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Ms Inger STØJBERG

Minister for Immigration, Integration and Housing
Denmark

Strasbourg, 12 January 2016

Dear Minister,

The human rights of migrants, including asylum-seekers and refugees, are one of my priority areas of focus, especially in the current context characterised by a marked increase in refugee movements across Europe. In recent months, I have repeatedly reiterated that in order to meet current challenges in a manner which is both effective and human rights compliant, European countries must fully abide by their human rights obligations and work towards solutions based on genuine inter-state solidarity. I am therefore deeply concerned by a number of changes to Denmark's legislation on asylum and immigration which have either already been adopted, or which will be discussed by the Danish Parliament in the coming days.

Thus, some of the changes introduced in November 2015 raise in my view issues of compatibility with the European Convention on Human Rights ("ECHR") and other international standards. I refer in particular to the amendments to the Aliens Act, which increase the possibilities of detaining asylum-seekers under "special circumstances", such as a massive arrival of asylum-seekers, and weaken the judicial review of detention. I have repeatedly stressed that asylum seekers and immigrants should not be considered as criminals and that all migration policies – including as concerns reception conditions and the use of detention – should reflect this approach. According to the case-law of the European Court of Human Rights ("The Court"), the detention of asylum-seekers can only be used as an option of last resort, and must pursue a legitimate purpose and be necessary and proportionate in each individual case. I am concerned that the possibility of making increased use of detention in specific circumstances, combined with the elimination of important legal safeguards regarding detention, could lead to detention being used disproportionately and indiscriminately in respect of asylum-seekers, in contradiction with Article 5 of the ECHR protecting the right to liberty.

I would also like to share with you my concerns regarding the new package of amendments to the legislation on aliens that the Danish Parliament will discuss in the coming days. Several of the measures proposed in this context aim at making it more difficult for beneficiaries of international protection to request family reunification. In a report following my visit to Denmark in November 2013, I expressed concerns about the toughening of rules governing family reunification, in particular in view of the impact of this on the enjoyment by children of rights protected under the UN Convention on the Rights of the Child (UNCRC). The proposal to postpone the right to family reunification to three years for beneficiaries of temporary subsidiary protection (as opposed to one year under current legislation) is of particular concern. Family reunification is one of the avenues that should be made available to refugees to obtain international protection in Denmark safely and legally, thereby enabling these persons to avoid risking their lives or going through very difficult journeys and seeking the help of smugglers to reach safety. Additionally, the measure raises issues of compatibility with Article 8 of the ECHR protecting, *inter alia*, the right to respect for one's family life and could infringe on the rights of children to live within their family environment and to have their applications for family reunification dealt with "in a positive, humane and expeditious manner", as prescribed by the UNCRC.

In my report of 2013, I called on the Danish authorities to consider granting permanent residence to refugees as early as possible, in order to establish a stable basis for their integration into society, in line also with UNHCR's recommendations contained in the [Conclusions on Local Integration](#).¹ However, the proposal contained in the new package of amendments tightening criteria to obtain a permanent residence permit and significantly diminishing the duration of residence permits, notably those granted to recognised refugees and beneficiaries of subsidiary and temporary subsidiary protection, not only goes in the opposite direction of this recommendation but also appears to run counter to the aim set by the Danish authorities of promoting a speedy and effective integration of these persons in Denmark .

In my 2013 report, I also encouraged the Danish authorities to ensure that the selection of quota refugees eligible for resettlement in Denmark be guided by the needs of the persons concerned. I therefore deplore the proposal to reintroduce the "integration potential" criterion in the selection of refugees eligible for resettlement in Denmark. I would like to recall that the primary aim of resettlement is to provide effective protection to those most in need of such protection.

Lastly, I was dismayed by the proposal to seize the assets of asylum-seekers arriving in Denmark, in order to cover their subsistence needs. I believe that such a measure could amount to an infringement of the human dignity of the persons concerned. It could also lead to violations of the right to property enshrined in Article 1 of Protocol 1 to the ECHR. While Article 1 Protocol 1 entitles states to control the use of property in accordance with the general interest, the Court has established that a fair balance must be struck between the demands of public interest and the right to the peaceful enjoyment of one's possessions. I believe that the proportionality of the proposed measure is doubtful. Asylum-seekers form a particularly vulnerable group of the population. Moreover, as underpinned by UNHCR in their Observations on the proposed amendments, most refugees reaching Europe have had to spend large sums of money to escape conflict zones and reach Europe and it is thus doubtful that they carry with them substantial assets. Many of them are, on the contrary, at risk of being reduced to dire living conditions.

I therefore urge you to ensure that all amendments to the legislation on aliens are fully compliant with the ECHR and other relevant international human rights and refugee protection standards. In the current challenging times, it is more than ever crucial to abide by our common human rights standards and to avoid undermining existing standards.

Looking forward to maintaining a constructive dialogue with you, I remain,

Yours sincerely,

Nils Muižnieks

¹ UNHCR Executive Committee, Conclusions on Local Integration, adopted on 7 October 2005.