

22 JUNE 2015

DANISH INSTITUTE FOR HUMAN RIGHTS (DIHR) – PARALLEL REPORT TO THE UPR OF DENMARK 2015/16

INFORMATION PROVIDED BY THE ACCREDITED NATIONAL HUMAN RIGHTS INSTITUTION OF THE STATE UNDER REVIEW IN FULL COMPLIANCE WITH THE PARIS PRINCIPLES

This is the individual stakeholder submission by the Danish Institute for Human Rights to the Universal Periodic Review of Denmark, 24th session January/February 2016.

DIHR publishes an annual status report on human rights in Denmark covering 21 different areas. An English summary is available at the DIHR homepage.¹ In this stakeholder report to the UPR of Denmark, DIHR has selected seven priority areas of particular relevance to the promotion of human rights in Denmark. In the selection of recommendations for the UPR, DIHR has prioritised recommendations that are specific and time-bound and thus suitable for the UPR process. The thematic issues covered in this report are:

1. NHRI mandate covering the Faroe Islands
2. National action plan on the rights of the child
3. Prohibition of discrimination due to disability, religion, age and sexual orientation
4. Right to vote for persons under legal guardianship
5. Coercion in psychiatric treatment
6. Access to interpretation in Danish courts
7. Solitary confinement of children and adults

BACKGROUND AND FRAMEWORK

1. NHRI MANDATE COVERING THE FAROE ISLANDS

Denmark and the Faroe Islands have not established a national human rights institution (NHRI) covering the Faroe Islands.

The UN General Assembly recommended in 1994 that all member states establish NHRIs in accordance with the UN principles relating to the status of national institutions (The Paris Principles).² The UN Committee on Economic, social and Cultural Rights recommended in 2013 that Denmark and the Faroe Islands extend the mandate of DIHR to the Faroe Islands as well.

DIHR is the NHRI of Denmark and DIHR is accredited as an A-status NHRI by the International Coordinating Committee of NHRIs. The mandate of DIHR has been broadened to cover Greenland

as well and DIHR works in close cooperation with the Human Rights Council of Greenland to monitor and report on the promotion and protection of human rights in Greenland.

There is however not established NHRI mandates covering the entire Kingdom of Denmark since the Faroe Islands is not covered by the mandate of DIHR.

Recommendation

- DIHR recommends that Denmark and the Faroe Islands establish a NHRI covering the Faroe Islands.

2. NATIONAL ACTION PLAN ON THE RIGHTS OF THE CHILD

Denmark would benefit from a national action plan on the rights of the child.

In 1993, the World Conference on Human Rights unanimously recommended that each state considers developing a national action plan identifying steps whereby that state would improve the promotion and protection of human rights. The conference particularly called on states to integrate the Convention on the Rights of the Child (CRC) into their national action plans.³

During the UPR in 2011, Denmark was recommended to develop a national action plan for human rights. In 2011, the UN Committee on the Rights of the Child also recommended that Denmark develop a plan of action for the full implementation of the Convention with specific time-bound and measurable goals and targets to effectively monitor progress.

Denmark is an active participant in the international human rights system and maintains high human rights standards. Denmark systematically reports to most UN treaty bodies, and has extended a standing invitation to UN Special Procedures. Several Danish public authorities and private actors work with human rights promotion and protection, as for instance The Parliamentary Ombudsman, The Danish Data Protection Agency, The National Council for Children, The Board of Equal Treatment and other key stakeholders.

Denmark has adopted several action plans and initiated measures in areas of great significance to human rights, such as human trafficking, domestic violence and ethnic equal treatment. These action plans promote human rights, however they rarely mention human rights standards since their focus is not explicitly targeted at human rights implementation. The work to promote human rights in Denmark can be strengthened through the development and implementation of national action plans focusing on the rights of particular groups across different sectors of society, for instance children.

Recommendation

- DIHR recommends that Denmark develops and implements human rights national action plans, in particular on the rights of the child.

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS TAKING INTO ACCOUNT APPLICABLE INTERNATIONAL HUMANITARIAN LAW

3. EQUALITY AND NON-DISCRIMINATION – DISABILITY, RELIGION, AGE AND SEXUAL ORIENTATION

Danish non-discrimination legislation provides inadequate protection against discrimination outside the labour market due to disability, religious belief, age and sexual orientation.

The International Covenant on Civil and Political Rights (ICCPR) article 26 contains a prohibition against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Convention on the Rights of Persons with Disabilities (CRPD) article 5 prohibits discrimination on the basis of disability.

The Council of Europe (CoE) has adopted protocol no. 12 to the European Convention on Human Rights (ECHR) which introduces a general prohibition of discrimination. So far Denmark has not ratified the protocol.

Danish non-discrimination legislation consists of several acts that offer different degrees of protection depending on the discrimination ground in question. The result is insufficient protection against discrimination targeted at certain groups and lack of predictability for ordinary citizens. For example, it is both illegal and criminalised for restaurants to refuse admittance based on the ethnic origin of a person. Refusing admittance because of a person's disability or age is however allowed under Danish law since these two discrimination grounds are not protected in neither criminal nor civil law outside the labour market. Furthermore discrimination based on sexual orientation within commercial or non-profit services is criminalised, but e.g. homosexuals are unable to bring such a complaint to the Board of Equal Treatment which is an administrative organ dealing with civil law discrimination cases.

Outside the labour market persons with disabilities do not enjoy full legal protection against discrimination. There is no express ban on discrimination of persons with disabilities and no duty on service providers to make reasonable accommodations for persons with disabilities.

Furthermore Danish legislation provides inadequate protection against discrimination outside the labour market on the grounds of age, religious belief and sexual orientation.

Recommendation

DIHR recommends that Denmark:

- Expressly prohibits discrimination of persons with disabilities outside the labour market.
- Expressly prohibits discrimination outside the labour market due to religious belief, sexual orientation or age.
- Ratifies protocol 12 to the European Convention on Human Rights on a general prohibition against discrimination.

4. PERSONS WITH DISABILITIES – RIGHT TO VOTE UNDER LEGAL GUARDIANSHIP

Persons under legal guardianship under section 6 of the Danish Guardianship Act are not allowed to vote or to stand for election.

CRPD article 29 concerns the right for persons with disabilities to enjoy political rights and fully participate in political life on an equal basis with others, including the right to vote and to be elected. The right to vote and to be elected is also covered by the ICCPR article 25 and ECHR protocol 1, article 3.

Generally, every Danish citizen living in Denmark who is older than 18 years of age has the right to vote and to stand for election. However according to the Danish Act on Parliamentary elections, persons placed under legal guardianship in accordance with section 6 of the Danish Guardianship Act, are not allowed to vote or stand for election. According to Danish law, persons under guardianship are furthermore prohibited from voting or standing for election at municipal, regional or EU-Parliamentary elections as well as other national referendums.

Guardianship in accordance with section 6 of the Guardianship Act restricts the legal capacity in financial matters. The purpose is to protect the property of persons incapable of administering their own economy. The original intention of section 6 was to protect the individual with no intended relation to the right to vote or stand for election.

According to the Danish Ministry of Justice, section 29 of the Danish Constitution prohibits that persons under legal guardianship are allowed to vote and stand for election. DIHR disagrees with this interpretation of the Danish Constitution since this limitation does not pursue the original intention of section 29 of the Constitution. Section 29 of the Constitution aims at other groups of persons than persons under section 6 guardianships.

Recommendation

- DIHR recommends that Denmark amends national legislation so that persons under legal guardianship are allowed to vote and stand for election.

5. COERCION IN PSYCHIATRIC TREATMENT

Physical immobilisation lasting more than 48 hours occurs regularly in Danish psychiatric hospitals.

Coercion in mental health treatment affects the right to personal liberty and respect for physical and psychological integrity. These rights are for instance protected by ICCPR, The UN Convention Against Torture (CAT), ECHR and CRPD. According to CRPD article 14 member states shall ensure that the existence of a disability in no case justifies a deprivation of liberty. Article 17 confirms the right to respect for the physical and mental integrity on an equal basis with others.

According to the European Committee for the Prevention of Torture (CPT) applying physical restraint to psychiatric patients for several days cannot have any medical justification and amounts to ill-treatment. In 2014, CPT expressed serious concern about the frequent and prolonged use of immobilisation in Danish psychiatric hospitals, which had increased despite measures taken to reduce immobilisation. Particularly the use of immobilisation for more than 48 hours had steadily increased and reached all-time peaks in 2012 and 2013.⁴ In 2014, CRPD also expressed concern about coercive treatment in Danish psychiatric institutions.⁵

According to the Danish Health and Medicines Authority, coercive measures were applied towards 21 percent of the approximately 26,000 persons admitted to psychiatric wards in 2012. Immobilisation with belts is applied approximately 5500 times each year and in approximately 500 cases lasting longer than 48 hours.⁶

The Danish Parliament has adopted an act in 2015, which increases the rights of patients in psychiatric institutions and introduces increased control measures for immobilisation.⁷ The act however does not abolish the use of physical immobilisation lasting longer than 48 hours. Research shows that it is possible to reduce the use of physical immobilisation in psychiatric treatment.⁸

Recommendations

DIHR recommends that Denmark:

- Abolishes the use of forced physical restraints lasting more than 48 hours.
- Limits the use of coercive measures in psychiatric institutions through legislative amendments and revision of guidelines.

6. ADMINISTRATION OF JUSTICE – ACCESS TO INTERPRETATION IN COURT

In Danish courts, there is a lack of qualified interpreters within several minority languages due to lack of certification and education of interpreters.

The right to a fair trial as guaranteed by ICCPR article 14 and ECHR article 6 includes the right to have the free assistance of an interpreter in criminal cases, if necessary. Even in civil court cases, the availability of an interpreter may be a precondition for the realisation of the right to a fair trial. The right to assistance of an interpreter includes a state obligation to appoint interpreters but it may even include a duty to ensure access to interpretation of a certain quality.

A report on the role of court interpreters shows that there is a general challenge with ensuring qualified interpreters in Danish courts. Often interpreters have difficulties understanding their role when interpreting in courts.⁹ Experiences from Danish lawyers shows, that many court interpreters lack sufficient Danish skills and are therefore unable to express themselves adequately.¹⁰

In Denmark, the Translators and Interpreters Education is the only available education for interpreters, but it does not meet the requirements for qualified interpretation in several relevant refugee and immigrant languages. For instance, there are no certified interpreters in Somali, Pashto, Urdu, Farsi and Tamil.

The European Union (EU) has adopted directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings. Denmark is currently not bound by the directive and has not implemented it.

Recommendations

DIHR recommends that Denmark:

- Establishes an interpreting education for the most common refugee and immigrant languages.
- Introduces certification scheme for interpreters.
- Implements EU directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

7. SOLITARY CONFINEMENT OF CHILDREN AND ADULTS

In Denmark, solitary confinement is used extensively compared to neighbouring countries, even in relation to children.

Solitary confinement has potentially harmful effects, which is reflected in the number of human rights recommendations concerning this issue aiming at its reduction or abolishment. In some cases solitary confinement can result in inhuman and degrading treatment. CAT, CPT and the UN special rapporteur against torture all recommend that solitary confinement is limited to a strictly necessary level. The special rapporteur and CRC have both recommended that solitary confinement of children be abolished.

Measures have regularly been adopted in Denmark to reduce the use of solitary confinement. This has proved successful for the use of solitary confinement during pre-trial detention which has been reduced significantly in recent years. However the use of solitary confinement as a disciplinary measure has increased. Between 2001 and 2011 the use of disciplinary confinement more than doubled.¹¹

Isolation of children is allowed according to Danish law and occurs in practice, sometimes for periods of up to two weeks. Only in few cases has the incarcerated minor had any meaningful contact with fellow inmates. Following an inquiry by DIHR and The National Council for Children to the Minister of Justice, the Danish Prison and Probation Service has instructed all prisons to limit the use of isolation of minors.¹²

Recommendations

DIHR recommends that Denmark:

- Adopts legislation to limit the use of solitary confinement.
- Abolishes solitary confinement of children.

¹ http://menneskeret.dk/files/media/dokumenter/udgivelser/status/2014-15/status_uk_2015.pdf.

² United Nations General Assembly, A/RES/48/134, 4 March 1994, Forty-eighth session, Agenda item 114 (b), resolution 48/134 National institutions for the promotion and protection of human rights.

³ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

⁴ Council of Europe, Report to the Danish Government on the visit to Denmark carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 13 February 2014, CPT/Inf (2014) 25. Available at: www.cpt.coe.int/documents/dnk/2014-25-inf-eng.pdf.

⁵ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Denmark, 3 October 2014, CRPD/C/DNK/CO/1.

⁶ Statens Serum Institut, 'Opgørelse over anvendelse af tvang i psykiatrien i perioden 2000-2013'. 6 May 2014.

www.ssi.dk/~media/Indhold/DK%20-%20dansk/Sundhedsdata%20og%20it/NSF/Dataformidling/Sundhedsdata/Tvang%20i%20psykiatrien/Anvendelse%20af%20tvang%20i%20psykiatrien%202001-2013.ashx.

⁷ Lov nr. 579 af 4. maj 2015 om ændring af lov om anvendelse af tvang i psykiatrien (Fastlæggelse af mindreårige psykiatriske patienters retsstilling, indførelse af ny formålsbestemmelse, skærpede kriterier for tvangsfiksering, ændring af kriterierne for åbning og kontrol af post, undersøgelse af patientstuer og ejendele samt kropsvisitation m.v.).

⁸ Bak J, Zoffmann V, Sestoft DM, Almvik R, Siersma VD, Brandt-Christensen M, 'Comparing the effect of non-medical mechanical restraint preventive factors between psychiatric units in Denmark and Norway', Nordic Journal of Psychiatry, 2015 Jan 23:1-11.

⁹ Tina Paulsen Christensen og Bodil Martinsen, 'Retstolkens rolle', Aarhus Universitet 2012.

¹⁰ The Association of Danish Authorized Translators and Interpreters, fact sheet (Tolkning I Danmark kræver certificering), 2014, available in Danish at: <http://tolkelisten.dk/onewebmedia/Faktaark%202014.pdf>.

¹¹ Danish Prison and Probation Service, 'Kriminalforsorgens Statistik 2012', side 32, og 'Kriminalforsorgens Statistik 2013', side 33.

¹² Danish Parliamentary Committee on Legal Affairs 2014-15, REU alm. del – svar på spm. 10 om afskaffelse af isolationsfængsling af børn i alderen 15-17 år, fra justitsministeren. Available at: www.ft.dk/samling/20141/alm.del/reu/spm/10/svar/1173268/1423003.pdf.