: in 2000 the number of cases reported to the police was 37 among which 16 led to indictments, in 2001 the number of reported incidents was 65 with subsequent 23 indictments. The numbers may be read as a reflection of an increase in the number of conflicts and an increased rudeness in the tone and attitude towards persons with another ethnic origin than Danish.

In 2002 though, there was a decrease in reported cases (36) and in indictments (17), the number of reported cases in the first half-year of 2003 is 15, which indicate a trend towards lower figures.

Statistics on racist incidents produced by the Danish Civil Security Service (PET) show that in 2000, 27 reports were filed on racist incidents, in 2001 there were 116 reports, in 2002 68 reports, and in 2003 51 reports were filed. Furthermore, the number in 2000 of possible violations of section 266 b which were reported to the Director of Public prosecutions was 9, and in 2001 11. In 2002 the number increased to 29 and decreased to 19 in 2003.⁶⁷

The figures indicate that the increase in apparent racial discrimination has stopped, however the language in the media and in statements by politicians is still considered to be discriminatory by many ethnic minorities; it is perceived by the media that an ethnic minority background equals social problems and criminality.

Concerning said Act, however, an aspect is evident especially from the “doormen-cases” concerning refusal of persons with another ethnic origin than Danish. Such cases often result in acquittal due to the weakness of evidence and may, thus, be seen as an impediment to effective implementation of the protection against race discrimination.

⁶⁶ See <http://www.politi.dk/information.htm> (30.09.2003)

⁶⁷ Figures from the Danish Ministry of Refugee, Immigration and Integration Affairs' Comments on DIHR contribution to Raxen 4.

8.2. GENERAL IMPLICATIONS AND EXPLANATIONS FROM A LEGAL APPROACH

The Aliens Act of 1983 created the framework for the Danish asylum system. The said system was flexible, in the sense that it was based on an open minded attitude towards receiving immigrants in the Danish society thus, it created the foundation for free access to the territory, laid down guarantees for the asylum procedure and adequate economical and social conditions for asylum seekers having received residence permits.

In the period from 1983 and to this day the area has experienced tightening in the legislation as mentioned in R3.

8.2.1. “The Anti-terror-package”

The attack on U. S. the 11 September 2001 released a series of initiatives on the international arena, especially U.N. Resolution No. 1373 of 28 September 2001 on Mandatory Action to Fight Terrorism.

One of the initiatives to fight terrorism was implemented in Danish legislation by a number of amendments to Danish Aliens Act (Act No. 362 of 06.06.2002). The Act contains provisions which partly deals with combating terrorism and partly deals with foreigners in general, introducing a tightening in the Alien legislation as part of the so-called “Anti-terror package”

The amendment shows that The Ministry of Integration and Immigration Affairs and Ministry of Justice have used the opportunity to introduce several dramatic tightening measures, claiming they were necessary in relation to the implementation of the U.N. Resolution.

A closer look on the “Anti-terror package” shows that it has been made hastily. This is apparent from several inaccurate formulations and legal references, together with substantial legal errors. This is especially unfortunate, since the amendments to Danish Aliens Act on several points’ clashes with fundamental Danish legal principles.

The new initiatives regarding the prevention of terrorism and the fight against terrorism hit the soft spot in between two contradictory considerations: The freedom of the individual and the principle of due process of law versus restrictions made to fight enemies of the democratic structure of the country. The “Anti-terror package” pretends to implement an international resolution⁶⁸, but in reality, it reaches far further on the expense of the statutory rights of the individual. For instance, the Act contains provisions regarding expulsion and exclusion from residence permits for both terrorists and perpetrators of other serious crimes. The Act also implies tightening of the prohibition against refoulement which applies not only to terrorists. In a trade off between the

⁶⁸ It should be noted that Act No 362 of 6 June 2002 aimed to – to the extent that the Aliens Act did not already contain adequate provisions on the subject – ensure a full accordance with the mentioned provisions of Resolution No. 1373 of 28 September 2001 on Mandatory Action to Fight Terrorism from the UN Security Council.

interests of the State and the individual, the amendments are clearly to the benefit of the State.

8.2.2. “The Alien package”

In January 2002, the Liberal-Conservative Government put forward the action plan “A new Policy for Foreigners” (*En Ny Udlængingepolitik*) cf. R3 5.3. p 15. The starting point of the action plan is to limit the number of foreigners coming to Denmark and to carry out the restrictions in accordance with the obligations to the International Conventions that Denmark has ratified. Furthermore it is the Government’s intention, with the action plan to approach the practice on the asylum area to other countries in the European Union.

The sporadically tightening in the area of Alien legislation in the recent years has been presented as efficiency adjustments, and other neutral notions. In some cases though the word “tightening” has been used. Apparently, the legislators have avoided use of the word “tightening” as much as possible, even though, in reality this indeed has been the case.

The action plan *A new Policy for Foreigners* from 2002 points in the opposite direction, the said plan appears unambiguous and explicit as a result of a strikingly newly oriented policy. The intention is to tighten up the legislation and to reduce the influx of foreigners. A reading of the bill and the explanatory notes leaves no doubts regarding the intentions and that the focus area is not on humanitarian principles, due process of law and international standards. On the contrary, the amendments implement parts of the Government’s action plan and are a serious step towards the minimum standards of the international conventions.

8.2.3. The abolishment of the concept of the so-called *defacto* status

As mentioned in R3, 5.3.1., the Government abolished the concept of *defacto* refugees. As a point of departure, only individuals entitled to protection in accordance with international conventions can receive residence permits. A substitute for the concept of *defacto* refugees has been the introduction of a new concept called “protection status” (*beskyltelsesstatus*) or B-status. The provision is structured in accordance with ECHR article 3, and entitles a person to a residence permit if the individual in his home country risks “torture, inhumane and degrading treatment or punishment.”

In the explanatory notes it is a precondition that the Danish Immigration Service comply with the jurisprudence of the European Court of Human Rights (The Court). This entails that the Immigration Service in every case must make an assessment, on whether a rejection will imply a violation of ECHR article 3 and the jurisprudence of The Court. In this respect it is problematic that the jurisprudence on this issue is relatively limited. Taken together with the very concrete decisions and argumentation of the case law, it is a challenge for the Immigration Service to interpret article 3 and the jurisprudence, to avoid violation of the ECHR in relation to granting B-status.

In a judgment from July 2002, *CASE OF AMROLLAHI v. DENMARK*⁶⁹, The Court held unanimously, that the implementation of the decision to expel the applicant, convicted of a drug crime to Iran for good; would be a violation of Article 8 of the ECHR. The Iranian citizen was married to a Danish citizen with whom he had a child also holding Danish citizenship. Accordingly, the expulsion order interfered with the applicant's right to respect for his family life, within the meaning of Article 8 § 1 of the ECHR.

The said judgement illustrates that the risk for Denmark to violate ECHR is not just a theoretical and abstract discussion. Even though the judgement did not concern a violation of ECHR article 3, it is still very relevant in this context. The Danish legislation, that forms the foundation for the decision of expulsion, is constructed after the same draft paper, as the new rules concerning B-status. In relation to the legislation concerning expulsion it is clearly a precondition that the Danish authorities shall do their utmost to exploit the minimum standards of the Conventions to the fullest.

The newly introduced B-status constitutes furthermore the latest steps in a development where earlier passed amendments regarding the rules of expulsion usher in a new epoch: The international obligations of Denmark are not observed by the legislator, but by the administration. From a constitutional point of view, it would be more adequate if the Parliament assumed their responsibility instead of letting the civil servants observe Denmark's obligations.

Furthermore, the concept of the B-status draws attention to a couple of joint European initiatives concerning subsidiary protection.

27 November 2001, The Council of Europe passed a recommendation concerning subsidiary protection. The recommendation is not legally binding; it is only a politically and morally binding paper. The paper recommends that the Member States should provide protection to persons, who have been forced to flee from their home country as a result of random violence, raised in the wake of armed conflicts or civil war. These persons are not covered by the Danish definition of a refugee (Convention-status and B-status).

One could also mention the proposal by the Commission from September 2001 to a Council Directive regarding the requirements of minimum standards for recognition of refugees and for allocation of subsidiary protection. Taking into consideration of the latter, it appears from the explanation to the proposal, that the initiative at this point, in essence, is a codification of the practice of the EU-countries. Rather than to impose new obligations on the member states for the protection of certain groups of persons, it is the proposal's intention to create a clarity regarding the already existing obligations and practice of the Member States. In accordance with the proposal, the country has to provide subsidiary protection to persons, who on return risk serious assaults, as a result of random violence in relation to armed conflicts. In this context one must also include refugees of (civil) war. During the Greek EU-presidency the Council came to a political agreement concerning this part of the proposal.

Although Denmark formally speaking is not legally bound by the recommendations, and the proposal of the Commission is still only a proposal, that claims to be a codification of

⁶⁹ Application no. 56811/00.

existing practice, it is worth noticing that both European initiatives indicate a protection of a far broader group of persons than the previous *de facto*-status. It is especially a significant broader group than the newly introduced *B*-status. The conclusion is, that Denmark internationally has signed a recommendation, protecting a broader group of persons, while the Government nationally has introduced a far more narrow approach (*B*-status), than the previous *de facto*-status.

As regard to the EU Draft Directive, one should emphasize that an increased rapprochement in the asylum area, to other EU-countries, earlier was a significant part of the Government's action plan launched in January 2002. Furthermore, this was underlined in the explanatory notes to "The Alien Package".

None the less the amendments and the introduction of the *B*-status go in the directly opposite direction. The amendments have moved the Danish asylum legislation further away from a common European rapprochement.

8.2.4. Reduction of the number of members of the Refugee Board

Flygtningenævnet (The Refugee Board)⁷⁰ was established under the Danish Aliens Act of 1983 as an independent and broadly composed expert agency, consisting of 7 members: a chairman or one of the deputies whom are judges, a member appointed respectively by the Minister of Social Affairs, the Minister of Justice, the Minister of Foreign Affairs, a member appointed subsequent to nomination from the General Council of the Bar and Law Society and two members appointed subsequent to nomination from Danish Refugee Council.

Subsequent to an amendment of the Aliens Act in the summer of 1995, the Council was reduced to only 5 members; one of the members nominated by Danish Refugee Council and the member appointed by the Minister of Social Affairs was removed.

The reason for this reduction was first and foremost, a presumption that a 5 member Board could easier deal with more cases than a 7 member Board. With the introduction of the "Aliens Package" the number of Board members was further reduced. The Refugee Board now consist of only 3 members. The sessions are presided by a Chairman, one member appointed by the Minister of Refugee, Immigration and Integration affairs, and the third member is appointed by the General Council of the Bar and Law Society.

The reasoning behind the reduction was not considerations concerning efficiency. On the contrary, the arguments were based on considerations of the legal incapacity of the members from the Danish Refugee Council and the Ministry of Foreign Affairs. The argumentation was that Danish Refugee Council was acting as an organisation promoting the interests of asylum seekers and the Ministry of Foreign Affairs provided background material and information during the procedures.

⁷⁰ The Refugee Board is an independent court-like body whose most important task is to process appeal cases after the Danish Immigration Service has refused to grant asylum in the first instance. The Board is not dependent on the political process and, hence, it is not subjected to Government or Parliamentary directives, further information available at: <http://www.fln.dk/engl.htm> (08.08.2003).

One can find it strange that more than 20 years has to go by before discovering and reacting on “problems” regarding legal incapacity. Especially when keeping in mind the reasoning for the original composition of the Board. The Foreign Ministry was chosen, because they have experience dealing with information from abroad. The Danish Refugee Council was chosen because they should secure versatility, in addition their role, as representatives of laypersons should give the Board public legitimacy and represent humanitarian viewpoints in the procedures.

The conclusion is that the reasoning and the argumentation behind the removal of the above-mentioned members were the very same as for appointing them in the first place.

With the reduction of the number of representatives in the Board, not many of the original intentions from The Alien Act of 1983 are left: to have a broadly composed expert agency. This is a weakening of the due process of law, which the Board should guarantee.

Equally, seen from a rule of law perspective it is problematic that the decisions not are under external legal control, since the Court of law and the Ombudsman of the Parliament do not, as a point of departure, have authority to review the decisions of the Board.

That the Board does not work under optimum conditions was the impression given in a television programme the 22 January 2003, where it was accentuated that there were striking differences between the decisions made by the Board, dependent on the judge who was acting as Chairman.

The Board produced in February 2003 a memorandum on the subject.

The memorandum is based on an examination of 5025 cases, and confirms that the Chairman has a decisive influence on the decisions. The examination shows that an asylum seeker has four times the chance of being granted a residence permit, if a “liberal” judge is acting chairman, compared to a “restrictive” judge.

During a consultation 2 April 2003 in the Parliament’s Committee for Alien- and Integration Politics concerning the procedures of the Board, the Minister of Integration Affairs rejected that the decisions of the Board was characterized by inconsistency. The Minister said that almost all of the rejected applications (97, 7 per cent) were decided unanimously. The examination however, showed that also almost all of the permissions (79, 2 per cent) were decided unanimously. The Minister’s conclusion must be criticized, since a high or low degree of unanimity does not indicate whether the Board follows a uniform practice.

The high degree of unanimity only reflects how the voting of the cases has been. However, the practice of the authorities must be measured on the outcome of the cases, whether these has been decided unanimously or with dissenting opinion, is irrelevant.

It should give rise to some criticism that that the Minister tried to explain away a very significant problem concerning due process of law.

Finally, one should mention one of the initiatives to limit the numbers of foreigners in Denmark. As mentioned in Raxen 3 report (2002) p. 18, the requirements for family reunifications were fundamentally tightened in 2002. The most far-reaching amendment is that family reunification can only be issued if the spouse’s aggregated ties with

Denmark are stronger than the spouse's aggregated ties with another country. This amendment has in practice meant that several Danes of Danish origin, whom in a period of some years have lived abroad and during their stay have been married to a person with a citizenship of that country, cannot be family reunificated in Denmark. Since the balanced has tipped, the person and his/her spouse now have stronger aggregated ties to the country. Several couples have been forced to move to Sweden, as EU legislation then make it possible, after a period of time, for a couple to move to Denmark.

8.3. EXPLANATIONS FROM AN INTEGRATION PERSPECTIVE

A report on the integration status in Denmark was launched in July 2003 by a private research institute in which the development in a five years period (1999-2003) is assessed from an integration perspective.⁷¹

The report is based on telephone interviews with refugees and immigrants over a 5-year period and should be seen as an indication of tendencies in the integration process. The research is based on interviews with 7 different so-called ethnic-national groups of immigrants. These are: Former-Yugoslavia, Turkey, Somalia, Iran, Iraq, Pakistan and persons of Palestinian origin (formally speaking stateless-persons).

The report focuses, among other things, on integration in the labour market, experienced discrimination, well-being in the Danish society and participation in politics.

Figures in the report show, that in a relatively short period of time, the number of refugees and immigrants who have received Danish citizenship has doubled. There has been an increase in the numbers of refugees and immigrants who are on the labour market; all interviewed groups of immigrants with the exception of Somali's have benefited from the strong Danish economy during the past years. The Somalis, apparently have moved from being unemployed to a status completely outside the labour market. The Palestinians groups have not experienced any improvement in employment, neither any setback. The group of Former-Yugoslav immigrants have experienced the biggest progress.

Seen from a gender perspective, more men than women are employed; there is a significant increase in the number of women outside the labour market (pensioners and unemployed not available for the labour market). Also, there is an increase in the number of persons on invalidity subsidy schemes. At the same time, however, there has been a general improvement in the educational level.

The survey of religions represented in minority groups show that most of the immigrants in Denmark are Muslims and a majority are Sunni-Muslims (55 percent), followed by Shia-Muslims (11 per cent) and other Muslims (16 per cent), Greek-Catholic (3 per cent) and Roman-Catholic (2 per cent). The survey indicates that the immigrants over a 5-year period perceive themselves as less religious.

⁷¹ IntegrationsStatus 1999-2003 – 5 år i et integrationsperspektiv, Catinét Research, July 2003, <http://www.catinet.dk>

According to the report, the number of immigrants who *do not* experience discrimination has increased by 15 percent while the group that experience discrimination has decreased by 18 percent. The areas where immigrants experience the most discrimination is: when shopping, at the workplace, on public transportation, at job applications and at entrances to nightclubs. About 19 percent of the immigrants - wanting to move from Denmark – point at discrimination as the reason. Iranians experience most discrimination, but they are also the group that in most areas are best integrated.

As part of the survey, immigrants have been asked whether they prosper from living in the Danish society. 62 percent confirm this, which is an increase compared to a survey made in 2000, which showed a percentage of 54.

Furthermore, the report shows an increased level of interest for politics: 71 per cent voted for the last general election, and 75 percent knows which party they will vote for. This represents an increase from 65 percent in 2000. The most popular parties among immigrants with Danish citizenship are the Social Democrats (70 per cent), the Socialist People's Party (13 per cent), and Social Liberal Party (7 per cent).

9. Summary and conclusions

The principles, programmes and plans of action initiated as part of the Danish Government's policy as well as the legislative measures adopted during the period 1 January to 1 September 2003, contribute to the picture drawn in the Raxen 3 report on legislation and may be summarized in the following overarching principles:

- a reduction of the influx of foreigners in Denmark
- self-maintenance
- better integration
- respect for international obligations

The principles were introduced as the basis for the Government's strategies in two policy programmes launched in January and March 2002, respectively, as *A new Policy for Foreigners* and *Towards a new integration policy*, and have been guiding for the activities of the Government and the Ministries since then.

The reflection of said principles is evident, especially within policy and legislation initiatives in the fields of integration and immigration, whereas the field of discrimination is mainly influenced by EU regulation aiming at combating race discrimination.

INTEGRATION

Within the period covered by this report, both the Government and the ministries have taken a number of initiatives within the field of integration to fulfil the goals set up in previous policies, including especially *Towards a new integration policy* of 5 March 2002. Moreover, new initiatives have been taken, primarily in relation to education and the labour market.

In June 2003, the report *The Government's Vision and Strategies for Improved Integration (Regeringens vision og strategier for bedre integration)*⁷² presenting 114 concrete initiatives. The 114 initiatives fall within 3 main focus areas on the political agenda, aiming at enabling a better integration of foreigners in the Danish society: 1) efforts to ensure a coherent and open democratic society, 2) efforts to help persons of an ethnic background other than Danish to manage better in the educational system, and 3) effort to help more foreigners to get a job.

According to the report the Government states that four fundamental principles will guide the course for new integration politics: 1) Make room for diversity and learn to use it for common advantage. 2) Abandon the so-called clientification of foreigners and show respect by imposing demands. 3) Abandon any lack of consistency in all its forms. 4) Avoid excusing suppressive family patterns by referring to "culture".

⁷² Regeringen (2003) Ministergruppen om bedre integration "*Regeringens vision og strategier for bedre integration*", available at: http://www.inm.dk/publikationer/engelske_publicationer/integration_policy/index.htm (04.08.2003)

To this end, a plan of action was adopted in August 2003 with the specific purpose of signalling the Government's disapproval of forced and arranged marriages, and enhancing the respect for democratic values, including gender equality, personal freedom and the freedom to choose a spouse.

Moreover, the principles were highlighted in a general governmental policy programme on the societal development of the Danish welfare state, which was launched in August 2003 under the title *Growth, Welfare - Renewal II*. The programme aims at strengthening the responsibility of the individual, e.g. via self-maintenance requirements, and improvement of the integration of foreigners through education, language courses and supervision.

Along the line of ensuring compliance with Danish standards and regulation, was also the setting up of a Cross-ministerial working group on female circumcision in the autumn of 2002.

Other initiatives were taken in 2003 by the Ministries aiming at improving the integration of foreigners in specific areas. Thus, new initiatives were taken to support entrepreneurs with another background than Danish; Integration Awards will be given to persons who have been successful in integrating on the labour market, school and education, volunteers work or association activities. Also, funds have been earmarked to strengthen the integration of ethnic minorities in the labour market, and a database creating access to research and publications concerning integration has been set up, cf R4 5.1.2.

Moreover, initiatives were taken to reduce so called re-education trips to countries of origin and to combat violent crimes committed by young immigrants by means of removal by force, establishment of special institutions and placement outside the family, cf. R4 5.1.4.

Legislative measures were adopted in 2003 with the purpose of improving the language skills of foreigners in Denmark, and ensuring an active social policy. The latter led to introduction of a limit concerning the benefits an individual may receive as cash benefit or start payment, and to extended possibilities for spouse supplementary payment – the so called “apron rule”, cf. R4 5.2.1. and 5.2.2.

Linked to the political initiatives concerning female circumcision, cf. R4, 5.1.1.) is an amendment to the Aliens Act and to the Criminal Code in the spring of 2003, which criminalized committing, aiding and abetting to female circumcision abroad.

IMMIGRATION

Within immigration the focus in 2003 is still on reducing the influx of immigrants via immigration legislation containing stricter requirements for application for asylum, family reunification and residence permits – and as such a continuation of the policy introduced in 2002.

A statistical survey shows clearly, that the number of persons arriving in Denmark is reduced. The number of persons applying for asylum in 2003 may very well reach a level of approximately 4000 persons, which corresponds to 2/3 of the number of asylum seekers in 2002, cf. R4 5.3. However, the numbers may not only be seen as a result of

effective legislation, but also a reflection of the situation in countries such as Iraq and Afghanistan cf. R4 7.2.

The statistics on family reunification also reveals a stricter application of the Aliens Act. Thus, the number of accepted application in the first half-year of 2003 was 2.607 compared to 11.250 in 2002, cf. R4 5.3..

Regarding legislation, Parliament adopted a number of changes to the Aliens Act during the spring of 2003, among which the Act on tightening the measures of expulsion, cf. R4 5.4.1., directly reflects the strategy on reducing the number of foreigners entering Denmark.

Also, said Act reflects tendency towards cutting-down on subsidies as a reaction to non-compliance with the requirements laid down by legislation. This tendency is clear, also from the new system concerning payment of benefits to asylum seekers, cf. R4 5.4.1., according to which supplementary benefits are made conditional upon observance of a contract imposing a duty on the asylum seeker to participate in activation and education.

Danish case law from the period covered by the report shows examples of cases in which expulsion is made part of the indictment, but has led to decision on acquittal due to family ties to Denmark. The rationale for said result is found mainly in human rights standards, whereby a movement in the direction of active application of human rights instruments is revealed.

ANTI-DISCRIMINATION

Within the field of discrimination, legislation was passed in 2003 implementing the EU Race Directive, which improves the protection against discrimination and reprisal on the grounds of race or ethnic origin and provides the victims of differential treatment with a legal remedy, i.e. a complaint mechanism within in the Danish Institute Human Rights, cf. R4 5.6.2.

Case law within the reporting period indicates a movement in the direction of active application of human rights standards by the courts and vague signs of an improved awareness of racial discrimination in the court system. At the same time, however, the number of cases reported on racial discrimination has raised, which may signalize an increased rudeness in the interaction of persons with Danish origin and other ethnic origins, cf. R4 7.1.4.

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