

Doc. 14213 Part 4
15 December 2016

The progress of the Assembly's monitoring procedure (September 2015-December 2016) and the periodic review of the honouring of obligations by Austria, the Czech Republic, Denmark, Finland, France and Germany

Periodic review report: Denmark

Report¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe
(Monitoring Committee)

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Summary

All member States of the Council of Europe that are not under a monitoring procedure *sensu stricto*, or engaged in a post-monitoring dialogue, are the subject of a regular periodic review by the Monitoring Committee of the honouring of their membership obligations to the Council of Europe. In this report, the committee presents the periodic review on Denmark. The committee concluded that Denmark is globally fulfilling its membership obligations to the Council of Europe and, overall, its democratic institutions function in line with the standards of the Council of Europe. However, a number of concerns were raised, and recommendations made in that respect, that deserve the prompt attention of the authorities.

1. See also Doc. 14213 [Part 1](#), [Part 2](#), [Part 3](#), [Part 5](#), [Part 6](#) and [Part 7](#).



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Explanatory memorandum by Mr Cezar Florin Preda, rapporteur

1. Introduction

1. Denmark (conventional long form: Kingdom of Denmark) is a founding member of the Council of Europe. The country has 5.7 million inhabitants (2016), 12,3% of whom are immigrants and descendants of immigrants.²

2. Denmark is a constitutional monarchy ruled under the 1953 Constitution which applies also to the Faroe Islands and Greenland. Queen Margrethe II ascended to the throne on 14 January 1972; she carries out mainly formal and ceremonial functions.

3. The Faroe Islands (49 126 inhabitants) and Greenland (55 847 inhabitants) enjoy a high degree of autonomy within the Kingdom. The Home Rule Acts, adopted originally in 1948 and 1979, introduced extensive self-government in these two islands. In 2009, the Act on Greenland Self-Government allowed the expansion and transfer of further competences and responsibilities from the Danish authorities to the Greenland authorities, who are now responsible for, *inter alia*, the administration of justice and the establishment of courts of law, the police, and mineral and oil resources. Public revenues from mineral and oil resource activities in Greenland accrue to Greenland. Greenlandic has also become the official language in Greenland³ while International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries applies in Greenland.⁴ Early general elections were held in Greenland in November 2014, after the social democratic government lost its majority due to an embezzlement scandal involving Greenland's Prime Minister, Aleqa Hammond.⁵ The current government – elected in November 2014 – consists of a coalition between Siumut, Atassut and Demokraatit.

4. Denmark became the first Nordic country to join the European Union in 1973, whereas the Faroe Islands decided to stay outside of the European Community. Greenland originally joined the European Commission as a part of the Kingdom of Denmark but decided to leave on 2 February 1985 as a result of a consultative referendum in 1982 where 53% voted against membership. For the 1992 Maastricht Treaty, Denmark was granted four opt-outs, pertaining to defence, justice and home affairs, and its national currency (not opting for the euro). The opt-out on citizenship rules was cancelled with the acceptance of the Amsterdam Treaty that took effect in 1999. Denmark has held nine referendums on the European Union, including the referendum in Greenland in 1982 on Greenland's European Union membership. The most recent one was organised on 3 December 2015, when 53.1% of voters rejected the opt-in model on Justice and Home Affairs proposed by the Prime Minister, Mr Rasmussen, which would have enabled Denmark to join 22 European Union legislative acts,⁶ ensure its continued participation in Europol, Eurojust and a European system notably for registering flight passengers while preserving Denmark's own rules on immigration issues.⁷ During the last European Parliament elections (September 2014), the Eurosceptic Danish People's Party (Dansk Folkeparti) scored 26.60%⁸ and, for the first time, became the largest party in a nationwide Danish election.

5. Denmark has recently faced its most important migration crisis, stemming notably from the Syrian and Iraqi conflicts. In 2014, almost 15 000 asylum requests were registered, and there were almost 3 600 requests in October 2015 (more than in the whole of 2011). In 2016, the number of asylum seekers reaching Denmark was expected to be 10 000.⁹ Early in September 2015, hundreds of refugees crossed Denmark's border at the Rødby ferry terminal and at the land border with Germany. Border controls were re-established between Sweden and Denmark, which have been extended until November 2016. In January 2016, Denmark re-established temporary border controls on the Danish–German border, which have been extended until November 2016 in accordance with the Council of the European Union's decision of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances, putting the overall functioning of the Schengen Area at risk.¹⁰

2. <http://denmark.dk/en/quick-facts/facts> and figures provided by the authorities (AS/Mon (2016) 31, p. 6).

3. Notification of the Act on Self-Government of 8 February 2010 to the United Nations Secretary General in: AS/Mon (2016) 31, p. 17 (comments by the Government of Greenland).

4. Fourth Opinion on Denmark adopted on 20 May 2014 by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC/OP/IV(2014)001), paragraph 17.

5. <https://freedomhouse.org/report/freedom-world/2015/denmark>.

6. See www.thelocal.dk/20150820/danish-pm-to-move-up-eu-referendum-date-report.

7. <http://english.eu.dk/en/faq/faq/referendums>.

8. www.europarl.europa.eu/elections2014-results/en/country-results-dk-2014.html.

9. Figures provided by the Danish Government, AS/Mon (2016) 31, p. 6.

6. This situation prompted the authorities to adopt a number of restrictive laws to respond to the increasing number of people seeking asylum in the country (as explained by the authorities)¹¹ and to devote one third of the development aid – which was already cut from 0.87% of gross national income to 0.71% – to the refugee crisis, a measure deplored by development associations.¹² We should however stress that Denmark remains one of the five member States belonging to the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD), which has achieved or exceeded the United Nations' target of keeping the official development assistance (ODA) at 0.7% of gross national income in 2014.¹³

7. This periodic review report was drafted in line with [Resolution 2018 \(2014\)](#) and the explanatory memorandum approved by the Monitoring Committee on 17 March 2015. It reviews the challenges faced by Denmark in the field of democracy, the rule of law and human rights, based on the most recent findings of the monitoring mechanisms of the main Council of Europe conventions, the findings of the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights and, when relevant, the reports prepared by other international instances and representatives of civil society and non-governmental organisations (NGOs). The comments¹⁴ sent by the Danish delegation to Parliamentary Assembly and the authorities, for which I am grateful, have also been taken into account in my findings and conclusions.

2. Democracy

2.1. General elections

8. Since the abolition of the *Landsting* in 1953, Denmark has had a unicameral system of parliament (the *Folketinget*). 179 deputies are directly elected according to a regional proportional representation system.¹⁵ 135 seats are allocated on a constituency basis, which ensures an even distribution across the country, with a small advantage to sparsely populated areas. Forty supplementary seats ensure that parties with a possibly more dispersed support also have a chance of being elected. The Faroe Islands and Greenland each have two representatives in parliament. The result of this system is a distribution of seats in the parliament which fairly reflects the share of the popular votes received by the parties. Parliament is elected for a four-year term, but the Prime Minister may call an election at any time. The voting age is 18.

9. Denmark's political system is that of a multi-party structure known as "negative parliamentarianism" (i.e. the government does not need to have a majority in the parliament, but it must not have a majority against it). Since 1909, no single party has had the majority in parliament. Denmark has thus a long tradition of minority governments, based on consensus. At present, 13 political parties are represented in the Danish Parliament. At the 2015 general elections, one of the oldest and historically most influential parties, Venstre (centre-right, conservative liberal) obtained 34 seats in the parliament (out of 179) (19%) and formed the minority government led by the Prime Minister, Lars Løkke Rasmussen; the Socialdemokraterne party (centre-left, social democrats) obtained 47 seat (26.2%) and the Dansk Folkeparti (Danish People's Party, right-wing, national conservative) 37 seats (20.7%).¹⁶

10. The government (*Danmarks regering*) currently comprises 17 members including the Prime Minister (President of the Venstre Party), who was appointed on 28 June 2015, replacing former Social Democrat – and first Danish female – Prime Minister Helle Thorning-Schmidt.

10. Ibid .

11. www.thelocal.dk/20151201/its-official-record-numbers-see-asylum-in-denmark.

12. www.thelocal.dk/20151120/denmarks-first-refugee-tent-camp-to-open-amid-spending-criticism.

13. The DAC has 28 member States. The countries that also achieved the target are Luxembourg, Norway, the United Kingdom and Sweden. See www.oecd.org/dac/stats/development-aid-stable-in-2014-but-flows-to-poorest-countries-still-falling.htm

14. See comments by members of the delegation of Denmark to the Parliamentary Assembly and of the government on the preliminary draft periodic report on Denmark, AS/Mon (2016) 31.

15. This system is based on a modified version of the St. Laguë method and Hare quota, using the method of greatest remainders. For more details, see www.ipu.org/parline-e/reports/2087_b.htm.

16. www.ipu.org/parline-e/reports/2087_E.htm.

2.2. Local democracy

11. In Section 82, the Danish Constitution gives the “right of the municipalities to manage their own affairs independently under the supervision of the State”.¹⁷ A number of administrative powers are delegated to the five regions and the 98 municipalities (“kommuner”) that were created as part of the 2007 Danish Municipal Reform.

12. Denmark ratified the European Charter on Local Self-Government (ETS No. 122) in 1988, with a territorial reservation on the Faroe Islands and Greenland. The Congress of Local and Regional Authorities of the Council of Europe (hereafter “the Congress”) issued its last report and recommendation on local and regional democracy in Denmark in October 2013.¹⁸ The Congress praised the generally positive (and in some ways exemplary) nature of local democracy in Denmark, which is reflected by: a “Charter Culture” as regards the implementation of the principles enshrined in the Charter; the merging of municipalities on a voluntary basis and after consultation with local authorities; and the possibility of inter-municipal co-operation agreements and the active participation by Danish citizens in the political decision-making processes.

13. A major local government reform was carried out in 2007, aiming at “ensuring an efficient public sector capable of providing optimum services without increasing taxation; reinforcing local democracy [to provide] social services by the authorities closest to the citizens; and establishing clear responsibilities for each of the relevant bodies and preventing overlapping”.¹⁹ As a result, 271 municipalities merged. There are now 98 municipalities directed by councils elected by direct suffrage, all (but seven) having more than 20 000 inhabitants. Fourteen former counties were replaced by five regions, the Municipality of Copenhagen became one of the now 29 municipalities in the capital (*Hovedstaden*) region and had to transfer some of its competences to the new region which, according to several experts, “weakened metropolitan governance”.²⁰

14. The Congress, however, issued several recommendations, asking the Danish authorities to clarify certain competencies not clearly allotted to local authorities; to allocate appropriate and concomitant financial resources to all competences exercised by local authorities; to improve the procedures for financial equalisation among the municipalities and draw on the Reference Framework on Regional Democracy in structuring the Danish regions; to revise the State’s supervisory procedures vis-à-vis local authorities in order to facilitate their access to the national capital markets; to reinforce the responsibilities of the capital city; and to revise the responsibilities and improve the financial autonomy of the regions. The Congress also called on Denmark to sign and ratify in the near future the Additional Protocol to the European Charter of Local Self-Government on the right to participate in local government affairs (CETS No. 207).

15. Following the adoption of Congress Recommendation 350 (2013), the Danish authorities undertook a series of measures related to an adjusted allocation of financial resources to local authorities (and regions) to compensate changes in their responsibilities and obligations based on annual negotiations between the government and the association Local Government Denmark, agreeing on expenditure levels and the improvement of procedures for financial equalisation among the municipalities, in particular to the benefit of peripheral and rural municipalities. In addition, the State’s supervisory procedures vis-à-vis local authorities were revised in order to facilitate their access to the national capital markets to raise loans, and the responsibility of the capital city Copenhagen was reinforced; the responsibilities of the regions were revised and their financial autonomy was improved. The 2007 municipal reform was evaluated in 2012-2013, which resulted in a political agreement in June 2013 allowing minor changes.²¹

16. Concerning the financial autonomy of the regions, the authorities indicated that regions are mainly financed through subsidies from the State and activity-based co-financing from the municipalities. Thus it had been deemed unnecessary to provide the regions with the right to levy taxes due to the character of the tasks of the regions.

17. The Danish authorities also explained that, at this stage, no political decision had been taken with respect to the signature and ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in local government affairs: the Danish Ministry of Social Affairs and the Interior is currently evaluating the legal impediments, including at constitutional level, which might preclude signing and ratifying the additional protocol.²²

17. https://www.constituteproject.org/constitution/Denmark_1953.pdf?lang=en.

18. See CG(25)12FINAL and Recommendation 350 (2013) adopted by the Congress of Local and Regional Authorities of the Council of Europe at its 25th Session (29-31 October 2013).

19. CG(25)12FINAL, paragraph 17.

20. Ibid., paragraph 46.

21. Detailed information on the municipal reform was provided by the authorities. See AS/Mon (2016) 31, pp. 6-7.

3. Rule of law

3.1. Fight against corruption and money laundering

18. Denmark ratified the Criminal Law Convention on Corruption (ETS No. 173) in 2000 and its Additional Protocol (ETS No. 191) in 2005. It signed, but did not ratify, the Civil Law Convention on Corruption (ETS No. 174) in 1999. Denmark has excellent scores in the Corruption Perception Index published yearly by Transparency International, ranking first for the fourth year in a row, in other words with the lowest perception of corruption.²³

19. Concerning its third evaluation round (transparency of party funding), the Group of States against Corruption (GRECO) regretted that 10 of the 14 recommendations remained unfulfilled. While commending the authorities for the preparation and publication of the “Report on openness concerning financial support to political parties” (yet to be implemented), it noted the lack of progress in the position taken by the authorities with regard to small facilitation payments – as a form of “undue advantage” – offered to foreign public officials (and officials of international assemblies and courts). Such payments may, in undefined “exceptional circumstances”, fall outside the scope of the Criminal Code and thus escape punishment.²⁴ In its most recent annual report, GRECO noted that the government-appointed Committee of Experts on the Transparency of Party Funding (tasked with reviewing the rules on party funding and drawing up models for possible future regulation of public and private funding of political parties) had finalised its report.²⁵ The Committee of Experts considered to what extent GRECO’s recommendations should lead to amendments to the Danish rules on party funding and on political parties’ accounts. In March 2015, the Committee of Experts published a report on openness of financial support to political parties²⁶ which contained a number of recommendations concerning increased transparency with respect to private and public financial support to political parties and accounting obligations for parties and candidates. It also proposed different models on how a future regulation of the area could be structured. On the basis of that report, the (then) Danish Government conducted in April and May 2015 introductory political consultations with all parties represented in the Danish Parliament. Following the general elections on 18 June 2015, the government changed. The new government is currently considering how to follow up on the Committee of Experts’ report.²⁷ We thus expect the authorities to take due consideration of GRECO’s recommendations and make the expected changes in the legislation or in the Danish rules on party funding.

20. GRECO also published, in 2016, a compliance report with respect to the fourth evaluation round (corruption prevention in respect of members of parliament, judges, and prosecutors), which concluded that Denmark has implemented satisfactorily only one of the six recommendations contained in the fourth round evaluation report (four have been partly implemented and one has not been implemented). I will outline the unresolved recommendations in the paragraphs below. GRECO welcomed consideration given by the Presidium of the Danish Parliament to the GRECO recommendations, and the letter of the outgoing Speaker sent to new MPs after the elections, on the ethical principles by which all MPs should abide. On the positive side, registration of occupations and financial interests by members of parliament has been made compulsory, and the list of members that do not comply with this requirement will be published on the parliament’s website. This “naming and shaming” sanction appears pertinent, given that the list published on the parliament’s website is subject to a high degree of transparency and that – as a result – the political consequences may be significant for MPs who violate these rules. The Venstre and the Social Democratic Party take the view that the current regulations are sufficient and are concerned that the new regulation would infringe upon the privacy of small donors and thereby hinder participation in the democratic process.²⁸

22. Ibid., p. 7.

23. <https://www.transparency.org/cpi2015/#results-table>.

24. Third evaluation round: fourth interim compliance report on Denmark: “Incriminations (ETS Nos. 173 and 191, GPC 2)”, “Transparency of party funding” adopted by GRECO at its 69th plenary meeting, Strasbourg, 12-16 October 2015, published in November 2015, [Greco RC-III\(2015\)14E](#), 4th interim. Referring to the letter sent to GRECO on 6 October 2015, the Danish authorities explained in their comments that they remain of the opinion that Danish law criminalises bribery, including small facilitation payments, to the extent required by the Criminal Law Convention on Corruption. Denmark has not therefore adopted any legislative changes concerning the scope of the offence of bribery since the 2009 report. Denmark has since endeavoured to clarify its position, most recently in a letter of 6 October 2015 to GRECO. AS/Mon (2016) 31, p. 7.

25. Sixteenth [General Activity Report \(2015\)](#) of GRECO, adopted at its 71st plenary meeting, Strasbourg, 14-18 March 2016, p. 30.

26. Report No. 1550/2015 on openness concerning financial support to political parties, see www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Betaenkning%20Partistoetteudvalg.pdf.

27. Information provided by the authorities, AS/Mon (2016) 31, pp. 7-8.

28. AS/Mon (2016) 31, p. 2.

21. Regarding the other measures recommended, GRECO expects further progress as regards awareness and more concrete guidance on ethical issues, more transparency on possible ad hoc conflicts of interest that may arise for members of parliament in connection with matters under consideration by parliament and additional arrangements for supervision and enforcement of rules on integrity. GRECO regrets moreover that the Presidium has so far not given further consideration to the possibility of drafting a code of conduct for parliamentarians (along the lines of the ethical principles mentioned above) and not seen fit to recommend any changes to the categories of information to be recorded by members of parliament and their relatives, and encourages it to reconsider its position.

22. With respect to the prevention of corruption in the judiciary, GRECO welcomes the ethical principles adopted by the Association of Danish Judges after a broad consultation with all judges, and their online publication. It expects, however, this text to be completed by practical examples to fully comply with the GRECO recommendation, drawing inspiration from the 2007 code of conduct in the public sector and the guidelines on good conduct and ethics in the prosecution service, produced by the Director of Public Prosecution, and targeted training on the ethical guidelines.²⁹ I was also informed of initiatives undertaken by the Danish Court Administration, the Danish Courts and the Academy of Danish Courts (*Domstolsakademiet*) to raise awareness and promote the practical use of the ethical principles adopted by the Association of Danish Judges, which I believe will contribute to raising awareness about the fight against corruption in the judiciary.³⁰

23. In the area of money laundering, Denmark signed, in 2012, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) but has not ratified it. Denmark is thus not a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

3.2. Measures taken in the context of counterterrorism

24. The fight against terrorism and threats to national security has become a topical issue in Denmark, as in many Council of Europe member States, especially since the publication of the cartoons of Prophet Mohammed by the Danish newspaper *Jyllands-Posten* in 2005. On 14-15 February 2015, Copenhagen was subjected to two terrorist attacks.³¹ On 3 November 2016, Denmark ratified the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217). However, counterterrorism measures adopted since then have given rise to some questions in relation to the difficult balance that needs to be achieved between guaranteeing public order and security and upholding individual liberties. Amnesty International in particular has looked into the matter.

25. Since 2006, a series of amendments to the Administration of Justice Act and other laws have weakened independent judicial oversight of police access to private and confidential information. Amnesty International considers that “the introduction of a number of bills has disproportionately restricted the right to privacy and – by weakening legal safeguards – has eroded judicial protection of this and other rights, including the right to a remedy for violations”. Amnesty International explains that this relates notably to extended tapping of telephones and computers,³² extended powers granted to the Police Intelligence Agency, which can compel any public authority, doctor, psychiatrist or other individual working in an official capacity to hand over confidential or private information pertaining to individuals under investigation, without judicial oversight or control; and the establishment in 2013 of a new supervisory body to monitor the collection of data by the Intelligence Agencies about individuals and legal persons through tapping of telephones and computers,³³ which can neither compel the intelligence agencies to stop a surveillance activity nor submit its

29. Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: compliance report: Denmark, adopted by GRECO at its 71st plenary meeting, Strasbourg, 14-18 March 2016, published in April 2016, [GrecoRC4\(2016\)7](#).

30. Information provided by the authorities, AS/Mon (2016) 31, p. 8.

31. On 14 February 2015, on the occasion of an art event called “Art, Blasphemy and Freedom of Expression” at the Krudttønden cultural centre, which left two victims (and the suspected perpetrator) dead, while five police officers were wounded. The Swedish artist Lars Vilks, one of the speakers at the event, known for his drawings of Mohammed, is thought to have been the main target. On the same night, a second shooting outside the city’s Great Synagogue in Krystalgade killed a Jewish man on security duty and wounded two police officers.

32. The tapping of the telephones and computers of a number of individuals, including relatives, acquaintances, colleagues, and neighbours, who are themselves not under investigation, but who are in some way connected to an individual under investigation for involvement in terrorism-related activities, drugs-related crimes or homicide. This can be done on the basis of a single warrant, i.e. the warrant pertaining to the individual under investigation. In Denmark, Human Rights in review: 2011-2015, Amnesty International Submission to the United Nations Universal Periodic Review, January-February 2016, pp. 5-6.

observations to parliament or to the judicial system. The Police Intelligence Agency can, on the other hand, decide to ignore such a recommendation by a mere notification to the Ministry of Justice, with no further consequences.

26. The authorities provided extensive information about the counterterrorism measures recently adopted. They stressed that interception of communications and surveillance are ordered by a court for a limited period of time (four weeks, renewable by court order), in line with the requirements of the Administration of Justice Act. This measure may be reversed at any time. In investigations related to offences against State interests and security and offences against the Constitution and the supreme authorities of the State, as well as terrorism (as listed in section 12 and 31 of the Criminal Code), the police may take the decision to carry out a surveillance measure. They must however submit the case to the court no later than 24 hours from the initiation of the measure and notify the court of any telephone numbers that have been targeted. The authorities provided detailed information about the procedures in place (obligation to appoint a counsel who should be able to make a statement before the court deciding on the surveillance order, and who may challenge the measure before the court; obligation to notify the charges against the suspect; obligation to notify the conclusion of telephone interception to the owner of the telephone or computer in question, etc.). However, the court may decide, upon a request from the police, to waive the notification or to postpone it for a specified period of time, which may be extended by a later decision if the notification is considered detrimental to the investigation or to the investigation in another pending case. In addition, the obligation to notify may be waived by the court if this is deemed necessary to protect confidential information about the investigative methods used by the police or if the circumstances otherwise advise against disclosure.³⁴

27. The Alternative Party informed me about the recent amendment to Article 136.2 of the Danish Penal Code (criminalisation of approving terrorism), which has reportedly resulted in a “big increase of the charges”.³⁵

28. Amnesty also pointed out that an individual who suspects that he or she is or has been the subject of an illegal investigation or tapping can lodge a complaint with the supervisory body, which is empowered to investigate the case and to compel the police or the Police Intelligence Service to stop any illegal or unwarranted investigation, but it cannot inform the complainant if he or she was in fact subjected to illegal investigation. “As a consequence, the individual has no means of legal redress or effective remedies”, according to Amnesty International.³⁶ The authorities clarified that the Danish Intelligence Oversight Board can give recommendations to – among others – the Danish Security and Intelligence Service, which can decide not to follow them. In that case, the Board will have to present the case to the Minister of Justice, who will make a decision based on the notification. If a recommendation is not followed, the government has to inform the Danish Parliament’s Intelligence Services Committee.³⁷ Concerning the informing of the individual subject of a possible illegal investigation, upon his/her request the Danish Intelligence Oversight Board notifies the complainant that no information is being processed by the Danish Security and Intelligence Service in violation of the legislation regarding the Services. Furthermore, the Board examines on its own initiative whether special circumstances give rise to a full or partial access to information about the processed data.³⁸

29. Amnesty International has expressed its concern about the Danish Aliens Act and the Administration of Justice Act, which “allows for expulsion and deportation of foreign nationals suspected of involvement in terrorism-related activities, on the basis of judicial procedures that allow for the use of secret evidence to support expulsion on ‘national security grounds’”. A “secret” lawyer from a list of pre-approved security-cleared lawyers is appointed to act for the individual concerned, but cannot however discuss the evidence with the individual concerned or his or her lawyer of choice in the open part of the proceedings. “This prevents the individual from effectively challenging the secret material or the allegations based on it, thus jeopardising the individual’s right to a fair process, possibly in breach of Denmark’s obligation to provide due process and equality of arms”.

33. Bill 161 of 27 February 2013 on the Police Intelligence Agency (and a parallel Bill on the Military Intelligence Agency).

34. Information provided by the authorities, AS/Mon (2016) 31, p. 9.

35. Comments from the Alternative Party, AS/Mon (2016) 31, p. 4, which also mentioned that, in the view of think tank on legal issues *Justitia* this provision, while not being, as such, in contradiction with Article 10 in the European Convention on Human Rights, goes beyond what is required by the United Nations and the [Council of Europe] and [the Alternative Party] thus recommends its abolishment.

36. Amnesty international 2016 Submission to the UN Universal Periodic Review, pp. 5-6.

37. Information provided by the authorities, AS/Mon (2016) 31, p. 9.

38. *Ibid.*, p. 9.

30. Likewise, on 2 July 2015, the government closed down the Iraq-Afghanistan Commission of Inquiry established in 2012 by the previous government to investigate actions of Danish soldiers involved in military operations overseas, considering that “sufficient light has been shed on the aforementioned questions”.³⁹ In particular, the Commission of Inquiry had been tasked with investigating practices regarding the apprehension and detention of Iraqis, whether Danish soldiers had handed over detainees to personnel from other countries and with determining Danish liability and responsibility for the detainees under international law. While Amnesty International regretted that “the Commission was closed before it could come to any conclusions, as the government stated that there was no need for such an investigation as no new information would emerge”,⁴⁰ the Danish Institute for Human Rights recommended that “Denmark finalise the preliminary investigation carried out by the internal task force under the Danish Defence Command which revealed a number of critical circumstances and questions about the Danish forces’ handling and transfer of detainees in Iraq in 2003-2007 and which was suspended when the (now defunct) Independent Commission was established”.⁴¹ The authorities asserted that the issues raised have since then been addressed by the Danish Ministry of Defence when issuing mission directives. It has also published a Military Manual which includes a separate chapter devoted to detention issues.⁴²

31. In May 2016, the government and a number of political parties agreed to appoint a group of impartial researchers that will have access to documents (including classified ones) handed to the defunct Commission of Inquiry. This group will be tasked with drawing up a historical report on the Danish military engagements in Kosovo⁴³ (1998), Afghanistan (2001) and Iraq (2003), in order to establish the basis of political decisions on Danish military involvement, ensuring an accurate description and making it possible to learn from previous experiences.⁴⁴ It would thus be important to ensure that the newly created group of researchers is able to complete and finalise the work undertaken by the Iraq-Afghanistan Commission of Inquiry, so as to determine the liability and responsibility, under international law, of the Danish forces in handling and transferring detainees in Iraq and Afghanistan in 2003-2007, and to draw all the lessons from that experience.

32. Amnesty International also noted that the Danish Government announced in 2011 that it would carry out an evidence-based review of counterterrorism legislation. An expert group has recently been appointed to carry out this task; however, Amnesty International was concerned that further legislation was passed before the review had even been carried out. In the meantime, the government decided in autumn 2015 to “discontinue the expert group”, on the basis that “a number of substantive counterterrorism initiatives have been launched since the 2015 attacks in Copenhagen”.⁴⁵ The authorities announced that a review of the legal framework of the Danish counterterrorism efforts would be launched in the next couple of years, “once the effects of these initiatives are known”.⁴⁶ The aim of this review is to ensure the right balance between effective measures and legal certainty for Danish citizens. The Alternative Party regretted the decision to dissolve the independent expert committee and pointed out that there was currently “no review nor overview of Danish anti-terror efforts and laws and their legal and economic implications”.⁴⁷

33. Finally, in echo of Assembly [Resolution 1507 \(2006\)](#) and [Recommendation 1754 \(2006\)](#) on alleged secret detentions and unlawful inter-State transfers of detainees involving member States, I would like to mention the letter sent on 23 September 2015 by the Danish authorities to the Secretary General of the Council of Europe, acting under Article 52 of the European Convention on Human Rights (ETS No. 5, “the Convention”), namely seeking explanations from all member States on their compliance with the legal obligations under the Convention in relation to “the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies”:

- Denmark explained that an Inter-ministerial Working Group for the Compilation of the Report Concerning Secret CIA Flights in Denmark, Greenland and on the Faroe Islands had been set up in 2008. Its report of 23 October 2008 concluded that the information received from United States did not

39. Ibid., p. 10.

40. Amnesty International 2015/2016 [annual report](#).

41. Danish Institute for Human Rights, Universal Periodic Review, Denmark 2016: [list of selected recommendations](#), revised version, 2016.

42. Information provided by the authorities, AS/Mon (2016) 31, p. 10.

43. * All references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

44. Ibid.

45. The authorities referred to a comprehensive evaluation of the Danish authorities’ efforts before and during the attack on 14-15 February 2015 in Copenhagen, available (in Danish) at: <http://justitsministeriet.dk/sites/default/files/media/Rigspolitiets%20afrapportering%20p%C3%A5%20evaluering.pdf>.

46. Information provided by the authorities, AS/Mon (2016) 31, p. 10.

47. Comments from the Alternative Party, AS/Mon (2016) 31, p. 4.

allow it to be authoritatively substantiated: 1) whether or not CIA flights had occurred there, including illegal transit of detained persons; 2) whether the authorities from these States should have had or actually did have knowledge of the alleged extra-judicial CIA activities. In their comments, the Danish authorities reiterated their position that the 2008 report included a series of substantiated conclusions that demonstrate that the current control regimes are adequate. However, "it is not possible to rule out that the United States of America will continue to make use of secret detention programs in the future, and that these programs amongst other things involve extraordinary renditions, Denmark should in the view of the Working Group continue to strongly criticise such detention programs both within the relevant international forum and in the bilateral contacts with the United States of America". The working group also issued a number of recommendations addressed to the government in order to make Denmark's position clear on that issue with international partners, and suggested procedures to prevent such renditions in the future;⁴⁸

- the Danish Institute for International Studies had examined the allegations that the Danish Government had not raised the critical questions with the US authorities requested by the Minister of Foreign Affairs in 2011 and concluded, in 2012, that there was no basis for such allegations, and that the conclusions of the Inter-ministerial Working Group were correct ⁴⁹ Amnesty International, however, challenged the investigation carried out by the Danish Institute for International Studies, which it considered to be inadequate, as the investigation focused exclusively on the territory of Greenland, relied entirely on written documents and did not collect any new information or use data dating back later than 2008.⁵⁰

34. In light of the conclusions of the reports by the Inter-ministerial Working Group and the Danish Institute of International Studies and the guarantee provided to Denmark by the United States *not* to transport detainees through the airspace of Denmark, Greenland and the Faroe Islands without the consent of the Danish authorities, the Danish Government in 2012 considered the matter closed.⁵¹

4. Human rights

35. Given the nature of the political system in Denmark, I enquired about the system of protection of human rights in the two semi-autonomous entities, and the rationale for the reservations made to the application of Council of Europe conventions ratified by Denmark in the Faroe Islands and Greenland.

36. The Government of Greenland stated in its comments that the general United Nations and Council of Europe human rights instruments apply to Greenland. The Government of Greenland is responsible for the protection of human rights in the fields of responsibility taken over from the Government of Denmark. A Greenlandic Council for Human Rights was established in 2013. In addition, the mandate of the Danish Institute for Human Rights was extended to Greenland in 2014. The Government of Greenland reports to the different United Nations treaty bodies as part of the Danish reporting. It is usually necessary that Denmark takes a territorial exemption as regards Greenland when ratifying new international conventions in order to examine if new legislation is necessary and in order to ensure that the convention can be presented to the Parliament of Greenland for acceptance.⁵²

37. The Government of the Faroe Islands stressed that, as a rule, Denmark makes territorial reservations for the Faroes unless the Faroese authorities have already decided that the Faroes should be covered by the agreement. Normally the process involves examination of whether the Faroes comply with all the requirements in the conventions or protocols and then, if deemed advisable, the convention or protocol will be proposed to the Faroese Parliament. These processes can be lengthy, especially with the very limited resources available, and there are therefore protocols that are not yet dealt with. The government has, however, highlighted their commitment to the international conventions on human rights in the coalition agreement and this is therefore an area of importance. The Minister of Foreign Affairs and Trade has set up a working group in order to examine the different national monitoring mechanisms that would be compatible with Faroese society – only 49 000 people – and still be in line with the United Nations Paris Principles. The working group has begun its work and is expected to give its recommendations by the end of 2016. Currently,

48. The detailed conclusions and recommendations of the Working Group are available in AS/Mon (2016) 31, pp. 10-12.

49. <https://pace.coe.int/documents/19838/2008330/AS-JUR-INF-2016-06-EN.pdf/f9280767-bf73-44a1-8541-03204e2dfae3>.

50. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 3.

51. Information provided by the authorities, AS/Mon (2016) 31, p. 12.

52. Ibid., p. 17.

human rights are monitored by NGOs in the Faroe Islands and through various initiatives and authorities, for example the Parliamentary Ombudsman, the Gender Equality Commission and the Faroese Data Protection Agency.⁵³

38. I would like to thank the authorities of Greenland and the Faroese Islands for their contributions to this report. I hope that their initiatives and hard work will soon lead to the reservations being lifted.

4.1. Protection of minorities

39. Denmark ratified the Framework Convention for the Protection of National Minorities (ETS No. 157) in 1997. While there is no definition of “minority” in the Constitution, the Framework Convention solely applies to the German minority in South Jutland of the Kingdom of Denmark. Likewise, the European Charter for Regional or Minority Languages (ETS No. 148), ratified in 2000, applies to the German minority language in Southern Jutland. Denmark excluded the application of the Charter to the Greenlandic and Faroese languages, considering the high degree of protection these languages already enjoyed through their home rule.⁵⁴

40. In this respect, the Framework Convention Advisory Committee has consistently invited the Danish authorities to pursue a dialogue-based approach in their relations with the individuals and groups that might be interested in the protection provided for by the Framework Convention to take into account the specific needs of Faroese and Greenlandic language speakers, or of the Rom living in Denmark (between 5 000 and 10 000).

41. In its 2015 recommendations for immediate action for the implementation of the Framework Convention, the Committee of Ministers invited the authorities to introduce additional and targeted initiatives and policies to combat all manifestations of intolerance, racism and xenophobia, in particular by addressing systematically racist manifestations in the media and the political sphere; and intensifying dialogue with representatives of different groups, in order to analyse the existing needs and find appropriate solutions allowing all interested persons to receive teaching in or of their language.⁵⁵

42. With respect to the protection of the rights of persons belonging to the German minority, the Committee of Ministers invited the Danish authorities to enable them to continue to be able to communicate fully using the German language, including electronically, with all bodies of the administration,⁵⁶ but also to opt for a structured approach for the implementation of the relevant provisions of the European Charter for Regional or Minority Languages, increase the level of radio broadcasting and provide television broadcasts in German and increase awareness and appreciation of German as a minority language of Denmark.⁵⁷

4.2. Fight against violence against women

43. I welcome the ratification of the Convention on Preventing and Combating Violence against Women And Domestic Violence (CETS No. 210, “Istanbul Convention”) by Denmark in 2014. It declared, however, that, until further notice, the convention shall not apply to Greenland and the Faroe Islands, which is a pity in the light of the information we have. No country report has as yet been prepared by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO). However I find it useful to draw attention to two issues highlighted by Amnesty International, notably in relation to impunity in rape cases.

44. In 2013, the Criminal Code provisions on rape and other forms of sexual abuse were strengthened. “The law now penalises as rape non-consensual sex with a victim in a “helpless state” and all provisions to reduce or exclude punishment for rape or sexual violence within marriage have been removed”. The attrition rates of reported rapes, however, remain high: “On an annual basis, 400-600 cases of rape are reported to the police. The number of actual rapes committed is estimated to be around 3 600 per year.” Furthermore,

53. Ibid., p. 17/18.

54. See Act No. 473 of 12 June 2009 on Greenland Self-Government, section 20: “Greenlandic shall be the official language of Greenland”, and Greenland Parliament Act No. 7 of 19 May 2010 on Language Policy, and Act No. 137 of 23 March 1948 on Home Rule of the Faroe Islands (“Faroese is recognised as the principal language, but Danish is to be learnt well and carefully, and Danish may be used as well as Faroese in public affairs”).

55. CM Resolution (4th cycle) on the implementation of the Framework Convention for the Protection of National Minorities ([CM/ResCMN\(2015\)7](#)), adopted by the Committee of Ministers on 1 July 2015 at the 1232nd meeting of the Ministers’ Deputies).

56. [CM/ResCMN\(2015\)7](#).

57. Committee of Ministers recommendation (4th cycle) adopted in October 2014 ([CM/RecChL\(2014\)6](#)) on the application of the European Charter for Regional or Minority Languages by Denmark.

“only one in five reported rapes results in a conviction”.⁵⁸ The majority of reported rape cases were closed by the police – before a formal police investigation had even been started, according to a recent report from the State Prosecutor’s Office – or the prosecution (mostly due to the “state of the evidence”) and never reached trial. In November 2015, the Director for Public Prosecutions called for changes to how police were handling these cases. The reports, however, did not include the examination of the reason for the disproportionately high attrition rate in prosecuting cases of rape.⁵⁹

45. The situation was also worrying in the Faroe Islands: Amnesty International had noted that the Penal Code “lagged behind the Danish penal code”: Faroese legislation penalised non-consensual sex with a victim in a “helpless state” as sexual abuse rather than rape and stipulated a much lighter penalty for such acts. “In certain instances, it also reduces the level of penalty for rape and sexual violence within marriage, or provides for exclusion of punishment altogether.”⁶⁰ In the comments provided by the Faroese authorities, I noted with satisfaction that the Faroese Government adopted in 2011 a five-year Action Plan to Prevent Violence in Permanent and Close Relationships, with four main focuses: 1) Information and prevention; 2) Assistance and support for the victim; 3) Initiatives targeting occupational groups; 4) Treatment options for those who perpetrate violence. In addition, the parliament requested the government to draft a programme concerning sexual abuse as well to complement the Action Plan.⁶¹ I was also informed that the Faroese Government is in the process of strengthening the provisions for rape and other forms of sexual abuse in the Criminal Code. This proposal will be submitted to parliament in November 2016, and should notably criminalise sexual assault in all circumstances, including within marriage, which is a very positive development.⁶²

46. I expressed to the Danish authorities my expectation that the country, which is now a Party to the Istanbul Convention, would continue to pay close attention to the fight against violence against women and domestic violence, including in the semi-autonomous entities, so as to be in a position to lift the territorial reservations on the application of the convention to the Faroe Islands and Greenland. Following this observation, the Danish Ministry of Justice has decided to ask the authorities in the Faroe Islands and Greenland to indicate whether they wish the Convention on Preventing and Combating Violence against Women and Domestic Violence to be applied to them, which is a positive move. If these entities wish to be subjected to the convention, the Danish Government will – together with the authorities in the Faroe Islands and Greenland – examine the need for legislative amendments in order to meet the obligations under the convention.⁶³ I encourage the Danish authorities, and those of the Faroe Islands and Greenland, to jointly undertake the necessary measures and adopt the necessary legislation to ensure that the convention can be applied on the whole territory of the Kingdom of Denmark.

4.3. Fight against human trafficking

47. Denmark ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) on 19 September 2007 (which however applies neither to the Faroe Islands nor to Greenland). The Group of Experts on Action against Trafficking in Human Beings (GRETA) issued a first evaluation report in December 2011,⁶⁴ leading the Committee of the Parties to issue several recommendations in January 2012,⁶⁵ to which the Danish Government replied in February 2014.⁶⁶

48. The main issues identified by the Committee of Ministers referred to the identification of victims of trafficking; the need to develop preventive measures to address trafficking for the purpose of labour exploitation; providing victims of trafficking with an adequate recovery and reflection period; reviewing the current institutional and procedural framework for the return and repatriation of victims of trafficking having regard to their safety, protection and dignity and in order to avoid re-victimisation; reviewing the system for granting residence permits to victims of trafficking with a view to ensuring that the victim-centred approach underpinning the convention is applied and in order to prevent re-trafficking; providing for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so.

58. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 7.

59. Amnesty International 2015/2016 [annual report](#).

60. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 7.

61. Details are provided by the Faroese Government in AS/Mon (2016) 31, p. 18.

62. Ibid., p. 18.

63. Ibid., p. 13.

64. GRETA's Evaluation Report and Government's Comments published in December 2011, [GRETA\(2011\)21](#).

65. [Recommendation CP\(2012\)4](#) of the Committee of the Parties adopted in January 2012.

66. [CP\(2014\)4](#).

49. GRETA performed a second evaluation round and carried out an evaluation visit in May 2015. The reply of the Danish authorities was published in March 2015,⁶⁷ reporting an increase in the number of identified victims of trafficking in Denmark, both in relation to trafficking for prostitution and for labour exploitation. The Criminal Code was amended in 2012 (to align with EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims), raising the maximum penalty for trafficking from eight years' imprisonment to 10 years, extending the purpose of exploitation to "exploitation for criminal activities", and providing Denmark with extraterritorial jurisdiction in cases of trafficking where the perpetrator is a Danish national or had permanent residence in Denmark at the time of the provisional charge and when committing the offence. The Aliens Act was amended in 2013 to extend the maximum reflection period from a total of 100 days to a total of 120 days, and to grant temporary residence permits to foreign nationals, including victims of trafficking, if their presence in Denmark is required for investigation or proceedings. The Danish Action Plan to Combat Human Trafficking 2015-2018 was launched in May 2015 (and amended in November 2015), after most of its funding (amounting to 88 million Danish Kroner – approximately 11.8 million euros) was approved by the parliament in October 2014.⁶⁸

50. Based on GRETA's report, published in June 2016,⁶⁹ the Committee of the Parties adopted [Recommendation CP\(2016\)4](#) on 23 May 2016⁷⁰ in which it welcomed the progress made by Denmark, such as the criminalisation of human trafficking (i.e. exploitation for criminal activities) and the increase of the maximum penalty for this offence from 8 to 10 years, the introduction of a new provision in the Aliens (Consolidation) Act concerning the granting of a temporary residence permit to victims of trafficking for the purpose of their co-operation in the investigation or criminal proceedings, and the extension of the maximum duration of the reflection period from 100 to 120 days. The Committee of the Parties also adopted a list of recommendations to Denmark, in order to, *inter alia* improve the identification procedure for victims of trafficking (including those with an irregular migration status) and increase the incentives for self-identification by victims of trafficking. The Committee also recommended that the authorities pursue a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation by expanding the mandate of the Danish Customs and Tax Administration (SKAT) and labour inspectors and improve the identification of, and assistance to, child victims of trafficking, including unaccompanied children. In addition, it recommended reviewing the legislation in order to ensure that all victims of trafficking with an irregular migration status are unconditionally provided with an adequate recovery and reflection period.

4.4. Legislation on asylum and immigration

51. Denmark has been adopting restrictive asylum and immigration policies since 2002. This issue remains sensitive, but seems to enjoy a large backing from most political parties. While the Danish authorities have taken steps to address human rights issues, including increasing the independence of the Refugee Appeals Board, further improvement is still needed.

52. In 2013, the Commissioner for Human Rights, Nils Muižnieks, expressed concern in respect of the rights of children in the context of asylum and immigration, family reunification issues involving children, life in asylum centres for indefinite periods of time, the fate of unaccompanied minor migrants who have disappeared from reception centres or the detention of minors for asylum and immigration purposes, that he considered should not be allowed and should be replaced with appropriate care arrangements. The Commissioner was concerned that considerations relating to migration control tend to have primacy over the best interests of the child in actions and decisions affecting children in the context of asylum and immigration.⁷¹

53. The Commissioner also exhorted the Danish authorities to ensure that, when rejected asylum seekers are returned, their right not to be exposed to a real risk of being subjected to treatment contrary to Article 3 of the European Convention on Human Rights or onward *refoulement* is thoroughly respected. The detention of asylum seekers and irregular migrants should remain exceptional and be for the shortest possible length of time, and permanent residence should be granted to refugees as early as possible in order to establish a

67. [Reply to Questionnaire](#) and 3 appendices in Danish published in March 2015.

68. Ibid.

69. [GRETA\(2016\)7](#), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark, Second evaluation round, adopted on 11 March 2016 and published on 10 June 2016.

70. [Recommendation CP\(2016\)4](#) on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark adopted at the 18th meeting of the Committee of the Parties on 23 May 2016.

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

stable basis for their integration in Denmark.⁷² In this respect, the Venstre and Social Democratic Party share the concerns about prolonged stays in asylum centres for foreigners whose asylum applications have been denied, and are in favour of strengthening repatriation measures in order to minimise prolonged stays.⁷³

54. The European Commission against Racism and Intolerance (ECRI), for its part, questioned the access of asylum seekers to a lawyer during the entirety of the asylum procedure, as well as the possibility to attend upper secondary school or university in Denmark.⁷⁴

55. The question of the detention of asylum seekers was also raised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which visited in September 2014 the Ellebæk immigration detention centre. The CPT expressed concern about the need to maintain the establishment in a decent state of repair, limit the carceral environment to a minimum and ensure regular activities are offered. The CPT also recommended that all newly arrived detainees are clinically assessed and that a specific screening is put in place aimed at identifying victims of torture. There was also a need to improve communication with the detainees and to enhance their contacts with the outside world.⁷⁵

56. In its reply of March 2015, the Ministry of Justice observed that according to the Danish Aliens Act an asylum seeker can only be deprived of liberty to ensure enforcement of a refusal of entry, expulsion, transfer or “in circumstances where the asylum seeker refuses to co-operate in the administrative procedures of the Danish Immigration Service, and if less interfering measures prove to be insufficient in order to ensure the presence of the asylum seeker for the purpose of expulsion”. The Danish national police strategy concerning the use of detention in relation to the Danish Aliens Act stipulates that detention can only be upheld as long as it is necessary and proportional. The use of detention must be in accordance with national law and Danish international obligations and with special consideration for vulnerable asylum seekers such as minor asylum seekers. The placement of a minor asylum seeker under the age of 15 in a secure institution cannot happen for the sole reason of not having a resident permit in Denmark, and will always be for as short a period of time as possible.⁷⁶

57. In November 2015, a set of stricter asylum laws was adopted by parliament under urgent procedure. New rules on detention of newly arrived asylum seekers and rejected asylum seekers were introduced in the Danish Aliens Act and resulted, *inter alia*, in the increase of detention periods, the extension of family reunification waiting periods to three years, but also the subcontracting of the use of force (such as handcuffs) to private companies and the possibility for the authorities to suspend the right of a detainee to see a judge within a 72-hour period. With regard to the latter, I was told that, as a rule, this could only be activated in special situations.⁷⁷ The authorities explained that newly arrived asylum seekers can only be detained during the registration and identification process. Detention of rejected asylum seekers will only apply to those who do not co-operate on their return and when a return is foreseeable. The government firmly believes that the new rules are in conformity with Denmark’s international obligations; the rules on the length of detention in the Danish Aliens Act are based on the EU Return Directive.⁷⁸ In November 2015, as a result of the significant increase in asylum seekers, the Danish Immigration Service introduced temporary accommodation in tents to accommodate 250 asylum seekers in northern Jutland.

58. The Commissioner for Human Rights expressed his concern about these amendments and recalled that “recent restrictive changes to asylum and immigration law in Denmark raise serious concerns of conformity with human rights standards. The government should reconsider them and ensure that law and practice fully comply with Denmark’s obligation to uphold refugee protection standards”. The Commissioner feared that “the possibility of making increased use of detention in specific circumstances, combined with the elimination of important legal safeguards regarding detention, could lead to detention being used disproportionately and indiscriminately in respect of asylum seekers, in contradiction with Article 5 of the European Convention on Human Rights which protects the right to liberty”.⁷⁹

72. [CommDH\(2014\)4](#).

73. AS/Mon (2016) 31, p. 2.

74. The 4th report on Denmark was adopted in March 2012 and made public in May 2012, [CRI\(2012\)25](#).

75. [CPT/Inf\(2014\)25](#), September 2014.

76. [CPT/Inf\(2015\)16](#), Response of the Danish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Denmark from 4 to 13 February 2014, published on 3 March 2015, p. 58.

77. AS/Mon (2016) 31, p. 15.

78. *Ibid.*, p. 14.

79. Letter from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to Ms Inger Støjberg, Minister for Immigration, Integration and Housing of Denmark, concerning changes to Denmark’s legislation on asylum and immigration, [CommDH\(2016\)4](#), 15 January 2016.

59. The Commissioner also criticised further restrictive measures, including the tightening of criteria to obtain a permanent residence permit, the significant diminishing of the duration of residence permits, notably for those granted international protection, and the proposal to seize assets of asylum seekers arriving in Denmark, in order to cover their subsistence needs, which, for the Commissioner “could amount to an infringement of the human dignity of the persons concerned. It could also lead to violations of the right to property enshrined in Article 1 of Protocol No. 1 to the European Convention on Human Rights”.⁸⁰ These measures were also criticised by NGOs,⁸¹ including Amnesty International.⁸²

60. I find it useful to mention the arguments presented by Minister Støjberg in her reply to the Commissioner’s letter,⁸³ which emphasised that the newly adopted rules were necessary in the current situation, and complied with Denmark’s international obligation. A number of clarifications were given by the Minister:

- In respect of the detention of asylum seekers, the police would be required to make an individual assessment in each case as to whether less intrusive means could be applied. The Minister indicated that “newly arrived asylum seekers can only be detained if it is necessary to complete the registration and identification process. The asylum seeker shall be released immediately after this process is completed”.
- The suspension of automatic judicial review within three days could be activated in a period with “a very significant increase in the number of arriving refugees and migrants” (i.e. “when the number of detainees is so high that it is not possible for the police and/or the courts to decide on the lawfulness of detention within three days”), only in “special circumstances”; it did not however amount to a general suspension of judicial review; to date, this clause has never been activated.⁸⁴
- In respect of residence permits, refugees are expected to meet the same requirements as any other aliens. The new rules extended the permanent residence requirement to six years at least for all aliens (four in some specific cases).
- While the primary criterion – which remains untouched – for the selection of quota refugees was whether the person concerned is entitled to protection or not, a new secondary criterion was introduced with the new regulation, assessing the person’s potential to integrate, based on his or her linguistic skills, educational aspects and work experience, family relationship networks and the refugee’s age and motivation.
- With respect to seizure of asylum seekers’ valuables, Denmark is to provide asylum seekers with basic subsistence, health care, services and accommodation, unless these asylum seekers have the financial means to do so themselves. The amendments of 26 January 2016 enable the police to use its search rights to search clothes and luggage with a view to finding assets and seize any amounts of money exceeding € 1 300 (sentimental items, such as wedding rings, being excluded from seizure). Complaints related to seizure could be lodged with the police.

61. In the field of migration, the issue of family reunification has raised questions:

- ECRI regretted that in June 2011, “the Aliens’ Act was amended to make the already existing strict rules for spousal reunification even stricter”. These provisions include the requirement that the spouse/partner living in Denmark should not have received certain types of public assistance for the past three years and that, normally, he/she should have had full-time ordinary employment in Denmark for at least two years and six months out of the past three years. Moreover, the entire cost of the spousal reunification procedure remains quite high, which amounted to an indirect discrimination against these groups, which are more affected by unemployment and poverty than ethnic Danes. ECRI urged the Danish authorities to carry out a wide-ranging reform of the spousal reunification rules in order to remove any elements which amount to direct or indirect discrimination and/or which are disproportionate to their stated aims.⁸⁵ In its March 2015 conclusions related to this specific interim recommendation, ECRI regretted that the Danish authorities had not taken any initiative to carry out a wide-ranging reform of the spousal reunification rules.⁸⁶

80. [CommDH\(2016\)4](#).

81. See www.thelocal.dk/20151124/danish-government-criticized-for-urgently-pushing-through-strict-new-asylum-laws.

82. Amnesty International 2015/2016 [annual report](#).

83. Reply from the Danish authorities to the letter of the Council of Europe Commissioner for Human Rights, Nils Muižnieks, concerning changes to Denmark’s legislation on asylum and immigration, [CommDH/GovRep\(2016\)10](#), 21 March 2016.

84. AS/Mon (2016) 31, p. 14.

85. CRI(2012)25, op. cit.

- The European Court of Human Rights (“the Court”) has addressed the issue of family reunification in at least two cases: in *Osman v. Denmark*, the Court concluded that Article 8 had been violated after the authorities refused to renew the residence permit of a Kenyan minor – who had spent the formative years of her childhood and youth in Denmark – after she had been sent abroad (on a “re-education” journey⁸⁷) against her will. In the given circumstances, the Court stressed that it could not be said that the applicant’s interests had been sufficiently taken into account or balanced fairly against the State’s interest in controlling immigration.⁸⁸ In another case, *Biao v. Denmark*,⁸⁹ the Court ruled (by 12 votes to 5) on 24 May 2016 that the Danish legislation which discriminates against people who are born outside Denmark and obtain Danish citizenship later in life is in breach of Article 8 (combined with Article 14). The case referred to an amendment to the Aliens Act adopted in 2003, which stipulates that the “attachment requirement” (*tilknytningskravet*)⁹⁰ is lifted for those who have held Danish citizenship for at least 28 years” (now 26) or who were born and raised in Denmark or came to Denmark as children and have had legal residence for 28 years. The Court found this rule discriminatory, as it “favoured Danish nationals of Danish ethnic origin, and placed at a disadvantage, or had a disproportionately prejudicial effect on persons, ... who acquired Danish nationality later in life and who were of ethnic origins other than Danish”.⁹¹ The Court also found that – having regard to the very narrow margin of appreciation in the present case – the Danish Government had failed to show that there were compelling or very weighty reasons unrelated to ethnic origin to justify the indirect discriminatory effect of the 28-year rule. In the reply issued in June 2016, Integration Minister Inger Støjberg indicated that the “attachment requirement” would now be applied to all Danes.
- According to Amnesty International, current practice in asylum cases fails to ensure that sufficient consideration is always given to the best interests of the child. If parents do not meet the requirements for asylum on grounds of persecution, the whole family is rejected and ordered to leave the country. The effect of the rejection on the child is not considered in such decisions, even in situations where the family is likely to experience extreme hardship in supporting itself, including the children.⁹²

62. In January 2016, the Commissioner for Human Rights questioned the new package of amendments (eventually adopted by the Danish Parliament on 26 January 2016), which aimed at limiting access to family reunification for foreigners with a temporary protection status. “The proposal to postpone the right to family reunification to three years for beneficiaries of temporary subsidiary protection raises issues of compatibility with Article 8 of the European Convention on Human Rights which protects the right to respect for one’s family life and could also infringe on the rights of children to live within their family environment, as prescribed by the United Nations Convention on the Rights of the Child.”⁹³

63. In her reply to the Commissioner’s letter, Ms Støjberg, Minister for Immigration, Integration and Housing of Denmark, stated that the usual practice (i.e. before the legislative amendment of January 2016) was that family reunification would in general not be granted to an alien with temporary protection status whose residence permit had not (yet) been extended after one year. The amendments of 26 January 2016 extended this period to three years. The regulation on temporary protection status has a limited scope and concerns only 20% of those who were granted asylum in Denmark.⁹⁴ The Minister also informed the Commissioner that

86. Conclusions adopted in March 2015 and published in June 2015, [CRI\(2015\)23](#).

87. AS/Mon (2016) 31, p. 15.

88. Application No. 38058/09. [Information Note](#) on the Court’s case law No. 142, June 2011. The Court considered that the parents’ decision did not entitle the authorities to ignore the child’s interests, including the right to respect for his or her private and family life. The legislative amendment that had, in the meantime, reduced the age of entitlement to family reunification from eighteen to fifteen years had not been foreseeable when the decision to send the applicant to Kenya was taken or when her residence permit expired. As noted by the authorities in their comments (see AS/Mon (2016) 31, p. 16), “the Court [did] not question the amended legislation as such but notes that the applicant and her parents could not have foreseen this amendment when they decided to send the applicant to Kenya or at the time when the twelve-month time-limit expired” (paragraph 75 of the judgment).

89. Application No. [38590/10](#), [judgment of 24 May 2016](#).

90. According to the Court, “the attachment requirement was introduced into Danish legislation on 3 June 2000 as one of the conditions for granting family reunion with persons residing in Denmark who were not Danish nationals. With effect from 1 July 2002 the attachment requirement was extended to apply also to residents of Danish nationality”: “the spouses’ aggregate ties with Denmark must be stronger than their aggregate ties with another country”, [judgment of 24 May 2016](#), paragraphs 32-34.

91. [Press release](#) on the Grand Chamber judgment, 24 May 2016.

92. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 7.

93. [CommDH\(2016\)4](#).

94. As pointed out by Mr Villumsen, from the Red-Green Alliance, in the comments of the delegation (AS/Mon (2016) 31, p. 5), new figures issued in 2016 showed that temporary protection concerned more than 30% of those who were granted asylum in the first quarter of 2016 (see [www.ft.dk/samling/20151/almindel/uu/spm/839/svar/1341925/1663301.pdf](#)).

individual assessments would be performed and family reunification granted based on individual circumstances and that it was foreseen that cases may arise where the rights of the child required that family reunification be granted.⁹⁵

64. In their latest comments on that issue, the authorities stressed that they would perform an individual assessment of each case, and that exceptions would be made in all cases where Denmark's international obligations so require. They also made it clear that the regulation on temporary protection status has a limited scope. Thus, the regulation on temporary protection status does not apply to refugees who are granted a residence permit according to the 1951 Convention Relating to the Status of Refugees, and aliens who – due to individual circumstances – are at risk of the death penalty or of being subjected to torture or inhuman or degrading treatment or punishment in case of return. The regulation on temporary protection status only applies to asylum seekers who are entitled to protection due to a general unstable situation in the home country at such a level of intensity that anyone would be in real risk of being subjected to inhuman or degrading treatment in case of return.⁹⁶

65. On 12 April 2016, the Court of Justice of the European Union (CJEU) ruled that Danish immigration law illegally limits the rights of Turkish workers to bring their families to Denmark.⁹⁷ The authorities explained that the case concerned the (now former) limitation of the requirement (at that time, the application for family reunification had to be submitted within a two-year deadline starting from the date when the parent residing in Denmark fulfilled the requirements for family reunification with the child). Referring to the fact that the integration requirement only applied to applications for family reunification filed after the two-year deadline (i.e. the fact that the time of filing the application for family reunification was decisive for whether the integration requirement would be made), the CJEU ruled that the integration requirement could lead to “incoherent results”. As a result, the integration requirement was found to be disproportionate by the CJEU. However, the CJEU also ruled that the objective of ensuring the successful integration of third-country nationals in the member State concerned, referred to by the Danish Government, may constitute an overriding reason in the public interest. On the basis of the judgment, the Danish Parliament passed new legislation abolishing the two-year deadline.⁹⁸ This ruling also prompted Denmark to fast-track new legislation that will require the immigration authorities to evaluate the “ability to integrate” of all children above the age of six who have a parent in their home country. At the same time, this bill was aimed at “tightening the rules on family reunification so that the authorities could decide for [themselves] who comes to Denmark ... under family reunification”, as explained by the Integration Minister Inger Støjberg.⁹⁹

4.5. Fight against discrimination

66. The Advisory Committee on the Framework Convention for the Protection of National Minorities notes that there is a solid legal framework in the field of anti-discrimination policies (Section 71.1 of the Constitution,¹⁰⁰ 1971 Prohibition of Discrimination due to Race Act, 1987 Prohibition of Discrimination due to Race Criminal Act, 1996 Prohibition of Discrimination in the Labour Market Act (consolidated in 2008), and the 2003 Ethnic Equal Treatment Act (consolidated in 2012)). A general climate of tolerance prevails in Denmark, nurtured by continuous support programmes and initiatives, in particular by the Danish Institute for Human Rights, aimed at better understanding the problem of intolerance and discrimination among people belonging to different minority groups. Efforts to increase the participation of minorities in State institutions, in particular in the police, have been acknowledged.¹⁰¹

95. [CommDH/GovRep\(2016\)10](#).

96. AS/Mon (2016) 31, p. 14.

97. The ruling (C-561/14) concerned the interpretation of the Danish Aliens Act (and the requirement of successful integration in the Danish Aliens Act section 9(16)) in cases concerning family reunification for children who are 6 years old or older and where one of the parents is still residing in the home country) in relation to the stand-still clauses in Article 13 of Decision No. 1/80 on the development of the EU/Turkey Association Agreement (Denmark having opted out of the EU Directive on family reunion for third-country nationals). It was on a 2006 case in which Caner Genç, a young Turkish man who was 13 at the time, was denied family reunification on the grounds that he was not suitable for successful integration. His older brothers were both successfully granted family reunification in 2003 to join their father Yasar Dogu Genç, who has lived and worked in Denmark since 1997. More information on that case available here: http://eulawanalysis.blogspot.fr/2016_04_01_archive.html.

98. AS/Mon (2016) 31, p. 15.

99. “Denmark to impose new ‘integration’ rules on kids”, *The Local/International*, 1 June 2016.

100. Chapter VIII, Section 71(1) states that “no Danish subject shall be deprived of his or her liberty because of his or her political or religious convictions or because of his or her descent”.

101. [ACFC/OP/IV\(2014\)001](#).

67. In its 2012 report, the European Commission against Racism and Intolerance identified a number of issues, including the need to increase the visibility of the Board of Equal Treatment and its knowledge of issues pertaining to discrimination based on “race”, ethnic origin, religion or belief and nationality (which is only the case in relation to the labour market). It welcomed the measures taken to integrate immigrants into the labour market. It expressed concern about the language examination and citizenship test as well as the cost of the citizenship procedure. ECRI regretted that some media have continued to portray minority groups, in particular Muslims and Roma, in a negative light and that some politicians, especially from the Danish People’s Party, have continued to make disparaging statements about groups of concern to ECRI in general and Muslims in particular. The negativity of public and political discourse has had a disproportionately adverse effect in a number of important policy areas. ECRI also regretted that Denmark had still not ratified Protocol No. 12 to the European Convention on Human Rights (ETS No. 177).

68. These concerns were also shared by the Commissioner for Human Rights, who deplored that public discourse and hate speech targeting ethnic and religious minority groups, particularly Muslims, continue to be of concern, in spite of reported improvements. Although a number of cases of hate speech have been prosecuted in recent years, the number of convictions remains limited.¹⁰²

69. ECRI thus encouraged the Danish authorities to ensure that politicians act responsibly when addressing issues pertaining to groups of concern to ECRI. ECRI recommended that the Danish authorities encourage the media to refrain from broadcasting any information likely to fuel discrimination and intolerance towards Roma. The authorities should encourage debate within the media on the image which they convey of Islam and Muslim communities and on their responsibility in this respect to avoid perpetuating prejudice and biased information. The Venstre and the Social Democratic Party, however, believe that this would run counter to the fundamental freedom of expression. In their view, the best way to combat discrimination and intolerance is by open and frank debate – suppressing information will only serve the interests of those trying to exploit fear and mistrust.¹⁰³ The Danish People’s Party, for its part, considers that there is no need for special efforts or campaigns to combat racism in newspapers or on television as it is up to the courts to assess whether someone crosses the line in the debate.¹⁰⁴

70. ECRI also recommended that the Danish authorities amend the requirements for obtaining a permanent residence permit in order to facilitate applicants’ access thereto. ECRI encouraged the Danish authorities to intensify their efforts to recruit members of ethnic minorities to the police.¹⁰⁵

71. In its 2015 conclusions (on specific recommendations), ECRI noted that the Danish national police had intensified its efforts and taken a number of initiatives to increase diversity in policing. ECRI viewed these steps as positive measures and the evidence of sincere efforts to diversify the police force.

72. The Commissioner, for his part, urged the authorities to firmly condemn all instances of racist and xenophobic speech in political discourse and raise awareness about the limits of freedom of expression in accordance with international standards and the case law of the European Court of Human Rights. Positive steps were taken in 2011 by the Director of Public Prosecutions to provide detailed guidance to prosecutors and police officers on the processing of cases of hate speech and hate crime. Further efforts should be made to encourage the reporting of hate crimes.¹⁰⁶ As a matter of fact, the Framework Convention Advisory Committee noted that the number of cases dealt with by the Board of Equal Treatment Act had been rising steadily every year (64 cases in 2009, 263 cases in 2013, of which 41 concerned allegations of discrimination based on race or ethnic origin).¹⁰⁷

73. The Advisory Committee notes with concern a proposed amendment to the Criminal Code (Section 266.b) which would decriminalise insulting and degrading speech and criminalise only statements leading to disturbance of the public order. This would further weaken the Criminal Code, which already does not offer sufficient and effective protection against hate speech, runs contrary to Committee of Ministers Recommendation No. R(97)20 on hate speech and could lead to the worsening of the climate of public debate in Denmark and increased polarisation of society.¹⁰⁸ I was informed that, since the 2015 ECRI report, the

102. [CommDH\(2014\)4](#).

103. AS/Mon (2016) 31, p. 2.

104. *Ibid.*, p. 3.

105. CRI(2012)25, op. cit.

106. [CommDH\(2014\)4](#).

107. ACFC/OP/IV(2014)001, paragraph 27.

108. *Ibid.*, paragraph 50.

Danish Government has decided to ask the Standing Committee on Criminal Law to assess whether it is possible to make changes to section 266.b of the Criminal Code while respecting Denmark's international obligations.¹⁰⁹

74. Finally, concerning the rights of lesbian, gay, bisexual and transgender (LGBT) people, Denmark continues to improve its legal framework, with a new gender recognition law that came into effect in September 2015, eliminating previous legislation that had required transgender persons to undergo psychiatric evaluation and sterilisation when obtaining legal documents reflecting their new gender.¹¹⁰ Denmark is about to take steps to ensure that transgender will no longer appear on Denmark's definition of mental illnesses as from 1 January 2017, as recently confirmed by the Ministry of Health;¹¹¹ this will hopefully change practices. *Pro memoria*, Denmark became the first country in the world to adopt same-sex civil unions in 1989, and the parliament overwhelmingly passed same-sex marriage legislation enabling couples to wed in the Lutheran State church of their choosing in 2012.¹¹² Same-sex marriage legislation was approved by the Greenland Parliament in May 2015 and by the Faroese Parliament on 29 April 2016.

4.6. Police complaints authority

75. The setting up of an independent police complaints authority (Police Complaints Authority) was commended by the CPT. In this context, it is important that law-enforcement officials are easily identifiable, so as to facilitate the prosecution and sanctioning of perpetrators of abuse. The Danish authorities should also examine reported practices of ethnic profiling by the police and ensure that adequate safeguards against this phenomenon are in place.

76. In October 2014, the Minister of Justice announced the introduction of ID numbers on Danish police uniforms to enable the identification of police officers in case of complaints, at the request of the Independent Police Complaints Mechanism. However, little progress has been noted on that issue according to Amnesty International.¹¹³ We learnt, however, that, since then, police officers do have ID numbers on their uniforms.¹¹⁴

77. Amnesty International was also concerned that the police complaint system in the Faroe Islands is not adequate. Complaints are initially examined by the local board, which decides whether a complaint should be forwarded to the State prosecutor for further investigation or be dismissed. The local board is comprised of the head of the police in the Faroe Islands, two police officers and four members of the Faroese Government, which means that the process is neither impartial nor objective. The Danish Government stressed however that it has no reason to doubt the objectivity or impartiality of the Faroese police complaint system in general or the local board in particular.¹¹⁵ The Government of the Faroe Islands mentioned that legislation concerning the police is under the Danish authorities' responsibility. This means that the Faroese Parliament and Government cannot enforce legislation in this area. The Faroese authorities have asked the Danish authorities to bring the legislation regarding the police in the Faroes up to date, including by changing the system of complaints about the police. It is not clear as to when this updated legislation will come into force in the Faroes.¹¹⁶

78. Pursuant to the Faroese Administration of Justice Act, there is no time-limit for pretrial detention, and this applies also to cases of detention in solitary confinement. Under Faroese law, pretrial detention can be prolonged indefinitely,¹¹⁷ which was confirmed by the authorities when explaining that pursuant to the Faroese Administration of Justice Act, a court order on pretrial detention must be limited to four weeks and for solitary confinement to two weeks, which can be extended an unlimited number of times by a new court order. The Danish Government is of the opinion that, in practice, pretrial detention and solitary confinement is not being used excessively in the Faroe Islands.¹¹⁸ I was also informed that the Faroese authorities have called on the Danish authorities to bring the legislation regarding the Administration of Justice Act up to date. Part of such a comprehensive work will include the provisions for pretrial detention. The Danish Ministry of Justice

109. AS/Mon (2016) 31, p. 15.

110. <https://freedomhouse.org/report/freedom-world/2015/denmark>. The Alternative Party stressed, however, that LGBT people still have to go through a severe and comprehensive psychiatric evaluation with many very personal questions that do not concern their wish to change gender, when wanting to alter their bodies. AS/Mon (2016) 31, p. 4.

111. www.thelocal.dk/20160513/denmark-to-remove-transgender-from-list-of-mental-illnesses.

112. <https://freedomhouse.org/report/freedom-world/2015/denmark>.

113. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 4.

114. Observation from Mr Villumsen (Red-Green Alliance), AS/Mon (2016) 31, p. 5.

115. AS/Mon (2016) 31, p. 16.

116. *Ibid.*, p. 18.

117. Amnesty international 2016 Submission to the UN Universal Periodic Review, p. 4.

118. AS/Mon (2016) 31, p. 16.

has recently stated that a working group will be established to carry out this comprehensive review. The working group is expected to deliver its proposal within two to three years. After this the proposal will be presented to both the Danish and the Faroese Parliament.¹¹⁹

4.7. Prison conditions

79. The last visit of the CPT was in 2014. The visit focused on the treatment of inmates in several prison establishments, as well as of young persons held in two secure institutions for juveniles.

80. In relation to prison matters, the CPT noted that there were no allegations of deliberate physical ill-treatment by prison staff and the report noted positively the downward trend in the resort to solitary confinement of remand prisoners by court order. However, safeguards surrounding the application of judicial restrictions on remand prisoners' contacts with the outside world were still to be reinforced. There was also a need to ensure that all inmates are properly interviewed and physically examined by health-care staff within 24 hours of their admission to prison. The CPT was again critical of the application of the measure of immobilisation in prisons. It recommended enhanced training of prison officers, to help prevent cultural and linguistic communication problems between foreign national prisoners and staff, which could easily deteriorate into conflictual behaviour. In its recent report, the CPT expressed some concern about inter-prisoner violence, intimidation and sexual exploitation and recommended *inter alia* that comprehensive anti-bullying strategies be put in place.

81. In respect of institutions for juveniles, while welcoming the wide range of structured activities offered, the supportive pedagogical approach and the accommodation of juveniles in well-staffed small living units, the CPT was nevertheless concerned that the majority of juveniles on remand had judicial restrictions placed on their contacts with the outside world, often for extensive periods.¹²⁰

4.8. Psychiatric institutions

82. The rights of persons in psychiatrist institutions drew the attention of both the Commissioner for Human Rights and the CPT.

83. The Commissioner called on the Danish authorities to ensure that legislation and practices regarding coercion in psychiatry, including forced hospitalisation, forced treatment and the use of physical restraints are in full compliance with human rights standards. He welcomed the publication of a comprehensive report on the care of persons with mental health problems in October 2013, which aimed at reducing involuntary placement and treatment and limiting drastically the use of coercion. He expected this report to be followed up swiftly through the adoption and implementation of an action plan. He also invited the authorities to strengthen guarantees against arbitrary or disproportionate decisions regarding forced placement, ensure respect for the consent of the patient and prevent further violations of the right of patients to physical integrity.¹²¹

84. The CPT, for its part, appreciated the constructive attitude and the overall acknowledgement, both by the central authorities and the staff in the hospitals visited, of the need to reduce the resort to physical immobilisation of patients in a bed (*fiksering*) in psychiatric hospitals. However, the CPT remained seriously concerned about the resort to immobilisation, and notably immobilisation lasting longer than 48 hours, which might have been at least partly due to low staffing levels. It thus recommended reinforcing the number of nurses.

85. In its reply of March 2015, the Danish authorities presented the action undertaken to address the issues raised by the CPT, including a comprehensive long-term action plan for the future development and expansion of the services to people with mental illness, presented on 15 May 2014, which aims at reducing coercion in psychiatry, including mechanical restraint, and will support the new framework and direction for psychiatry. Inspired by what is being done on cancer and heart disease, the government formed a task force for psychiatry, which will be following developments in general, including monitoring the goal of a 50% reduction of coercive measures. The Psychiatric Act, as amended in 2010, lays down the conditions for using coercive measures as long as they are needed, with more stringent requirements for the use of mechanical restraint, including a minimum frequency of medical supervision and simultaneous assessment of whether restraint should cease or continue. The Ministry of Health disregarded the possibility of establishing a legal limit to the duration of immobilisation but proposed instead that clear and uniform rules be laid down

119. Ibid., p. 18.

120. CPT [Press release](#), 17 September 2014.

121. [CommDH\(2014\)4](#).

stipulating a minimum frequency of medical supervision and simultaneous assessment of whether the immobilisation should cease or continue. The government had also planned to amend the Psychiatry Act in order to ensure better rights for psychiatric patients who are subject to detention or coercion and aimed at clarifying the legal status of minors in psychiatric care, ensuring a stronger emphasis on the need to seek advance indications from the patient regarding treatment during the admission interview and tightening the criteria for and supervision of the use of medical restraint.¹²²

86. To conclude, I would like to indicate that, apart from the shortcomings identified above, human rights are generally well protected, but with some operational mechanisms that could still be strengthened. I also note that dualism prevails in Denmark: the European Convention on Human Rights is the only international human rights convention which is both ratified and incorporated into Danish law, which is not the case for other United Nations core human rights conventions ratified by Denmark. The authorities stressed that the United Nations human rights conventions are relevant sources of law in Denmark (i.e. the conventions can be and are indeed invoked before and applied by the Danish courts and other national authorities).¹²³ I understand that this issue was debated in 2014 by a committee of human rights experts. After a public consultation process, the former government decided not to incorporate the United Nations human rights conventions into Danish law. The authorities are of the view that such incorporation might entail a risk of a shift in the legislative powers conferred upon parliament to the courts, and that it was important to maintain the elected representatives' responsibility for compliance with international obligations. In this regard, the present government generally agrees with the former government.¹²⁴

87. I take good note that Denmark continuously pays attention to the possibilities of withdrawing or narrowing its reservations. Thus, in 2014, Denmark narrowed its reservation in respect of Article 14 of the International Covenant on Civil and Political Rights (ICCPR).¹²⁵ I would thus invite Denmark to further promote human rights by incorporating international instruments, and lifting reservations, as well as to encourage the authorities of the semi-autonomous Faroe Islands and Greenland to reinforce their system of human rights protection in the light of the conclusions of the Council of Europe monitoring mechanisms.

5. Conclusions

88. Overall, the functioning of democratic institutions in Denmark complies with Council of Europe standards. Denmark globally honours its membership obligations to the Council of Europe. The Monitoring Committee notes that Denmark has faced one of its most important migration crises, stemming notably from the Syrian and Iraqi conflicts. Despite tensions related to migration issues, rising populism and counterterrorism measures taken in the wake of recent terrorist attacks perpetrated in Denmark, the country has managed to remain committed to a high degree of protection of human rights and, overall, well-functioning democratic institutions. There is overall a high level of trust in the capacity of the democratic and State institutions to uphold human rights standards. There is also a genuine "culture of local democracy" which contributes to a vivid democratic life.

89. The Monitoring Committee has taken note of the specificities of the Danish political system, with two semi-autonomous entities, Greenland and the Faroe Islands, which enjoy a high degree of autonomy and thus bear an important responsibility in ensuring the protection of human rights. With respect to the application of international treaties, dualism prevails in Denmark, the European Convention on Human Rights being the only international human rights convention which is both ratified and incorporated into Danish law. This could be seen as an additional challenge, in particular with respect to the implementation of international human rights instruments, especially in Greenland and the Faroe Islands: their consent is required to ensure that these legal instruments can have full effect over the whole territory. The Monitoring Committee can only encourage all the authorities concerned to ensure consultations to incite those authorities to upgrade their standards and allow the lifting of reservations.

90. In the light of the findings of the monitoring mechanisms of the main Council of Europe conventions, a certain number of issues should, however, be addressed by the authorities. The committee therefore wishes to make the following recommendations to the Danish authorities.

122. CPT/Inf(2015)16, pp. 69-74.

123. AS/Mon (2016) 31, p. 16.

124. Ibid.

125. Ibid.

91. In the field of democracy, the committee welcomes the latest progress made in strengthening local democracy after the Danish Municipal Reform launched in 2007 and encourages the authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in local government affairs, in line with [Recommendation 350 \(2013\)](#) on Local and regional democracy in Denmark of the Congress of Local and Regional Authorities;

92. In the field of the protection of human rights, the Monitoring Committee invites the Danish authorities to:

- while taking note of the steps taken to limit restrictions to fundamental freedoms and procedural guarantees, review and upgrade the legal framework of the Danish counterterrorism legislation (including the Danish Aliens Act and the Administration of Justice Act), so as to find the right balance between effective measures and protection of fundamental rights, and ensure that current and future legislation complies with human rights standards;
- ensure that the provisions of the Aliens Act and the Administration of Justice Act dealing with the expulsion and deportation of foreign nationals on “national security grounds” for their suspected involvement in terrorism-related activities, comply with Denmark’s obligation to provide due process and equality of arms;
- ensure that the newly created group of researchers inquiring about the Danish military engagements in Kosovo (1998), Afghanistan (2001) and Iraq (2003) is able to complete and finalise the work undertaken by the Iraq–Afghanistan Commission of Inquiry (which was disbanded in 2015), to determine the liability and responsibility of the Danish forces under international law, to draw lessons from this work and further inspire preventive measures based on the findings of the Iraq–Afghanistan Commission of Inquiry;
- ratify Protocol No. 12 to the European Convention on Human Rights;
- in the light of the recommendations issued by ECRI and the Commissioner for Human Rights, ensure that the amendment of Article 266.b of the Penal Code (which would limit the criminalisation of insulting and degrading speeches to statements leading to disturbance of the public order) complies with Committee of Ministers Recommendation No. R(97)20 on hate speech, so as to ensure sufficient and effective protection against hate speech, and avoid the worsening of the climate of public debate in Denmark and increased polarisation of society;
- while stressing that the media are independent, engage in a dialogue with professional media organisations about possible measures to be undertaken in the light of ECRI’s recommendations about the image of Islam and Muslim communities conveyed by media;
- following the recent adoption of restrictive asylum and immigration laws, and welcoming recent initiatives undertaken to align the legislation with international rulings, ensure that laws and practice fully comply with Denmark’s obligation to uphold refugee protection standards, in particular to further protect children’s rights taking into account the best interest of the child, including on family reunion issues, and in line with the European Convention on Human Rights and the United Nations Convention on the Rights of the Child;
- make the necessary legislative changes to implement [Recommendation CP\(2016\)4](#) of the Committee of the Parties and ensure full implementation of the Council of Europe Convention on Action against Trafficking in Human Beings;
- further to the ratification in 2014 of the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence, develop and adopt a comprehensive action plan to prevent and combat rape and other forms of sexual violence, in line with the Istanbul Convention.

93. In this respect, the Monitoring Committee:

- welcomes the initiatives undertaken by the Faroese authorities since 2011 to prevent and eradicate domestic violence, violence against women and sexual abuse, and welcomes the announced revision of the Faroese Criminal Code which should strengthen the provisions on rape and other forms of sexual abuse in all circumstances, including within marriage;
- appreciates the initiative taken by the Danish Government to engage a dialogue with Greenland and the Faroe Islands and urges all stakeholders to create the conditions that would allow the lifting of the reservations to the main human rights conventions, including the Istanbul Convention and the Convention on Action against Trafficking in Human Beings and, more generally, to consider those national monitoring mechanisms which could be extended to these entities;

- welcomes, in Greenland, the creation of a Greenlandic Council for Human Rights in 2013, and the extension to Greenland of the mandate of the Danish Institute for Human Rights in 2014;
- encourages the Danish authorities to strengthen the functioning and competence of the Danish Institute for Human Rights with a view to ensuring that the resources put at its disposal correspond to its expanded mandate.

94. In the field of rule of law, the Monitoring Committee welcomes the announced creation of a working group to carry out a comprehensive review of the legal framework in the Faroe Islands, which should include the amendment of the Faroese Administration of Justice Act – which is expected by the Faroese authorities – to amend the provisions on pretrial detention and ensure their compliance with Council of Europe standards and which should establish an independent police complaints mechanism.

95. The Monitoring Committee praises the excellent scores of Denmark in the Corruption Perception Index published yearly by Transparency International. Denmark ranks first for the fourth year in a row, which reflects a very low perception of corruption by the population and an overall high trust in the oversight institutions. The committee notes that a Committee of Experts on the Transparency of Party Funding produced a report in 2015. It thus invites the Danish authorities to strengthen the legal framework in the light of the proposals made by this expert committee and the recommendations made by GRECO, and in particular to:

- initiate the expected reform in the field of transparency of party funding without further delay and to ensure its compliance with the relevant Council of Europe anti-corruption standards and GRECO's recommendations;
- ensure that small facilitation payments – as a form of an “undue advantage” – offered to foreign public officials (and officials of international assemblies and courts) fall within the scope of the criminal code;
- consider the drafting of a code of conduct, and complete the set of measures required to prevent corruption among judges;
- ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) signed in 2012.

96. The committee also encourages the Danish authorities to ratify the European Social Charter (revised) (ETS No. 163) which they signed in 1996 and the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed in 1995.

Appendix

Council of Europe conventions signed and/or ratified between 1 October 2013 and 17 November 2016 by Denmark

No.	Title
181	Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows
	Signature: 08/11/2001 Ratification: 16/03/2015 Entry into force: 01/07/2015
210	Council of Europe Convention on preventing and combating violence against women and domestic violence
	Signature: 11/10/2013 Ratification: 23/04/2014 Entry into force: 01/08/2014
213	Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms
	Signature: 24/06/2013 Ratification: 22/07/2016
215	Council of Europe Convention on the Manipulation of Sports Competitions
	Signature: 18/09/2014
217	Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism
	Signature: 03/05/2016 Ratification: 03/11/2016

Recent findings of Council of Europe monitoring mechanisms and other bodies as at 17 November 2016

European Court of Human Rights	European Convention on Human Rights (ETS No. 5) ratified in 1953 Protocol No. 1 (ETS No. 009) ratified in 1953 Protocol No. 2 (ETS No. 044) ratified in 1963 Protocol No. 6 (ETS No. 114) ratified in 1983 Protocol No. 12 (ETS No. 177) neither signed nor ratified Protocol No. 13 (ETS No. 187) ratified in 2002 Protocol No. 14 (CETS No. 194) ratified in 2004 Out of a total of 64,850 applications pending before a judicial formation on 31 December 2015, 30 concerned Denmark. Resolutions adopted by the Committee of Ministers: 2 in 2013, 1 in 2014, 0 in 2015 and in 2016. See Press country profile Denmark
Congress of Local and Regional Authorities	European Charter on Local Self-Government (ETS No. 122) ratified in 1988 Last report and Recommendation on local and regional democracy in Denmark adopted in October 2013: CG(25)12FINAL and Recommendation 350 (2013)

Group of States against Corruption (GRECO)	Civil Law Convention on Corruption (ETS No. 174) signed in 1999 but not ratified Criminal Law Convention on Corruption (ETS No. 173) ratified in 2000, Additional Protocol (ETS No. 191) ratified in 2005 <i>Third evaluation round: interim compliance report on Denmark: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding" adopted by GRECO at its 55th plenary meeting, Strasbourg, 14-16 May 2012, published in January 2014, Greco RC-III(2012)11E Interim report</i> <i>Third evaluation round: second interim compliance report on Denmark: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding" adopted by GRECO at its 61st plenary meeting, Strasbourg, 14-18 October 2013, published in January 2014, Greco RC-III(2013)11E Second interim report</i> <i>Third evaluation round: third interim compliance report on Denmark: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding" adopted by GRECO at its 65th plenary meeting, Strasbourg, 6-10 October 2014, published in November 2014, Greco RC-III(2014)18E Third interim report</i> <i>Third evaluation round: fourth interim compliance report on Denmark: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding" adopted by GRECO at its 69th plenary meeting, Strasbourg, 12-16 October 2015, published in November 2015, Greco RC-III(2015)14E 4th interim</i> <i>Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Denmark, adopted by GRECO at its 63rd plenary meeting, Strasbourg, 24-28 March 2014, published in April 2014, GrecoEval IVRep(2013)6E</i> <i>Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: compliance report: Denmark, adopted by GRECO at its 71st plenary meeting, Strasbourg, 14-18 March 2016, published in April 2016, GrecoRC4(2016)7</i>
Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) ratified in 1996 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed in 2012 but not ratified Denmark is not a member of MONEYVAL.
Commissioner for Human Rights	<i>Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Denmark, from 19 to 21 November 2013, CommDH(2014)4 / 24 March 2014</i> <i>Letter from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to Ms Inger STØJBERG, Minister for Immigration, Integration and Housing of Denmark, concerning changes to Denmark's legislation on asylum and immigration, CommDH(2016)4 / 15 January 2016</i> <i>Reply from the Danish authorities to the letter of the Council of Europe Commissioner for Human Rights, Nils Muižnieks, concerning changes to Denmark's legislation on asylum and immigration, CommDH/GovRep(2016)10 / 21 March 2016</i>
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	Convention (ETS No. 126) ratified in 1989, Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) ratified in 1994 Last country visits: - Denmark: February 2014 - Greenland: September 2012 Publication of the last reports: - Denmark: September 2014, CPT/Inf(2014)25 - Greenland: January 2013, CPT/Inf(2013)3

Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties	Convention (CETS No. 197) ratified in 2007 1st Evaluation Round: · GRETA's Report and Government's Comments published in December 2011, GRETA(2011)21 · Recommendation CP(2012)4 of the Committee of the Parties adopted in January 2012 · Government Reply to Recommendation received in February 2014, CP(2014)4 2nd Evaluation Round: · Evaluation visit in May 2015 · Government's Reply to GRETA's 2nd Questionnaire published in March 2015, GRETA(2015)8 and appendices · GRETA's Report and Government's Comments adopted in March 2016, published in June 2016, GRETA(2016)7 · Recommendation CP(2016)4 of the Committee of the Parties adopted in May 2016
Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties	Convention on preventing and combating violence against women and domestic violence (CETS No. 210) ratified in 2014
European Commission against Racism and Intolerance (ECRI)	The 4th report on Denmark was adopted in March 2012 and made public in May 2012, CRI(2012)25 Conclusions adopted in March 2015 and published in June 2015, CRI(2015)23
Venice Commission	No opinion concerning Denmark

Other Treaties:

Framework Convention for the Protection of National Minorities	Convention (ETS No. 157) ratified in 1997 · Last State Report (4th cycle) received in January 2014, ACFC/SR/IV(2014)002 · Last Advisory Committee Opinion (4th cycle) adopted in May 2014, ACFC/OP/IV(2014)001 · Last CM Resolution (4th cycle) on the implementation of the Framework Convention adopted in July 2015, CM/ResCMN(2015)7
European Charter for Regional or Minority Languages	Convention (ETS No. 148) ratified in 2000 · Last State Periodical Report (4th cycle) submitted in March 2014, MIN-LANG(2014)PR4 · Last Committee of Experts' evaluation report (4th cycle) adopted in May 2014, ECRML(2014)9 · Last Committee of Ministers' Recommendation (4th cycle) adopted in October 2014, CM/RecChL(2014)6
European Social Charter	European Social Charter of 1961 (ETS No. 35) ratified in 1965 European Social Charter (revised) (ETS No. 163) signed in 1996 but not ratified Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed in 1995 but not ratified See Country factsheet Denmark