

Global Detention Project Submission to the UN Human Rights Committee

117th Session (20 June – 15 July 2016)

Consideration of State Report – Denmark (sixth periodic report)

Geneva, 20 April 2016

Issues concerning immigration detention (article 9 and 10 of the ICCPR)

The Global Detention Project (GDP) welcomes the opportunity to provide information for consideration of the sixth periodic report of Denmark (CCPR/C/DNK/6, 10 November 2015) submitted to the UN Human Rights Committee (Committee) under article 40(4) of the International Covenant on Civil and Political Rights (ICCPR). The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration- or asylum-related reasons.

Length of detention

In its *List of issues prior to the submission of the sixth periodic report of Denmark* (CCPR/C/DNK/Q/6, 29 November 2011, para. 19), the Committee asked Denmark to provide information about the country's intention to revise the Aliens Acts, in particular concerning a maximum limit to the length of deprivation of liberty for migrants and asylum-seekers pending deportation.

In response to this request, in its sixth periodic report (CCPR/C/DNK/6, 10 November 2015, para. 172), Denmark explained that following the December 2011 amendment to the Aliens Act a maximum time limit was introduced to the Denmark's legislation. The initial period of detention is up to 6 months, which may be extended by 12 months when the detainee does not cooperate with authorities or if there are delays in obtaining the necessary travel documents.

The limitation on the length of detention is to be welcome, however the maximum permissible length may raise concerns. In 2016 the UN Committee against Torture (CAT) found the 18-month total permissible length of detention of asylum seekers excessive and recommended Denmark to reduce this length for as short as possible (CAT/C/DNK/CO/6-7, 4 February 2016, para. 24-25).

Key questions: Does the state party consider reducing the permissible length of detention of non-citizens? What is the average length of detention in practice?

Besides the length of detention, there are other elements of the country's immigration detention policy that may raise issues under articles 9 (right to liberty) and 10 (condition of detention) of the ICCPR.

Justification of detention

As per the Human Rights Committee's General Comment 35 (para. 18):

Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances.

Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.

In November 2015 Denmark amended the Aliens Act (L 62). The amendment reportedly provides "special circumstances" for detaining asylum seekers, including the detention of asylum seekers who are part of "massive arrivals." The amendment will reportedly add a new paragraph to article 36 of the Aliens Act (which sets out grounds for detention) according to which the police will be entitled to detain an asylum-seeker in the context of his arrival to Denmark, for the purpose of verifying his identity, conduct registration and establish the basis for his application.

This amendment may create a risk of arbitrary detention because it does not contain a qualification that detention for these purposes may be ordered where there is a threat to public order. Without this qualification, these grounds may lead to systematic detention merely to facilitate administrative expediency. Both the Council of Europe's Commissioner for Human Rights¹ and the UNHCR² expressed their concern about these extended grounds for detention.

Key questions: how are the concepts of "special circumstances" and "massive arrivals" to be determined in practice? What safeguards are there to ensure that asylum seekers are protected from systematic detention? What safeguards are there to ensure that detention of migrants and asylum seekers is necessary and proportionate? How many non-citizens were detained in 2014 and 2015?

¹ Commissioner for Human Rights, *Denmark: amendments to the Aliens Act risk violating international legal standards*, January 2016, <http://www.coe.int/en/web/commissioner/-/denmark-amendments-to-the-aliens-act-risk-violating-international-legal-standards>.

² UNHCR Regional Representation for Northern Europe, *UNHCR Observations on amendments to the Danish Aliens Act as set out in Lovforslag nr. L 62: Lov om ændring af udlændingeloven (Håndtering af flygtninge- og migrantsituationen)*, January 2016, http://www.unhcr-northerneurope.org/fileadmin/user_upload/Documents/PDF/Denmark/UNHCR_Observations_on_Danish_law_proposal_L62_January_2016.pdf.

Review of detention

As per the Human Rights Committee's General Comment 35 (para. 18):

The [immigration detention] decision [...] must be subject to periodic re-evaluation and judicial review.

The November 2015 amendment to the Aliens Act also modified the rules on the review of detention. Reportedly, during the periods declared “special circumstances” a hearing does not take place within 72 following the arrest (art. 37(1) of the Aliens Act) but “as soon as possible” and only at the request of the applicant. In this context, courts only assess the legality of the detention, and do not rule on the duration of its possible extension. Following a decision on the legality of detention in a particular case, there is no right for another review within four weeks.

Key questions: How does the new amendment ensure that detainees have access to effective judicial review of their detention? How is it ensured that detainees are able to request the review of their detention? If detainees fail to request the review, is there any possibility for courts to assess the lawfulness of detention on their own motion?

The places of detention

As per the Human Rights Committee's General Comment 35 (para. 18):

Any [...] [immigration] detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons.

Denmark appears to use three facilities for the purposes of long-term immigration detention—two dedicated facilities (Ellebaek and Vridsløselille centres) and one prison with a specialized section (Aabenraa prison). Reportedly, the country may also use remand prisons. However the information is scarce and it is not possible to verify with certainty where the non-citizens are actually detained.

Ellebaek facility has repeatedly been the focus of criticism for the penitentiary-like character.³ In 2016 UN Committee against Torture (CAT/C/DNK/CO/6-7, 4 February 2016, para. 24-25) regretted that Danish officials consider the centre's prison-like structural layout and fixtures in Ellebaek facility to be necessary for security reasons. The Committee recommended that Denmark alter the layout and fixtures so as to change the carceral appearance of the centre and ensure that facilities confining asylum seekers are appropriate for their status and situation.

³ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Addendum: MISSION TO DENMARK, A/HRC/10/44/Add.2, 18 February 2009, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DKIndex.aspx>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Government of Denmark 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 11 to 20 February 2008, CPT/Inf (2008) 26, September 2008, <http://www.cpt.coe.int/documents/dnk/2008-26-inf-eng.pdf>.

As of March 2016, the Vridsløselille facility (which is a former prison opened early in 2016 as dedicated immigration detention facility), was reportedly locking rejected asylum seekers in their cells for 23 hours a day because the facility lacked the necessary personnel to ensure that detainees could securely walk freely around the facility.⁴

Key questions: Can Denmark provide a complete list of all the facilities that have been used to detain or confine people for reasons related to their immigration status or their asylum procedure? In particular, are remand prisons used for immigration detention purposes? Does the country consider modifying the penitentiary character of the Ellebæk facility, as per recommendations of the UN Committee against Torture? What measures does Denmark consider to take to ensure that non-citizens detained in Vridsløselille facility are not locked for 23 hours per day?

⁴ New Times, "Rejected asylum seekers confined in prison cells for 23 hours a day," *New Times*, 15 March 2016, <https://www.facebook.com/newtimes.dk/posts/1243964638950969>.