



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Observations on the proposed amendments to the Danish Social Security legislation (reduction of social welfare and change of bonus for language level test):

Lov om ændring af lov om aktiv socialpolitik, integrationsloven og forskellige andre love (*Nedsættelse af integrationsydelse og omlægning af dansk tillæg*)

I. Introduction

1. The UNHCR Regional Representation for Northern Europe (hereafter “RRNE”) is grateful to the Ministry of Immigration and Integration of the Kingdom of Denmark for the invitation to submit its observations on the proposal to amend social security legislation dated 16 October 2017 and its Explanatory Memorandum (*lovudkast*) (hereafter the “Proposal”).
2. UNHCR has a direct interest in law proposals in the field of asylum as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with governments, to seek permanent solutions to the problems of refugees.¹ According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”.² UNHCR’s supervisory responsibility is reiterated in Article 35 of the 1951 Convention and in Article II of the 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as the “1951 Convention”).³ It has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (hereafter “TFEU”).⁴
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention,⁵ as well as

¹ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.refworld.org/docid/3ae6b3628.html> (“UNHCR Statute”).

² *Ibid.*, para. 8(a).

³ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

⁴ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁵ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

II. The Proposal

4. UNHCR notes that the aim of the Proposal is “ensure that it is more attractive to work than to receive social benefits”⁶, wherefore the Government proposes to reduce the maximum amount payable under the unemployment benefits system (in Danish: Integrationsydelsen) by three percent. The Proposal further alters the bonus payable after completion of a Danish Language Level 2 test to a fixed amount instead of a monthly payment for the duration of the integration program⁷.
5. As UNHCR understands that all refugees not fulfilling the residency requirement of having resided in Denmark during seven out of the last eight years will thus be affected by the reduction of social security benefits (*Integrationsydelse*).

III. UNHCR Observations

6. With regards to the reduction of the *Integrationsydelse*, UNHCR wishes to refer to its earlier comments provided when the reduced benefits were introduced in 2015⁸ and when the scope of persons affected was expanded in 2016.⁹ UNHCR wishes to reiterate its concern that the *Integrationsydelse* will negatively impact refugees’ ability to find a durable solution and fully integrate in Denmark and start the process of recovery from the traumas of conflict and persecution. The measures carry the risk of further marginalizing refugees in Danish society who, as newcomers, do not have the same opportunities as Danish citizen who returns to achieve an adequate standard of living based on their own efforts during the initial period in the country of asylum.
7. The Proposal concludes that the proposed measures are not limited by EU regulations, but it does not include an assessment of whether the Proposal is compliant with Denmark’s international obligations.¹⁰ UNHCR notes with concern that in its view, the measures fall short of the requirements of the 1951 Convention, as they do not sufficiently take into account the specific status and rights of refugees and because they lead to the unequal treatment and enjoyment of the right to social security provided for under the Convention.
8. UNHCR recalls that, as provided by both international refugee and human rights law, including Article 14 in the European Convention on Human Rights and Articles 23 and 24 of the 1951 Convention, the appropriate standard in the area of provision of public relief and social security is for States to generally afford refugees the **same treatment** as is afforded to nationals.¹¹ The 1951 Convention

⁶ The Proposal is a consequence of an agreement with the Danish Folk Party dated 20 June 2017

⁷ The Proposal maximizes the amount to a 6 times payment of DKK 1,500

⁸ UNHCR observations, available at: <http://www.refworld.org/pdfid/55c9c80b4.pdf>.

⁹ UNHCR observations, available at : <http://www.refworld.org/country,,,DNK,,5694ec964,0.html>

¹⁰ The Proposal’s Explanatory memorandum (*Iovudkast*) Note 11.

¹¹ See, e.g. 1951 Convention, Articles 23 and 24. See also Comments to the 1951 Convention, where it is stated ” Article 23 gives refugees the same right to public relief and assistance as is accorded to

specifically provides that refugees cannot be expected to fulfil requirements, which, due to the nature of the requirement such as length and conditions of sojourn or residence, a refugee is incapable of fulfilling.¹² The further reduction in benefits for refugees who have not resided in Denmark during seven out of the last eight years is significant, especially, since the integrationsydelsen is at lower level¹³ than the otherwise¹⁴ afforded social benefits. The reduction could have a serious impact on the wellbeing and living conditions of the refugees, including families with children. Especially, since the Government on 4 October, 2017 proposed to lower the social child allowances, thus requiring residency in Denmark during six out of the last 10 years in order to be granted a full allowances.¹⁵ UNHCR wishes to remind that the benefits must, according to international law, be adequate in amount and duration, and ensure respect for the principle of human dignity.

9. UNHCR is also concerned that the measures are at variance with the principle of **non-discrimination**, which is enshrined in all major human rights instruments to which Denmark is a party. As noted in the earlier UNHCR observations, the International Covenant on Economic, Social and Cultural Rights, prohibits

any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security.¹⁶

The principle of non-discrimination is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.

10. UNHCR further recalls that under international law socio-economic rights are to be realized progressively and wishes to reiterate that it considers that the proposed measures will lead to a “retrogression” rather than a progressive realization of rights, as they intend to lower the standards of the current entitlements for refugees.¹⁷ The UNHCR Executive Committee, of which Denmark is a member and currently chairs, has referred to the progressive

nationals of the country in which they are lawfully staying”, at:

www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d4ab5fb9&query=Grahl%20Madsen

¹² 1951 Convention, Article 6.

¹³ According to the Danish Refugee Council, the shift from *kontanthjælp* to *integrationsydelse* has meant a reduction in the disposable amount received by the refugees with 30–60%.

¹⁴ See Commentary on the Refugee Convention, at

<http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d4ab5fb9&query=Grahl%20Madsen>,

where it is stated “However, there can be no doubt that the Conference accepted that as far as the provisions of the Convention go, the Contracting States are bound not to discriminate between various national groups of refugees, e.g. refugees from a culturally related neighboring country and refugees from a more distant and alien country”.

¹⁵ Law proposal no. 35, article 2, see:

http://www.ft.dk/ripdf/samling/20171/lovforslag/l35/20171_l35_som_fremsat.pdf

¹⁶ UNHCR observations dated August 2015, paras. 16–19. See

<http://www.refworld.org/country,,,DNK,,5694ec964,0.html>

¹⁷ UNHCR observations dated August 2015, paras. 9–10, see

<http://www.refworld.org/country,,,DNK,,5694ec964,0.html>.

realization of rights and affirmed “the particular importance of the legal dimension of integration, which entails the host State granting refugees a secure legal status and a progressively wider range of rights and entitlements that are broadly commensurate with those enjoyed by its citizens and, over time, the possibility of naturalizing”.¹⁸ The Proposal may also diminish Denmark’s leverage at international level when Denmark argues that host countries in the region should provide full protection to refugees.

11. UNHCR finds that the Proposal does not fully take into account that refugees generally arrive with weak, if any, attachment or link to the host country, and have gained qualifications and work experience in very different labour markets conditions. Moreover, many are not able to provide proper documentation that would certify their level of skills or experience. Therefore, and not surprisingly, refugees find it particular difficult to enter the local labour market and they suffer from multiple disadvantages compared to other migrant groups.¹⁹
12. UNHCR acknowledge the bonus payable to those passing a Danish Language Level 2 test, and the incentive to support integration. In UNHCR’s view, the financial acknowledgement should be awarded for the duration of the integration period, since training for the test is costly and since participation in the test itself amounts to a sum of approximately DKK 2,600, which many already on *Integrationsydelse* may not be able to afford.²⁰
13. With the Proposal, the impact of the retrogression will be further exacerbated, since the Proposal may create a sense of hopelessness among individuals longing for further integration into Danish society.

IV. Conclusion

14. To conclude, UNHCR considers that the proposed amendments fall short of the requirements of the 1951 Convention as they do not sufficiently take into account the specific situation of refugees and because they lead to the unequal treatment and enjoyment of the right to social security. The combined object and purpose of Articles 23 and 24 of the 1951 Convention, as well as relevant human rights obligations, establish a minimum standard of treatment with regard to social security, below which there would be concerns that inhuman or degrading treatment could arise. The general principle that refugees shall enjoy social security rights on par with nationals should be upheld and reinforced.
15. In line with international obligations, UNHCR recommends removing the residency requirements from all social benefits for recognized refugees. Retaining the current provisions of the relevant laws regulating unemployment, child care and pension benefits of refugees, in order for refugees to receive the same benefits as the general national population, would support this general

¹⁸ UNHCR, Conclusion on Local Integration, 7 October 2005, No. 104 (LVI) - 2005, para. (I), available at: <http://www.refworld.org/docid/4357a91b2.html>.

¹⁹ OECD report “Making Integration Work, 2016, available at http://www.keepeek.com/Digital-Asset-Management/oecd/social-issues-migration-health/making-integration-work-humanitarian-migrants_9789264251236-en#page3.

²⁰ See https://www.nyidanmark.dk/da-dk/Ophold/familiesammenfoering/aegtfaeller/prove_i_dansk.htm

position and acknowledge the special position of refugees vis-à-vis other non-nationals. It would also, in UNHCR's view, support the Government's expressed aim to improve the integration of refugees in Denmark.

UNHCR Regional Representation for Northern Europe

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