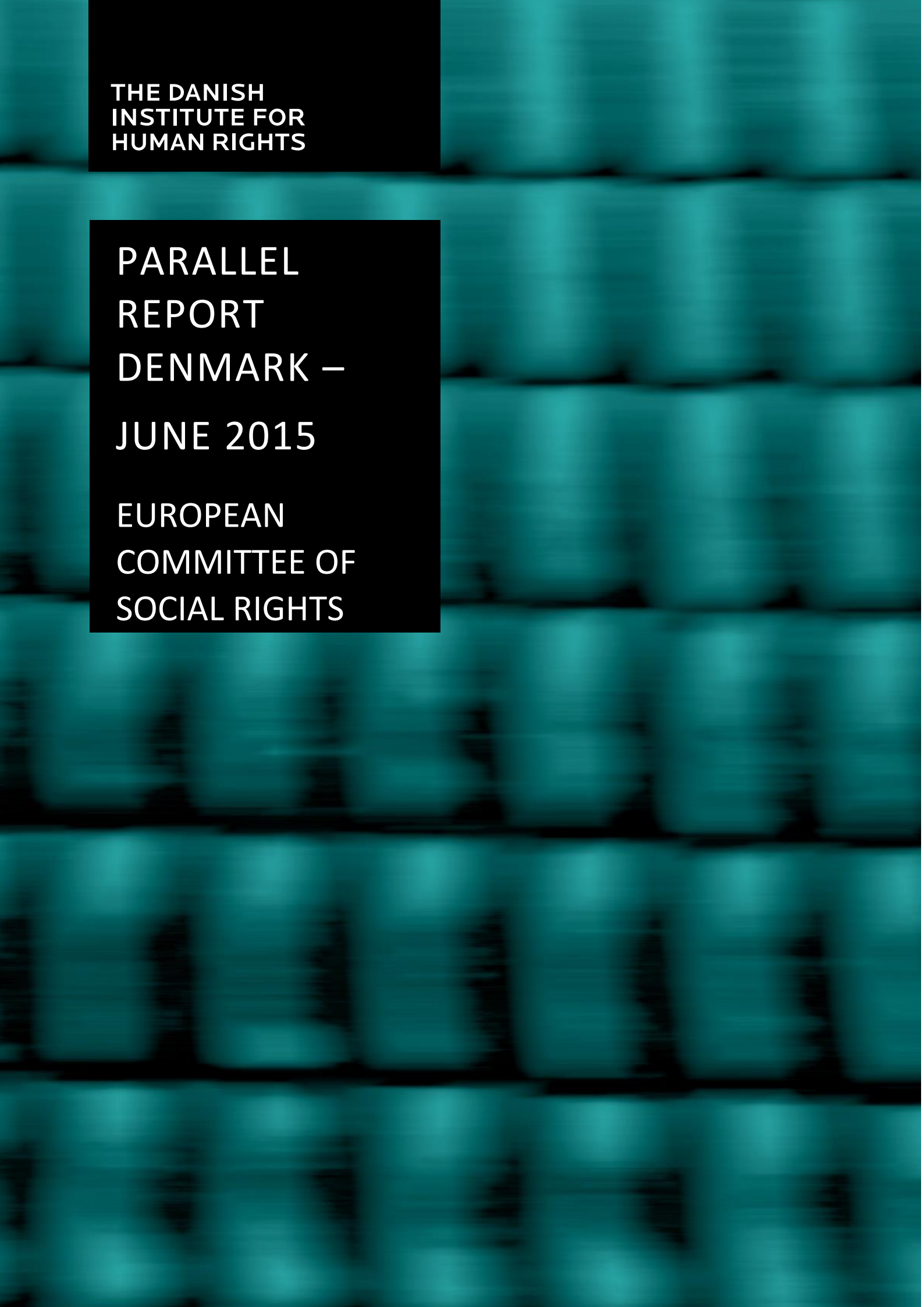

THE DANISH INSTITUTE FOR HUMAN RIGHTS

PARALLEL REPORT DENMARK – JUNE 2015

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

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PARALLEL REPORT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

PARALLEL REPORT TO THE COUNCIL OF EUROPE'S COMMITTEE OF SOCIAL RIGHTS WITH ADDITIONAL INFORMATION TO THE 34TH NATIONAL REPORT ON THE IMPLEMENTATION OF THE EUROPEAN SOCIAL CHARTER SUBMITTED BY THE DANISH GOVERNMENT ON ARTICLE 8, 16 AND 17.

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PREFACE

INTRODUCTION

This parallel report to the Council of Europe's Committee of Social Rights contains additional information to the 34th national report on the implementation of specific articles of the European Social Charter in Denmark submitted by the Danish government in February 2015.

The European Social Charter has specific provisions on the reporting procedure that require the Contracting Parties to report on the application of the Charter as well as specific provisions on the involvement of national organisations that are members of the international organisations of employers and trade unions and such international organisations involvement in the reporting procedure.

The involvement of national human rights institutions and civil society organisations are not regulated in the Charter or in the established practice of the Committee of Social Rights. Following a visit to Denmark by a delegation of the European Committee of Social Rights in September 2014 to discuss matters related to the European Social Charter, the delegation and the Danish Institute for Human Rights (DIHR) discussed the possibilities for strengthening the involvement of national human rights institutions in monitoring the implementation of the European Social Charter. This parallel report is the result of these discussions.

The aim of this report is to supplement the national report with additional information from the national human rights institution on Charter-related issues and to give the Committee of Social Rights as much information as possible to assess the application of the European Social Charter in Denmark.

This report consist of:

- **Part 1** concerns the right to maternity leave and maternity benefits in Danish law (article 8).
- **Part 2** concerns family housing rights (article 16) and violence in intimate relations (article 16 and 17).
- **Part 3** concerns children's rights in the criminal justice system.

THE DANISH INSTITUTE FOR HUMAN RIGHTS

DIHR is Denmark's national human rights institution (NHRI). DIHR was established in 1987 and is regulated by act no. 553 of 18 June 2012 on the Institute for Human Rights – Denmark's National Human Rights Institution. DIHR is an independent, self-governing institution within the public administration and is established and functioning in accordance with the UN Principles relating to the Status of National Institutions (The Paris Principles). DIHR has been accredited as an A-status National Human Rights Institution by the International Coordinating Committee of National Human Rights Institutions.

DIHR monitors the human rights situation in Denmark and publishes an annual status report as well as academic research, analyses and reports on human rights. In 2015, DIHR has published a new status report concerning the human rights situation in Denmark that includes economic and social rights. An English summary of the status report is available on the institute's website: www.humanrights.dk/

The core funding of DIHR is based on the Danish Finance Act and covers activities within monitoring, research and education. In addition, DIHR receives separate funding for equal treatment work within the field of gender, race and ethnic origin and rights of persons with disabilities.

In 2014, DIHR was appointed as the national human rights institution of Greenland. The mandate of DIHR thus extends to Denmark and Greenland. DIHR cooperates with the Human Rights Council of Greenland in carrying out the monitoring function in Greenland. The mandate of DIHR does not extend to the Faroe Islands, the other self-governed part of the Kingdom of Denmark. Pursuant to Denmark's declaration in accordance with article 34(1) addressed to the Secretary General of the Council of Europe, the European Social Charter does not apply in Greenland or the Faroe Islands. Thus, this report does not contain topics concerning the implementation of the European Social Charter in Greenland or the Faroe Islands.

PART 1

1 ADDITIONAL INFORMATION ON MATERNITY RIGHTS (ARTICLE 8)

Right to maternity leave
The Committee has asked Denmark to provide information on what legal safeguards exist to avoid any undue pressure from employers to shorten their maternity leave.

DIHR understands the question as regarding pressure to shorten the leave situated in the first 14 weeks after the child is born.

DIHR has no knowledge on cases, where a woman has been under pressure to shorten this part of the leave. The Committee refers to a Danish evaluation on the use of maternity leave carried out in 2007 by the National Centre for Social research, which says that 99 percent of the interviewed mothers had taken the 14 weeks postnatal leave guaranteed by law. In the view of DIHR the numbers show that the above mentioned pressure is not a significant factor, since almost all Danish mothers take a substantial longer leave.

In general, the legal protection against discrimination on grounds of pregnancy, motherhood and parenthood is strong as described in the 34th National Report. In Denmark there is at the same time a substantial number of cases on dismissal because of pregnancy and maternity and parental leave. These cases illustrate that there exist a pressure from employers on mothers to shorten their leave and on father to refrain from taking their parental leave. The pressure for a shorter leave seem however not to be focused specifically on the period of maternity leave but rather on the periods in the end of the legal period for rights to leave, e.g. the parental leave on 32 weeks which is placed after the 14 weeks of maternity leave (article 9 of the Maternity Leave Act).

Right to maternity benefits.
The Committee has asked Denmark to provide information on whether periods of unemployment are taken into account for the calculation of the qualifying period entitling women to receive the maternity benefit.

The national report does not give any remarks on this question. A relevant regulation to be mentioned could be article 27 of the Maternity Leave Act, which

stipulates the employment requirements for the entitlement to maternity benefits:

Employment requirements

27. - (1) An employee shall be entitled to maternity benefits from the local authority where the person concerned

(i) has been attached to the labour market continuously for the last 13 weeks prior to the beginning of the period of absence and in this period has been employed for a minimum of 120 hours,

(ii) would have been entitled to unemployment benefits or an allowance in lieu thereof, cf. the Act on Unemployment Insurance, etc., if there had been no right to benefits under this Act,

(iii) has within the last month completed vocational training of a minimum of 18 months' duration or

(iv) is a trainee in paid practice as part of training that is regulated by or pursuant to statute.

(2) In the calculation of the 13-week period of subsection (1) (i), periods shall be included in which the employee has

(i) worked as an employee,

(ii) worked as a self-employed person immediately prior to the work as an employee and with the activity has fulfilled the employment requirement under section 28,

(iii) received benefits under the Act on Sickness Benefits or benefits under this Act,

(iv) received unemployment benefits or an allowance in lieu thereof,

(v) taken holiday with pay or holiday allowance,

(vi) received compensation during a period under notice from the Employees Guarantee Fund or

(vii) been subject to an industrial dispute.

(3) Where assessment is made of whether the employment requirement under subsection (1) has been fulfilled, periods of up to one year in which leave allowance has been disbursed under the Act on Childcare Leave shall be disregarded. Furthermore, periods of up to two years shall be disregarded where, under the Act on Social Services, compensation has been granted for lost earnings in order to care for a disabled child in the home or where, under the same Act, payment has been granted in order to care for a dying person or, under section 26 of this Act, benefits have been granted to parents with seriously ill children.

Section 1 gives the right to maternity benefits on condition that the person has been attached to the labour market in a further described way. According to section 2, iv) the condition on "attachment to the labour market" in section 1 can be met by periods of - among other things - unemployment.

PART 2

2 ADDITIONAL INFORMATION ON HOUSING RIGHTS AND DOMESTIC VIOLENCE (ARTICLE 16)

HOUSING RIGHTS UNDER ARTICLE 16
Supplementary information regarding the right of the family to social, legal and economics protection in the housing area.

The general housing policies implementing the right to decent housing for families are well described in the national report. However, to give the full picture of the housing situation the DIHR will in the following provide some additional information.

Data from Ministry of Housing, Urban and Rural Affairs shows that there has been a decrease in the number of the cheapest dwellings between 2007-2013. The data shows a decrease of 55 percent in the number of rental dwellings at the price of 3000 DKK (approximately 400 €) or lower and a decrease of 27 percent in the number of dwellings at the price between 3000-4000 DKK. These rent levels are according to the former Ministry of Children, Equality, Integration and Social Affairs considered affordable to people living of the lowest levels of social benefits. Generally young people and singles without children receives the lowest social benefits and it is questionable whether the housing rights of these groups are observed in accordance to article 16. In addition, the decrease in the number of the cheapest dwellings may put extra pressure on the available dwellings with a rental level slightly above the lowest category.

For more than a decade, the Parliament has passed different legislation to pursue policies for improving living conditions in the challenged social housing neighbourhoods. From a human rights perspective these policies and initiatives aim at fulfilling the right to adequate or decent housing for the residents living in these neighbourhoods. A part of these policies - pursuing the aim of strengthening the social diversity of tenants - involves a wide range of alternative letting rules. This policy mainly aims at preventing vulnerable tenants from moving into these neighbourhoods and to attract socially well-established tenants, and have little focus on improving vulnerable people's access to attractive social housing in other neighbourhoods.

Only the alternative letting rules called “combined letting” give precluded tenants a right to obtain a similar dwelling in another neighbourhood within 6 months. Statistics from the Ministry of Housing, Urban and Rural Affairs show that out of 709 precluded tenants, only 28, were offered another appropriate substitute dwelling by their municipality. [1]

There is a lack of knowledge on the combined effect of the initiatives to create socially mixed neighbourhoods on access to housing for, among others, ethnic minorities. DIHR has among other recommendations on housing rights recommended Denmark to conduct a systematic registration of the use of all letting instruments aggregated by data on socio-economic status, disability, gender and ethnic origin to determine whether such initiatives has a disproportionate impact on vulnerable groups.

VIOLENCE IN INTIMATE RELATIONS UNDER ARTICLE 16 AND 17

Denmark ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) on 23 April 2014.

An analysis of the legal consequences of the Istanbul Convention in accordance with Danish Law was published in June 2014 by DIHR. The report highlights that the work of the police authority on domestic violence is currently a matter for local police districts. This results in an unequal judicial protection of victims among different districts.

There are differences between the police districts when the following is examined:the education of professionals, the access to attack alarms, the use of and the provision of counselling to victims and perpetrators and the use of restraining orders, barring orders and evictions.

In 2012, the regulation on restraining orders, barring orders and eviction was assembled in a single act. The purpose was to strengthen the protection of victims exposed to violence, harassment and stalking.

The act gives the police the authority to remove the aggressor from the shared home not allowing him or her to return in case of a well-founded assumption that the violence will continue. It is very different how each police district uses this instrument that ensures that victims don’t have to flee their own home.

DIHR recommends that Denmark ensure a uniform and effective handling of cases about domestic violence in all police districts.

Denmark launched a national action plan to address domestic violence in 2014. The Danish government has set a target for 2020 to reduce the percentage of women, who seek shelter more than once at a crisis centre for victims of domestic violence by at least 30 percent.

However, Danish crisis centres for victims of domestic violence around-the country report that municipalities neglect their legal obligation to give family counselling to battered women with children. A survey carried out in the summer of 2014 showed that 31 out of 36 crisis centres estimate that local authorities did not live up to their obligations regarding family counselling. Family counselling is advice on relocation, job, finances and education.

PART 3

3 ADDITIONAL INFORMATION ON CHILDREN'S RIGHTS (ARTICLE 17)

Supplementary information regarding children's conditions in the criminal justice system. The regulation and practice regarding children in the criminal justice system is well described in the state report.

The use of solitary confinement is, however, not only used in relation to pre-trial custody but to some extend as well as administrative or "disciplinary" punishment of convicted children imprisoned in regular prisons due to lack of capacity in juvenile institutions or for other reasons.

When a child between 15-18 years for whatever reason is imprisoned in a regular prison, the general rules in the Execution of Punishment Act applies, including provisions on solitary confinement as disciplinary punishment. Between 2009-2013, based on the Execution of Punishment Act, children have in total been isolated 158 times from 24 hours to 14 days. For children placed in juvenile institutions Administrative Act no. 186 of 20 February 2015 applies which limit isolation to a maximum of 2 hours.[2]

The Prison and Probation Service has now instructed all prisons to limit the use of solitary confinement as disciplinary punishment against children and the former Minister of Justice has informed the Parliamentary Standing Committee on Legal Affairs that the Prison and Probation Service will examine the placement of children in regular prisons and the use of solitary confinement.[3]

END NOTES

[1] DR, “Boligminister: Kommuner snyder ikke boligsøgende”, available in Danish at: http://www.dr.dk/Nyheder/Indland/2014/04/10/140957.htm.
[2] Danish Institute for Human Rights, “Børn skal ud af isolation i de danske fængsler”, Press release, 8 October 2014, available in Danish at: http://menneskeret.dk/nyheder/boern-isolation-danske-faengsler.
[3] Danish Institute for Human Rights, Annual Status Report 2014-15, Thematic Report on Chrildren’s Rights, p. 32-33, available in Danish at: http://menneskeret.dk/udgivelser/boern-status-2014-15.


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