

**TO THE EUROPEAN COURT OF HUMAN RIGHTS**

DOC. NO. 19/03272-12

17 JANUARY 2020

**SUPPLEMENTARY WRITTEN OBSERVATIONS IN APPLICATION  
NO. 6697/18**

**M.A. V. DENMARK**

**INTRODUCTION**

The Institute filed its written observations in the case on 18 January 2019. In its observations the Institute focused on the development on the Danish Aliens Act in recent years, international human rights standards and national law across the Contracting states in the field of family reunification with refugees.

Due to recent, significant developments, the Institute hereby takes the opportunity to supplement its observations focusing on developments in Denmark subsequent to January 2019.

The institute will provide the Court with the following information:

- The development of practice regarding Syrian nationals with temporary protection status
- Alignment in the treatment of refugees
- The potential deterrent effect of the political agenda
- Updated data on the number of refugees and family reunified persons in Denmark

**THE DEVELOPMENT OF PRACTICE REGARDING SYRIAN NATIONALS WITH  
TEMPORARY PROTECTION STATUS**

**DIFFERENTIAL TREATMENT OF GROUPS OF REFUGEES IN DENMARK**

1. A key issue in the case is whether Denmark can restrict the right to family reunification of only one group of refugees arguing that their stay in Denmark is more temporary than that of other groups of refugees.

2. This differential treatment of various group of refugees in respect of family reunification is based on the overall presumption underpinning the Danish Aliens Act, namely that refugees granted protection status under Section 7, subsection 3, are living in Denmark on a more temporary basis than other refugees who are granted asylum on other grounds, namely Section 7, subsection 1-2 of the Aliens Act.

3. Section 7, subsection 3, was introduced in light of the Syrian refugee crisis and in order to generally differentiate between refugees who are at risk of being individually persecuted and refugees who are fleeing as a result of a general especially grave situation in the home country characterised by arbitrary violence and assaults against civilians. In the explanatory notes to the bill restricting family reunification for refugees with temporary protection status, the Danish Government stated:

*“The people concerned do not have a specific conflict with anyone in their home country. Therefore, this group – generally speaking – has a more temporary need for protection than these individually persecuted, as the situation in the home country can change quickly towards more peaceful conditions in the home country.”<sup>1</sup> (unofficial translation by the Danish Institute for Human Rights. Emphasis added.)*

#### **RECENT PRACTICE DEVELOPMENTS**

4. In the Institutes’ original submission on 18 January 2019, it was noted that the Danish immigration authorities had not yet reported on any significant changes concerning the conditions in Syria of importance to the withdrawals of temporary protection status granted to Syrian nationals. This situation changed in 2019.

5. In February 2019, The Danish Immigration Service and the Danish Refugee Council published the report “Syria, Security Situation in Damascus Province and Issues Regarding Return to Syria”.<sup>2</sup> The report describes that the general security situation in government-controlled areas in Syria, particularly in Damascus Province, has improved.

6. The Danish Refugee Council subsequently stated that the council holds that – following UNCHR’s guidelines – refugees should not be returned to Syria.<sup>3</sup>

#### **June 2019 – general security situation (six test cases)**

7. Partly based on the findings in the report, though, the Danish Immigration Service in six cases concerning Syrian nationals from Damascus refused to prolong their residence permits (protection status under section 7, subsection 3, of the Aliens Act) with reference to the improvement of the general security situation in the Damascus Province.

8. In June 2019, the Danish Refugee Appeals Board decided to grant asylum under another legal provision in all six cases (Section 7, subsection 1-2), thereby overturning the decisions by the Danish Immigration Service.<sup>4</sup>

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<sup>1</sup> Explanatory notes to bill L 87 of 10 December 2015, section 2.2.1, available in Danish: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176273>.

<sup>2</sup> Homepage of the Danish Immigration Service; link to the report in English: <https://www.nyidanmark.dk/da/Nyheder/2019/02/Udl%C3%A6ndingestyrelsen-offentligg%C3%B8r-ny-landerapport-om-Syrien>.

<sup>3</sup> Interview with Eva Singer, Director of the Asylum Department, Danish Refugee Council, new article of 27 March 2019, available in Danish: <https://www.altinget.dk/udvikling/artikel/dansk-flygtningehjaelp-vi-kan-ikke-sende-syriske-flygtninge-hjem>.

<sup>4</sup> Homepage of the Danish Refugee Appeals Board, available in Danish: <https://www.fln.dk/da/Nyheder/Nyhedsarkiv/2019/27062019>.

9. The Refugee Appeals Board emphasized that there is a general high risk of being considered in opposition to the Syrian authorities if being returned to Damascus according to available background information such as the report published by the Danish Immigration Service and the Danish Refugee Council, but also other sources of information on the situation.

10. One of the consequences of these decisions is that the individuals in the six test cases can apply for family reunification immediately after the Refugee Appeals Boards' decision. Their stay in Denmark is thus considered less temporary than before.

11. The decisions of the Refugee Appeals Board were individual and specific in each of the cases. Overall, however, the board stressed that the general security condition in Damascus has improved and that there are no longer grounds for assuming that anyone will be at risk of being subjected to a violation according to the ECHR's Article 3 solely because of their presence in Damascus.

12. The reasoning of the appeals board is illustrated by one of the six cases. In this case, the applicant had only referred to – and was granted temporary protection status (Section 7, subsection 3) with reference to – the general security situation in Syria in 2018. The Refugee Appeals Board decided to grant her protection status (Section 7, subsection 2) because the applicant's situation, during her stay in Denmark, had developed into an individual risk of persecution:

*“Considering that the complainant will enter Syria as a young woman alone, that she stayed for a short period in a conflict zone where rebel forces at the time of her stay partially controlled the area before leaving Syria, and that she has close family members in Denmark who have been granted Convention status, the Board finds, that there is a real risk that the complainant, if returned, will be detained and questioned by the authorities in Syria. This compared with the background information available on the abuse from the Syrian authorities in the process of a hearing or detention.”<sup>5</sup> (unofficial translation by the Danish Institute for Human Rights)*

### **September 2019 – recall to military service**

13. In September 2019, another decision regarding a Syrian national was overturned by the Danish Refugee Appeals Board due to updated background information on the risk of being recalled for the military in Syria, which previously was a decisive factor to be granted convention status (Section 7, subsection 1) for Syrian men between 18-42 years old.

14. The applicant was initially granted temporary protection status (Section 7, subsection 3) in 2016 when he was 45 years old. During his stay in Denmark background information

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<sup>5</sup> Homepage of the Danish Refugee Appeals Board ([www.fln.dk](http://www.fln.dk)), decision in Danish: <https://www.fln.dk/-/media/FLN/Nyheder/Sag-1-den-24-juni-2019B.pdf?la=da&hash=F82DD1F00B77A3E8A04D74838374599C64F468E6>.

relevant for his situation changed, and he was granted convention status (Section 7, subsection 1):

*“The Board finds that the background information available on recall to military service in Syria does not appear entirely clear, and it cannot – as stated by the Immigration Service – without any further ado be assumed that Syrian men over the age of 42 are not recalled and removed from the reserve list.”<sup>6</sup>*

### **December 2019 – first final rejections to Syrian nationals**

15. Denmark is, as far as the Institute is aware, the first country in Europe to give a final rejection to Syrian asylum applicants for reasons unrelated to national security.

16. On 16 December 2019, the Refugee Appeals Board decided<sup>7</sup> to reject three asylum applications from Syrian nationals who had all fled from Damascus because of the general security situation. The appeals board emphasized that the applicants did not meet the criteria of asylum on a general nor an individual basis and that a return to Damascus would not violate their human rights. All applicants had either been in contact with the Syrian authorities before they arrived in Denmark or had family members who had been in contact or returned to Syria during their stay in Denmark which differ from the cases decided in June 2019.

17. However, the day after, on 17 December 2019, the Coordination Committee of the Danish Refugee Appeals Board (*Flygtningenævnets koordinationsudvalg*) agreed on the following:

*“The members of the committee took note of the decisions and agreed that the precautionary principle, which was expressed in the practice of the Refugee Appeals Board in the test cases from June 2019 and subsequent cases, and which is reproduced in the summary from the committee meeting on 29 August 2019, must continue to be applied when considering cases concerning Syrian nationals.*

*The principle is phrased the following way: “The Syrian authorities’ consideration of which citizens who constitute a security threat is characterized by arbitrariness and unpredictability. Consequently, there may be good reason to exercise caution in the assessment and give the applicant/claimant the benefit of a reasonable doubt.”*

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<sup>6</sup> Homepage of the Danish Refugee Appeals Board ([www.fln.dk](http://www.fln.dk)), decision in Danish: <https://www.fln.dk/-/media/FLN/Nyheder/02102019-nyhed.pdf?la=da&hash=3C8B54228615838CD55DE9A2E57A809CD2F62972>.

<sup>7</sup> Homepage of the Danish Refugee Appeals Board ([www.fln.dk](http://www.fln.dk)), news from September 2019: <https://www.fln.dk/da/Nyheder/Nyhedsarkiv/2019/17-12-2019>.

*The committee further noted that the risk of entry is an integrated part of the risk assessment, and in some circumstances, there can be reason to address this explicitly.*<sup>8</sup> (unofficial translation by the Danish Institute for Human Rights)

18. The development in the practice during 2019 reflects that the change in the general security situation in parts of Syria can result in rejections of asylum or withdrawals of residence permits.

### **ALIGNMENT IN THE TREATMENT OF REFUGEES**

19. Denmark has in several respects – since the introduction of the differential treatment of refugees in relation to family reunification in 2015 – indicated a willingness to move towards an alignment of the living conditions of all refugees, no matter which residence permit they have been granted, and no matter for how long the residence permit has been granted. Some examples of this alignment are explained in the following.

#### ***Temporary residence***

20. In addition to reducing the timeframe of residence permits as described in paragraph 24 of the Institute’s initial third-party intervention, the Danish Parliament in February 2019 adopted a bill,<sup>9</sup> which introduced a new way of describing the residence permits of *all refugees*. Thus, residence permits granted to all refugees and their family members changed from being granted with ‘the possibility of a permanent residence’ to ‘the purpose of a temporary residence’, stating that all refugees are granted protection in Denmark only until they no longer need protection.

21. This change did not affect the duration of individual resident permits to any group of refugees. However, in the future residence permits to *all refugees* must be revoked, when, among other reasons, the circumstances giving the grounds for the residence permit have changed in a way so that the alien is no longer at risk of persecution (new section 19a in the Aliens Act). Revocation must take place, unless a revocation would be in violation of Denmark’s international obligations. In the Danish government’s explanatory notes to the bill, the Government wrote:

*“The agreement on foreigners contains a new approach to the area of foreigners and integration, focusing on temporariness and return, which sends a clear signal that refugees’ stay in Denmark is temporary and that Denmark has both the will and the ability to act quickly and efficiently when the basis for the individual’s residence permit is no longer present.”*<sup>10</sup> (unofficial translation by the Danish Institute for Human Rights)

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<sup>8</sup> Homepage of the Danish Refugee Appeals Board ([www.fln.dk](http://www.fln.dk)), summary of the meeting on 17 December 2019: <https://fln.dk/-/media/FLN/Koordinationsudvalg/kudvalget-den-17-december2019.pdf?la=da&hash=992AA5933F2ADEC6802BE299127BAD937CED5C64>.

<sup>9</sup> Act no. 174 of 27 February 2019 amending the Danish Aliens Act, the Integration Act, The Repatriation Act and other acts, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=207366>.

<sup>10</sup> Explanatory notes to bill L 140 of 15 January 2019, section 1, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=206521>.

### **Free education**

22. Only refugees with Convention status and individual protection status have access to free higher education. However, the Minister of Immigration and Integration has said a number of times, that the Government wants to adjust the legislation towards also giving refugees with temporary protection status access to free higher education. For example:

*“The Government does not see any contradiction between the fact that a refugee with a temporary stay in Denmark can take a higher education and contribute to society while residing temporarily in Denmark, and the fact, that they would have to return home again, when their need for protection ceases”<sup>11</sup> (unofficial translation by the Danish Institute for Human Rights)*

### **Divorce**

23. Until recently, The Danish authorities did not consider Denmark the country of domicile of refugees with temporary protection status, which is a prerequisite to apply for a divorce according to Danish law. Thus, this group of refugees could not apply to be divorced if both parties had temporary protection status.

24. However, on 7 January 2020, the District Court of Copenhagen overturned that practice and decided that refugees with temporary protection status can now apply to be divorced in Denmark.<sup>12</sup> The District Court referred to the parties’ attachment to the Danish society and international obligations under ECHR Article 8.

### **The Basic Integration Education (Integrationsgrunduddannelsen, “IGU”)**

25. The Basic Integration Education is a two-year education programme for refugees<sup>13</sup> initiated in 2016 combining school and internships.<sup>14</sup> The programme applies to *all* refugees (Section 7, subsection 1-3). The purpose of the programme is to qualify refugees and family reunified for a future job in Denmark. The Government decided in April 2019<sup>15</sup> to extend the programme until 2022 after some debate about its purpose. It is a condition to be a part of the Basic Integration Education-programme, that the applicant is 18-40 years old and has been registered as a resident in Denmark in the Danish National Register for less than 5 years.

26. In the 2020 Finance Act it was decided to expand the programme to cover all refugees and reunified family members, no matter for how long they have been registered as residents and even if they are older than 40 years.

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<sup>11</sup> Answer from the Minister of Immigration and Integration to the Immigration and Integration Committee, 27 August 2019: Available in Danish: <https://www.ft.dk/samling/20182/almindel/uu/svar/1585720/2069412.pdf>.

<sup>12</sup> The District Court of Copenhagen, case number: BS-43895/2018-KBH.

<sup>13</sup> Homepage of the Ministry of Immigration and Integration: <https://uim.dk/arbejdsomrader/Integration/bonus-og-igu/generelt-om-igu>.

<sup>14</sup> Act No. 623 of 8. June 2016 on the Basic Integration Education (IGU), available in Danish: <https://www.retsinformation.dk/forms/r0710.aspx?id=181798>

<sup>15</sup> Act No. 562 of 7 May 2019 amending the Act on Basic Integration Education available in Danish: <https://www.retsinformation.dk/Forms/R0710.aspx?id=209222>.

### ***The 2020 Finance Act***

27. On 2 December 2019, the Government and the supporting parties presented the 2020 Finance Act.<sup>16</sup> In the Finance Act it was agreed that all refugees and their families (Section 7, Subsection 1-3) can maintain their residence permit in Denmark if they have been working for two years, and has a job when their residence permit is either withdrawn or cannot be extended.

### **THE POTENTIAL DETERRENT EFFECT OF THE POLITICAL AGENDA**

28. Denmark has adopted and maintained the three-year rule on family reunification with the purpose of making it unattractive to move to Denmark and taking care of the identity of the country as a welfare state.<sup>17</sup>

29. The three-year rule as adopted by Parliament in 2016 as part of a bill<sup>18</sup> comprising a wide range of initiatives restricted the rights of asylum seekers and refugees in terms of economic, social and cultural rights, just as the Government in various ways have followed a policy aiming at making the conditions of refugees in Denmark less favourable compared the previous conditions in Denmark and compared to conditions in the neighbouring countries.

30. It remains difficult to measure the practical impact of the three-year rule as the three-year rule on the welfare of Denmark as the rule is merely one of multiple political initiatives aimed at reducing the flow of migrants and asylum seekers to Denmark. In the following, the Institute will present significant examples of the potentially deterrent measures adopted by the legislature in order to demonstrate the complexity of measure the impact of any of these specific measures.

### ***“The Jewelry law”***

31. Among the restrictions mentioned above, the bill introduced the so-called ‘Jewelry law’ (*smykkeloven*) which required newly arrived asylum seekers to hand over any assets, including jewelry, with a value of more than EUR 1,338 (DKK 10.000).

### ***Integration benefits***

32. In 2015, the Parliament passed a bill,<sup>19</sup> which introduced integration benefits (*integrationsydelsen*) available for foreigners in Denmark who has not had a residence in Denmark within the past 7 out of 8 years. The benefits were changed in 2018<sup>20</sup> to 9 out of 10 years

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<sup>16</sup> The 2020 finance act, 2. December 2019. Available in Danish: [https://www.altinget.dk/misc/aftale-om-finansloven-for-2020%20\(1\).pdf](https://www.altinget.dk/misc/aftale-om-finansloven-for-2020%20(1).pdf).

<sup>17</sup> Danish Institute for Human Rights, Written observations in case M.A. v. Denmark, 18 January 2019.

<sup>18</sup> Act No. 102 of 3 February 2016 amending the Aliens Act, available in Danish: <https://www.retsinformation.dk/Forms/R0710.aspx?id=177348>

<sup>19</sup> Act. No. 1000 of 30 August 2015 amending the Integration Act and other Acts, available in Danish: <https://www.retsinformation.dk/Forms/R0710.aspx?id=174123>.

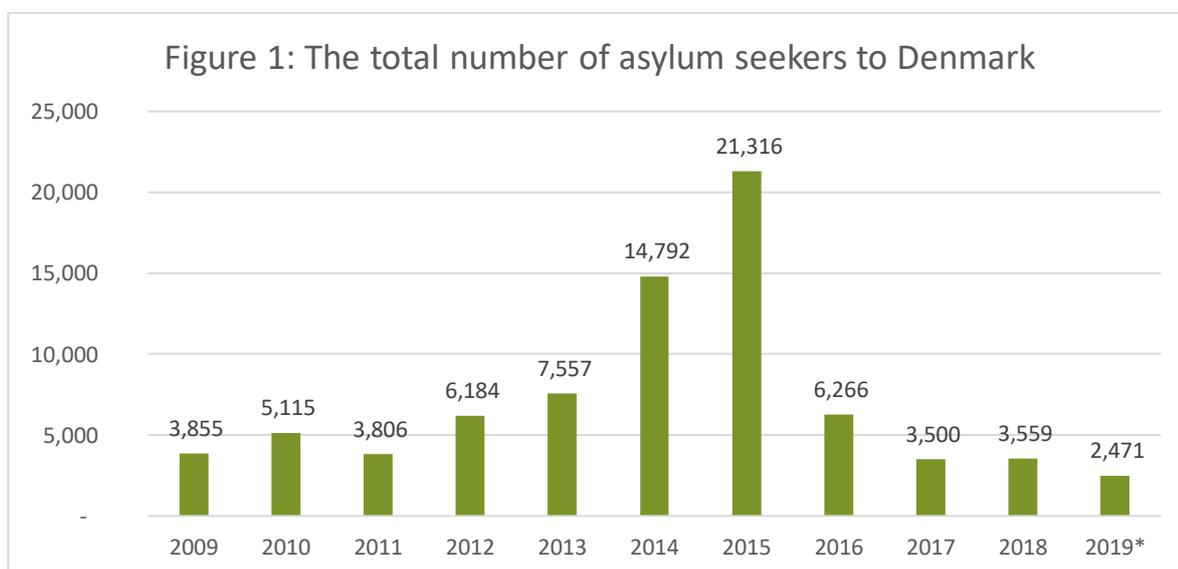
<sup>20</sup> Act No. 743 of 8 June 2018 amending the Active Social Policy Act and other acts, available in Danish: <https://www.retsinformation.dk/Forms/R0710.aspx?id=201901>.

and in 2019<sup>21</sup> the name of the benefit was changed to ‘the self-sufficiency and home travel benefit or transitional benefit’ (in Danish: “selvforsørgelses- og hjemrejseydelse eller overgangsydelse”). The benefit is economically the lowest social benefit in the Danish welfare system and it has been discussed<sup>22</sup> whether the benefit is compatible with the Danish Constitution regulating a minimum level of subsistence. In 2019, the Government and its supporting parties agreed<sup>23</sup> on a temporary economic child support of approximately EUR 267 (DKK 2,000) monthly to those families with children who would normally receive the integration benefit.

### UPDATED DATA ON THE NUMBER OF REFUGEES AND FAMILY REUNIFIED PERSONS IN DENMARK

33. As noted in paragraph 30, it remains difficult to measure the concrete effect of any of the multiple initiatives undertaken by the Danish Government and legislature aimed at protecting the welfare of Denmark by restricting migration to Denmark. The figures below show the development during recent years.

34. The development in the number of asylum seekers in Denmark generally follows the overall development of the rest of Europe demonstrating a dramatic increase of asylum seekers up to and in 2015 and an equally dramatic decrease after 2015. Figure 1 shows the total number of asylum seekers from 2009-2019.



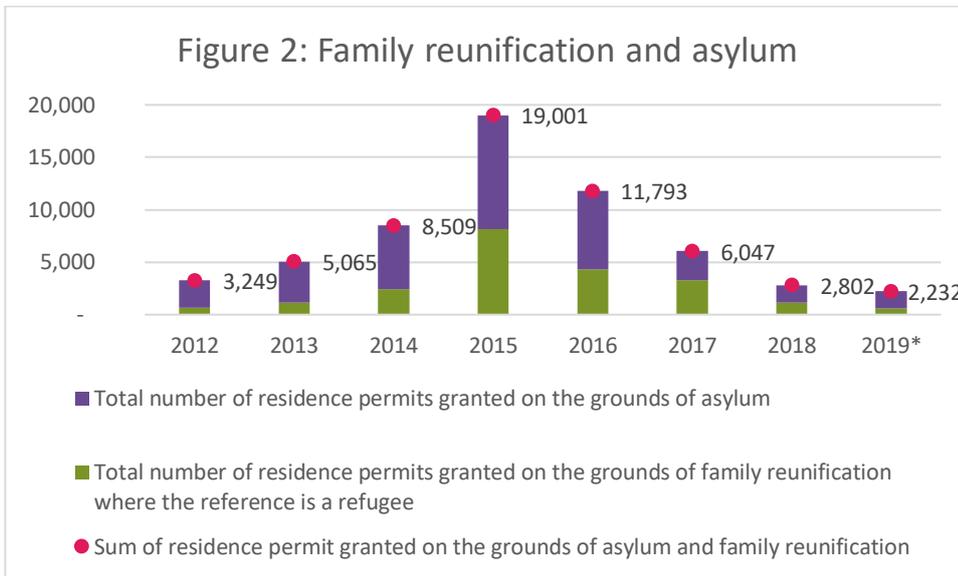
Source: The Ministry of Immigration and Integration. \*) 2019 is as of 30/11/2019

<sup>21</sup> Explanatory notes to bill No. L 140 of 15 January 2019, section 6, available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=206521>.

<sup>22</sup> Danish Institute for Human Rights, Families on integration benefit, Analysis, October 2018, available in Danish: [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2018/integrationsydelse\\_web-ny\\_19.12.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2018/integrationsydelse_web-ny_19.12.pdf).

<sup>23</sup> Political agreement between the Government and the supporting parties, 3 September 2019, available in Danish: <https://bm.dk/nyheder-presse/pressemeldelser/2019/09/politisk-aftale-fattige-familier-faar-midlertidigt-tilskud/>

35. Only a fraction of the asylum seekers is granted residence permits pursuant to Section 7, subsections 1-3. Figure 2 shows the total number of residents permits granted on the grounds of asylum and family reunification with a refugee from 2012-2019.



Source: The Ministry of Immigration and Integration.

\*) 2019: Family reunification as of 30/10-2019 and asylum as of 30/11-2019

36. There is no data available to authoritatively determine how the development would have been – or will become – if one of the many measures, namely the three-year restriction on family reunification, had not been adopted respectively were to be modified. However, it is safe to say that the impact on the general welfare of Denmark will be insignificant if the three-year rule were now to be amended in order to allow the limited group of persons either equal access to family reunification or at earlier access to family reunification.