IHF FOCUS: judicial system and fair trial; detainees' rights; minorities; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers and immigrants.

The November 2001 national *Folketing* (Danish Parliament) elections brought a new Government centre/right Coalition into power. This comprises the Liberals (V) and Conservatives (C), with the nationalist Danish People's Party (DPP) as its parliamentary support basis. The DPP is notorious for its xenophobic statements and it has promoted restrictive immigration and asylum policies. In particular, individuals from Islamic countries have been amongst its targets.

Xenophobic and racist statements played an important role in the campaign leading up to the parliamentary elections, focusing especially on issues related to refugees, immigrants and Danish foreign aid. Soon after taking office, the Government took measures to restrict Denmark's liberal asylum and immigration policy as well as the rights of foreigners to family reunification and some social subsidies.

In cases of "minor" offences, the Danish law allowed for judicial proceedings before a court without the presence of legal counsel despite the fact that the verdict often resulted in a criminal record. Another judicial concern was the absence of legal provisions providing for effective remedies for human rights violations. The use of solitary confinement prevailed, despite repeated criticism by international organizations.

Denmark failed to recognize other minorities than the Germans in Southern Jutland, ignoring e.g. Germans elsewhere, and Greenlanders on the mainland. Further, the long-standing claim of compensation by the indigenous Inuit members of the Thule community in Greenland for their displacement from their lands, and the consequent loss of traditional hunting rights remained unsolved.

The Advisory Committee on the Council of Europe's Framework Convention for the Protection of National Minorities criticised Denmark's restricted interpretation of minorities. At the same time, it expressed its concern about the privileged funding of the Lutheran State Church of Denmark and the obligatory registration of all names by this church.

Judicial System and Fair Trial

A large number of criminal cases were processed in a courtroom with only the judge and the prosecutor present but no counsel for the defendant. According to Article 732 of the Code on the Administration of Justice, the court may find that the nature of the case was not sufficiently substantial for the accused to require a defence counsel. Such cases included a number of minor offences such as shoplifting.

Of further concern was the fact that those convicted in "minor cases" often received notification indicating that they now had a criminal record that will remain with them for up to five years. Since the early 90s, criminal records have been an increasing problem for many people wanting to enter the job market. Due to the fact that employers increasingly demanded from their employees a perfect record or a spotless police report, these petty crimes barred many from getting a job. Thus a case, which the courts considered to be "minor" could have crucial significance for the future of an individual, who had been unjustly denied a defence counsel. The Society for Humane Criminal Policy (KRIM) recommended that the concept of petty crimes or misdemeanours be prosecuted as usual, but omitted from the police record.

In fact, the daily newspaper *Politiken*[2] reported that during the period between 1997-99, the number of people with criminal records increased by a staggering 40%.

This continuing pattern was in line with the increases reported in previous years.

Lack of Compensation

Doubts remained as to the availability in Danish law of effective remedies for human rights violations as required by several human rights conventions, for example, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination.

A recent report to the Ministry of Justice[3], which formed the basis for a revision of the Damages Liability Act, was silent on the question of compensation for human rights violations. According to the sparse information on this practice, compensation was awarded in cases of defamation of character, deprivation of liberty and sexual offences. The gravity of the abuse, combined with the nature of the act as well as consideration of the circumstances, all determined the amount of the sum awarded. The tort concept reserved compensation to instances where violence occurred in a particularly insulting or humiliating manner. As a result, many types of human rights violations were not covered by the relevant Article 26 of the Damages Liability Act. For example, in a case of discriminatory denial of entry to a discotheque, compensation was refused by the High Court and an application to the Supreme Court was declared inadmissible. Moreover, compensation could not be applied for even in cases of the gravest crimes of violence if the violence had not been carried out in the above-mentioned manner.

◆ In a judicial examination of the treatment of refugees in Copenhagen prisons, a separate report reviewed the alleged maltreatment of Himid Hassan Juma and Babading Fatty.[4] No reference was made to Article 26 - nor was this done at a much later date when a discretionary amount *ex aequo et bono* was paid to Mr Fatty.

The question as to whether the Damages Liability Act provides an effective remedy for human rights violations has been considered in complaints before the UN Committee on the Elimination of Racial Discrimination (CERD). In one case Denmark argued a communication inadmissible due to the failure to exhaust domestic remedies. The Committee did not accept the argument and found that there had been no remedy.[5]

The issue was discussed in more detail in a later communication with CERD.[6] Although the positions were similar, the CERD made a specific recommendation on effective remedies. That, however, was not considered by Denmark when revising the law.

In a later statement, CERD recommended that, although there had been no violation of Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination in the case under consideration, Denmark "[7…] take the measures necessary to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction in accordance with Article 6 of the convention, including economic compensation, will have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering."[7]

Detainees' Rights

Solitary Confinement

By law, persons in police custody awaiting trial could be placed in solitary confinement. The purpose of this long-standing practice was to prevent the detainee from influencing witnesses and alleged accomplices. A person in solitary confinement was deprived of contact with people inside and outside the prison: the only exceptions were prison staff, police and attorneys. The police usually allowed only supervised visits from close relatives to persons in solitary confinement. They also controlled all correspondence and access to newspapers, books and radio/TV. Soli-

tary confinement was applied for several months in a number of cases and there were cases where it had been in effect for more than a year.

According to an investigation carried out by the Danish police in 1987-1997, solitary confinement in police custody caused strain and a risk to mental health. In May 2000 the law was amended in order to diminish the use of solitary confinement by extending the conditions for it, and limiting the maximum period of isolation to three months.[8] The limitations did not apply to the most serious crimes. Following the implementation of the 2000 provisions, there has been a 50% decrease in the use of solitary confinement. Still, each year, several hundreds of people have been held in solitary confinement.

The use of solitary confinement during police custody has been a subject of criticism on the domestic and international levels, including criticism voiced by the UN Committee Against Torture (CAT), the European Commission for the Prevention of Torture (CPT) and the UN Human Rights Committee, which in October 2000 expressed particular concern "about the wide use of solitary confinement for incarcerated persons following conviction, and especially for those detained prior to trial and conviction." The Committee stated that "solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with Article 10 (1) of the Covenant." It urged Denmark to reconsider the practice of solitary confinement and ensure that it is used only in cases of urgent necessity.[9]

In July 2001, the UN Committee on the Rights of the Child expressed concern that "children between the ages of 15 and 17 years may be held in adult detention facilities and kept in solitary confinement[10] for a maximum of eight weeks.

National Minorities

The Council of Europe Framework Convention for Protection of National Minorities

When Denmark adopted the Framework Convention for Protection of National Minorities, it made a statement confining this Convention to the German minority in Southern Jutland, ignoring Germans elsewhere, Greenlanders on the mainland as well as other possible ethnic minorities. The Council of Europe's Advisory Committee on the Framework Convention considered that this provision was in conflict with the Convention, leading to a controversy between the Danish Government and the Council of Europe/Advisory Committee on the Framework Convention. In this conflict, the Danish Helsinki Committee supported a broader interpretation covering also other minorities than the Germans in Southern Jutland, in accordance with the intention of the Framework Convention and the views expressed by the Advisory Committee.[11]

Indigenous Peoples

During the Helsinki Summit in 1992 the CSCE formally agreed to include the rights of the indigenous peoples in the CSCE/OSCE Human Dimension concerns and noted that special difficulties existed in exercising these rights.[12]

In Denmark, indigenous people are found in Greenland. They belong to the circumpolar Inuit inhabiting the territory from Siberia over Arctic North America to Greenland. The Home Rule Government introduced in 1979 exercises most powers of a central government, apart from foreign affairs, security and the judiciary. The Greenland authorities depend on the Danish Government for economic support. Obligations to protect and secure human rights are thus vested interests at both levels of government.

On four separate occasions since 1996, the UN Committee on Human Rights and the CERD have expressed con-

cern over the delay in resolving the claim of compensation by the members of the Thule community in Greenland in respect of their 1953 displacement from their lands and the loss of traditional hunting rights on account of the construction of a US-military base in 1951.[13]

In October 2000, the UN Human Rights Committee made public its concern "over reports that the alleged victims in the Thule case were induced to reduce the amount of their claim in order to meet the limitations set in legal-aid requirements."[14] Subsequently an application was made for reconsideration of the decision to reduce the claim in view of the recommendation of the Human Rights Committee. On 3 January 2001, the relevant section of the Ministry of Justice rejected the application. An appeal to the Parliamentary Ombudsman to review the matter was turned down on 10 September. When the case reached the Supreme Court, the Danish State denied the identity of the indigenous tribal community in Thule. At the first instance level, the High Court had flatly rejected the State's request for dismissal of the claim based on collective indigenous rights, finding that the Thule tribe had a concrete and essential legal interest to protect their rights. The Court found the Inuit to be a people within the meaning of the ILO Convention 169 regarding indigenous and tribal peoples (which, as it appeared, the Danish Government intended to deny), which Denmark has ratified.

The Danish Helsinki Committee followed up the dispute and showed its support of the principle that the existence of a minority or an indigenous people was a factual question, not one of law. It also noted that the Inuit or Thule tribe have been recognised by Denmark since before Danish colonisation of that area in 1921. Further, the Committee stated that both in the Thule tribe case as well as in more general terms regarding the European Framework Convention for the Protection of National Minorities, the Danish State seemed to follow a line of definitional evasion of treaty obligations, which the Committee considered unfounded.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

The parliamentary elections campaign was strongly characterized by the issue of immigrants and refugees which was the DPP's central theme. The central issues were the means and methods to restrict immigrants' and refugees' legal claims to family reunification, and concrete ways to limit the number of asylum seekers entering Denmark. These issues were debated in a harsh, intolerant and sometimes openly xenophobic atmosphere with the contribution of many mainstream parties. A campaign poster of the of the Liberal Party clearly aimed at linking immigrants with criminality while a poster of the DPP led to fear that Denmark would soon be "islamisized".

Another important topic in the election campaign was the public spending on foreign aid. The Liberals and especially the DPP promoted dramatic cuts in foreign aid and imposing stringent demands on donor countries before they would receive any bilateral support. The mainstream parties' xenophobic rhetoric, repeated in their election pledges, raised negative media coverage in Europe. Prime Minister Rasmussen was forced to reassure the EU member States that the new Government indeed shared European values and that it had no intention of violating international human rights conventions, particularly the Geneva Convention relating to the Status of Refugees.

Asylum Seekers and Immigrants

The proposal for a new national immigration law is, in various ways, a radical shift from the previous liberal policy. First, the new Government decided to repeal the concept of the so-called *de facto* refugees,

which has been used to grant "non-convention" refugees asylum. This means that in the future refugees who are not refugees according to the Geneva Convention's definition may be refused protection in Denmark even though their individual situation may be just as critical as that of "convention" refugees. Conscientious objectors, victims of civil wars and/or persons who have strong reasons to fear torture or death penalty when they return to their native country are examples of groups who might lose the right to asylum. The Government's own estimate is that as many as two thirds of the annual asylum seekers will be rejected due to the abolishment of the *de facto* concept.

The second shift is the plans to raise the requirements governing family reunification for immigrants and to some extent for refugees. According to the old policy, immigrants and refugees who were granted asylum in Denmark enjoyed the right to a legal claim for family reunification with their spouse, children and/or parents. This legal claim will now be replaced by a number of new rules and conditions that have to be fulfilled before family reunification is accepted. In essence, no person is allowed to bring his/her spouse of non-EU foreign origin to Denmark if that spouse is under the age of 24.

This new legal age criterion is another tightening of the already strict conditions, since a number of economic- and housing criteria have to be met as well. For example, all applicants must be self-sufficient and able to guarantee that the incoming immigrant will not become an economic burden on the public welfare system. Likewise, an applicant who does not own his or her own residence or have a long-term lease, or whose residence is considered below general standards by the authorities, will not be considered for reunification. However, special provisions will be introduced for refugees who were already married in their country of origin at the time they had to take refuge.

Third, there are plans to cut social benefits by 30-50% for immigrants and refugees who do not have a permanent residence permit. Simultaneously, it has been decided to prolong the waiting period for a residence permit from three to seven years. The explanation for the drastic reduction in social benefits is that it will encourage immigrants and refugees to find work. The UN has criticised the Government for this act principally because of obvious discrimination targeted against this particular group.

On the positive side, the new Government has committed itself to adhere to all international conventions and to work for better integration of foreigners in general. The primary integration tool will be a concerted effort to make the labour market more positive and open towards immigrants. In 2001, the job situation for immigrants was negative and the overall explanation was discrimination combined with a general lack of willingness to hire especially some specific groups of immigrants. Although the Government has pledged to do more on this issue, by the end of 2001 it had not proposed any concrete new measures to implement this process.

Endnotes

[1] Based on the *Annual Report 2001* of the Danish Helsinki Commitee.
[2] 26 May 2000
[3] *Betænkning [Report]* No 1383/2000.
[4] Copenhagen, February 1992, pp. 223.
[5] CERD, *Communication No. 10/1997*, views adopted on 17 March 1999, at Para. 6.1, 6.2 & 10; reprinted in CERD compilation, CERD/C/390, p. 64.
[6] CERD, *Communication No. 17/1999*, *B.J. v. Denmark*, views adopted on 17 March 2000, 55 UN GAOR Suppl. 18 (A 55/18), Para 458 & Annex III.A, p.116, reprinted in CERD compilation, CERD/C/390, p. 77.
[7] CERD, Communication No. 17/1999, decision of 17 March 2000.
[8] By law, a person could be held in solitary confinement for four weeks if the crime he/she was charged with carried a prison sentence of up to four years; for eights weeks for a crime carrying a sentence of up to six yers; and for three months for crimes carrying a sentence longer than six years. Threre was no limit for inmates suspected of the most serious crimes.
[9] UN Committee on Human Rights, *Concluding Observations of the Human Rights Committee: Denmark*. 31/10/2000. CCPR/CO/70/DNK.
[10] *Concluding Observations of the Committee on the Rights of the Child:* Denmark. 10/07/2001.
[11] For the exchange of comments between the Danish Government and the Advisory Committee/Council of Europe, see an addendum to document CM (2000) 166, July 2001. In October 2001 the Committee of Ministers of the Council of Europe recommended that Denmark give further consideration to the minority issue and the church-state relations (see introduction). Res.CMN(2001) 2).
[12] *The Challenges of Change*, Helsinki Document 1992, Ch. VI, Para 29.
[13] CERD 11 March 1996 (UN GAOR A/51/18, p. 17-20); HRC 20 November 1996 (UN GAOR A/52/40, Vol. I, p. 14-17; CERD 13 August 1997 (UN GAOR A/52/18,p. 59-62); HRC 30 November 2000, A/56/40, Vol. I, p. 34-37. See also IHF, *Human Rights in the OSCE Region, the Balkans, the Caucasus, Europe, Central Asia and North America, Report 2001*, p. 117.
[14] UN Committee on Human Rights, op.cit.