



ALTERNATIVE FOLLOW-UP REPORT

**to Denmark's follow-up report (E/C.12/DNK/FCO/6) dated 3 November 2021
to be considered by the UN Committee on Economic, Social and Cultural Rights
during its session in February 2022**

14 January 2022



Introduction

This report is written jointly by the Danish Refugee Council and DIGNITY - Danish Institute Against Torture (DIGNITY) and submitted to the Committee as an alternative follow-up report to Denmark's follow-up report of 3 November 2021.¹ We also refer to our joint alternative report to the Committee's list of issues submitted to the Committee in September 2019.

We would like to highlight that since Denmark underwent its last review by the Committee in October 2019, it has made progress on the following two areas mentioned in our alternative report:

- Refugees with article 7 (3) status (the Aliens Act) now have the right to seek divorce in Denmark.
- Refugees with article 7 (3) status and their reunified family members now are entitled to free higher education.

In the last review of Denmark, the Committee adopted three follow-up issues (Concluding Observations, para 13, 17 and 19).² This report responds to the recommendation 13 that stipulated:

Retrogressive measures affecting refugees and migrants

12. The Committee is concerned at the numerous retrogressive measures adopted by the State party, as indicated in the present concluding observations, which have directly and indirectly curtailed the rights of refugees and migrants. The Committee is concerned that certain measures have not been necessitated by a reduction in available resources or the implementation of an austerity programme, and disproportionately affect groups that are already disadvantaged and marginalized (art. 2 (1)).

13. The Committee recommends that, in the implementation of the new political agreement entitled "A fair direction for Denmark", the State party reverse the retrogressive measures taken that do not meet the criteria of necessity, proportionality temporariness and non-discrimination, which are elaborated in the Committee's letter dated 16 May 2012 on austerity measures.

Denmark responded to this in its follow-up report by mentioning in general terms that Denmark pursues its policies in full accordance with Denmark's international obligations and that Danish legislation is adopted in accordance with Denmark's international obligations.³ Without providing any details, Denmark mentioned that "any derogating measure will be temporary in nature and will only be applied for the period necessary to counter the emergency situation."⁴

We would argue that Denmark's response is lacking sufficient information for the Committee to make an assessment on whether Denmark is implementing recommendation 13, cf. CESCR note on the procedure for follow-up to concluding observations.⁵ No information has been submitted on whether Denmark intends to take any measures to reverse the numerous retrogressive measures that have directly and indirectly curtailed the rights of refugees and migrants.

¹ E/C.12/DNK/FCO/6.

² Concluding Observations of 12 November 2019, E/C.12/DNK/CO/6.

³ E/C.12/DNK/FCO/6, para 6.

⁴ Ibid.

⁵ CESCR note on the procedure for follow-up to concluding observations, para 5.

We also note that no plan of implementation of the Committee's recommendations has been prepared by the Danish government. We recommend the Committee to ask Denmark what measures have been taken to distribute the Concluding Observations and to prepare an implementation plan with input from civil society.

We note that the "tough on immigration policy" is still being implemented by the current government and by way of example refugees are often provided with residence status in Denmark of temporary nature. The uncertainty about further restrictions creates stress among refugees and their family members, especially among those who are already psychologically vulnerable because of past trauma.

Below we would like to highlight retrogressive measures concerning refugees' rights to family reunification, health care and social allowances and recommend the Committee to ask Denmark for further information on the implementation measures regarding these three issues:

1. Right to Family Reunification (CESCR article 2)

As mentioned in our alternative report, refugees, who have obtained temporary residence permit pursuant to article 7 (3) of the Aliens Act, are not entitled to family reunification with partners or children right after having obtained residence in Denmark.⁶

In January 2019, the Danish Refugee Council published a report concerning the conditions for refugees in Denmark that focused on the issue of the implications of the above-mentioned regulation, as well as of the temporary residence status granted to refugees and the low integration benefit that they receive.⁷ The report, which is based on a survey of the experiences of 673 volunteers in Danish Refugee Council who works with refugee families, documented that many refugee families noted that the waiting time for family reunification with partners and children has a negative impact on their health and well-being. In addition, refugees are very stressed about their economic situation and its negative impact on their children.

After the judgement by the European Court of Human Rights, *M.A. v. Denmark*, of 9 July 2021, Denmark is now proposing a two-year waiting period before this group of refugees are entitled to residence permit for their family members.

A study from The Rockwool Foundation published in 2021 shows that family separation is a risk factor of mental health problems and waiting for asylum and family reunification has consequences for the mental health. Refugee fathers waiting for their family to come to Denmark face an increased risk of mental illness and are twice as likely to receive a psychiatric diagnosis, including stress-related diagnosis such as PTSD, compared to refugee fathers who have brought their close family to the country. The study shows that this risk is mainly related to the factor of being separate from the family, and not related to the duration of the waiting period. Thus, a reduction of the duration of the waiting period will not reduce the risk of mental illness according to this study. Moreover, the study also shows that even after the family has arrived, fathers

⁶ Law no. 102 of 3 February 2016. The law allows for certain exemptions, for example if the partner is a person with disabilities.

⁷ DRC (2019): Vi tager jo drømmene fra dem, available in Danish at https://drc.ngo/media/oqInvaau/vi-tager-jo-droemmene-fra-dem-undersoegelse_lovaendringer_2019.pdf

with a total waiting time for of more than one and a half years have an increased risk of mental illness in the first years after family reunification.⁸

We would argue that Denmark has not explained how the coming rule is implemented without resulting in a violation of Article 2 CESC, the Committee's recommendation to "align the conditions for family reunification for all refugees with the obligation to provide the widest possible protection and assistance to the family" and the conditions for using austerity measures, cf. Committee's letter of 16 May 2012.

We would maintain our recommendation that refugees with article 7 (3) status would be entitled to family reunification on the same conditions as other refugees living in Denmark.

2. The Right to Health (CESCR article 10)

Payment of translation

Refugees, who have lived in Denmark for more than three years, continue to be required to pay for translation when accessing health services. We would argue that this potentially involves a violation of the principle of equal access to health services and the right to health.

We would argue that Denmark has not explained how this is in accordance with the CESC and why no measure has been taken to implement the Committee's recommendation to provide free interpretation, (Concluding Observations, para 26(d)). In addition, Denmark has not explained how this is in accordance with the conditions for using austerity measures, cf. Committee's letter of 16 May 2012.

We would continue to recommend that refugees would not be required to pay for translation as this hampers their access to health services in Denmark.

Transportation

Traumatized refugees can receive treatment at DIGNITY's center for rehabilitation if their medical doctor makes a referral, or at other rehabilitation centers. However, many of them are not entitled to reimbursement of their expenses for transportation to DIGNITY located in Copenhagen, and they cannot afford to pay for the cost on their own. Unfortunately, this leads to a situation in which many traumatized refugees do not receive treatment. By way of example, recently five refugees, who were admitted to DIGNITY's rehabilitation center, were not able to begin their treatment due to lack of ability to pay their transportation costs.

We would argue that Denmark has not explained how this is in accordance with the CESC and why no measure has been taken to implement the Committee's recommendation to provide reimbursement of transportation costs (Concluding Observations, para 26(d)). In addition, Denmark has not explained how this is in accordance with the conditions for using austerity measures, cf. Committee's letter of 16 May 2012. We would recommend that refugees, who access rehabilitation services in Denmark, are entitled to transportation from home to service provider.

⁸ Published as Hvidtfeldt, Camilla, Jørgen Holm Petersen, Marie Norredam (2021): Waiting for family reunification and the risk of mental disorders among refugee fathers: a 24-year longitudinal cohort study from Denmark. See https://www.rockwoolfonden.dk/app/uploads/2021/12/RFF-NYT-Foroegget-risiko-for-psykisk-sygdom_december-2021.pdf

3. The Right to Adequate Standard of Living (CESCR article 11)

As mentioned in our alternative report (issue 2), people who have not lived in Denmark for at least nine of the past ten years and not been in full employment for at least two years and six months would be given the low social benefit called “self-supporting and return benefit”.

We know that many refugees, who receive the low benefits, are experiencing a dire financial situation and suffering from the hardships as a consequence of the low level of benefit.

The government established a commission to make recommendations about the allowance system in general (“Ydelseskommisionen” in Danish) that published its recommendations in May 2021. Some of its recommendations related to immigrants receiving “self-supporting and return benefit” are positive, including a small increase in their monthly allowance.⁹ However, no new system has been established and Denmark has not explained how the coming system will be in accordance with the requirements of the CESCR.

Moreover, refugees continue gradually to earn the right to child benefits (for children below 18 years) and pension. The graduation principle with regards to child benefits where the right would be gradually owned over a period of six years for refugees and other newcomers to Denmark.¹⁰ The consequences of the low self-supporting and return benefit - in combination with the restriction on the child benefit - are severe and mean that more children in refugee families live in poverty than other children.

The graduation principle also applies to pension for refugees, and it was restricted further in 2018 when the entitlement to full pension depended upon the number of years that the person had lived in Denmark from the age of 15 until age of pension. To be entitled to full pension, the requirement is now having lived 9 out of 10 years of the total time in Denmark. Thus, by way of example, a person who retires at the age of 65 years, is entitled to full pension if s/he has lived 45 years in Denmark since the age of 15 years. This also applies to pension provided prior to the normal retirement age due to illness etc. (in Danish “førtidspension”).¹¹

The consequences of the low pension are that more elderly refugees live in poverty than other elderly.

Although the new allowance system may entail positive developments, we expect the above-mentioned graduation principle to stay in place. We would like the Committee to urge Denmark to explain how this principle is in accordance with the CESCR and recommendation 13 of the Committee in its Concluding Observations.

⁹ Factsheet 7, see <https://bm.dk/arbejdsmraader/aktuelle-fokusomraader/ydelseskommisionen/>

¹⁰ Law no. 1402 of 5 December 2017.

¹¹ Law no. 995 of 30 August 2015 and Law no. 442 of 8 May 2018.