



**amnesty
international**

Dansk Afdeling
Gammeltorv 8, 5. sal
1457 København K

Tlf.: 33 45 65 65
Fax: 33 45 65 66
E-mail: amnesty@amnesty.dk
Web: www.amnesty.dk
Giro: 4078470

The European Parliament Committee on Civil Liberties,
Justice and Home Affairs

Amnesty Internationals concerns in regard to asylum seekers and refugees in Denmark, April 2008

Amnesty International is looking forward to the visit by the European Parliament Committee on Civil Liberties, Justice and Home Affairs in Denmark on the 10th and 11th of April. We hereby mention some of our concerns and recommendations in regard to the Danish policy towards asylum seekers, refugees and immigrants. If you would like to have a general overview of the Danish asylum policy and the Danish Aliens Act, please consult the following web-pages:

Link to the Danish Immigration Services:

http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/asylum.htm

Link to the Danish Aliens Act: (please see § 7-9 for who is admitted as a refugee:)
http://www.nyidanmark.dk/resources.ashx/Resources/Lovstof/Love/UK/aliens_act_945_eng.pdf

In 2002 (after the governmental election in 2001) the government introduced several amendments in the Danish Aliens Act. Amnesty International considers that many of the amendments have meant more restricted rights to asylum seekers, refugees and immigrants and we have raised our concerns on several occasions.¹

"Anti-terrorist-legislation" and the impact on foreigners in Denmark

In 2002 and again in 2006 new anti-terrorist legislation was adopted by the Danish Parliament. The change in 2002 meant, that asylum seekers and foreigners (immigrants, asylum-seekers and refugees that are not Danish citizens) who are considered to be a threat towards the Danish national security can either be expelled or remain in Denmark on a so-called 'tolerated stay'.² Under Danish law, an individual who faces expulsion on national security grounds has no right to challenge that decision in a court, no right to be told on what grounds they are suspected of posing a threat to national security, and no right to know on what grounds it has been decided that they can safely be removed to the country to which they are to be expelled. Nor has the lawyer of the person or the Danish Refugee Board the right to challenge the decision and are not informed about the reasons

¹ Meetings with the Minister of Refugees, Immigration and Integration, letters to the Minister, the Ministry of Refugees, Immigration and Integration, the Immigration Services, the Danish Parliamentarians, press-statements, comments on the Danish legislation etc.

² If these foreigners cannot be expelled due to Denmark's obligations in regard to article three in the Convention against Torture and the European Convention against Human Rights, the foreigners can remain in Denmark on a so-called 'tolerated stay', where only their basic needs such as food are met. They are not allowed to work in Denmark or follow any educational activities.

behind the decision that is taken by the Danish Security and Intelligence Service (PET).³ The Refugee Board has to decide whether this foreigner should be expelled or should be able to live in Denmark on a so called 'tolerated stay', if the expulsion is considered to be a violation of Denmark's international human rights obligations, the decision of the Board is however taken without their knowledge of the foreigners risk of persecution, as they are not informed of why the Danish authorities consider these persons to be a threat to the Danish security.

Although the Danish police does not give any information about the amount of people that are subjected to this law, some sources indicate, that the figure could be around 20.⁴

Two persons that are considered to be a threat to the national security have just (on the 3rd of April) been released and accepted on a so-called tolerated stay as the Refugee Board decided that they could not be send back.

In February 2008, the Danish authorities arrested two Tunisians and a Dane of Moroccan origin, reportedly on suspicion of involvement in an alleged conspiracy to murder one of the cartoonists who drew the controversial caricatures of the Prophet Mohammad. This alleged conspiracy has been characterized in statements by the Danish authorities and in the Danish media, as a 'terrorist' plot.

Within days of the arrests, the Danish national was released; the two Tunisian nationals, who have not been charged with any criminal offence, remain in detention⁵ and now face expulsion from Denmark, reportedly on the grounds that the Danish Intelligence Services consider them to be "a threat to national security".

Amnesty International has on various occasions⁶ criticised that neither the foreigner considered to be a terrorist, his lawyer and the Danish Refugee Board have a right to challenge the decision in a court, no right to be told on what grounds they are suspected of posing a threat to national security, and no right to know on what grounds it has been decided that they can safely be removed to the country to which they are to be expelled. Our recommendation is that all individuals who face deportation from Denmark on national security grounds are given an effective opportunity to challenge the assertion at Court that they pose a threat to national security.

Rejected asylum seekers that are unable to return to their country of origin

Some rejected asylum seekers have remained in Denmark for years as the Danish authorities cannot return them by force (Iraqis, Romas from Kosovo, some Iranians, persons from Somalia except Somaliland).

In regard to rejected Iraqi asylum seekers, the Danish authorities do not have an agreement with the Kurdish and Iraqi authorities to accept refused Iraqi asylum seekers - except for Kurdish criminal rejected asylum seekers from the Northern part of Iraq⁷. For a long time the Danish government has

³ If PET considers that the foreigner is a threat towards the security of the Danish State, the Police asks the Minister of Justice to bring the case forward to the Minister of Refugees, Immigration and Integration that decides (together with the Danish Refugee Board that are unaware of the facts in the case) whether the foreigner should be expelled or be able to live in Denmark on a tolerated stay.

⁴ See for instance Kim Kjær from the Danish Institute of Human Rights, Politiken, the 25th of February, 2008.

⁵ The Danish Supreme Court has just accepted to examine whether the Tunisians should still be detained.

⁶ Recently in letters to the Minister of Refugees, Immigration and Integration in March 2008 about the cases of the two Tunisians.

⁷ Four criminals from the Northern Part of Iraq have been expelled. Source: Rigspolitiet on the 5.th of February, 2008.

tried to obtain such an agreement but without any success, and therefore it is not yet possible to expel Iraqi asylum by force. *On various occasions UNHCR and Amnesty International have stressed, that rejected Iraqi asylum seekers cannot return forcible to their country of origin in dignity and safety.*

Amnesty International has also raised concerns about other rejected asylum seekers, such as minority groups from Kosovo, some Iranians and persons from Somalia – see for instance the report: Amnesty International. ‘Kosovo (Serbia). No forcible return of minorities to Kosovo EUR 70/004/2007. We have criticised the unwillingness of the Danish authorities to follow the recommendations from UNHCR (especially in regard to Iraqis coming from the Central and Southern part of Iraq) and Amnestys recommendations - see for instance MDE 14/041/2007 of Sept. 2007: Iraq. Millions in Flight. The Iraqi refugee crisis.’

Amnesty International has tried to convince the Danish authorities to grant asylum to more Iraqi asylum – seekers. Nevertheless, within the last years, only few Iraqis have been given Convention status (after § 7.1 in the Aliens Act) or Protection status (§ 7.2 in the Aliens Act) in Denmark. In 2006, only 47 Iraqis out of 519 Iraqi asylum seekers were given Protection Status in Denmark (Convention status, Protection status and Humanitarian status). In 2007, the number of Iraqi asylum seekers had risen to 1071, and 379 Iraqis received protection in Denmark, the majority of which where 308 Iraqi translators etc. that worked for the Danish troops and their relatives and who received a special invitation from the Danish government and visas to enter Denmark and seek asylum.

In 2006, the amount of all asylum seekers receiving protection in Denmark (Convention status, Protection Status and Humanitarian status) was 1095 persons. In 2007, 1278 asylum seekers gain protection in Denmark.⁸

During the past years, Amnesty International has raised concerns about those rejected asylum seekers that are unable to return to their country of origin. Our position has been that those rejected asylum seekers, that cannot return to their home country in security and dignity should be able to have a temporary residence permit in Denmark. This has not been the case and instead, some Iraqis for instance, have been living in Denmark for more than 8 years without the possibility to work in Denmark and with limited opportunities to engage in educational activities.⁹

Asylum seekers and the stay in asylum centres

In July 2007, the Council of Europe Commissioner for Human Rights¹⁰ expressed a number of concerns in regard to refugees and asylum seekers. He estimated that 40 % of all asylum-seekers¹¹ stay more than three years in reception centres after the final refusal of a residence permit. As the Commissioner pointed out, the long stay could be due to technical reasons- or due to the rejected asylum seekers own lack of co-operation.

⁸ The figure is taken from the Danish Immigration Services, per March 2008.

⁹ Around 393 persons from Iraq have been denied asylum in Denmark. This figure is from the Danish police (Rigspolitiet) on the 5.th of February, 2008

¹⁰ His report can be found at the following web-page:

<https://wcd.coe.int/ViewDoc.jsp?id=1162943&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

¹¹ The Commissioner does not refer to any sources in regard to the 40 %. We have tried to see whether this figure is correct, and think that it might be an accurate estimation. In 2007, 649 rejected asylum seekers were from countries, where return was not possible out of 1877 asylum seekers – which gives a percentage of 34.

The consequences of the long stay at the asylum centres are serious consequences for their (mental) health for these asylum seekers. The Committee wrote the following: “Despite the measures taken to improve the living conditions and activities in asylum centers, in particular the conditions for asylum-seeking families with children, the Committee is concerned about unduly long waiting periods in asylum centers and the negative psychological effects of long term waiting and the uncertainty of daily life on asylum-seekers. The State party, while improving the living conditions in asylum centers, should take into consideration the effects of long waiting periods and to provide both children and adults living in asylum centers with educational and recreational activities as well as adequate social and health services.”

Although Amnesty International acknowledges that not all asylum seekers are entitled to asylum in Denmark, the organisation is concerned about those asylum seekers that are unable to return to their country of origin in safety and dignity. Therefore, Amnesty has urged the Danish government to improve conditions for rejected asylum seekers from Iraq, Somalia, some Iranians and people from Somalia.

In January 2008 an agreement between the government and the rights wing party, - the Danish Peoples Party ‘Dansk Folkeparti’ was made, giving some improvements for those asylum seekers with children that cannot return to their country of origin (Iraq, Iran, Kosovo and Somalia) and that have been denied asylum in Denmark more than 3 years ago. The intention is to give those asylum seekers with children the possibility to move out of the Danish asylum centers, and improve the education facilities for youngsters between 17 and 21 years that are rejected asylum seekers from the above mentioned countries. As per April 2008 only 29 families have been asked whether they would like to remain at the asylum-centers or would like to live outside and according to the Danish Red Cross only few families wish to live outside the centers. According to the information given by the Danish Red Cross¹², the families want to remain at the centers due to their network and their impression, that residing somewhere else but without any possibility to work and follow educational activities will not change their lives radically.

Amnesty International wrote its comments to this agreement and stated, that rejected asylum seekers originating from Iraq, Iran, Kosovo and Somalia should have improved conditions after already one year, as various reports from experts such as doctors, psychologists and NGO’ s document that asylum seekers mentally and physical well-being worsens after a 1-year stay at the Danish asylum centers. We have also argued, that the asylum- seekers that cannot return to their country of origin in safety should be given the possibility to work and educate themselves.

Dublin Convention and Greece.

In 2006, Denmark returned 2 asylum seekers, both Iraqis, to Greece due to the Dublin Regulation. In 2007, 10 persons, hereunder three from Iraq, were transferred to Greece.¹³

Amnesty International has on various occasions raised concerns about the asylum system in Greece (See the report: Amnesty International. Out of Spotlight. The rights of foreigners and minorities are still a grey area. AI Index EUR 25/005/2006).

Recently (the 28th of March, 2008) we have sent a letter to the Minister of Interior of the Slovenian EU- Presidency and in February we published a press release in regard to our concerns about Dublin- transfers to Greece. All the documents have been sent to the Danish authorities: The Danish Immigration Service and Ministry of Refugees, Immigration and Integration with *Amnesty’s*

¹² The Danish Red Cross, April 2008.

¹³ According to our information from the Danish Immigration Service (Udlændingservice) on the 29th of February, 2008.

recommendation that Denmark - like Norway- should stop all transfers from Denmark to Greece, as there is a lack of guarantee that international human rights law will not be violated. We have not yet received any answer from the Danish authorities.

Amendment from Refugee protection status to B-status.

In 2002 the so-called ‘de facto status’ was changed to ‘B- status’. Although asylum seekers still can achieve protection status in Denmark on other grounds than the ones mentioned in the Refugee Convention – the amendment meant that it is harder to receive protection status if people are fleeing from war and refugees have a severe subjective fear of returning to their country.

*Amnesty International has expressed its concerns about the fact that some asylum seekers fleeing from generalised war and violence, but nevertheless do possess a well-founded fear of persecution due to their membership of a particular ethnic or religious group, might have difficulties in demonstrating that they as **individuals** will be subjected to human rights abuses if returned to their country of origin.*

We have the impression that it is very hard to achieve protection in Denmark – even as a member of a particular ethnic or religious group – if you cannot prove a *concrete* and *individual* risk of persecution. Many Iraqis will have difficulties in showing a special individual risk of persecution as they fled from the country years ago. Denmark gives protection to few Iraqis- in 2006, only 47 Iraqis out of 519 Iraqi asylum seekers were given Protection Status in Denmark (Convention status, Protection status and humanitarian status). In 2007, the number of Iraqi asylum seekers had risen to 1071, and 379 Iraqis received protection in Denmark, mainly due to the 308 Iraqi translators etc. that worked for the Danish troops and their relatives.¹⁴ This is very low in comparison to countries such as Sweden, that received almost half (46 percent) of all Iraqi asylum seekers in the EU and gave protection to over 80 percent in 2006.¹⁵

Detention of asylum seekers and immigrants.

In the Danish Aliens Act the following two paragraphs (§ 35 and § 36) give the possibility of detaining asylum seekers and rejected asylum seekers:

§ 35: Asylum seekers that have committed a criminal act can be detained under this paragraph.

§ 36: Rejected asylum seekers can be detained on various grounds, for instance if there might be a risk that this person will “disappear” and if other methods (according to § 34 in the Aliens Act- such as reporting weekly to the police) is not enough to assure an effective return for the foreigner. An asylum seeker can also be detained if this person does not inform the police about his nationality or identity or description of the travel route.

§ 37: Indicates the rules about the length of the detention.

A detained alien has to be presented before the Court within 3 days and the detention has to be renewed within 4 weeks. There are no statistics about the persons that are detained for under three days.

¹⁴ The figure is taken from the Danish Immigration Services, per March 2008.

¹⁵ In 2006, 8.951 Iraqi asylum - seekers arrived in Sweden, and 7.245 received protection. Source: UN and EU Commission.

As per March 2008¹⁶, 68 persons were detained due to the Danish Aliens Act § 36.

Amnesty International's Danish Section has recently started investigating the Danish law and practice concerning detention of non-criminal immigrants and asylum-seekers.

Our preliminary findings show concerns about the following issues:

- *Amnesty International finds it problematic that there is no upper-limit in the Danish Aliens Act in regard to the detention period of non-criminal asylum seekers and immigrants.*
- *We have seen some cases where non-criminal rejected asylum seekers and immigrants have been detained for up to 2 years, although the authorities in their country of origin could not provide them with the relevant identification/documentation papers.*
- *We have the impression, that many young men are imprisoned during the first asylum phase when they are waiting to be transferred to their first country of asylum, due to the Dublin Regulation, although other initiatives such as reporting measures might have been used instead.*
- *Amnesty has observed some proceedings at the Court located in Hillerød, (Hillerød Kriminalret). Only a very low number of detained are released, as the vast majority of cases do have their detention prolonged – although other measures might have been sufficient. Once an undocumented (illegal) immigrant has resided illegal in Denmark or has tried to go underground, but then tries to seek asylum based on new grounds and information, this person will normally be detained under the whole asylum case. Each case in the Court does not get more attention than 5 or ten minutes.*

Discrimination- Starting allowance

People who have not resided permanently in Denmark for at least seven of the last eight years and haven't worked for at least 2 ½ years, are not entitled to claim regular social welfare benefits. Instead they are restricted to the so-called "starting allowance".

For persons over the age of 25 years of age, the "starting allowance" amounts to between 45 and 65 percent of regular social benefits, depending on their marital and parental status. Statistics show that newly-arrived residents, in particular members of ethnic minorities, experience more difficulty in finding a job than people born in Denmark. Most notably, newly-arrived residents do not meet the language-requirements (and other formal requirements) on the Danish labour-market, and furthermore, they face barriers in the form of scepticism and discrimination on the labour market. They are, therefore, heavily over-represented among recipients of the "starting allowance". In 2006 94 % of the starting allowance was paid to people without a Danish background.

In July 2007, the Commissioner for Human Rights of the Council of Europe noted concerns that the "starting allowance" risked creating poverty, and that it might be a cause of indirect discrimination against resident non-nationals from ethnic minorities.

Amnesty International made a study on the start allowance and published its findings in the report: 'Starthjælp - Når Staten Diskriminerer', November 2007.

Our recommendations are that the start allowance should be abolished as it risks creating poverty and because it is an indirect discrimination against residents from ethnic minorities.

Expulsion of criminal foreigners.

¹⁶ Figures by the Danish police, by the 7th of March, 2008.

An amendment in the Danish Aliens Act in 2006 meant, that it is now easier to expel criminal foreigners. Amnesty's concern is that refugees having been in Denmark for less than 8 years can be either expelled for committed minor crimes or can remain in Denmark on a so-called 'tolerated stay'.

Amnesty International has raised concerns about the fact that this can harm the right of family life (art. 8 of the European Convention on Human Rights) and can also be seen as a violation of article 32 of the UN Refugee Convention, which only gives the State the possibility to expel refugees if they are a threat to the national security. Also minors under the age of 18 years can get a "suspended expulsion" in Denmark.

The possibility to apply for asylum from Danish representations abroad.

Since 2002 it is no longer possible to seek asylum from Danish representations or Embassies abroad. Although only around 65 persons received protection in Denmark due to that possibility, Amnesty International finds that the missing possibility to seek asylum from abroad - combined with strict visa requirements to get entrance in Denmark - makes it even harder to seek asylum in Denmark.

Therefore Amnesty International recommends that the possibility to seek asylum from Danish representations should be re-introduced.

The possibility to obtain a lawyer at the first place of appeal.

If the Immigration Services decides that an asylum application can be processed in Denmark, the Immigration Service will then determine whether or not asylum can be granted. The asylum seeker will fill out an application form and is interviewed by the Immigration Service, assisted by an interpreter. The asylum seeker does not have any access to a lawyer. If the application for asylum is rejected, the case is referred to the Refugee Appeals Board which will make the final ruling on the case.

Amnesty International has recommended that the asylum seekers should already have access to a lawyer at the level of the Immigration Services in order to avoid severe misunderstandings.

We have heard about cases where the asylum seeker is rejected both at the Immigration Services and the Refugee Appeals Board as this person is considered to be unreliable as he changed the version of his flight reasons, his age etc. With an assistance of a lawyer there might be a better chance, that the asylum seeker can be legally and morally supported to tell the 'correct' story of his flight reasons.

The amendments in the Refugee Board:

An asylum application is first decided at the Danish Immigration Service (Udlændingetjenesten). If the asylum application is rejected the case is normally appealed at the Danish Refugee Board, where the asylum request is final without the possibility to appeal before a judicial court.

Amnesty International has criticised that an amendment in 2002 changed the composition of the Refugee Board, eliminating the presence of the Ministry of Foreign Affairs and the Danish Refugee Council. Now the Board consists of the following three: A judge, a member appointed by the Danish Bar and Law Society and a member appointed by the Ministry of Refugees, Immigration and Integration. We have questioned the independence of the member appointed by the Ministry of

Refugees, Immigration and Integration and have criticised that the Board has lost expertise with the lack of especially the membership of the Danish Refugee Council.

Amnesty International therefore recommends that the membership re- introduces a representative from the Danish Refugee Council and the Ministry of Foreign Affairs.

Foreigners seeking citizenship in Denmark

Until the end of 2005 foreigners that had been traumatized as victims of torture could be granted exemption from passing an examination in Danish while seeking Danish citizenship in Denmark.

An amendment was made, meaning that traumatized foreigners no longer can be exempted and have to pass the examination. Amnesty criticised this new rule, as traumatized foreigners are a very sensitive group and should have the possibility to obtain Danish citizenship even if they are not capable of making the examination of the Danish language. *Therefore Amnesty International finds it necessary that people suffering from PTSD are exempted from the examination.*

Concerning the confidentiality of the doctors

In 2005 an amendment in the Danish Aliens Act meant, that the Danish Immigration Services can get access to medical information about an asylum seeker or a person seeking residence permit on humanitarian grounds without the acceptance of the foreigner or even informing the foreigner that it can or will happen. Amnesty Internationals medical group has criticised this amendment as they consider it to be a violation of the doctors right of professional secrecy and that it constitutes a threat towards the relationship of trust between the doctor and the foreigner. *Amnesty Internationals medical group has recommended that the Danish Immigration Services inform the asylum seeker and do achieve the permission to get access to the medical information about the person concerned.*