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Memorandum to the Danish Government

Assessment of the progress made in implementing the 2004 recommendations of the Council of Europe Commissioner for Human Rights

For the attention of the Committee of Ministers
and the Parliamentary Assembly

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I. INTRODUCTION

1. The first Commissioner for Human Rights, Mr. Alvaro Gil-Robles, visited Denmark on 13-16 April 2004 at the invitation of the Danish Government. In the report of his visit¹ he made recommendations to the Danish authorities to help address what thought to be shortcomings in the protection of human rights.
2. To assess progress made in implementing the 2004 recommendations, a delegation of the Office of the new Commissioner, Thomas Hammarberg, ("the delegation") visited Denmark on 5-7 December 2006².
3. The delegation met with officials from all the authorities, bodies and establishments it had wished to discuss with³ and visited all the places it had asked to see⁴.
4. The Commissioner expresses his gratitude to the Danish authorities for the constructive co-operation and generous hospitality provided to his delegation⁵.
5. The present memorandum follows the order of themes as presented in the 2004 report and is built upon information gathered before, during and after the visit.

II. THE SITUATION OF ETHNIC MINORITIES, IMMIGRANTS, REFUGEES AND ASYLUM-SEEKERS

Clarity and certainty of the legal rules on family reunification

6. In 2004, the Commissioner was concerned that the total overhaul operated by the 2002 Aliens Act and its subsequent amendments at times lacked clarity and that the frequency of the amendments bore the risk of jeopardising the principle of legal certainty, tendencies that were reinforced by the room left to discretionary decisions.

¹ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, 8 July 2004, on his visit to Denmark, 13-16 April 2004, CommDH (2004)12. Hereafter "the 2004 report".

² Mr Markus Jaeger, Ms Irene Kitsou-Milonas and Mr Stefano Montanari.

³ The officials met were from the National Council for Children, the Department of Prison and Probation, the Office of the Greenland Home Rule, the Ministry of Foreign Affairs (Human Rights Unit), the Complaints Committee for Ethnic Equal Treatment, the Danish Refugee Board, the Ministry of Family and Consumer Affairs, the Ministry of Social Affairs and Gender Equality, the Ministry of Education (International Unit), the Ministry of Refugees, Immigration and Integration Affairs, the Council of Ethnic Minorities, the Ministry of the Interior and Health, the Ministry of Justice, the Police Complaints Board, the Representation of the Faeroe Islands in Denmark. The delegation also met with the Parliamentary Ombudsman, officials from the Danish Institute for Human Rights, the Chairman of the Danish Press Council, the members of the Danish Delegation to the Parliamentary Assembly of the Council of Europe, members of the Danish Parliament (Legal Affairs Committee and Integration Affairs Committee). The delegation also had a meeting with representatives of major non governmental organisations operating in Denmark; that meeting was kindly hosted by the Danish Institute of Human Rights.

⁴ The delegation visited the Vesterbro New School, the "Kvindehjemmet" in Copenhagen (Shelter for women and children victims of domestic violence), the Reception Centre in Sandholm and the Sandholm Foreigners Detention Centre, the Glostrup Hospital (Psychiatric and Forensic Psychiatric Departments), the prison of Herstedvester.

⁵ In particular, the Commissioner is grateful to Ms Marianne Hoffmann, Minister Counsellor at the Ministry of Foreign Affairs, for the time she devoted to the preparation of the visit of his delegation.

Minimum age requirement of 24 years of both spouses for their reunification in Denmark

7. The Danish authorities have explained that the 24-year age requirement is meant to protect young adults from forced marriages since it is felt that the older a person is the greater the capacity of resistance.
8. In 2004, the Commissioner pointed out the case law regarding Article 8 of the European Convention on Human Rights (ECHR) (right to family life and private life) and expressed the opinion that the restriction in place went beyond target in that it seriously limited the right of persons of marriageable age to marry and to found a family in Denmark, including many persons who are not parties to a forced or arranged marriage. Other initiatives, like those contained in the Government's action plan against forced and arranged marriages, could bring very positive results as regards the aim pursued. The Commissioner asked for reconsideration of the age limit.
9. In its reaction to the 2004 report the Danish government did not agree on the appropriateness to lift the said age requirement and has, consequently, not done so. At the same time, funds for the above-mentioned action plan against forced marriages were sharply reduced in 2005-2007⁶. This being said, the delegation also met individuals and was informed of media reports who mentioned cases where the additional time for reflection imposed on the foreign partner was deemed beneficial for a critical assessment of the planned marriage. It was, however, generally admitted that no sound statistics on the impact of the age limit on the number of forced marriages are available.
10. On his side, the Commissioner reiterates his predecessor's concern that the 24-year age limit bars too many truly consenting partners from enjoying the right to family life in Denmark and recommends that the Government put the age requirement for living together on Danish soil with a foreign partner more in line with the rules applying to Danish couples. He is not convinced of the general assumption that individuals from countries who need a residence permit to live in Denmark are less apt to judge on the well-foundedness of their intention to marry than Danes of the same age. He also wonders why, if a differential were to exist at all, it would be of six years⁷. He notes that the EU Directive of 22 September 2003 regarding family reunification allows for setting an age limit of 21 year⁸. The Commissioner recommends to reduce the minimum age requirement in Denmark to that limit, or below.

Requirement of 28 years of citizenship of the person living in Denmark for an exemption from the condition of both spouses having aggregate ties to Denmark that are stronger than with another country for granting a residence permit to his or her foreign partner

11. In 2004, the Commissioner considered that this provision did not guarantee the principle of equality before the law because it treated differently Danish citizens depending on the period during which they have held citizenship. He noted that in practice the provision was affecting particularly first and second-generation immigrants who often have to wait until they are in their late 30's before they can

⁶ From 10.5 million DKK (approximately 1.4 million euros) in 2003 to 2.9 million DKK (approximately 390,000 euros) in 2005.

⁷ Under Danish law, marriage can be contracted between persons of the age of 18 years. Under exceptional circumstances, municipalities can allow a marriage also to people under 18.

⁸ The Danish authorities have pointed out, in their reaction to the 2004 report, that they made a reservation on the Directive and are, thus, not legally bound by it.

settle in Denmark with a foreign partner who needs a residence permit. The possibilities of exceptions from that rule were not considered sufficient safeguards for ensuring the right to family life and for securing refugees' spouses reunification. The Commissioner recommended reconsidering the provision.

12. In its reaction to the 2004 report the Government of Denmark considered it had no legal obligation to change the rule in question as the possibility of exceptions was foreseen in the law and allowed to deal appropriately with concrete cases involving, for example, refugees. Consequently, the 28-year citizenship requirement has not been changed.
13. The Commissioner cannot see how one can dispute that the requirement in question does introduce a different treatment of Danes who have held citizenship as of birth and those who have obtained it later on in their life and normally have to wait another 28 years before they can live in Denmark with their foreign partner. He notes that, in a meeting of his delegation with the Legal Affairs Committee of the Danish Parliament, it was conceded that there was indeed a discriminatory effect of such legislation and that this corresponded to a political decision. The Commissioner recommends that the Government reduce the very high threshold of 28 years.

Economic conditions of family reunification

14. The Commissioner three years ago was concerned by the fact that, in addition to the conditions already mentioned, the economic situation of applicants was taken into account for granting family reunion and for maintaining the right to a residence permit for the members of the family. This could lead to a violation of the principle of equality before the law and of Article 14 of the ECHR, which prohibits discrimination on grounds such as property. He also pointed out that the constant threat of separation from one's spouse or of having to move abroad in order to continue family life created strain and anxiety and was not propitious for integration.
15. Since 2004 the economic conditions have not been done away with. There have been developments both in the direction recommended and in the opposite sense. Among the economic conditions is the obligation for the applicant who lives in Denmark to provide a bank guarantee which is released only after seven years and insofar as it has not been used for social assistance to the couple. Contrary to the Commissioner's recommendation, in 2006 the amount requested was increased from 50,000 to 56,567 DKK (approximately 7,500 euros as of April 2007). On the other hand, in line with the recommendations, the 2005 Aliens Consolidation Act provides now that this economic requirement can be halved upon request if the foreigner passes a final Danish language test or provides evidence of having completed a course of Danish education. It would seem that no changes have been introduced as concerns the condition for the person demanding family reunification to have a regular income and to occupy (and maintain) an adequate accommodation.
16. Even though economic conditions may well be intended to make sure that a successful integration of non-EU nationals in the Danish society can take place in good material circumstances, the Commissioner considers that these measures are most of all likely to result in indirect discrimination of minority and vulnerable groups. Because these are more likely than others to have difficulties in fulfilling the conditions. In addition, as regards the bank guarantee, it should be considered that this requirement puts the applicants in the hands of private entities (commercial banks) who may or may not grant the financial guarantee required.

17. The Commissioner recommends that the Danish Government remove the requirement of a bank guarantee from the list of economic conditions for family reunification in order to avoid discrimination on the grounds of economic conditions.

Maximum age limit of 14 for the family reunification of children

18. Since 2004, the legal rule in Denmark is that the right to family reunification of children ends when the child turns 15. Waivers to the rule can be granted under Article 9(c) of the Alien's Act. This possibility, the Government argued, allows to take care of the best interest of the child in individual cases, thus keeping the Danish legislation in line with the basic principle of the UN Convention on the Rights of the Child which holds that a child is a human being below the age of 18 and should be permitted to grow up in a family environment. In his report, the Commissioner judged "incongruous and certainly dissuasive" the fact that non-eligibility to live with the parents was made the rule in Denmark and the possibility to do so left to be the exception. Such presumption was the exact contrary of that of the Rights of the Child Convention. Also, it failed to secure the legal certainty that ought to surround the determination of fundamental rights.
19. The Government explained that the reason for the legislation was to protect children from being sent on so-called "re-education journeys" to their parents' country of origin, a phenomenon it judged dangerous for the integration in Danish society. The Commissioner pointed out that no reliable data on this phenomenon had been provided and that the provision affected all children and families, including those who did not resort to a practice that was judged "fairly unusual" by the Council of Ethnic Minorities. He "strongly encouraged" the Danish Government and the Parliament to reconsider the provision.
20. Today, the Commissioner regrets that the Danish Government has not given suit to the recommendation made in 2004. He considers that a constructive dialogue with the Danish Institute for Human Rights and specialised NGOs could help better understand the phenomenon of re-education journeys, assess its possible effect on integration in Denmark and, if appropriate, identify and implement alternative effective measures. The Commissioner also believes that links with the country of origin should not automatically be deemed to be dangerous for the purpose of integration in the country where the child lives with the parents. In any event, the Commissioner urges the Danish Government to revise the family reunification rules with respect to the age limit for children in order to bring the Danish legislation in line with the international definition of the child (i.e. a person below the age of 18) and the presumption that living with the family is in the best interest of the child, unless the contrary is proven.

The rights of refugees to family reunion

21. One of the Commissioner's recommendations made in 2004 was to ensure that the right of refugees to family reunion was clearly stated in the law.
22. In line with the Commissioner's recommendation, the Danish Government has included a reference to the right to family unity of refugees in the relevant provision of the 2005 Aliens Act. The reference indicates the reasons which allow the exemption from conditions for granting a residence permit for the purpose of family reunification. However, the delegation heard complaints about difficulties encountered by

applicants for family or spousal reunification in reaching the Immigration Service and receiving information on their cases. Other complaints concerned the length of the processing of visa applications.

23. The delegation was informed that the Danish Ministry of Integration had launched in Spring 2006 an internet portal with information on relevant legislation and case law to increase transparency for the benefit of (potential) applicants, lawyers and other interested parties.
24. The Commissioner is pleased to note this development and commends the Danish authorities for their efforts to improve the information on and the transparency of the use of discretion in the determination of individual applications for family reunification, including by refugees.

The composition of the Refugee Board

25. In the 2004 report the Commissioner recommended that the possibility of appealing negative asylum decisions "before a qualified and independent authority" be ensured; as a minimum, the original composition of the Refugee Board should be restored. Indeed, the Commissioner regretted that the membership of the Refugee Board was reduced by the reform of the Aliens' Act with representatives of the Danish Refugee Council and of the Ministry for Foreign Affairs being removed.
26. In line with the first part of the Commissioner's recommendation, the 2005 Aliens Consolidation Act (echoed by the Board's Rules of Procedure) provides for a clarifying amendment asserting the independence of the members of the Refugee Board and providing that they can only be removed by judicial decision. The Commissioner highly welcomes that the independence of the members of the Refugee Board has been positively affirmed.
27. The Commissioner agrees with his predecessor that adding the competences of representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs to those of the other members of the Board would reinforce and broaden its collective expertise.

Visit to the Sandholm reception and foreigners detention centres

28. In 2004 the Commissioner visited the Sandholm centre. He observed that the conditions in all respects were commendable but was concerned by the asylum and immigration statistics, which revealed the extent of the restrictions of new arrivals.
29. The delegation visited both the Sandholm reception centre and the foreigners' detention centre (where it had the possibility to speak in private with detainees). It also visited apartments for families as well as the school run by the Danish Red Cross with state financing and had the opportunity to talk with the Director of the Centre and a number of staff during the visit. The delegation found that the material conditions both at the reception centre and the detention centre were commendable. It was informed that in June 2006 the Government had allocated additional appropriations to the various asylum centres. The delegation was, however, made aware of two sets of concerns.
30. The first concern is the length of stay in the centres. An estimated 40 per cent of the asylum-seekers in Denmark stay more than three years in reception centres. Some of the people met in Sandholm had spent 11 years of their lives in Danish centres,

isolated from the outside world⁹, after final refusal of a residence permit which they had requested on one ground or another and in the impossibility of deporting them. Living in a stalemate between the authorities' insistence on deportation and the impossibility to do so for a host of technical reasons (often including the foreigner's lack of cooperation, as pointed out by the Government), finally rejected foreigners nowadays have to face the prospect of having to stay in the Danish centres for what could be the rest of their lives¹⁰. This results often in serious consequences for their (mental) health. The delegation was informed about a considerable increase in the number of suicide attempts in the centres, alcohol addiction and a steep rise of medication expenses.

31. The second issue of concern is the prolonged stay of children in such conditions. Of the 2,374 inmates of Denmark's reception centres, around 400 are children. The Minister for Refugees estimated that 220 children have been held in reception centres for over four years, 97 of them for between three to four years. Revisions of the Aliens Consolidation Act and the Integration Act have improved the legal status of asylum-seeking children and ensure that more attention is paid to their needs. The delegation could witness that highly committed personnel try their best to offer quality schooling and social services to the children in the centres. Some children are allowed to attend schools outside the centres. But, as the delegation was told, there could be no doubt that their prolonged stay in the centres in the company of desperate adults puts huge mental strain on the children. In addition, being compelled to move from one centre to another prevents them from establishing durable relations both with other children and the adults (staff) who take care of them.
32. The Commissioner welcomes the commendable material conditions secured by the Danish authorities to the foreigners in the Sandholm reception centre and the particular effort made for the children there by devoted and qualified personnel. But he deplores a situation where the authorities insist on the absence of a legal entitlement to stay for the persons held in the centres and the obligation for them to leave the country, whereas this is technically impossible. While recognizing the legal right of the Danish Government to insist on the deportation of irregular migrants, the Commissioner points out the authorities' duty to safeguard the physical and mental health and the dignity of human beings in all circumstances and recommends to try to find alternative solutions to unlimited confinement of adults and children in reception centres.

⁹ The Danish Government has indicated that this statement is "not correct". "Sandholm reception centre is not a closed centre. There is control of access to the centre, but the persons living there can enter and leave as they please. Hence, they are not confined."

¹⁰ The Danish Government has made the following comment on this observation: "[T]he persons in question are rejected asylum seekers; their applications have been finally turned down and they have overstayed the deadline given to them regarding their leaving Denmark. These rejected asylum seekers can leave Denmark voluntarily if they so wish. Moreover, it follows from section 9 (c) (2) in the Danish Aliens Act that upon application rejected asylum seekers can be granted a residence permit if they can not return to their home country, provided that for 18 months they have cooperated with the Danish authorities in making a return possible."

III. THE FIGHT AGAINST DISCRIMINATION, RACISM AND EXCLUSION

The Council of Ethnic Minorities

33. In his 2004 report the Commissioner expressed satisfaction with the creation of the Council of Ethnic Minorities and the work done by it. He recommended a more prominent role and greater resources to that institution.
34. For 2007 the Government has allocated additional funds (now approximately 67,000 € compared to 50,000 € in 2004) to the Council of Ethnic Minorities. The chairman of the Council told the delegation he could not complain about lack of financial means or Government attention. The Minister for Refugees was showing readiness to help the Council in becoming more visible in the public debate and involved it in dialogue with all sorts of authorities. The Council had, of course, only a consultative function.
35. The Commissioner expresses his satisfaction with the measures taken and encourages the Danish authorities to continue providing effective and adequate support to the work of the Council of Ethnic Minorities and to take into consideration the views expressed by it.

Promoting an inclusive society

36. Three years ago the Commissioner recognised the emphasis Danish authorities placed on the need to strengthen the fight against discrimination and racism and that important initiatives had been launched in that respect. He took note, however, that a number of human rights organisations felt that occasionally there was a lack of distinction between assimilation and integration (an assertion that was strongly rejected by the Government). The Commissioner found in 2004 that greater emphasis could be given to the positive aspects of the preservation of minority cultures and expressed concern about the frequent expressions of strong anti-immigrant statements by certain politicians, as well as about the fact that a frequently distorted and distrustful image of ethnic minorities was reflected in the public debate and in the media. As a consequence, the Commissioner recommended to strengthen efforts to promote an inclusive society and combat discrimination and intolerance.
37. The delegation was informed that the Danish authorities have launched various initiatives to better address discrimination, racism and exclusion. 10 million DKK (approx. 1,34 mill. Euros) have been allocated in 2007-2010 to further promote equal treatment and diversity and combat discrimination. The 3-year campaign "Show Racism the Red Card" aims at fighting against racism in football and society. The Danish police stations have improved their performance in registering cases of racially motivated violence, vandalism and harassment. In the beginning of 2005, Police started a new campaign ("Nightlife for every one") providing extra police on the street to stop the discrimination that minority youth experience during nightlife. The Danish Security Intelligence Service (PET) is working towards improving the system for reporting racist incidents. Several politicians said they considered calling for an awareness campaign to improve immigrants' confidence in reporting to the police. In 2007 the Prosecutor's Office is to start monitoring court practices with regard to the criminal code provisions allowing racist motivation to be taken into account as an aggravating factor. Also, the Government has ratified the Council of Europe Additional Protocol to the Convention on cyber crime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

38. While these initiatives are highly appreciated, the Commissioner feels that a number of concerns still needs to be addressed to foster a more inclusive society. For instance, under Act n° 361 of June 2002, only persons who have legally dwelled in Denmark for at least seven years out of the preceding eight years are entitled to full cash allowance benefit. All the others, including Danes, receive only a so-called “starting allowance”. It amounts to between 56 and 73 per cent of what is considered to be a discount budget for life in Denmark. According to Amnesty International, 64 per cent of those who receive the starting allowance live in poverty. This rule is intended to entice beneficiaries of social benefits to seek employment. But it has been criticised because of the risk of creating poverty and as a cause of indirect discrimination against lawful foreign residents of minority origin insofar as, in practice, they find it more difficult to find a job than Danes in the same situation and, consequently, have to live longer than others on the “starting allowance”. Such situation was deemed in violation of Art. 13.1 of the European Social Charter (ESC)¹¹ and of Art. 23 of the Convention relating to the Status of Refugees (UNCSR)¹². NGOs have pointed out that the practice contributes to marginalizing refugees.¹³
39. The delegation visited the Vesterbro New School, where, reportedly, foreign pupils were separated from Danes during curriculum activities. The delegation talked at length with the headmaster and two teachers and was informed about the efforts made to integrate foreign pupils, also by way of extra-curriculum activities. Moreover, it was informed about the free mother tongue classes that the school offers as extra-curriculum activities for bilingual pupils. The delegation was positively impressed by the commitment and the efforts undertaken by that school in promoting the integration of foreign pupils.
40. Offering mother tongue teaching is compulsory only for the benefit of “bilingual students”¹⁴ from the European Union and European Economic Area countries, the Faeroe Islands, Greenland and the German minority. The municipalities’ obligation to offer mother tongue classes also to bilingual students from other countries has been repealed and municipalities no longer receive financial support for such purpose. As a consequence, 11 out of 20 of the largest municipalities in Denmark do not offer minority children mother tongue education any more while five municipalities demand payment. The Commissioner fears that the reduction in the offer of free mother tongue classes results in a loss of minority identity and favours indeed assimilation rather than integration.
41. The delegation was informed that since January 2004 municipalities are no longer obliged by law to establish an integration council. This reduces the possibility of ethnic minorities to make their concerns and views known.

¹¹ European Committee of Social Rights, Conclusions XVIII-1 (Denmark), article 1, 5, 6, 12, 13, 16 of the Charter (Strasbourg: n. a.) pp. 21-23; The Danish Institute for Human Rights, Supplementary Report to Denmark’s Sixteenth and Seventeenth Periodical Report to the International Convention on the Elimination of all Forms of Racial Discrimination (Copenhagen: June 2006) p. 4.

¹² UN Committee on the Elimination of Racial Discrimination, Consideration of Reports submitted by States parties under Article 9 of the Convention. Concluding observation: Denmark (New York: August 2006), p. 5; the Danish Institute for Human Rights, Supplementary Report to Denmark’s 4th Periodical Report to the UN Committee on Economic, Social and Cultural Rights 2004 (Copenhagen: October 2004) p. 2; Documentary and Advisory Centre on Racial Discrimination, Submission to the UN Committee on the Elimination of Racial Discrimination at its 69th session on the consideration of the 16th and 17th periodic reports of Denmark (Copenhagen: 8 June 2006) p. 2; and ENAR, Shadow Report 2005. Racism in Denmark (n. p.: 2006), p. 15.

¹³ International Helsinki Federation for Human Rights, Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006 (Vienna: 2006) pp. 147-148.

¹⁴ « Bilingual student » or pupil is the term that designates a child who has at least one foreign parent.

42. As regards gender equality, the Danish legislation is not applicable in the Faeroe Islands and Greenland and the rights enshrined in the UN Convention on the Elimination of Discrimination against Women (UNCEDAW) have not been fully incorporated in the legislation of those territories where information about the situation of women is still too limited.
43. The Commissioner pays tribute to the various initiatives of the Danish authorities to fight discrimination and racism and to promote an inclusive society. To help identify and adopt additional measures for that purpose, the Commissioner recommends the government to grant social assistance under the same criteria to every person residing in Denmark, to bring the situation of women in the Faeroe Islands and in Greenland in line with that in Denmark, to design positive initiatives to promote inter-religious and intercultural dialogue and promote a fair image of ethnic minorities in the Danish society, to restore the obligation for municipalities to establish an integration council as well as to ratify the revised European Social Charter, sign and ratify the 1991 Protocol amending the European Social Charter, ratify the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and to sign and ratify the additional Protocol 12 to the ECHR.

The situation of the Roma

44. In the 2004 report, concern was expressed over a number of reports of discrimination against Roma regarding access to employment, housing and education. The Commissioner was particularly concerned to learn of difficulties faced by Roma children in accessing education. In the municipality of Elsinore there were special classes for 30 Roma children. The Commissioner pointed out that, on a number of grounds, segregate schooling was detrimental to the Roma children and asked for alternative solutions to be found. He recommended ensuring equal access to quality education for all children, countering the segregation of ethnic minority children, including Roma children.
45. The Danish Ministry of Education found that the municipality of Elsinore had violated the Act on Public Schools by establishing special classes for pupils with a high absence rate. As a consequence, these classes were closed by the summer 2005.
46. The Commissioner welcomes the measures adopted and invites the Danish authorities to actively involve Roma people in issues that are relevant to them.

IV. CRIMINAL JUSTICE, THE POLICE AND THE PRISON SYSTEM

The use of isolation in prisons and pre-trial detention

47. The Commissioner observed in 2004 that, further to international criticism, isolation for remand prisoners ordered by the courts had significantly decreased and that the same was true regarding the use of isolation as a disciplinary punishment by decision of the prison director. But it seemed to him that the use of isolation was still fairly common in Denmark.
48. In 2005, the number of cases of solitary confinement by court decision was again on the rise and concerns arose about the possibility that such a measure could be adopted also as regards minors. Although the 2004 changes in the Administration of Juvenile Act provide clear, exhaustive rules for measures that may be taken against minors under 15, the delegation was informed about concerns over the practice of solitary confinement and imprisonment in youth institutions of minors below 18 with serious behavioural problems. It was explained to the delegation that minors might

find themselves alone in a prison (i.e. with no other minors, while being separated from the adults as a requirement of the European prison rules) because of the mere fact that few minors are imprisoned and that those are often spread over the country's prisons due to the necessity to bring them before the judges in the places where they are indicted.

49. The delegation was informed by the Ministry of Justice officials it met that a bill amending the provisions on solitary confinement of the Administration of Justice Act would enter into force on 1 January 2007. The main purpose of the amendment is to decrease the number of solitary confinements by court decision and to further limit their duration. In particular, the amendments provide for a tightening of the rules for implementing and extending solitary confinement of detainees under the age of 18, shorter time limits for solitary confinement for detainees of all ages and stricter controls over the request for extension of isolation; introduction of a maximum time limit of six months (to be exceeded only under particular circumstances), the obligation for Court to state reasons more specifically when ordering solitary confinement; an extension of the access to an oral hearing of appeals on solitary confinement and pre-trial court examination of the person charged and of witnesses for the purpose of lifting the solitary confinement, while requests for extension of solitary confinement will always have to be submitted in writing.
50. Regarding solitary confinement as a disciplinary measure the interlocutors of the delegation confirmed that there was now more restraint in using such measure and they underlined that the inmate concerned could bring the case to the court if the confinement lasted longer than 7 days.
51. Finally, as regards the absence of a definition and of an explicit prohibition of torture in the Danish Criminal and Military Criminal Codes, the delegation was informed that torture is covered by provisions on violence and threats and that in June 2006 the Minister of Justice asked the Penal Reform Council to examine the issue.
52. The Commissioner welcomes the new legal provisions that further qualify and narrow the scope of court decisions ordering solitary confinement and he expresses the hope that prison authorities in Denmark would show restraint in using solitary confinement as a disciplinary measure. The Commissioner is pleased that the discussion about introducing a definition of torture and its express prohibition in the Danish criminal codes has now started in Denmark.

Security detention of indeterminate duration and “medical castration” (anti-hormone therapy)

53. In the 2004 report the Commissioner flagged his concern that a prison sentence of indeterminate duration as established under the Danish law (“safe custody” under Article 72 of the Danish Penal Code) confounded the principle of legal certainty and he considered it of paramount importance that judicial review of such a sentence is available at reasonable intervals from the very outset. The Commissioner was informed that the way decisions of “safe custody” were handled and reviewed in Denmark indicated great caution and restraint on behalf of all the authorities involved.
54. The Commissioner was also informed of the use of the so-called “medical castration” of sex offenders held in safe custody, all of them at the Herstedvester Prison. Although this treatment was administered on a voluntary basis, the Commissioner was concerned by the pressure put on the detainee to accept it, since the treatment

was almost always a precondition for release on parole. The Commissioner believed it essential that the detainees were able to make an informed and free decision on the treatment and that its long-term side-effects were carefully studied.

55. The delegation was informed that at the time of its visit 33 detainees were kept in safe custody. These detainees were very serious offenders, including sexual offenders, and their dangerousness was assessed by a panel of experts including psychiatrists on the basis of which judges decide on whether or not to order or extend safe custody. Officials met by the delegation conceded, however, that for a detainee to be imprisoned without any time limit under the regime of "safe custody" does pose major problems for his or her mental health and behaviour and, by way of consequence, for the modalities of the detention itself.
56. Regarding the anti-hormone therapy as a way to put an end to or to avoid safe custody to sex offenders, a visit to the prison at Herstedvester gave the delegation a chance to learn about the results obtained so far in Denmark. These are encouraging: Since the mid-1990's according to data gathered by the Department of Prisons and Probation no single case of reoccurrence of sexual crime has been registered for offenders who were released on parole on condition to continue the medical castration treatment. As regards informed consent by the prisoner and the possibility to stop the treatment, it was underlined by the delegation's interlocutors that the various safeguards called for by the Commissioner in 2004 are being scrupulously granted.
57. The Commissioner welcomes the information he received from his delegation on the good conditions at the Herstedvester prison and on the encouraging results of anti-hormone therapy when practiced with numerous, strict safeguards. As concerns safe custody, the Commissioner reiterates his predecessor's concerns of principle and the absolute requirement that judicial review of such decision be carried out at short intervals on the basis of thorough expert reports and contradictory examination.

The situation of Greenlanders detained in Denmark

58. Three years ago the Commissioner was concerned by the fact that Greenland had no institution capable of hosting prisoners who have committed serious offences and are in need of psychological treatment under the safe custody regime. As a result convicts from Greenland had to be held in Denmark, far away from their friends and family. The Commissioner recommended to provide the necessary infrastructure and resources in Greenland. His concerns were shared by a number of interlocutors in the Danish authorities and his recommendation basically accepted.
59. At the Herstedvester prison the delegation was informed of the special measures taken to try to compensate for the distance that separates the Greenlanders detained there from their homeland and their family and found that the living conditions offered to them were as good as could be under the given circumstances. The delegation was also informed that the Parliament would discuss the issue in October 2007 in order to find a solution to the difficulties faced in setting-up an adequate establishment in Greenland, namely the need for adequate funds and the lack of qualified professionals available in Greenland or willing to move there. There was, however, an issue of financial burden-sharing between the Danish and the Greenlandic authorities.
60. The Commissioner understands the serious difficulties to build a highly specialised institution with the necessary infrastructure and resources for criminals in need of psychological treatment in Greenland. However, he reaffirms his predecessor's recommendation to set up such an institution. Therefore, he invites the Danish

Government and, possibly, the authorities of Greenland to explore the possibility of setting incentives to attract professionals to Greenland and to find ways to allocate adequate funds for the building and the running of the institution.

Investigation into allegations of improper behaviour by the police

61. In his report of 2004 the Commissioner noted concerns over the independence and effectiveness of the procedures for dealing with complaints against the police, including with respect to firearm incidents and deaths in police custody. Complaints are dealt with the Regional Public Prosecutors who must inform a Regional Police Complaints Boards consisting of two lay men and one lawyer and that delivers non-binding opinions to the Regional Public Prosecutor. The Commissioner noted that at local level Chief Constables represent both the police and the prosecution; in their latter function the Regional Prosecutors are their superiors. He concluded that given such close ties between the prosecution service and the police the independence and role of the Police Complaints Boards was vital in Denmark and his recommendation was to strengthen the independence and role of the Boards by awarding it greater influence over the activity of the prosecution service in investigating and deciding on complaints against the police.
62. The delegation discussed the issue with competent officials of the Ministry of Justice (which in Denmark is responsible for both law enforcement and the administration of justice) as well as the president of the National League of Police Complaints Boards. They informed that the Parliament was indeed considering changes regarding the composition and the role of the Police Complaints Boards but that, as the Commissioner had conceded in 2004, the matter was difficult.
63. The Commissioner insists on the importance of his predecessor's recommendation made three years ago that the independence and the powers of the Police Complaints Boards need to be strengthened in Denmark.

V. TRAFFICKING IN HUMAN BEINGS

64. In 2004 the Commissioner hailed Denmark's efforts to raise public awareness of trafficking in human beings and to fight that crime effectively. As regards the protection of the victims the Commissioner noted that the emphasis was laid on the victim's swift return to the country of origin with "impressive" measures being taken to ensure their safety and their reintegration and help them restart their lives. However, he thought that further consideration should be given to the grounds on which victims of trafficking were allowed to stay in Denmark and the length of such stay. He recommended that permission to stay in Denmark be given automatically to witnesses for at least the duration of the criminal proceedings irrespective of whether they were staying lawfully or unlawfully in the country, rather than leaving such decisions to the discretion of the immigration authorities. The right to stay beyond the time of the criminal proceedings should also be considered as the threat of quick deportation made victims more reluctant to inform on traffickers and act as witnesses. The Commissioner also recommended to take into account the specific protection needs of children victims of trafficking for whom no particular measures were foreseen in the 2002 Government's Action Plan to combat trafficking.
65. In 2005, the Danish authorities added an appendix to the original action plan against trafficking to cover also specifically questions relating to children and to carry out additional initiatives. In 2006 the Danish authorities signed the Council of Europe Convention on Action against Trafficking in Human Beings.

66. In March 2007 the new Action Plan 2007-2010 was published. It covers all persons trafficked to Denmark and strengthens the efforts already undertaken to increase public awareness, improve domestic and international efforts, provide support and assistance to victims and take traffickers to justice. According to the Action Plan, victims are now granted a reflection period of 30 days (from 15 days in 2004) before they are returned to their country of origin. Victims who cooperate with the authorities may obtain an extension of up to 100 days. EU nationals may, as a starting point, stay for up to three months in Denmark.
67. Trafficked children may, as other aliens, seek asylum in Denmark. Special guidelines have been drawn up for processing children's applications. If a child's application is rejected, the child can still, in certain cases, be granted a residence permit if the situation in his/her country of origin is unsafe.
68. The Commissioner warmly welcomes the many initiatives undertaken to fight against trafficking in human beings and the fact that Danish authorities have set this fight as one of their priorities. He is glad to note that there are now specific provisions in the action plan to deal with trafficked children. However, he reiterates the recommendation to grant a temporary, if not permanent, residence permit to victims of trafficking who cooperate with the authorities. Also, he calls on the Danish authorities to ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

VI. THE USE OF IMMOBILIZATION IN PSYCHIATRIC ESTABLISHMENTS

69. In the 2004 report, the Commissioner recommended adopting a legislation imposing tighter controls on the use of restraining measures in the treatment of psychiatric patients and introducing alternatives to long-term immobilisation. He referred to criticisms of the Committee for the Prevention of Torture and national human rights actors which questioned the use of immobilization and emphasized that long periods of restraints had no medical justification. The Commissioner welcomed the intention of the Minister for Interior and Health to address this issue in the revision of the Danish Psychiatric Act in 2005-2006, but called on the Minister to introduce alternatives to the use of long periods of immobilization without delay.
70. The delegation went to the Glostrup psychiatric hospital and spoke with the Director and several of his colleagues and visited the institution (which they found very commendable, by the way). The practitioners explained in detail the new Danish Psychiatric Act that was going to enter into force as of January 2007. It establishes the requirement of medical control of the necessity of an immobilisation every four hours and, if the immobilisation exceeds 48 hours, the need for a concurring opinion by a second medical doctor¹⁵.
71. The delegation was also told that, after the Commissioner's visit in 2004, a pilot project was launched to see if alternative measures to long-term immobilisation could indeed be used. The results of the project proved that this was the case to quite some extent. As a consequence, the use of immobilisation has now dropped significantly in some Danish psychiatric institutions.

¹⁵ In case of disagreement the view of the treatment doctor takes precedence. The practitioners met expressed satisfaction with the new Act except on one issue which they judged not realistic: The need of a formal medical check before starting a restraining measure does not take into account the fact that patients' crises occur most often rather suddenly and not necessarily at hours where several doctors are immediately available, leaving no time for formal prior double-check.

72. The Commissioner notes with appreciation that both the Danish legislators and practitioners have taken action in line with his predecessor's recommendations.

VII. VIOLENCE AGAINST WOMEN

73. In the 2004 report, the Commissioner recommended the adoption of a more flexible approach in the granting of residence permits to foreign women who cease to live with their violent partners. He pointed out that such women were in a particularly vulnerable situation since the violent men frequently abused their fear of losing their residence permit in the event of the marriage or cohabitation being terminated, as persons who have come to Denmark for family reunification are normally subject to a 7-year residence requirement before they can apply for a permit in their own right. The Commissioner welcomed the possibility of exemption from that requirement for victims of domestic violence under the Danish Aliens Act but noted that there seemed to be significant difficulties in obtaining such exemption in practice.
74. The delegation visited the Kvindehjemmet in Copenhagen, the largest shelter for women and children victims of domestic violence, and found the conditions commendable. The centre hosted at that moment 41 women and 35 children, with ethnic women highly represented (almost 80%). The delegation was informed about the difficulties foreign women victims of violence have in obtaining a residence permit on their own right, thus becoming too dependent on the violent spouse. As a consequence of this dependency, some women decided to leave the centre and rejoin their violent partner. The delegation was also informed about the different pedagogical activities that the centre organised for children and was positively impressed by the commitment of the centre's personnel.
75. The delegation was informed that immigrants who leave a violent partner after having dwelled in the country for at least two years may apply for a residence permit and will normally obtain it. A study on the issue was expected to be available by the end of 2006¹⁶.
76. The Commissioner notes with satisfaction that, in line with the 2004 recommendation of his predecessor, exemptions from the 7-year residence requirement for obtaining a residence permit are indeed usually made for foreign spouses (and their children) who have dwelled at least two years in Denmark before quitting their violent partner. He recommends that the Danish authorities grant at least a temporary residence permit to victims of domestic violence in Denmark who have not yet lived for two years in the country.

VIII. SUMMARY OF RECOMMENDATIONS

The Commissioner for Human Rights recommends that the Danish authorities
with respect to the situation of ethnic minorities, immigrants, refugees and asylum-seekers

1. reduce the minimum age requirement of both spouses from 24 to 21 years for their reunification in Denmark when at least one of them needs a residence permit;

¹⁶ The delegation also received information on a number of other important government initiatives against domestic violence, such as the gradual use of restraining orders against the perpetrators. Under the Exclusion Act (with respect to which a recent study showed, however, a number shortcomings) and the possibility for violent men to receive treatment.

2. reduce the requirement of 28 years of citizenship of the person living in Denmark for an exemption from the condition of both spouses having aggregate ties to Denmark that are stronger than with another country for granting a residence permit to his or her foreign partner;
3. remove the requirement of a bank guarantee of approximately 7,500 € from the list of economic conditions for family reunification;
4. raise the maximum age limit of 14 for the family reunification of children to 17 years;
5. add the competences of representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs to those of the other members of the Refugee Board;
6. try to find alternative solutions to the indefinite confinement of adults and children in reception centres when it is impossible to deport foreigners whose applications to stay have been finally rejected;

with respect to the fight against discrimination, racism and exclusion

7. grant social assistance under the same criteria to every person residing in Denmark, without discrimination on the grounds of legal status or length of residence;
8. bring the situation of women in the Faeroe Islands and in Greenland in line with that in Denmark;
9. design positive initiatives to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society;
10. restore the obligation for municipalities to establish an integration council;
11. ratify the revised European Social Charter, sign and ratify the 1991 Protocol amending the European Social Charter, ratify the 1995 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints and sign and ratify the additional Protocol 12 to the ECHR;

with respect to criminal justice, the police and the prison system

12. set up an institution in Greenland for the detention of serious criminals in need of psychological treatment;
13. strengthen the independence and the powers of the Police Complaints Boards;

with respect to trafficking in human beings

14. grant a temporary, if not permanent, residence permit to victims of trafficking who cooperate with the authorities;
15. ratify the Council of Europe Convention on Action against Trafficking in Human Beings;

with respect to violence against women

16. grant a (temporary) residence permit to foreign women who are victims of domestic violence in Denmark even when they have lived less than two years in the country.

A P P E N D I X

Comments by the Danish Government

1. General remarks

The Danish Government is pleased that the Human Rights Commissioner appreciates initiatives taken by Denmark in the area of integration and that he acknowledges other initiatives taken in the area of asylum and migration since the report of the previous Human Rights Commissioner. The Government has had a good dialogue with the Secretariat of the Human Rights Commissioner in the drafting of his memorandum.

The Commissioner has a strong focus on the Danish legislation on family reunification and recommends several changes in line with the recommendations made by his predecessor in 2004.

The Danish Government does not agree with these recommendations. The Danish Government continues to maintain that the Danish rules on family reunification do not amount to unfounded discrimination and do not violate ECHR article 8.

In this regard, it should be noted that the Government considers it crucial for Denmark to observe its international obligations, including the European Convention on Human Rights and the UN Refugee Convention. Therefore the Danish Aliens Act, including its rules on family reunification, has been developed in respect of these obligations.

In the processing of applications for a residence permit in Denmark the immigration authorities always consider whether, in the specific case, an applicant should be granted a residence permit despite non-fulfilment of one or more of the statutory conditions in the Danish Aliens Act to ensure regard for the observation of the international human rights obligations, including the right to family life.

Furthermore, particular emphasis should be put on the fact that the Danish Government has developed rules in order to increase managed migration as a tool to improve the successful integration of immigrants into the Danish society.

Besides being a means to ensure managed migration, the Government sees the Danish rules as a means to support the integration of immigrants. It appears from the draft memorandum that the Human Rights Commissioner has another opinion.

As noted in the comments below, the Danish Government stresses the importance of the many positive initiatives in the area of integration. Integration is an ongoing process, but it should be emphasised that progress is made day by day.

It should be noted that in its memorandum of 22 September 2004 the Danish Government commented on the report of 8 July 2004 by Mr. Alvaro Gil-Robles, the previous Commissioner for Human Rights, as regards the part of the report concerning foreigners. Already in the memorandum of 22 September 2004 the Danish Government put forward a range of arguments to support the legislation and policies that Mr. Alvaro Gil-Robles alluded to in his report.

The Danish Government suggests that the comments below to the draft memorandum of the Human Rights Commissioner be taken into account when drafting his final memorandum.

2. The recommendations

Recommendation 1 on the minimum age requirement from 24 to 21 years

The Commissioner for Human Rights (hereinafter the Commissioner) recommends that the Danish authorities reduce the minimum age requirement of both spouses from 24 to 21 years for their reunification in Denmark when at least one of them needs a residence permit. The Commissioner finds the age limit disproportionate in view of the extent of the exception to the right to privacy and family life, cf. ECHR article 8.

In that respect the Commissioner in para 9 notes that funds for the Government's action plan against forced marriages were sharply reduced in 2005-2007. The details appear in footnote 6 of the Commissioners Memorandum.

Further, the Commissioner in para 9 notes that while drafting the report he got the impression that no sound statistics on the impact of the age limit on the number of forced marriages were available.

In para 10, the Commissioner reiterates his predecessor's concern that the 24 year age limit bars too many truly consenting partners from enjoying the right to family life in Denmark and recommends that the Government put the age requirement for living together on Danish soil with a foreign partner more in line with the rules applying to Danish couples.

Comments by the Danish Government

The Government finds no grounds for amending the minimum age requirement of 24 years for spouses for family reunification. The Danish Government still finds that the age limit is in line with ECHR article 8 and would like to add the following:

The Government maintains that the 24 years rule is necessary to prevent young people from being forced to marry or entering into arranged marriages for family reunification purposes. The Government finds the 24 years rule effective, because it protects young people against pressure in connection with the entering into a marriage in the light of the fact that the older a person is, the better s/he can withstand pressure from his/her family or others.

Additionally, the rule promotes better integration, because it contributes to improved educational and work opportunities for young people.

If it is found, that the applicant can not be granted a residence permit according to the Aliens act section 9 (1) (1) because of at least one of the spouses' young age, as common practise an assessment will be conducted as to whether there are circumstances which as a consequence entail that the applicant must be granted a residence permit according to the Aliens Act section 9 (c) (1). This includes an assessment of ECHR art. 8.

It should in this regard be noted that the Danish Government in line with the recommendation of former Commissioner recommendation, the Danish Government has included a reference to the right to family unity of refugees in the relevant provision of the 2005 Aliens Act. The reference indicates the reasons, which allow the exemption from conditions for granting a residence permit for the purpose of family reunification.

The Commissioner for Human Rights recommends the reduction of the minimum age requirement to an age limit of 21 years or below. The Government notes that the Commissioner in para 10 accepts that there can be a minimum age requirement higher than 18 years. The Government is of the same opinion and considers 24 years the age limit best suited to attain the above-mentioned goal.

The action plan against forced marriages mentioned by the Commissioner covered the period 2003-2005. But many of the initiatives in the action plan are continuing, and the funds dedicated to the fight against forced marriages are still considerable. Furthermore, the focus is no longer only on forced marriages but on honour related violence in general.

The funds at state level allocated to the fight against forced marriages and honour related violence in families, are as follows:

2004: 16.5 million DKK ~ 2.2 million €

2005: 6.8 million DKK ~ 0.9 million €

2006: 8.1 million DKK ~ 1.1 million €

2007: 13.2 million DKK ~ 1.8 million €

2008: 10.4 million DKK ~ 1.4 million €

2009: 5 million DKK ~ 0.7 million €

2010: 5 million DKK ~ 0.7 million €

The funds are for example spent on:

- Shelters for women and girls who are in danger of a forced marriage or have escaped a forced marriage
- Hotline offering advice for young people experiencing honour related violence
- Hotline for professionals dealing with youngsters
- Specialised “ethnic team” which can advise the municipalities in these difficult cases
- Information to the municipalities for example in the form of an Internet based tool case, seminars etc.
- Lectures for parents and children belonging to ethnic minorities
- “Attitude campaigns”

Some of the coming initiatives consist of:

- A shelter for young couples who are in danger of forced marriages or have escaped a forced marriage
- Aftercare for such young couples
- A corps of professional mediators
- A corps of ethnic male role models

Furthermore, funds have been dedicated to strengthen the initiatives for ethnic women and their families. The funding comprises 12 million DKK ~ 1.6 million € in 2006, 6 million DKK ~0.8 million € in each of the years 2007 and 2008 and 4 million ~0,5 million € DKK in 2009. Some of these funds can be allocated to initiatives against forced marriages, honour related violence in the family, re-education journeys etc.

As regards the Commissioner's comment on the lack of adequate statistics, it is correct that there is no direct statistical evidence of any correlation between the introduction of the age limit and the number of forced marriages. Such statistical evidence is very difficult to produce due to the obvious difficulties in assessing the number of forced marriages.

However, the annual statistical report concerning foreigners "*Tal og fakta – befolkningsstatistik om udlændinge*", published by The Ministry of Refugee, Immigration and Integration Affairs on 18 June 2007 provides strong indications of the age limit having an effect on marriage patterns among immigrants and descendants from non-western countries.

- The report shows that the general age of marriage among immigrants and descendants from non-western countries has increased noticeably from 2001 to 2006.
- Furthermore, the report shows that the share of marriages with foreign spouses within the group of immigrants and descendants from non-western countries living in Denmark, has dropped from 62.7 percent in 2001 to 37.8 percent in 2006.

Forced marriages typically involve relatively young immigrants or descendants from non-western countries and foreign spouses. Thus, the changes in marriage patterns, described in the abovementioned report, may indicate that the number of forced marriages can be expected to decrease as a result of the age limit.

Recommendation 2 on the 28 years of citizenship exception to the rule on aggregate ties to Denmark in cases on family reunification

The Commissioner recommends a reduction of the requirement of 28 years of citizenship of the person living in Denmark for an exemption from the condition of both spouses having aggregate ties to Denmark that are stronger than those with another country for granting a residence permit to his or her foreign partner (hereinafter the 28 years rule).

Comments by the Danish Government

The Government finds no reason to amend the 28 years rule.

The Government refers to its memorandum of 22 September 2004 as regards this issue. Thus, the Government continues to find that the 28 years rule is not in contradiction with the principle of equality.

The 28 years rule represents an objectively based deviation from the condition of ties stipulated by the Aliens Act in cases, where the person who wants to bring his or her spouse or regular cohabitant to Denmark has held Danish citizenship for 28 years. The 28 years rule is therefore an exception to the condition of ties and reflects a standardised assessment of ties. Therefore, it is necessary to require citizenship of a certain length of time. Thus, a 28-year-old Danish national will normally be found to have such ties with Denmark that it is possible to refrain from making a condition of ties. Hence, there are objective reasons for the differential treatment accorded to citizens depending on the length of their citizenship.

In order to ensure equal treatment of Danish nationals and foreign nationals living in Denmark in comparable situations the legislation specifies that an exemption from the condition of ties will generally also apply to persons who have not held Danish nationality for 28 years, but were born and grew up in Denmark, or arrived in Denmark as small children and grew up in Denmark, when they have resided lawfully in Denmark for 28 years.

Recommendation 3 on the bank guarantee in cases on family reunification

The Commissioner recommends a removal of the requirement of a bank guarantee of approximately 7,500 € from the list of economic conditions for family reunification in order to avoid discrimination on the grounds of economic conditions, cf. para 17 in the Commissioner's draft Memorandum.

Comments by the Danish Government

The Government does not find that there is reason to change the regulation regarding the demand for financial security in connection with family reunification for spouses.

Reference is made to the Governments memorandum of 22 September 2004.

The Government finds that as a starting point everyone must be self-supporting. This also applies to aliens arriving to Denmark as part of a family reunification for spouses. Thereby it is ensured that the person in question does not burden the state. At the same time this will contribute to a greater goodwill and understanding towards foreigners from the public in general.

Family reunification for spouses is therefore as a starting point granted on the condition that the person residing in Denmark deposits app. 50.000 DKK as financial security for the coverage of possible future public expenditure for the purpose of helping in accordance with the Act on an Active Social Policy or the Integration Act, which is granted to the applicant.

In the draft Memorandum the Commissioner mentions the fact that the amount has been increased from 50.000 DKK in 2002 to 56.567 DKK in 2006. It should be noted that this is an ordinary adjustment of the amount relative to the increase of salary payments in the Danish job market. Thus there is no decision to increase the amount. The adjustment was presumed necessary when the requirement for financial security was introduced.

The demand for deposition of financial security does not imply a demand that the person in question must possess 50.000 DKK as the person can provide a Banker's Guarantee, which typically carries with it a fee of 1.500 DKK per year.

The position suggested by the Commissioner on discrimination on the grounds of economic conduct would imply that no country would be able to maintain or introduce a requirement of self-maintenance as such a requirement per se always will involve the property or financial capacity of the persons concerned. The Danish Government does not support this position.

In 2006 as an alternative to the financial security requirement it was made possible to deposit a sum corresponding to the size of the security, in a financial institute. The spouse residing in Denmark is now able to choose between providing a security and making a deposit. The deposition of the amount in a financial institute will usually be cheaper than providing security, as the deposition carries no annual fee.

It is emphasized, that exceptions can be made from the requirement for security, where family reunification of spouses is allowed as a consequence of Denmark's international obligations.

In addition, the Government points to the fact that a simplification of the requirement for self-maintenance by act no. 89 of 30 January 2007 in the Aliens act section 9 (3) has been introduced rendering the decision independent of a person's income, as long as the person is self-maintaining. The decisive factor in regard to the assessment of ability to self-maintenance is thus whether help is received 1 year prior to the decision regarding family reunification and until the possible granting of a permanent residence permit.

Furthermore it should be noted, that the European Court of Human Rights in the decision *Haydarie vs. the Netherlands* and in the judgement *Konstantinov vs. the Netherlands* states that the Court in principle "does not consider unreasonable a requirement that an alien having achieved settled status in a Contracting State and who seeks family reunion there must demonstrate that he/she has sufficient independent and lasting income, not being welfare benefits, to provide for the basic costs of subsistence of his or her family members with whom reunion is sought."

Recommendation 4 on the maximum age limit of 14 for the family reunification of children

The Commissioner recommends raising the maximum age limit of 14 for family reunification of children to 17 years. He urges the Danish Government to revise the family reunification rules with respect to the age limit for children in order to bring the

Danish legislation in line with the international definition of the child (i.e. a person below the age of 18) and the presumption that living with the family is in the best interest of a child, unless the contrary is proven.

The Commissioner furthermore notes in para 20 that instead of a 14 year age limit a constructive dialogue with the Danish Institute for Human Rights and specialised NGOs could help better understand the phenomenon of re-education journeys, assess its possible effects on integration in Denmark and, if appropriate, identify and implement alternative effective measures. The Commissioner also believes that links with the country of origin should not automatically be deemed to be dangerous for the purpose of integration in the country where the child lives with the parents.

Comments by the Danish Government

The Government is still of the opinion that the Convention on the Rights of the Child does not automatically confer a right to family reunification on children below the age of 18 and therefore finds no reason to change the legislation in this area.

The Government refers to its memorandum of 22 September 2004 as regards this issue.

The Government finds, that it can be derived from the existing case law from the European Court of Human Rights (ECHR) regarding article 8 in the European Convention of Human Rights in relation to family reunification with children that families according to the European Convention of Human Rights article 8 do not have an immediate right to choose the country where they wish to practice their family life, and that in each case where a child applies for family reunification with parents residing in Denmark, a concrete assessment must be made as to whether it is proportionate to dismiss an application for residence permit.

In cases where the child at the time of application has been separated from the parent resident in this country for a period of time, the Government finds, that it can be derived from the case law of the ECHR that in applying the proportionality assessment emphasis must in particular be placed on the reason for the separation of the family in the concrete case. If the separation is due to the choice of the parent residing in Denmark to leave the child in the home country and seek a residence permit in the state of residence, this condition will weigh greatly in disfavour of granting the right to family reunification. Even more so this will be the case if a considerable time has passed since the reference's entry into the state of residence and until family reunification is applied for.

In addition, when carrying out the proportionality assessment emphasis will amongst other factors be placed upon the applicant's family, cultural and linguistic ties to the country of origin, the applicant's age and whether there are substantial barriers to practicing family life in the country of origin and/or continuously to practice family life to the present extent via visiting stays.

The Danish immigration authorities will in connection with an application for family reunification from a child conduct an assessment of whether special reasons are present that render it necessary to grant permission to family reunification of a child in this country even though the child does not fulfil the condition that it should be under the age of 15 years at the time of application.

In cases where denial of family reunification would be in conflict with the international obligations of Denmark and family reunification cannot be granted according to the Aliens act section 9 (1) (2), a residence permit will thus be issued according to section 9 (c) (1) of the Aliens Act.

This could for instance be the case if the child and the parent residing in Denmark otherwise have to live as a family in a country, which the person residing in Denmark does not have the possibility to enter into and reside in together with the applicant – for instance due to health reasons or rights connected to the asylum status.

This is for instance also the case if one of the child's parents who is residing in the home country and with whom the child resides, is granted permission to family reunification of spouses in Denmark with a person that is not the child's parent and if the child has not previously shared family life with the other parent who is still residing in the home country.

This also applies if the establishment of family life with the parent who is still residing in the home country must be assumed impossible or if the best interest of the child goes against referring the child to establishing family life with the parent who is still residing in the home country.

Thus, children between 15 and 18 years of age are not barred in general terms from applying for family reunification. The immigration authorities thus examine all applications for family reunification with children. The lowering of the age limit from 18 to 15 years merely means that children between 15 and 18 do not have a statutory right to family reunification. The rule is no expression of a prohibition against residence permits for these children.

Furthermore, it should be noted, that the European Court of Justice in its judgement C-540/03 states that a condition for integration provided for by Member States' legislation existing on the date of implementation of the Family Reunification Directive in order to examine the specific situation of a child over 12 years of age arriving independently from the rest of his or her family cannot be regarded "as running counter to the fundamental right to respect for family life, to the obligation to have regard for the best interests of children or to the principle of non-discrimination on grounds of age, either in itself or in that it expressly or impliedly authorises the Member States to act in such a way."

The Government believes that the best interests of the child must be the primary consideration in all matters affecting the child. The very reason for reducing the age limit to 15 years was, in fact, consideration for the best interests of the child.

With the rule, the Government wants to prevent children from being sent on re-education journeys to the parents' countries of origin and thus being separated from their parents living in Denmark.

The rule also encourages parents living in Denmark to apply for family reunification with their children as soon as possible to allow the family a life together. Examples were seen of parents letting their children stay in their country of origin until they were almost 18 years old either with one of the parents or with other family members in order to give the child an upbringing in accordance with the culture of their country of origin. Out of consideration for the child and for purposes of integration a child who is to live the rest of its life in Denmark should spend its childhood in Denmark and not in the parents' country of origin.

However, this does not mean that the Government believes that links with the country of origin should "automatically be deemed to be dangerous for the purpose of integration in the country where the child lives with the parents".

Since 2004, the Government has carried out various initiatives in order to obtain further understanding of the phenomenon of re-educational travels. In the autumn of 2004, the Government initiated two independent study-projects to acquire information concerning the quantity of re-educational travels and the qualitative consequences thereof.

The Government acknowledges that links to the country of origin should not automatically be deemed dangerous for the process of integration. However, it is the Government's perception that each incident that involves a child's lasting absence from school in order to be replaced within the cultural context of the country of origin marks a serious threat to the child's process of integration into Danish society.

Following the research made available, the Government appointed a cross-ministerial working group in order to identify relevant actions in regard to prevent re-educational travels considered harmful for the child's education and general integration process in Danish society. The working group published a report in June 2006 listing a number of initiatives, which are to be implemented throughout 2007. Among the initiatives are:

- Developing a valid procedure for collecting reliable data concerning re-educational travels. A pilot study is being carried out throughout 2007.
- Providing information for embassies, municipalities, schools, parents and children: All relevant actors are to receive information on the subject matter. The Ministry of Refugee, Immigration and Integration Affairs is to collaborate with the National Council for Children in order to provide children with information on rights and responsibilities in regard to family problems, including possible re-educational pressure from parents.
- Providing grants to support the establishment of networks and support-groups for youngsters experiencing generational conflicts. The Ministry of Refugee, Immigration and Integration Affairs provides financial aid to various NGO's offering support and counselling to youngsters and parents experiencing family conflicts. Also, additional grants are to be provided for the set up of a telephone advice-line for parents experiencing generational conflicts specifically related to trans-cultural challenges.

The Government believes that the initiatives will have a preventive effect in regard to re-educational travels in particular and generational conflicts in general. Also, the Government believes that the initiatives will bring further clearance to the understanding of the phenomenon and its possible effects on integration in Denmark.

Recommendation 5 on the composition of the Refugee Board

The Commissioner recommends adding the competences of representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs to those of the other members of the Refugee Board.

Comments by the Danish Government

The Government does still not agree with the Commissioner's recommendation regarding restoring the original composition of the Refugee Board by adding representatives of the Danish Refugee Council and of the Ministry of Foreign Affairs as members of the Board.

The Government refers to its remarks in its memorandum of 22 September 2004 concerning this issue.

The Government remarks that the actual independence of the Refugee Board has never been called into question. This also goes for the period before an amendment of the Aliens Act of 1 July 2005, in which the independence of the Refugee Board was explicitly stipulated in section 53.

The Government draws attention to the fact that the former Commissioner for Human Rights in his report from 2004 recognised that the Board members' independence was also at that stage safeguarded by law. The mentioned amendment of the Aliens Act in 2005 only serves to further clarify the independence of the Refugee Board.

For the Government, it is not clear in what exact manner participation by the Danish Refugee Council and the Ministry of Foreign Affairs on the Refugee Board is supposed to reinforce the expertise of the Board. The Government also remarks that neither the former Commissioner nor the present Commissioner has described in detail why the Refugee Board with its current composition is not found to be sufficiently qualified.

Finally, it should be noted that the Refugee Board, also with its current composition, possesses a high degree of legal expertise in general and in asylum law in particular, which is supported by secretariat assistance to the Board. The Board is also in possession of an extensive selection of background information from a large number of sources, including the Ministry of Foreign Affairs and the Danish Refugee Council.

Recommendation 6 on confinement of finally rejected asylum seekers in reception centres

The Commissioner recommends that the Danish Government try to find alternative solutions to the indefinite confinement of adults and children in reception centres when it is impossible to deport foreigners whose applications to stay have been finally rejected.

Comments by the Danish Government

The Government agrees that asylum seekers shall not remain in the asylum centres for several years. Consequently the Government has made a serious effort in order to reduce the time for procedures in cases of asylum.

If an asylum seeker is denied asylum it is his or her duty to leave the country. It is crucial for the legitimacy of the asylum system that rejection of an application for asylum actually results in the asylum seeker leaving the country.

Therefore the Government has consistently maintained that rejected asylum seekers have an obligation to leave the country for their homeland voluntarily, in cases where home journey is possible.

In such cases a rejected asylum seeker should not – by denying to abide by the authorities' rejection of asylum etc. – through counteracting be able to exert pressure to obtain a residence permit.

The Government would like to stress that rejected asylum seekers who can leave Denmark voluntarily only reside in this country because they refuse to respect the decision by the Danish authorities to reject their application for asylum and to have them leave the country. All asylum applicants in Denmark have received a thorough treatment of their cases by the authorities, i.e. the Danish Immigration Service and the Refugee Board.

The number of attempted suicides in Danish asylum centres has been slightly increasing during the last years. In comparison with the fact that the amount of persons in the centres has been declining, this results in an increasing number of incidents.

The Government is aware of this development and has therefore initiated a number of improvements of the conditions in the centres.

With the amendment to the Aliens Act implemented in 2006 the possibility of offering courses and activation was introduced also for rejected asylum seekers, if they contribute to their own departure. Education and activation must generally be considered good for the health and quality of life of the asylum seekers, and it is expected that this will encourage the rejected asylum seekers to return to their home country and start a new life there.

The Danish Parliament has on 1 June 2007 passed a bill introduced by the Government which means that rejected asylum seekers who until now have not assisted with their departure – in cases where voluntarily but not compulsory departure is possible, can be offered a total upgrading scheme in Denmark and in the home country in addition to economic support when returning to and help to housing and employment in the home country. The rejected asylum seeker must in return agree to cooperate in connection with the departure and voluntarily depart Denmark.

Specific criteria apply concerning which groups of rejected asylum seekers the scheme includes. It is thus among other things a condition that bigger supporting projects are planned or initiated as part of the reconstruction efforts in a country after war.

For practical reasons the offer is at first given to rejected Iraqi asylum seekers. The scheme is to be evaluated by 1 May 2008. If the scheme fulfils its purpose the Minister for Development Cooperation can extend the offer to other groups of rejected asylum seekers if the criteria are met. The scheme is based on a completely voluntary concept.

An examination undertaken by the Danish National Institute of Social Research of the conditions in the asylum centres in Denmark ("Living conditions for children with family in the Danish asylum centres", published October 2006) confirms that families who have been denied asylum and will not depart voluntarily can suffer during a stay of long duration in the centres, but the draft Memorandum links the difficulties in the families to the rejection of asylum. The conditions in the centres also play a vital role.

The same examination shows that the settings for education, activation and health treatment are good, that the children are happy about the education and activation activities and that health treatment lives up to what is offered children outside of the asylum centres.

The examination was conducted during the spring of 2006 and describes the situation before the Government implemented a series of improvements in relation to the conditions on the asylum centres. In May 2006 the Government injected 37,6 million DKK to the improvement of the conditions at the asylum centres, especially the conditions for families with children. The improvements also concern rejected asylum seekers and the funds will also cover support for returned asylum seekers in their respective countries of origin. In 2007 and 2008 respectively 47,3 and 44,5 million DKK have been allocated to continue the initiatives.

Families with children are offered accommodation in 2 rooms as part of the Government's efforts to create the best possible environment for children in asylum centres. Furthermore, self-housekeeping was introduced at Centre Avnstrup in summer 2006, which has resulted in increased well being at the centres and a strengthening of family ties. The Government is now expanding this scheme, so that rejected asylum seekers accommodated in Centre Sandholm can receive the same offers regarding subsistence allowances and self-housekeeping.

Concerning the movement of asylum seeker-families, cf. para 31 of the Commissioner's draft Memorandum, the Government can inform the Commissioner that some asylum seekers have moved several times due to the large decline in the number of asylum seekers, which has made it necessary to close some centres.

In addition, circumstances in relation to the ordinary procedures, have resulted in the movement of asylum seekers. When asylum seekers enter the country and apply for asylum the person concerned will usually be registered at Centre Sandholm. After that the asylum seeker moves to an accommodation centre. When the asylum procedure is

finished, an asylum seeker who has received asylum stays at the accommodation centre until the person can be offered housing in the receiving municipality. Asylum seekers who do not receive asylum can stay in the accommodation centre if they agree to voluntary return. Asylum seekers, who do not agree to voluntary return, are moved to a deportation centre.

Following these general remarks, the Danish Government has some additional comments on the paragraphs underpinning recommendation no. 6 by the Commissioner (para 28-30)

Para 30 states that the persons staying in the reception Centre Sandholm are "isolated from the outside world". This is not correct. Sandholm reception centre is not a closed centre. There is control of access to the centre, but the persons living there can enter and leave as they please. Hence, they are not confined.

Para 30 furthermore states that the persons staying in the reception centres "have to face the prospect of having to stay in the Danish centres for what could be the rest of their lives".

As already mentioned, the persons in question are rejected asylum seekers; their applications have been finally turned down and they have overstayed the deadline given to them regarding their leaving Denmark. These rejected asylum seekers can leave Denmark voluntarily if they so wish. Moreover, it follows from section 9 (c) (2) in the Danish Aliens Act that upon application rejected asylum seekers can be granted a residence permit if they can not return to their home country, provided that for 18 months they have cooperated with the Danish authorities in making a return possible.

Para 31 and 32 state that persons i.a. children "have been held in reception centres" and that they are staying in "unlimited confinement". Following the comment above to para 30 it should be stressed that the children are not deprived of liberty; they are not confined to the reception centres.

In para 32, the Commissioner deplores a situation where the authorities insist on the absence of a legal entitlement to stay for the persons held in the centres and the obligation for them to leave the country, whereas this is technically impossible.

As already mentioned, the rejected asylum seekers can leave voluntarily. It is therefore not technically impossible for them to leave Denmark.

Consequently, the Danish Government is not "insisting on deporting" the rejected asylum seekers, cf. para 30 and 32. The Danish authorities are insisting that the rejected asylum seekers leave voluntarily since their application for asylum have been overturned. Only if an applicant does not leave the country voluntarily, forced return may be an option, cf. section 32 (a) of the Danish Aliens Act.

Recommendation 7 on social assistance “starthjælp”

The Commissioner recommends the Danish Government to grant social assistance under the same criteria to every person residing in Denmark, without discrimination on the grounds of legal status or length of residence.

Comments by the Danish Government

The Danish Government firmly believes, that the starting allowance promotes an inclusive society.

The recommendation does not take into consideration that the level of social assistance in Denmark is one of the highest in the world and often exceeds the wage which people without skills can earn in the ordinary labour market.

Until 2002, when the new legislation was passed, newly arrived foreigners typically received such high cash benefits, that the earned income they could otherwise obtain was far lower than the social benefits. Therefore the employment rate especially for refugees was very low - about 9 per cent. In the then new Government’s point of view that policy was very exclusive. Therefore it was important for the Government that benefit rates were reduced to a level that made work pay.

The starting allowance is based on the idea of qualifying principles, which are, to a great extent, used in the field of social security (i.e. pensions).

Persons covered by the new rates during the seven-year period receive, as a minimum, benefits corresponding to the – compared to almost all other countries - advantageous level of the benefits granted to students in Denmark.

The starting allowance has been successful. From surveys it can be established that the reduced allowance increases the encouragement to become self-supporting and that a larger part of the persons receiving the reduced allowance are actually self-supporting than those who receive the high allowance.

The table below shows the development on introduction allowances covering citizens from abroad.

Number of new introduction allowance receivers, who are self-supporting or are participating in education

	Introduction allowance on starting allowance level	Introduction allowance on social assistance level
After 4 quarters	21 %	14 %
After 8 quarters	33 %	21 %
After 12 quarters	45 %	28 %
After 16 quarters	49 %	34 %
After 17 quarters	52 %	35 %

Percentage of all receivers - people in education counts for about 3 percentage points

The table shows - according to the latest figures – that labour market inclusion after about four years is 52 per cent for people at starting allowance level while it is only 35 per cent for people on social assistance level.

As to the employment effect on refugees a survey from the Rockwool Foundation Research Unit from April 2007 identified significant and robust positive employment effects of the reduction of the welfare benefits. After 16 months an increase in employment on 56 per cent could be identified. The probability for refugees on social assistance level of being employed after 16 months was 9 percent, while the probability of refugees on starting allowance being employed after the same period of time was 14 per cent.

Recommendation 9 on initiatives to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.

While recognising initiatives made in recent years in order to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society, the Commissioner recommends the Danish Government to design additional positive initiatives to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.

Comments by the Danish Government

The Government agrees with the Commissioner that integration is an ongoing challenge, and that the work cannot be “considered done”. However, it should be stressed that a series of initiatives have been taken in order to promote inter-religious and intercultural dialogue, foster diversity at school and promote a fair image of ethnic minorities in the Danish society.

In recent years, the Danish Government and Parliament has initiated or supported a series of initiatives aimed at promoting and strengthening dialogue between ethnic and religious groups in a framework of a coherent society with room for diversity.

At the political and organisational level, both the Prime Minister and the Minister of Refugee, Immigration and Integration Affairs have hosted a number of ad hoc meetings with religious and ethnic minorities.

At the institutional level, dialogue with ethnic minorities is continuously taking place through the National Council for Ethnic Minorities, which advises the Minister of Refugee, Immigration and Integration Affairs on issues of importance to immigrants and refugees. The Council meets with the Minister of Refugee, Immigration and Integration Affairs regularly – and at least every three months – to discuss current challenges, new

initiatives and legislation. Local integration councils representing ethnic minorities are established in many municipalities and have an advisory role vis-à-vis the local authorities on issues related to the local integration politics, cf. also below as regards para 41 in the Commissioner's report.

The Minister of Refugee, Immigration and Integration Affairs has initiated specific dialogue-initiatives with women belonging to ethnic minorities in order to improve their integration into the labour market and society in general thereby acquiring knowledge about the barriers which the women themselves perceive as hindering their participation in the labour market and their integration in general. An example is the initiative Dialogue Days in June 2007, where the Minister met ethnic minority women from socially deprived urban areas.

The activities of the Minister also include open dialogue with youngsters from ethnic minorities on important questions relating to integration. These activities include visits to schools, the opportunity to chat with the Minister on the Internet, participation in education and work bazaars and an integration-game on the Internet.

In 2006, the Minister initiated a competition for young people to write a speech on democracy and integration for the traditional Danish constitution day celebration. 13 young people were given speaking time on the constitution day in connection with public statements made by a number of the Government ministers, including the Prime Minister. This attracted broad media attention and wide exposure of the issues of democracy and integration.

Moreover, a number of other initiatives contain elements of intercultural dialogue. This includes among others the role model campaign "We need all youngsters" aiming at attracting minority youth to the educational system, the Government Action Plan to Promote Equal Treatment and Diversity and Combat Racism and subsequently the 10 million DKK (approx. 1.350.000 €) allocated in 2007 - 2010 to local activities and projects to further equal treatment and combat discrimination, the campaign "Show Racism the Red Card" aimed at fighting racism among players and audience, a European conference on active participation of ethnic minority youth organised jointly with the Netherlands in September 2006 and a national Danish conference in August 2006 on Community and Diversity bringing together politicians, researchers, writers, practitioners and representatives from business and the education system. An additional conference will be held in 2007 focusing on active citizenship for ethnic minority women.

Furthermore, the Ministry of Refugee, Immigrant and Integration Affairs has recently initiated a diversity program to be implemented in the years 2006-2009. The main idea with the program is to expand the experiences from companies having good experiences with employment of workforce of foreign origin, to make other companies act likewise. Special funding has been allocated to increase diversity in the workplace and thus improve the situation for immigrants and descendants in the labour market. The Ministry has allocated approx. 3, 0 million Euros to the diversity programme.

Furthermore, as a part of the Danish Anti-Terror Action Plan, the Danish Police is engaged in a permanent dialogue with leaders and key figures from ethnic or religious minority groups partly to prevent radicalisation and recruitment to terrorism.

On the finance bill, a total of 10 million DKK (approximately 1.350.000 €) has been allocated for the period 2006–2008 for support to projects and initiatives organised by local authorities, civil society organisations, ethnic minority associations etc. to strengthen local dialogue on fellowship and diversity. Support to the EU Year for Intercultural Dialogue 2008 is also provided from this budget.

Recommendation 10 on the establishment of municipal integration councils;

In connection with recommendation no. 9 above, the Commissioner recommends a restoration of the obligation for municipalities to establish integration councils in order to ensure the possibility of ethnic minorities to make their concerns and views known and thereby to fight discrimination and racism and to promote an inclusive society.

Comments by the Danish Government

As can be seen already from the comments above on recommendation no. 9, Integration Councils are only one of the channels available for ethnic minorities to enhance their political influence in the Danish society.

All Danish citizens, including citizens with an ethnic minority background, can seek political influence through elections to parliament and municipal authorities. Furthermore, all foreigners above 18 years are allowed to vote for and seek election to municipal assemblies three years after having been granted permanent residence permit. In fact, the number of members of municipal assemblies who are either third country nationals or descendants of third country nationals (non-EU citizens and citizens not coming from Norway, Iceland, USA or Canada) increased to 67 in 2005 from only 3 in 1981.

To strengthen the dialogue between the municipalities and the ethnic minorities even further, the Minister for Refugee, Immigration and Integration Affairs has supported the Council for Ethnic Minorities with 570.000 DKK (approx. 76.550 €) to arrange five regional conferences to discuss the opportunities and barriers for the integration councils with regard to their work, role and political influence. The aim of the conferences was also to establish more integration councils in the long run. The Council for Ethnic Minorities will continue to work with the recommendations and experiences from the conferences and will try to provide tools for the local integration councils, so that they can become more visible and obtain more political influence.

The Minister for Refugee, Immigration and Integration Affairs has also supported the Council for Ethnic Minorities with 450.000 DKK (approx. 60.435 €) to conduct an information campaign to promote awareness of the local integration councils and their potential and the Council for Ethnic Minorities, and to make the concerns and views of the ethnic minorities broadly known.

The local integration councils consist partly of members representing local ethnic minority associations, so as to ensure that the interests of immigrants and refugees are ensured at the local as well as the national level. The local integration councils advise the local authorities on issues related to the local integration politics and help to secure an effective and coherent effort to integrate ethnic minorities in local society.

The majority of the local integration councils either have a formal right to be heard in matters concerning the local integration policies or are consulted by the local authorities on such issues. The majority of the local integration councils therefore have a relatively close dialogue with the local politicians and authorities.

Local integration councils are provided with secretarial assistance and cost free facilities such as conference rooms by the local authorities. Most integration councils have separate budgets.

Until 1 January 2004, the establishment of local integration councils was mandatory for the municipalities if 50 citizens in a municipality requested it by a written form. It is correct that the establishment of local integration councils is no longer mandatory, as the Danish Government emphasises the autonomy of local governance enshrined in the Constitution. It should be underlined that this flexibility was requested by local authorities in many municipalities and by Local Government Denmark (KL) – the interest group of which all 98 municipalities in Denmark are members. By making advisory councils voluntary, integration councils become highly prioritised partners of dialogue for the local authorities. It furthermore ensures the active support from the individual local authority towards the local integration council and is consequently thought to increase their actual influence.

Even though it was made a voluntarily option for the municipalities to establish integration councils in 2004, it has not directly resulted in a decrease in the number of local integrations councils. When a municipality decides to discontinue the integration council it is primarily justified by the lack of interest and participation among the ethnic minorities themselves. Therefore, it should be taken into account that the aim is to ensure real influence and participation by the councils and not in itself to ensure a high number of councils.

Currently, 42 local integration councils are operative in all 98 municipalities, including in all major cities in Denmark. This represents an increase in the coverage of integration councils in the municipalities compared to last year (2006). The Minister for Refugee, Immigration and Integration Affairs will this year award the best integration council with an 'Integration award' to increase the visibility of the local integration councils.

Recommendation 11 on the ratification of the European Social Charter, the signing and ratification of the 1991 Protocol amending the European Social Charter, the ratification of the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints and the signing and ratification of the additional Protocol 12 to the ECHR.

Comments by the Danish Government

Denmark has not ratified the revised European Charter and the two protocols mentioned due to the fact that the Government finds that there is a possible conflict between certain provisions of the Revised Social Charter and various Danish laws and the fundamental model of collective agreements on the labour market. In addition to this, Denmark has hesitations with respect to the general anti-discrimination clause in art. E, which is open-ended.

The Government finds that the extent of the Contracting States' obligations under Protocol 12 to the ECHR are very uncertain. The Danish Government has therefore decided to await the case-law of the European Court on Human Rights on the interpretation of Protocol 12 ECHR before it decides whether or not to ratify the protocol.

Recommendation 12 on setting up an institution in Greenland for the detention of serious criminals in need of psychological treatment.

The Commissioner expresses his understanding for the serious difficulties to build a highly specialised institution with the necessary infrastructure and resources for criminals in need of psychological treatment in Greenland. However, he reaffirms his predecessor's recommendation to set up such an institution.

Comments by the Danish Government

A report on Greenland's Judicial System was handed over to the Danish Government and to the Greenland Home Rule by the Commission on Greenland's Judicial System in August 2004. The Danish Government and the Greenland Home Rule will in the nearest future take the last steps in order to implement the various proposals and recommendations made by the Commission, including a proposal to set up an institution in Greenland for the detention of serious criminals in need of psychological treatment.

Recommendation 13 on the independence and the powers of the Police Complaints Boards.

Reference is made to para 62 of the draft Memorandum concerning investigation into allegations of improper behaviour by the police.

Comments by the Danish Government

It should be noted that the Danish Government informed the Commissioner's representatives that the Government has set up a broad-based committee to review and evaluate the current system for handling complaints against the police and processing criminal cases against police officers. The report of the committee is expected by mid 2008.

Recommendation 14 on residence permits to victims of trafficking who cooperate with the authorities

The Commissioner recommends that victims of trafficking who cooperate with the authorities be granted a temporary, if not permanent, residence permit.

Comments by the Danish Government

The Government does not support the Commissioner's recommendation of granting a residence permit to foreigners who are victims of trafficking.

Like all other foreigners, foreign victims of trafficking can apply for asylum in Denmark.

The Aliens Act in its implementation in practice allows the authorities to abstain from deporting victims of trafficking in order for them to testify in the investigation or criminal proceedings regarding trafficking.

In para 6 of his draft memorandum, the Commissioner mentions that the Government on 1 March 2007 has launched a new action plan dealing with any type of human trafficking. This plan aims to ensure holistic and nationwide efforts directed at victims of trafficking also in the future. The key aspect is the outreach and help to the victims, but the plan also comprises a strengthening of the work of the police and of international cooperation.

An element in the action plan is the possibility to offer a 100-day reflection period to victims of trafficking who accept and assist in an offer of assisted voluntary return. In this respect the Danish Government would like to clarify the position for victims who cooperate with the authorities and are consequently allowed to stay in the country for up to 100 days: Anyone who is a victim of human trafficking will, upon request, normally be granted a travel deadline of 30 days, with an option to further extend the travel deadline upon request. This is done so that support and counselling can be provided to the individuals in question. Victims who are EU nationals may, as a starting point, stay for up to 3 months in Denmark. This reflection period will be extended so that human trafficking victims, who collaborate on a prepared return, may be granted a travel deadline of up to 100 days.

This type of assisted voluntary return comprises psychological, legal and social welfare help as well as health treatment, while the victim of trafficking is staying in Denmark. And whenever possible, it will be assured that the victim of trafficking is received by an organisation in his or her home country. The new action plan will ensure increased focus on establishing cooperation with NGOs and social authorities in the countries of origin of the victims of trafficking.

The Government is of the opinion that the initiatives in the new action plan cater for the situation of the victims trafficking.

Recommendation No. 15 on ratifying the Council of Europe Convention on Action against Trafficking in Human Beings

The Commissioner recommends that Denmark ratify the Council of Europe Convention on Action against Trafficking in Human Beings.

Comments by the Danish Government

The legal changes necessary for ratification of the Council of Europe Convention on Action against Trafficking in Human Beings were made by bill no. 504 of 6 June 2007, adopted by Parliament on 1 June 2007. On 1 June 2007, the Parliament also accepted that the convention be ratified.

Following this, the Government plans to ratify the convention during the summer of 2007.

Recommendation 16 on granting a residence permit to foreign women who are victims of domestic violence in Denmark even when they have lived less than two years in the country.

The Commissioner recommends that a (temporary) residence permit to foreign women who are victims of domestic violence in Denmark be granted even when they have lived less than two years in the country.

Comments by the Danish Government

The Government finds no reason to amend the rules regarding residence permit to foreign women who are victims of domestic violence in Denmark.

The Government would like to underline that when deciding on revocation or refusal of prolongation of a residence permit to a foreign woman who has been subjected to violence by her spouse or cohabitant, the immigration authorities always – i.e. no matter how long the woman has been living in Denmark – have to assess all the factual circumstances of the case. This i.a. implies that it has to be assessed whether circumstances exist that would make a decision on revoking or refusing prolongation of the residence permit particularly burdensome.

When assessing whether revocation or refusal of prolongation of the residence permit should not be the result of a separation of the spouses or cohabitants, the factors outlined in section 26 of the Aliens act should be taken into account, i.a. the children of the foreigner, the situation in the foreigner's country of origin, i.a. whether the alien upon return will be ill-treated or outcast due to the cessation of the marriage or cohabitation, and/or whether the person in question will be without any family and/or social network in the country of origin. This applies in particular when the general conditions for single women in the country of origin are deemed to be difficult, or when the couple was married already in the country of origin. In assessing the case, a relevant factor can be the length of stay in Denmark of the foreign woman subjected to violence.

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In para 76 of the draft memorandum, the Commissioner mentions a two-year limit. This is a rule of positive presumption. According to this rule, a foreigner who substantiates that he or she has been subjected to violence and has lived in Denmark for a minimum of approximately two years and has tried to integrate into Danish society, is presumed to have such an affiliation to Denmark that revoking or refusing to extend the residence permit is assumed to be particularly burdensome. Therefore, this foreigner can normally expect to retain his or her residence permit – no matter end of marriage or cohabitation.

Based on this, it should be underlined that also in cases regarding women with less than two years stay in Denmark, an assessment has to be made of the ties of the foreigner to Denmark.

In the fall of 2006, the Minister for Refugee, Immigration and Integration Affairs asked the Danish Immigration Service to go through those cases, where foreigners have argued that they are no longer living together with their spouse due to domestic violence.

The Danish Immigration Service has informed the Minister that there are no limits as to what can be accepted as proof for such violence. In line with the *travaux préparatoires* to the Aliens Act, all kinds of documentation can be put forward, i.a. statements for doctors or of crisis centres, emergency rooms or police reports etc. In practice it has no impact on the decision on revocation or refusal of extension of the residence permit if some time lapses between the violence happened and the termination of cohabitation was committed.

Based on this information, the Government sees no reason to changing the mentioned practice.

The immigration authorities have drafted guidelines for the caseworkers in order to ensure that the practice described above is always taken into consideration when deciding on these cases.

In order to enhance the legal position of persons subjected to violence, the Government has recently changed practice in these cases. This implies that a foreigner subjected to violence can stay in a crisis centre for 30 days without the immigration authorities starting a procedure of withdrawal of the residence permit.

Moreover, the Government has launched an action plan to fight domestic violence. The plan runs from 2005 to 2008.

Based on the action plan, an information campaign has been carried through in 2005 and 2006. The campaign was directed towards women from ethnic minorities who were informed about their economic rights and their rights in respect of their children, divorce, and their rights as victims of domestic violence.

Further, five information films have been produced aimed at women belonging to ethnic minorities. The films are about these women's rights and the possibilities of receiving help from the police, crisis centres, local authorities and lawyers. The films are available in nine different languages.

In addition, employees at crisis centres have received education about meeting and working with women from ethnic minorities who have been subjected to violence.

The National Organisation of Shelters for Battered Women and their Children (LOKK) offers counselling for young people and for professionals. LOKK has received funds to employ staff, in particular to deal with honour related crime.

The Minister of Refugee, Immigration and Integration Affairs would like to launch additional information campaigns with LOKK aimed at informing foreign women staying in Denmark due to family reunification about their rights thereby trying to avoid that the husband keeps his wife isolated or in ignorance.

3. Other comments by the Commissioner:

In para 22 of the draft Memorandum, the Commissioner notes that the delegation of the office of the Commissioner visiting Denmark in December 2006 heard complaints about difficulties encountered by applicants for family or spousal reunification in reaching the Immigration Service and receiving information on their cases. Other complaints concerned the length of the processing of visa applications. The delegation was informed that the Danish Ministry of Integration had launched in spring 2006 an Internet portal with information on relevant legislation and case law to increase transparency for the benefit of (potential) applicants, lawyers and other interested parties. The Commissioner in para 24 notes that he is pleased to note this development and commends the Danish authorities for their efforts to improve the information on and the transparency of the use of discretion in the determination of individual applications for family reunification, including by refugees.

Comments by the Danish Government

The Government would like to add a few additional comments on the speed and transparency in case handling:

Generally letters to the Danish Immigration Service are answered within 15 working days. From 1 June 2006, the opening hours of the telephone service of the immigrations officials of the Danish Immigration Service were extended to 6 hours a day. In average, 96 % of all incoming calls have been answered by the Danish Immigration Service in the last 7 months of 2006. The high number of answered calls is expected to be maintained in 2007. The telephone service is managed, so that individuals can receive information and guidance on their cases. Before the extension of the telephone service 55-65 % of all incoming calls was answered.

As regards visa applications, the average processing time of visa applications in 2005 and 2006 was 44 days and 49 days. The processing time in 2007 averages 40 days at the moment, but 80 % of all applications are processed within 22 days. It is expected that the average processing time for visa applications for the year of 2007 will be 35 days. The processing time for application for extensions of visa is expected to be only 30 days for 2007. This processing time applies to approximately the 20 % of the visa applications handled by the Danish Immigration Service. The remaining approximately 80 % are handled by diplomatic missions within approximately one week.

However, two incidents in 2006 in particular caused a slowing down of processing times of applications for visa and residence permits, which as a general rule are lodged at diplomatic missions abroad. Firstly, the burning down of Danish embassies during the controversy based on the drawings of the Prophet Mohammed published by a Danish newspaper resulted in a change of the usual working routines in the visa area at the end of 2005 and start of 2006. Resources had to be redirected to give guidance to people in the crisis areas. Secondly, the war in Lebanon resulted in the biggest evacuation of Danish nationals since World War II, and special attention had to be put to this evacuation, which drained substantial resources from both the embassies in the area and from the Danish Immigration Service.