



## Deelrapport Eurasylum

### Opvang van en bijstandverlening aan niet rechtmatig verblijvende en rechtmatig verblijvende, maar nog niet toegelaten vreemdelingen in Denemarken.

Vooronderzoek uitgevoerd in opdracht van de Adviescommissie voor Vreemdelingenzaken (ACVZ), in het kader van het ACVZ-advies 'Recht op menswaardig bestaan' (Advies 34/2012), door Ulla Iben Jensen en Jens Vedsted-Hansen, Den Haag: ACVZ, 2011.

### Report on reception and assistance for aliens residing illegally in Denmark and for aliens who have residence rights but no entitlement to benefits and facilities.

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## DENMARK

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## 1 Immigration in Denmark: Applicable Legislation and Actors

### 1.1 Immigration Legislation and Actors

#### 1.1.1 *Legislation*

In Denmark, the situation of aliens irregularly residing and regularly residing but not yet admitted, is regulated by the *immigration legislation* and the - generally applicable - *legislation on social services and on health care*.<sup>1</sup>

##### 1.1.1.1 Immigration legislation

The applicable *immigration legislation* is composed of *Udlændingeloven* (hereafter: the Aliens Act) and a number of corresponding executive orders, circulars, guidances and communications.

This immigration legislation governs the entry, residence and departure of aliens. Sections 34-43, 46, 46e and 48-48e Aliens Act govern assistance and reception in particular. According to a number of these provisions, the Danish Immigration Service (or the Police) has a *maintenance obligation* of *asylum seekers* and *aliens staying illegally* in Denmark.<sup>2</sup>

In addition to this, *Integrationsloven* (hereafter: the Integration Act) applies to refugees and immigrants issued with a residence permit for Denmark.<sup>3</sup>

##### 1.1.1.2 General social welfare legislation

The applicable *legislation on social services and health care* is composed mainly of *Aktivloven* (hereafter: the Active Act), *Service-loven* (hereafter: the Service Act), *Sundhedsloven* (hereafter: the Health Act) and the corresponding executive orders, guidance and communications.

The *Active Act* and the *Service Act* form the legal basis for the municipalities to provide ordinary assistance to persons staying legally in Denmark; including to aliens staying legally in Denmark pursuant to the Aliens Act. In addition, the Active Act provides municipalities the possibility to offer acute/emergency assistance to persons not legally residing in Denmark in exceptional situations based on considerations of necessity/emergency.

The *Health Act* provides the legal basis for the regions to provide ordinary medical treatment to persons with residence in Denmark, i.e. persons listed in the National Register of Persons. Further, the Act provides the legal basis for the regions to offer acute/emergency assistance to persons not residing in Denmark.

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1 It should be noted, that due to the Danish opt-out from European cooperation on Justice and Home Affairs, the Reception Directive does not apply to Denmark.

2 The Aliens Act Sections 42a-42h.

3 The Integration Act Section 2.

### 1.1.2 Administrations in charge of immigration

As described further below, the responsibility of providing social assistance for asylum seekers and aliens illegally residing in Denmark is assumed by the Immigration Service, pursuant to the Aliens Act. As a result, the general social welfare legislation is subsidiary as regards these categories of aliens, apart from urgent medical assistance pursuant to the Health Act.

#### 1.1.2.1 Immigration authorities/organizations

*The Danish Ministry for Refugee, Immigration and Integration Affairs*<sup>4</sup> assumes responsibility for the drafting of legislation, issuance of guidelines to the *Danish Immigration Service*<sup>5</sup> and the administration of general policies on immigration and integration.<sup>6</sup>

Most decisions pursuant to the Aliens Act are made by the Danish Immigration Service. However, the Integration Ministry assumes responsibility on the processing of cases regarding humanitarian residence permits<sup>7</sup> and expulsion of aliens deemed a danger to national security or serious threat to public order, safety or health.<sup>8</sup>

*The Danish Immigration Service*<sup>9</sup> is a directorate under the Integration Ministry. The Immigration Service administrates the Aliens Act by processing applications for asylum, family reunification, visas, residence and work permits and issuing guidelines to the *Regional State Administrations*.<sup>10</sup> The Immigration Service is also engaged in other areas pertaining to asylum and immigration, including being responsible for supporting and accommodating asylum seekers and certain other aliens staying irregularly in Denmark.<sup>11</sup> According to the Aliens Act, it is the responsibility of the Immigration Service to provide and run accommodation centres. This may take place in cooperation with private organizations or societies, government bodies or municipalities.<sup>12</sup>

As a main rule, decisions made by the Immigration Service may be appealed to either the Integration Ministry<sup>13</sup> or to the Refugee Appeals Board (decisions on refugees and asylum).<sup>14</sup>

*The Danish Refugee Appeals Board*<sup>15</sup> is the second instance authority in cases on refugees and asylum.<sup>16</sup> The Board is an independent quasi-judicial body, considered to be a court within the meaning of Article 39 of Directive 2005/85/EC on the right for asylum seekers

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4 Official website [www.nyidanmark.dk](http://www.nyidanmark.dk). Hereinafter the Integration Ministry.

5 The Aliens Act Section 46 (4) and Jens Vedsted-Hansen, 'Grundbegreber og hovedsondringer i udlændingeretten', pp. 15-17.

6 See [http://www.nyidanmark.dk/en-us/authorities/the\\_ministry/the\\_integration\\_ministrys\\_goals\\_and\\_tasks.htm](http://www.nyidanmark.dk/en-us/authorities/the_ministry/the_integration_ministrys_goals_and_tasks.htm), accessed on 3 February 2011.

7 The Aliens Act Sections 46a.

8 The Aliens Act Section 46g.

9 Official website [www.nyidanmark.dk](http://www.nyidanmark.dk). Hereinafter the Immigration Service.

10 *EU-opholdsbekendtgørelsen* ('the EU Residence Order') Section 36 (1). The Regional State Administrations is the 1<sup>st</sup> instance in most cases on EU/EEA citizens; please see below.

11 The Aliens Act Sections 42a-42h on the Danish Immigration Service's *maintenance obligation*. See [http://www.nyidanmark.dk/en-us/authorities/the\\_danish\\_immigration\\_service/the\\_danish\\_immigration\\_service.htm](http://www.nyidanmark.dk/en-us/authorities/the_danish_immigration_service/the_danish_immigration_service.htm), accessed on 3 February 2011. Cf. the Aliens Act Section 46 (1).

12 The Aliens Act Section 42a (5). See [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/accommodation\\_centres/accommodation\\_centres.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/accommodation_centres/accommodation_centres.htm), accessed on 29 March 2011.

13 The Aliens Act Section 46 (2).

14 The Aliens Act Section 53a.

15 Official website <http://www.fl.n.dk>.

16 The Aliens Act Section 53a.

to have their case examined by a court or tribunal.<sup>17</sup>

Decisions made by the Refugee Appeals Board are final and are not subject to judicial review. Deliberations of the courts are thus limited to points of law.<sup>18</sup>

*The National Police - the Alien Department*<sup>19</sup> is responsible for controlling the entry, residence and departure of aliens. The police further have a *maintenance obligation* of certain spontaneous non-registered asylum seekers residing in Denmark.<sup>20</sup>

*The municipalities*<sup>21</sup> administrate the generally applicable social acts pursuant to which an alien may be entitled to assistance. Further, a number of municipalities operate accommodation centres. *The Jammerbugt Municipality*<sup>22</sup> operates two accommodation centres<sup>23</sup> and has, as operator of such centre, certain authorities pursuant to the Aliens Act.<sup>24</sup> Similarly, the *Thisted Municipality*<sup>25</sup> operates three accommodation centres.<sup>26</sup> As the operator of accommodation centres, the municipality has certain authorities pursuant to the Aliens Act.<sup>27</sup>

*The Danish Red Cross*<sup>28</sup> operates and administers most accommodation centres in Denmark. According to the Aliens Act, it is the responsibility of the Immigration Service to provide and run accommodation centres. This may take place in cooperation with private organizations or societies or government bodies or municipalities.<sup>29</sup> As the operator of accommodation centres, the Red Cross has certain authorities pursuant to the Aliens Act.<sup>30</sup>

*The Danish Refugee Council*<sup>31</sup> is a private humanitarian cooperative organization involved in various capacities in the treatment of asylum cases. The Council offers advice, services (interpretation etc.) and assistance to asylum seekers and refugees. In situations where the Immigration Service considers an asylum application to be manifestly unfounded, the Immigration Service can reject the application without the possibility of an appeal to the Refugee Board (the accelerated procedure(s)). The decision of the Immigration Service must be seconded by the Danish Refugee Council. If the Council does not agree that the case is manifestly unfounded, the case will be subject to

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17 The Aliens Act Section 53. See also <http://www.fln.dk/da-dk/English/General+information+regarding+the+Danish+Refugee+Appeals+Board/General+Information+regarding+the+Refugee+Appeals+Board.htm>, accessed on 3 February 2011.

18 The Aliens Act Section 56 (8), limiting the ordinary judicial review, Jens Vedsted-Hansen, 'Klageproceduren i asylsager', pp. 467ff and Henrik Zahle, *Dansk forfatningsret*, pp.324-325.

19 Official website [www.politi.dk](http://www.politi.dk).

20 The Aliens Act Section 43 (1).

21 Website of the interest group and member authority for the 98 Danish municipalities, 'Local Government Denmark' is <http://www.kl.dk>.

22 Official website <http://www.jammerbugt.dk>.

23 The contract between the Immigration Service and the municipality is available at [http://www.nyidanmark.dk/NR/rdonlyres/40DF559A-7FE2-4BFF-B1E2-1997F8415E67/0/samlet\\_kontrakt\\_jammerbugt\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/40DF559A-7FE2-4BFF-B1E2-1997F8415E67/0/samlet_kontrakt_jammerbugt_2011.pdf), accessed on 7 February 2011.

24 Sections 42c-42h and 46e.

25 Official website <http://www.thisted.dk>.

26 The contract between the Immigration Service and the municipality is available at [http://www.nyidanmark.dk/NR/rdonlyres/6DFC8B79-E16F-4987-97F9-C6081ED4705D/0/samlet\\_kontrakt\\_thisted\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6DFC8B79-E16F-4987-97F9-C6081ED4705D/0/samlet_kontrakt_thisted_2011.pdf), accessed on 7 February 2011.

27 Sections 42c-42h and 46e.

28 Official website [www.drk.dk](http://www.drk.dk).

29 Section 42a (5). See [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/accommodation\\_centres/accommodation\\_centres.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/accommodation_centres/accommodation_centres.htm). The contract between the Immigration Service and the Red Cross is available at [http://www.nyidanmark.dk/NR/rdonlyres/50EF576E-216F-4247-BF8A-65985FA8FCED/0/samlet\\_kontrakt\\_drka\\_1halvaar\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/50EF576E-216F-4247-BF8A-65985FA8FCED/0/samlet_kontrakt_drka_1halvaar_2011.pdf), both accessed on 7 February 2011.

30 Sections 42c-42h and 46e.

31 Official website [www.drc.dk](http://www.drc.dk).

the normal procedure and thus, referred to the Refugee Appeals Board.<sup>32</sup>

Some other general authorities' decisions may have an impact on the status of migrants as well.

*The Danish Ministry for Foreign Affairs*<sup>33</sup> issues residence permit for persons enjoying diplomatic privileges and for members of their family.<sup>34</sup>

*The Danish Ministry of Social Affairs*<sup>35</sup> assumes responsibility for the Service Act. With the legal basis in the Finance Act, the Ministry further established an emergency fund for shelters housing persons not comprised by the existing offers, thus including aliens irregularly residing in Denmark.

*The Danish Ministry of Interior and Health*<sup>36</sup> assumes responsibility for the Health Act.

*The Danish Ministry of Employment*<sup>37</sup> assumes responsibility for the Active Act.

*The Danish Regional State Administrations*<sup>38</sup> make most of the decisions pertaining to the residence of EU/EEA citizens<sup>39</sup> pursuant to the *EU-opholdsbekendtgørelsen* ('EU Residence Order')<sup>40</sup> with legal recourse to the Immigration Service.<sup>41</sup>

The Regional State Administrations are five independent regional institutions belonging under the Ministry of Interior and Health as far as organization and budget is concerned. Each State Administration is associated with a *region* and a number of *municipalities*. The Regional State Administrations supervise that the municipalities comply with the legislation applying to public authorities specifically. The Regional State Administrations handles tasks in areas where it is considered to be an advantage that the administration is performed at a regional level. The Regional State Administrations thus administrates tasks falling within various ministries' jurisdiction.<sup>42</sup>

*The National Social Appeals Board*<sup>43</sup> is a government agency under the Ministry of Social Affairs. The Board is an administrative, independent authority which decides complaints as the supreme administrative complaints authority in cases within the area of legislation on social matters and employment. The Board handles task falling within various ministries' jurisdiction and further coordinates practice at a national level.

*The regions*<sup>44</sup> administrate the main parts of the Health Act (among other things).

*The municipalities*<sup>45</sup> administrate the generally applicable social acts pursuant to which an alien may be entitled to maintenance. Further, a number of municipalities operate

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32 The Aliens Act Section 53b and Kim U. Kjær, 'Åbenbart grundløs-proceduren' pp. 505ff.

33 Official website [www.um.dk](http://www.um.dk).

34 The Aliens Act Section 47 (1).

35 Official website [www.sm.dk](http://www.sm.dk).

36 Official website [www.sum.dk](http://www.sum.dk).

37 Official website [www.bm.dk](http://www.bm.dk).

38 Official website <http://www.statsforvaltning.dk>.

39 And adoption of foreign children and citizenship for Nordic citizens.

40 EU Residence Order Section 33 (1).

41 EU Residence Order Section 34 (1).

42 See <http://www.statsforvaltning.dk/site.aspx?p=5466> and <http://www.statsforvaltning.dk/site.aspx?p=6410>, both accessed on 3 February 2011.

43 Official website <http://www.ast.dk/>.

44 Website of the interest group for the 5 Danish Regions, 'Danish Regions,' is <http://www.regioner.dk>.

45 Website of the interest group and member authority for the 98 Danish municipalities, 'Local Government Denmark' is <http://www.kl.dk>.

accommodation centres, as mentioned above.

*The Danish Emergency Management Agency*<sup>46</sup> (an organization under the Ministry of Interior and Health) may assume operation of accommodation centres in Denmark. Currently, the Danish Emergency Management Agency does not operate accommodation centres.

*The Danish Parliamentary Ombudsman*<sup>47</sup> may consider complaints and cases on his own initiative about public authorities, including about the immigration authorities.<sup>48</sup> However, the Ombudsman may not consider complaints on the Refugee Appeals Board. Yet, he may consider cases or initiate general inquiries on his own initiative about the Refugee Appeals Board.<sup>49</sup>

*The Courts of Denmark*<sup>50</sup> are entitled to pass judgment on any matter relating to limitations on the powers of public authorities.<sup>51</sup> This entitlement is described as the ordinary or usual judicial review of executive powers. According to practice, tradition and scholars, the judicial review pursuant to the Constitutional Act is limited to points of law. Thus, the decision or discretion of the public authorities is not subject to judicial review.<sup>52</sup> Pursuant to the Aliens Act, the courts have various roles related to the status of aliens, such as determining whether an alien convicted of an offence will be expelled and stating the period of an entry prohibition imposed on the alien.<sup>53</sup>

In Denmark, immigration is a central governmental matter. Local governments, elected by the people consisting of *regions* and *municipalities*, do not have autonomy in awarding residence status. They do, however, have tasks pursuant to various acts within the areas of integration, immigration, social services, health and education etc. of relevance to migrants. The local governments thus administrate pursuant to the legislation.

### 1.1.3 The role of courts

#### 1.1.3.1 Ordinary judicial review of administrative decisions and administrative regulations

Administrative decisions made by the administrative authorities and administrative regulations issued by the administrative authorities are subject to an ordinary review which is based in the Constitutional Act.

This ordinary judicial review is limited to points of law. Thus, the discretion or assessment of the public authorities is not subject to judicial review, allowing the administrative authorities a 'margin of appreciation' particularly in situations where the administrative authority is specialized within the legislative area in question. However, special circumstances may extend the intensity and the extent of the judicial review. In addition,

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46 Official website [www.brs.dk](http://www.brs.dk).

47 Official website [www.ombudsmanden.dk](http://www.ombudsmanden.dk).

48 See for instance FOB2004.311 on the Aliens Act Section 42a (8) of the duty of an alien expelled by judgment with exceptional leave to remain to reside at a specified accommodation as decided by the Immigration Service vs. the possibility of residing with his family.

49 The Aliens Act Section 58a and *Lov om Folketingets Ombudsmand* ('the Ombudsman Act') Section 17, cf. Jens Vedsted-Hansen, 'Klageproceduren i asylsager', pp. 468-469.

50 Official website [www.domstol.dk](http://www.domstol.dk).

51 *Grundloven* ('the Constitutional Act') Section 63.

52 Section 63. Karsten Revsbech, 'Domstolekontrol med forvaltningen' p. 354 and pp. 385-423.

53 The Aliens Act Section 49 (1).

special legislation within specific administrative areas may extend or limit the ordinary judicial review.<sup>54</sup>

Administrative decisions made by the immigration authorities are subject to this ordinary review. However, particular provisions within the Aliens Act extend or limit the judicial review.

Decisions made by the Refugee Appeals Board are final in the sense that the Board's decisions are not subject to judicial review. Deliberations of the courts are thus limited to points of law, limiting the scope of judicial review.<sup>55</sup>

Conversely, the aliens Act provides the legal basis for judicial review of certain final administrative decisions on residence permits for family reunification and of administrative decisions on expulsion of EU citizens or Nordic citizens made by the Immigration Authorities. Section 52 of the Aliens Act widens the scope of judicial review, by prescribing an in-depth judicial review of administrative decisions made by the Immigration Authorities.<sup>56</sup>

Denmark has no constitutional court. Yet, in practice the ordinary courts are considered competent to perform constitutional review of national legislation and thus, to examine the legislation's compatibility with the Constitution.<sup>57</sup>

### 1.1.3.2 Specialized immigration courts

Specialized immigration courts as such have not been established. However, the *Danish Refugee Appeals Board* is the second instance in cases on refugees and asylum.<sup>58</sup> The Board is an independent quasi-judicial body, considered to be a court within the meaning of Directive 2005/85/EC Article 39 on the right for asylum seekers to have their case examined by a court or tribunal.<sup>59</sup> Decisions made by the Refugee Appeals Board are final in the sense that the Board's decisions are not subject to judicial review. Deliberations of the courts are thus limited to points of law.<sup>60</sup>

## 1.2 Regular Residence and Entitlement to Social Rights and Benefits

In this chapter, an overview is given of the distinction between *legal and illegal stay*<sup>61</sup> and

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54 The Constitutional Act Section 63. Karsten Revsbech, 'Domstolekontrol med forvaltningen' p. 354 and pp. 385-423 and Henrik Zahle, *Dansk forfatningsret*, pp. 320-328.

55 The Aliens Act Section 56 (8), limiting the ordinary judicial review and Ufr1997.1157HD. Cf. Jens Vedsted-Hansen, 'Klageproceduren i asylsager', pp. 467ff and Karsten Revsbech, 'Domstolekontrol med forvaltningen' pp. 412-414.

56 Section 52. Cf. Gunnar Homann, 'Udvisning', pp. 685-694 and Jens Vedsted-Hansen, 'Familiesammenføring', pp. 199-201.

57 Ufr1999.841H on the Supreme Court's annulment of a provision in the so-called 'Tvind Act' and Henrik Zahle, *Dansk forfatningsret*, pp. 278-284 and pp. 304-320.

58 The Aliens Act Section 53a.

59 The Aliens Act Section 53. Cf. Jens Vedsted Hansen, 'Klageproceduren i asylsager', pp. 473-504. See also <http://www.fln.dk/da-dk/English/General+information+regarding+the+Danish+Refugee+Appeals+Board/General+Information+regarding+the+Refugee+Appeals+Board.htm>, accessed on 3 February 2011.

60 The Aliens Act Section 56 (8), limiting the ordinary judicial review and Ufr1997.1157HD. Cf. Jens Vedsted-Hansen, 'Klageproceduren i asylsager', pp. 467ff and Karsten Revsbech, 'Domstolekontrol med forvaltningen' pp. 412-414.

61 Cf. Jens Vedsted-Hansen, 'Grundbegreber og hovedsondringer i udlændingeretten', pp. 14-15 and Gunnar Homann, 'Udvisning', p. 664.

the corresponding *social rights*.

### 1.2.1 Legislation on regular residence

Residence is legal pursuant to a formal permit issued: visa,<sup>62</sup> residence permit or registration certificate/card.<sup>63</sup> Residence permits or registration certificates/cards are issued to/on grounds of:

- EU/EEA citizens and family members thereof;<sup>64</sup>
- refugees and quota refugees;<sup>65</sup>
- family reunification;<sup>66</sup>
- employment/self-employment;<sup>67</sup>
- humanitarian considerations;<sup>68</sup>
- exceptional reasons;<sup>69</sup>
- previous Danish nationality;<sup>70</sup>
- aliens from the Kosovo Province holding or formerly holding a residence permit pursuant to the Kosovo Emergency Act;<sup>71</sup> and
- religious activity.<sup>72</sup>

Applications for regular immigration (family reunification, labour migration and study) must principally be submitted prior to entry into Denmark.<sup>73</sup> Applications can be submitted in Denmark only if the alien has legal residence pursuant to the rules exempting from visa/residence permit or the EU rules or is issued with a residence permit, provided no particular reasons are against this, or if required by Denmark's international obligations.<sup>74</sup>

If the in country submission of an application for residence permit is allowed, an application suspends the enforcement of the time-limit for departure.<sup>75</sup>

### *Procedural stay*

The stay is also regular without a formal permit, in compliance with the rules exempting the alien from holding a visa or residence permit or registration certificate/card.<sup>76</sup> Pending a procedure, the stay is regular even when the alien is not issued with a formal

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62 The Aliens Act Sections 4-4c.

63 The Aliens Act Section 5 (1), conversely.

64 The Aliens Act Section 6; special rules apply to EU citizens following the EU rules on free movement, cf. the EU Residence Order.

65 The Aliens Act Sections 7 and 8.

66 The Aliens Act Section 9.

67 The Aliens Act Section 9a.

68 The Aliens Act Section 9b.

69 The Aliens Act Section 9c.

70 The Aliens Act Section 9d.

71 The Aliens Act Section 9e.

72 The Aliens Act Section 9f.

73 The Aliens Order Section 29 (2). Exceptions apply to labour migration under Section 9 (2) (v); an application must be submitted by an alien staying in Denmark, cf. Section 9 (4).

74 Act on amendment of the Aliens Act No. 572 of 31 May 2010 Sections 9 (18), 9a (4), 9c (5) and 9f (7). See more below Part 1.2.5 on the background for this Act.

75 Act on amendment of the Aliens Act No. 572 of 31 May 2010 Section 33 (5).

76 The Aliens Act Sections 1-3a, 4b and 5 (2) on Nordic citizens, aliens exempt from the requirement on visa, children below the age of 18 residing permanently with the person having custody and EU/EEA citizens with a right to reside for up to 6 months.

permit, but is entitled to stay in Denmark during the processing of the case on residence permit.<sup>77</sup> It should be noted, that procedural stay is not considered legal stay pursuant to the rules on expulsion, laying down the general rule on how to calculate the length of an alien's legal stay in Denmark. Consequently, when calculating the length of the legal stay of an alien, procedural stay is not taken into account.<sup>78</sup>

### *Irregular and illegal stay*

An alien who is not entitled to stay in Denmark under the rules of the Aliens Act, must leave Denmark. If the alien does not leave Denmark voluntarily, the police must make arrangements for his/her departure.<sup>79</sup> In situations of hindrances to deportation, the alien's stay may be considered legal for procedural reasons.<sup>80</sup>

A decision on lapse,<sup>81</sup> refusal of an application for a residence permit or of an application for extension of a residence permit, on revocation of a residence permit, on refusal of an application for the issue of a registration certificate or a residence card, on revocation of a registration certificate or a residence card, on administrative expulsion or on return must state a *time-limit for departure* from Denmark.<sup>82</sup>

As a consequence of a court judgment, court order or decision ordering an alien to be expelled, the alien's visa and residence permit will lapse, and the alien will not be allowed to re-enter Denmark.<sup>83</sup> Where expulsion has been decided by judgment, the police will determine an immediate time-limit for departure, unless the alien has been subjected to human trafficking, in which case the time-limit may be set to 30 days upon request.<sup>84</sup>

The *time-limit for departure* is counted from the time of the *official notice of refusal*. A final refusal of asylum passed by the Refugee Board is proclaimed in connection with the Board meeting. A refusal decided by the Immigration Service pursuant to the manifestly unfounded procedure is notified by the police upon request by the Immigration Service. As far as possible, the police must notify the refusal on the day of the Immigration Service's request. The same applies in cases where the refusal has not been proclaimed to the alien in connection with the Refugee Board meeting.<sup>85</sup>

In cases where the Refugee Board has rejected an asylum claim and where the alien has been notified of the decision in connection with the Board meeting, the police's *deportation control* must be carried out the day of the police's receipt of the decision. If this is not possible, the deportation control must be carried out the day after.<sup>86</sup>

In cases where the alien has been ordered to leave Denmark immediately, the police's deportation control must be carried out with direct connection to the official notice of

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77 The Aliens Act Sections 33 (3)-(5), 48e (1) and 53a (2).

78 The Aliens Act Section 27 (2), cf. the Aliens Act Part IV. Cf. Gunnar Homann, 'Udvisning', pp. 664, 674 and 686.

79 The Aliens Act Section 30 (1) and (2).

80 Jens Vedsted-Hansen, 'Grundbegreber og hovedsondringer i udlændingeretten', pp. 14-15.

81 Although lapse is not mentioned in Section 33 (1), it is assumed by Jens Vedsted-Hansen to be encompassed by Section 33 (1) following considerations on enforcement and on notification of the alien, see 'Bortfald og inddragelse af opholdstilladelser' p. 552, note 5 and p. 593 note 112. However, in practice a residence permit seems to be able to lapse automatically, see more below note 186.

82 The Aliens Act Section 33 (1).

83 The Aliens Act Section 32 (1).

84 The Aliens Act Section 33 (9).

85 The Aliens Act Section 30 (1) and (2), cf. *Cirkulære om forkyndelser og udrejsekontrol i asylsager m.v.* ('Circular on Promulgation and Departure Control in Cases on Asylum etc.'), Section 1 (1) and (4) and Kim U. Kjær, 'Udsendelse af udlændinge', p. 768.

86 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 3 (2).

refusal.<sup>87</sup>

In cases where the alien has not been ordered to leave Denmark immediately, the police's deportation control is carried out the day after the expiry of the time-limit for departure.<sup>88</sup>

Following the deportation control and if the police establish that the alien has not left Denmark, the police must make arrangements for his/her immediate departure.<sup>89</sup>

According to the Aliens Act, certain measures may be imposed on the alien by the police, provided it is necessary for ensuring the presence of the alien concerned.<sup>90</sup> If these measures are insufficient to ensure enforcement of a refusal of entry, expulsion, transfer, retransfer or return of an alien not entitled to stay in Denmark, or to ensure the alien's presence during the examination of his/her case on application on asylum, when the case is expected to be or is being examined according to the manifestly unfounded procedure, the police may order that the alien is to be deprived of his/her liberty.<sup>91</sup>

*- Lack of visa or residence permit*

As mentioned above an alien who is not entitled to stay must leave Denmark.<sup>92</sup> An alien staying in Denmark without the requisite permit may be refused entry on arrival from a country which has not acceded to the Schengen Convention on more specified conditions. Refusal of entry may further be effected until 3 months after entry.<sup>93</sup> In addition, an alien may be expelled if the alien is staying in Denmark without the requisite permit.<sup>94</sup>

*- Lapse, revocation of or refusal of applications on residence permits for regular immigrants or unaccompanied minors*

Decisions on lapse, revocation and refusal are made by the Immigration Service with legal recourse to the Integration Ministry.<sup>95</sup> As a main rule, an appeal suspends enforcement of the decision. As for decisions on lapse and on residence permits for aliens who have hitherto been issued with a residence permit for the purpose of a temporary stay, however, an appeal may suspend enforcement only in exceptional circumstances.<sup>96</sup>

Where expulsion has been decided by judgment, causing the alien's visa and residence permit to lapse,<sup>97</sup> the police determine the time-limit for departure to be immediately.

Consequently, an alien's stay beyond the time-limit stated in either a final administrative decision or, in an administrative decision not suspending enforcement or in a judgment on expulsion, is considered to be illegal.

Final decisions on residence permits for family reunification of minors below 15 years and on expulsion of Nordic citizens or aliens falling within the EU rules may be submitted

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87 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 3 (1).

88 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 3 (3).

89 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 4.

90 Section 34.

91 The Aliens Act Section 36.

92 The Aliens Act Section 30 (1) and (2).

93 The Aliens Act Section 28.

94 The Aliens Act Section 25b.

95 The Aliens Act Section 46 (1).

96 The Aliens Act Section 33 (3), cf. Jens Vedsted-Hansen, 'Bortfald og inddragelse af opholdstilladelse', p. 593.

97 The Aliens Act Section 32 (1).

for (full) judicial review by the courts.<sup>98</sup> Submission to the courts does not suspend the enforcement of the administrative decision, except where so ordered by the courts. Usually, the courts order suspension of the decision.<sup>99</sup>

Regarding *unaccompanied minors*, a residence permit may be issued if *exceptional reasons* make it appropriate to

- an unaccompanied alien who has submitted an application for a residence permit on asylum prior to his 18<sup>th</sup> birthday if, from information available on the alien's personal circumstances, there are particular reasons to assume that the alien should not undergo asylum proceedings; or
- an unaccompanied alien who has submitted an application for a residence on asylum prior to his 18<sup>th</sup> birthday, if there is reason to assume that in cases other than those mentioned in Section 7 on asylum the alien will in fact be placed in an emergency situation upon a return to his country of origin.<sup>100</sup>

If refusal of issue of the latter type of residence permit is appealed within 7 days of notification to the alien in question, the alien is entitled to remain in Denmark until the appeal has been decided.<sup>101</sup>

Decisions may be submitted for ordinary review by the courts to points of law. Such submission does not suspend the enforcement of the administrative decision, except where so ordered by the courts.<sup>102</sup>

#### - *Final rejection of asylum*

A rejection of an application on asylum is automatically appealed to the Refugee Board,<sup>103</sup> provided the application is not considered manifestly unfounded and thus treated pursuant to the accelerated procedure(s).<sup>104</sup> The appeal automatically suspends enforcement of the decision on refusal.<sup>105</sup>

A final rejection of an application on asylum<sup>106</sup> must state the immediate departure upon the *official notice of refusal*. Consequently, a subsequent stay in Denmark is – considered illegal until deportation or voluntary departure occurs. Exceptions may apply in situations of hindrances to deportation. Thus, the alien's stay may be considered legal for procedural reasons.<sup>107</sup>

However, if the alien has submitted an application for a *humanitarian residence*

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98 The Aliens Act Section 52.

99 The Aliens Act Section 52 (6), Cf. Jens Vedsted-Hansen, 'Bortfald og inddragelse af opholdstilladelser', p. 593.

100 The Aliens Act Section 9c (3).

101 The Aliens Act Section 33 (13).

102 In Ufr1997.756/1HK the Supreme Court ruled that proceedings on the validity of refusal of a residence permit pursuant to the rules on family reunification did not suspend enforcement of the refusal. The Court found that the Integration Ministry's interest in executing the deportation carried more weight than the alien's interest in staying in Denmark. In Ufr2007.776HK the Supreme Court ruled that the interest of the applicant in staying together with her family during the Supreme Court's processing of the case carried more weight than the public authorities' interest in executing the deportation.

103 The Aliens Act Section 53a.

104 The Aliens Act Section 53b.

105 The Aliens Act Section 53a (2), cf. Jens Vedsted-Hansen, 'Klageproceduren i asylsager', p. 485 and 'Bortfald og inddragelse af opholdstilladelser', p. 593. See also [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/application\\_for\\_asylum/appeal.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/appeal.htm), accessed on 9 February 2011.

106 By either the Refugee Board or by the Immigration Service upon submission to the Danish Refugee Council, cf. the Aliens Act Sections 53a and 53b, respectively.

107 The Aliens Act Section 33 (2), cf. Jens Vedsted-Hansen, 'Grundbegreber og hovedsdringer i udlænderretten', pp. 14-15.

*permit*<sup>108</sup> no later than 15 days after registration as an asylum seeker,<sup>109</sup> that application suspends enforcement of the time-limit for departure. The same applies where the asylum application is determined before that time pursuant to the manifestly unfounded procedure.<sup>110</sup>

#### *Humanitarian residence permit*

A humanitarian residence permit may be issued to a rejected asylum seeker in such a position that essential considerations of a humanitarian nature conclusively make it appropriate. Serious illness and families originating from a country at war having young children may be considered such essential considerations of a humanitarian nature. The decision is made by the Integration Ministry without administrative legal recourse.<sup>111</sup>

A decision on refusal of an application for a residence permit on asylum, decision on lapse or revocation of such a residence permit, must also include a decision on whether the alien may be returned from Denmark if he/she does not voluntarily leave the country.<sup>112</sup>

An application for reopening of a decision on asylum or on humanitarian residence permit does not suspend enforcement of the decision with a view to the time-limit for departure, unless the authority that made the decision so decides.<sup>113</sup>

#### *Hindrances to deportation; non-deportability and duldung*

Although an alien receiving a final rejection of asylum must leave Denmark immediately, it may be impossible for the police to deport the alien and impossible for the alien to leave voluntarily. This may be due to judicial as well as - objective - practical hindrances, such as hindrances to the issue of passports or travel documents etc.

Provided the rejected asylum seeker cooperates with the authorities, in particular the police, the stay may be considered legal on procedural grounds.<sup>114</sup>

Notwithstanding the time-limit for departure determined, certain categories of rejected asylum seekers who *cooperate concerning the departure and conclude a contract* with the Danish Immigration Service about an upgrading course and voluntary departure<sup>115</sup> shall leave only when the upgrading course in Denmark has been completed or is ended.<sup>116</sup> This applies in situations where the alien until then has not cooperated on

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108 Pursuant to the Aliens Act Section 9b. Not to be confused with residence permits issued if *exceptional reasons* make it appropriate, including regard for family unity, pursuant to the Aliens Act Section 9c. Please see more below on the issue of such residence permits pursuant to Section 9c (2) in situations of *hindrance to deportation*.

109 The Aliens Act Section 48e (1).

110 The Aliens Act Section 33 (4).

111 The Aliens Act Section 46a. See also [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/humanitarian\\_residence\\_permit/humanitarian\\_residence\\_permit.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/humanitarian_residence_permit/humanitarian_residence_permit.htm), accessed on 9 February 2011.

112 The Aliens Act Section 32a, cf. Section 31 on non-refoulement.

113 The Aliens Act Section 33 (7).

114 Cf. Jens Vedsted-Hansen, 'Grundbegreber og hovedsondringer i udlænderretten', pp. 14-15 and Kim U. Kjær, 'Udsendelse af udlændinge', pp. 773-779, see also [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/application\\_for\\_asylum/Hindrances\\_to\\_deportation.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/application_for_asylum/Hindrances_to_deportation.htm), accessed on 26 March 2011

115 A contract about an upgrading course can only be concluded if major aid projects are planned or have been initiated as part of a reconstruction action in the relevant alien's country of origin following war, and if negotiations on readmission or on practical arrangements about readmission or acceptance of forcible return have been instituted, or if it impossible to institute such negotiations due to the situation in the country, cf. the Aliens Act Section 43c (2).

116 Please see more below Paragraph 1.2.2.2 on the offers following from a contract concluded with the Immigration Service.

return, deportation has not been possible and voluntary return of the alien is possible.<sup>117</sup> A contract concluded means that the alien will not be deported as long as the alien complies with the terms of the contract. A contract does not, however, alter the fact that the alien is liable to removal, but must be considered a part of the alien's exit plan. If the alien violates the contract, the alien must leave immediately.

In situations of *hindrances to deportation*, a temporary residence permit may be issued to a rejected asylum seeker if *exceptional reasons* make it appropriate, including regard for family unity, provided

- it has not been possible to return the alien for at least 18 months; and
- the alien has assisted in the return efforts for 18 months consecutively; and
- the return must be considered futile according to the information available at the time.<sup>118</sup>

Pertaining to *duldung*, a decision on refusal of an application for a residence permit on asylum, decision on lapse or revocation of such a residence permit, must also include a decision on whether the alien may be returned from Denmark if he/she does not voluntarily leave the country, as mentioned above.<sup>119</sup>

In situations where the refusal of asylum is based on the *exclusion clauses* (e.g. Article 1F Refugee Convention, serious crime, serious threat to national security etc.),<sup>120</sup> but it is decided that the alien may not be returned due to risk of ill-treatment pursuant to the Article 1 A Refugee Convention and/or Article 3 ECHR, the alien is granted an exceptional leave to remain. This is a so-called 'tolerated stay' or *duldung*.

'Tolerated stay' is characterized by being a stay without a formal permit; the alien's stay is merely tolerated due to the non-deportability and non-possibility of voluntary return of the alien. However, a number of provisions in the Aliens Act govern such stay of an alien.<sup>121</sup>

A decision according to which an alien whose application for a residence permit for asylum has been refused cannot be returned from Denmark must be changed if the basis referred to in the decision is no longer present.<sup>122</sup> Further, the Immigration Service checks every six months or when occasion otherwise arises whether there is a basis for making such a decision on deportation.<sup>123</sup>

'Tolerated stay' may in principle be defined as implying a *de facto* right to reside in

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- 117 The Aliens Act Section 33a, cf. Section 43c and *Bekendtgørelse om kontraktordning for afviste asylansøgere, der samarbejder om udrejse* ('Executive Order on Rejected Asylum Seekers Cooperating Concerning the Departure').
- 118 The Aliens Act Section 9c (2), cf. the Aliens Order Section 25 (8), *Cirkulæreskrivelse om Rigspolitiets forelæggelse for Udlændingestyrelsen af sager om opholdstilladelse på grund af udsendelseshindringer, jf. udlændingelovens § 9, stk. 2, nr. 4*, ('Circular on the National Police's Submission of Cases on Residence Permits on Grounds of Hindrances to Deportation to the Immigration Service') and *Vejledning om behandlingen af sager om opholdstilladelse på grund af udsendelseshindringer, jf. udlændingelovens § 9, stk. 2, nr. 4*, ('Guidance on the Processing of Cases on Residence Permits on Grounds of Hindrances to Deportation'). Cf. Lone B. Christensen og Kira Hjul Hallberg, 'Opholdstilladelser efter udlændingelovens §§ 9a-9f', pp. 226-227 and *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.7.1.
- 119 The Aliens Act Section 32a, cf. Section 31 on non-refoulement.
- 120 The Aliens Act Section 10.
- 121 The Aliens Act Section 31, cf. Jens Vedsted-Hansen, 'Grundbegreber og hovedsondringer i udlændingeretten' pp. 14-15, and Kim U. Kjær, 'Udsendelse af udlændinge', pp. 762, 766-767. Please see below Paragraph 1.2.2.2 on social rights.
- 122 The Aliens Act Section 32b.
- 123 The Aliens Act Section 49b.

Denmark due to the non-deportability and non-possibility of voluntary return, thus making the stay legal. Yet, such stay has traditionally been considered illegal in Denmark.<sup>124</sup> However, as noted by the Danish Institute for Human Rights, such stay is assumed legal by the Integration Ministry in a recent amendment from 2008 of the provisions in the Aliens Act on 'tolerated stay' – at least in relation to Article 2 of the Fourth Protocol of the ECHR.<sup>125</sup> Further, in the guidance from 1998 for the municipalities on the social acts, 'tolerated stay' is considered legal.<sup>126</sup>

Yet, in a newsletter for the municipalities of 2009, the Immigration Service states that 'tolerated' stay is not considered legal stay in Denmark.<sup>127</sup>

Also, aliens on *duldung* are encouraged to leave Denmark voluntarily, and a number of measures aiming at motivating, encouraging or advancing return or facilitating the control with aliens have been adopted in the Danish Aliens Act.<sup>128</sup> Lately, some of the control measures have been tightened on grounds of national security and national order by the introduction of stricter rules on the police's control with the alien, on the alien's reporting duty at the police and on the possibility of ordering the alien to reside at a specified accommodation.<sup>129</sup> The measures comprise aliens who are non-deportable due to the prohibition on *refoulement*, not cooperating on return. This includes refugees or asylum seekers expelled by judgment on grounds of crime committed in Denmark, aliens expelled by administrative decision on grounds of serious threat to national security and aliens refused asylum due to the exclusion clauses in Article 1F of the Refugee Convention.<sup>130</sup> In the Bill on the Tunisian Act it is stated that every alien on 'tolerated stay' may leave Denmark voluntarily. The fact that the aliens are in Denmark is caused only by the alien's refusal to leave voluntarily and the fact that Denmark cannot deport the aliens in question as such deportation would constitute a violation of Denmark's international obligations.<sup>131</sup>

Consequently, there seems to be a lack of clarity and consistency in whether exceptional leave to remain is considered legal or illegal stay.

## 1.2.2 Link between residence status and entitlement to social rights

### 1.2.2.1 Regular stay and entitlement

Aliens staying legally in Denmark may be entitled to social rights pursuant to the general social welfare legislation and/or pursuant to the immigration legislation.

#### *Regular migration*

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124 *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 33-35 and *Forslag til Lov om ændring af udlændingeloven og ægteskabsloven m.fl.* ('Bill on Amendment of the Aliens Act and the Marriage Act etc.') 2001/2 LSF 152 of 28 February 2002 general remarks Section 6.

125 *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 33-35, referring to Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Part 4.

126 *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 33-35, Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 2.

127 See <http://www.nyidanmark.dk/NR/rdonlyres/COFFA0BC-EA6A-457A-8C31-A8DEF4FA1B72/0/NyhedsbrevtilkommunerneDECEMBER2009.pdf>, accessed on 22 February 2011.

128 The Aliens Act Sections 33a, 34-36, 42a (8)-(11) and 43c. Cf. *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 31- 32 and 125-126.

129 The so-called Tunisian Act; Act on amendment of the Aliens Act No. 1397 of 27 December 2008; please see more below Paragraph 1.2.5 on the background for this.

130 The Aliens Act Section 10 (1) and Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Part 1.

131 Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Part 1.

Upon a positive decision, *regular immigrants* fulfil the requirement on legal stay pursuant to the acts on social services, and are thus entitled to social services according to the general social welfare legislation and/or the Integration Act. However, a positive decision on regular immigration usually presupposes self-support and results in the applicant and his/her family being subjected to conditions on future self-support, limiting the actual access to social services for applicants.<sup>132</sup> In addition, legal residence in Denmark of certain duration is a prerequisite for access to some social services, thus limiting the entitlement to social services for migrants as compared to that of Danish citizens.

The municipalities must report to the Immigration Service if the alien and possibly his/her family receive social assistance.<sup>133</sup> If an alien issued with a residence permit conditioned on self-support receives social services, the residence permit may be revoked.<sup>134</sup> Also, an alien in need of continuous maintenance - defined as having lasted or expected to last a half year - may be returned to his/her home country on more specified conditions.<sup>135</sup>

As for medical assistance, any person with residence in Denmark, i.e. listed in the National Register of Persons, is entitled to assistance.<sup>136</sup> Persons who are on temporary stay and who do not reside in Denmark have access to acute/emergency assistance, only.<sup>137</sup>

### Asylum

Applications on asylum<sup>138</sup> must be submitted in Denmark.<sup>139</sup> Assistance for asylum seekers falls under the Immigration Service's maintenance obligation. Asylum claimants apprehended in areas close to the German border fall under the police's maintenance

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132 As for *family reunified*, unless exceptional reasons conclusively make it inappropriate, including regard for family unity, it must be made a condition for a residence permit that the person living in Denmark has not received any assistance under the Active Act or the Integration Act for 3 years before the decision on the residence permit is made. Unless exceptional reasons conclusively make it inappropriate, including regard for family unity, it must moreover be made a condition for a residence permit that the applicant and the person living in Denmark do not receive any assistance under the Active Act or the Integration Act during the period until the applicant is issued with a permanent residence permit. This does not comprise assistance in the form of isolated benefits of a minor amount not directly related to support, or benefits that are comparable with a wage or salary or pension or replace such payment, cf. the Aliens Act Section 9 (5). Additional - financial and non-financial - conditions apply.

As for *labour migrants*, it must be made a condition for a residence permit that the alien and persons issued with a residence permit as a result of family ties with the alien do not receive any assistance under the Active Act. It must be made a further condition for a residence permit that the maintenance of the alien and of persons issued with a residence permit as a result of family ties with the alien is secured through their own means for the first year of their stay in Denmark, cf. the Aliens Act Section 9a (3).

Regarding *students*, a residence permit for study is conditional upon the alien's maintenance being ensured through the alien's own means, grants, study loans or the like, cf. Executive Order on the Issue of Residence and Work Permits for Students Section 7 (1).

As for residence permits issued with the purpose of *religious activity*, it must be made a condition for a residence permit that the alien and persons issued with a residence permit as a result of family ties with the alien do not receive any public assistance for maintenance during their stay in Denmark, cf. the Aliens Act Section 9f (4).

133 The Aliens Act Sections 9 (23) and 44e.

134 The Aliens Act Section 19.

135 The Active Act Section 3 (4), cf. the Aliens Act Section 18. Cf. Guidance on the Active Act Paragraph 14.

136 The Health Act Section 7 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-5.

137 The Health Act Sections 7-8, cf. Section 80 and *Bekendtgørelse om ret til sygehusbehandling m.v.* ('Executive Order on Entitlement to Treatment at Hospitals etc.') Sections 4-7.

138 The Aliens Act Section 7.

139 The Aliens Order Section 29 (1).

obligation.<sup>140</sup>

Exceptions apply if an asylum seeker is married to a person issued with a residence permit for Denmark. In such case, the spouse has the maintenance obligation.<sup>141</sup> In addition, the Immigration Service's maintenance obligation does not apply if the asylum seeker is entitled to maintenance under other legislation, apart from being entitled to maintenance assistance under the Active Act,<sup>142</sup> or if the alien's place of residence is unknown.<sup>143</sup>

Further, the Immigration Service may decide that an asylum claimant, who has *sufficient means* of his own, will not have his or his family's expenses of the stay and necessary healthcare services defrayed. If the alien has sufficient means of his own to pay for the expenses of his or his family's stay and necessary healthcare services, the Immigration Service may order him to do so.<sup>144</sup>

Consequently, the Immigration Service defrays expenses of asylum seekers' stay and necessary healthcare services until the alien is issued with a residence permit, departs or is returned. The maintenance obligation of the Immigration Service ceases when an alien is referred to a specific municipality pursuant to the Integration Act.<sup>145</sup>

The Immigration Service's support covers:<sup>146</sup>

- cash allowance and/or free meals, if the applicant is staying at an accommodation centre with a cafeteria service which the applicant is covered by;
- housing at an accommodation centre;<sup>147</sup>
- necessary healthcare and social services;
- schooling for children;<sup>148</sup>
- schooling and other activities for adults;<sup>149</sup>
- transportation to and from meetings with the authorities, hospitals etc.

Moreover, the police defray the expenses for accommodation and stay of and necessary healthcare services to aliens staying in Denmark who submit an application on asylum and who are not registered as asylum seekers, if there is an immediate need for the police to make these arrangements.<sup>150</sup> The police's maintenance obligation comprises illegal immigrants - spontaneous asylum seekers - apprehended in areas close to the German border who may be returned to Germany according to the Danish-German

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140 The Aliens Act Section 42a (1).

141 The Aliens Act Section 42a (3) (ii), cf. the Active Act Section 2 on the maintenance obligation.

142 The Aliens Act Section 42a (3) (iv).

143 The Aliens Act Section 42a (3) (iii). Further, exceptions apply if the alien resides lawfully in Denmark as a result of a formal permit or as a result of rules exempting from formal permits, cf. the Aliens Act Section 42a (3) (i).

144 The Aliens Act Section 42a (4) and *Bekendtgørelse om betaling af udgifter til underhold af asylansøgere m.fl.* ('Executive Order on Expenses for Asylum Seekers etc.').

145 The Aliens Act Section 42a (1).

146 See [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/conditions\\_for\\_asylum\\_applicants/conditions\\_for\\_asylum\\_applicants.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm), accessed on 16 February 2011.

147 It is the responsibility of the Immigration Service to provide and run accommodation centres. This may take place in cooperation with private organizations or societies or government bodies or municipalities, cf. the Aliens Act Section 42a (5) and *Skrivelse om indlogering af asylansøgere*, ('Communication on Accommodation of Asylum Seekers').

148 The Aliens Act Section 42g and *Bekendtgørelse om undervisning og aktivering m.v. af asylansøgere m.fl.* ('Executive Order on Education and Activation etc. of Asylum Seekers etc.') Part 2.

149 The Aliens Act Sections 42e and 42f and Executive Order on Education and Activation etc. of Asylum Seekers etc. Parts 4-7.

150 The Aliens Act Section 43 (1). The police's maintenance obligation was specified by Act No. 425 of 31 May 2000. See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, general remarks 4 and specific remarks Section 1, 26 and 41.

agreement on return of asylum seekers. In practice, these aliens are accommodated in hostels, inns or the like until the time of - possible - return to Germany. In addition, the police may hand over the alien to the Immigration Service who then assumes responsibility of maintenance of the alien.<sup>151</sup>

During the procedure, the alien is entitled to assistance from the Danish Refugee Council. Consequently, when the Immigration Service makes a decision on omission of refusal of entry, expulsion, transfer or retransfer and return, the police must inform the alien of his/her right to contact the Danish Refugee Council.<sup>152</sup>

Asylum seekers may not be offered assistance pursuant to the general social welfare legislation. This is caused by the fact that the responsibility of providing social assistance for asylum seekers is assumed by the Immigration Service, as mentioned above,<sup>153</sup> resulting in the general social welfare legislation to be subsidiary.<sup>154</sup> However, asylum seekers staying legally in Denmark may be encompassed by the social welfare legislation, when the asylum seeker is not allowed to reside in an asylum centre due to marriage contracted with a person residing in Denmark and when the alien hence falls under the spouse's maintenance obligation.<sup>155</sup> Thus, in exceptional cases asylum seekers may be entitled to assistance pursuant to the Active Act in situations where the asylum seeker is not encompassed by the Immigration Service's maintenance obligation.<sup>156</sup>

Upon a positive decision, *refugees* fulfil the requirement on legal stay pursuant to the acts on social services and do no longer fall under the Immigration Service's maintenance obligation. They become entitled to social services according to the general social welfare legislation and/or the Integration Act.

However, legal residence in Denmark of certain duration is a prerequisite for access to some social services, thus limiting the entitlement to social services for refugees as compared to that of Danish citizens.

As for medical assistance, any person with residence in Denmark, i.e. listed in the National Register of Persons, is entitled to assistance.<sup>157</sup>

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151 *Om behandlingen af sager om illegal grænseoverskridelse I henhold til den dansk-tyske grænseløberoverenskomst af 31. maj 1954* ('Circular on the Processing of Cases on Illegal Border Crossing Pursuant to the Danish-German Border Agreement of 31 May 1954'), cf. Kim U. Kjær, 'Frihedsberøvelse og andre tvangsforanstaltninger', p. 823.

152 The Aliens Act Section 48a (3).

153 Provisional Guidance on the Municipalities' Involvement in Cases on Aliens, Paragraph 8.

154 Jens Vedsted Hansen in *Opholdsret og forsørgelse*, pp. 482 - 484 on the principles of subsidiarity when a specific maintenance arrangement to certain aliens has been laid down in the immigration legislation.

155 Cf. Guidance on the Active Act Paragraph 12, Provisional Guidance on the Municipalities' Involvement in Cases on Aliens Paragraphs 2, 6, 8, 12 and 19 and *Orienteringsskrivelse om ændring af lov om aktiv socialpolitik og udlændingeloven - ændrede regler for personer, som søger om asyl eller familiesammenføring, samt personer, som er varetægtsfængslet eller indsat til afsoning i fængsel eller arresthus*, ('Communication on Amendment of the Active Act and the Aliens Act - Amended Rules for Persons Applying for Asylum or Family Reunification, and Persons Who are in Custody').

156 *Skrivelse om orientering om bekendtgørelse om hjælp til asylansøgere* ('Communication on Orientation on Executive Order on Assistance for Asylum Seekers') and Bill on Amendment of the Active Act and the Integration Act 2001/2 LSF 126 of 1 March 2002, specific remarks Section 1, 17 on starting allowance pursuant to the Active Act for aliens staying legally in Denmark not comprised by the Immigration Service's maintenance obligation.

157 The Health Act Section 7 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-5.

### 1.2.2.2 Irregular stay and entitlement

Aliens not issued with a residence and work permit are not allowed working in Denmark.<sup>158</sup> Further, marriage may be contracted only by persons having Danish citizenship or legal stay in Denmark pursuant to a visa, to rules exempting the alien from holding a visa or residence permit or registration certificate/card or, to a residence permit/registration certificate/card.<sup>159</sup>

They may be entitled to social rights pursuant to the immigration legislation<sup>160</sup> and/or pursuant to the provisions on acute/emergency assistance in the Active Act and the Health Act. There is no general provision denying social rights upon refusal of residence status. On the contrary, the maintenance obligation of the Immigration Service comprises aliens staying irregularly/illegally in Denmark and rejected asylum claimants.<sup>161</sup> The assistance provided by the Immigration Service does, however, vary according to the migrant's status.

As for the general social welfare system law however, legal stay or residence in Denmark is a prerequisite for access to *ordinary assistance*. Also, residence of certain duration is a prerequisite for access to some social services. Yet, in situations of irregular stay, the alien may have access to *acute/emergency assistance*.

a) *Asylum claimants who have received the final rejection of asylum and non-deportable asylum claimants upon expiry of the time-limit for departure*

Assistance for asylum claimants falls under the Immigration Service's maintenance obligation.<sup>162</sup>

As a main rule, exceptions apply if an asylum claimant is married to a person issued with a residence permit for Denmark. In such case, the spouse has the maintenance obligation.<sup>163</sup> In addition, the Immigration Service's maintenance obligation does not apply if the alien is entitled to maintenance under other legislation, apart from being entitled to maintenance assistance under the Active Act,<sup>164</sup> or if the alien's place of residence is unknown.<sup>165</sup>

b) *Immigrants (excluding asylum seekers) not entitled to stay in Denmark; including aliens expelled by judgment or administrative decision and aliens who have received a*

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158 The Aliens Act Section 13 and 14. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Parts 3.2.6.6, 3.2.6.6.1 and 3.2.6.6.2.

159 The Marriage Act Sections 11a and 11b.

160 Cf. also [http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse\\_udl\\_m\\_ulovligt\\_oph.htm](http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse_udl_m_ulovligt_oph.htm) and [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/conditions\\_for\\_asylum\\_applicants/conditions\\_for\\_asylum\\_applicants.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm), both accessed on 16 February 2011.

161 The Immigration Service's maintenance obligation of aliens illegally residing in Denmark (Section 42a (2)), spontaneous asylum seekers and asylum seekers in the Dublin phase or deportation phase (Section 42a (1)) was adopted and specified by Act No. 425 of 31 May 2000 (and Act No. 292 of 30 April 2003) following the situation of a number of Somalian refugees whose residence permits were revoked on grounds of The Netherlands being the first country of asylum. The time-limits for departure had expired and the refugees were not entitled to assistance other than acute/emergency assistance pursuant to the general acts on social welfare. Subsequently, the then Ministry of Interior announced that the Ministry would cover the expenses for accommodation and maintenance of the refugees. See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, general remarks 4 and specific remarks Sections 1, 26 and 27.

162 The Aliens Act Section 42a (1).

163 The Aliens Act Section 42a (3) (ii), cf. the Active Act Section 2.

164 The Aliens Act Section 42a (3) (iv).

165 The Aliens Act Section 42a (3) (iii). Further, exceptions apply if the alien resides lawfully in Denmark as a result of a formal permit or as a result of rules exempting from formal permits, cf. the Aliens Act Section 42a (3) (i).

*final decision on lapse, revocation or refusal of extension of residence permits issued on any ground (i.e. including refugees and all 'regular migrants') upon expiry of the time-limit for departure*

Aliens who are not asylum seekers and who are not entitled to stay in Denmark under the rules of the Aliens Act, fall under the Immigration Service maintenance obligation. Thus, the alien will have the expenses of his/her stay and necessary health care services defrayed by the Immigration Service if necessary for maintenance of the alien.<sup>166</sup> Exceptions apply if an alien is married to a person issued with a residence permit for Denmark. In such case, the spouse has the maintenance obligation.<sup>167</sup> In addition, the Immigration Service's maintenance obligation does not apply if the alien is entitled to maintenance under other legislation, *including* assistance under the Active Act,<sup>168</sup> or if the alien's place of residence is unknown.<sup>169</sup>

Consequently, the following aliens who are not entitled to stay in Denmark and who are not asylum claimants, fall under the Immigration Service's maintenance obligation:<sup>170</sup>

- aliens who have received a final rejection on their application for a residence permit on any ground - apart from asylum, who have not left Denmark within the time-limit for departure;
- aliens who have entered Denmark illegally;
- aliens staying illegally in Denmark upon expiry of the period of stay allowed according to a visa or according to the rules on exemptions from visa;
- aliens staying illegally in Denmark due to expiry of a residence permit;
- aliens who withdraw an application for a residence permit;
- spontaneous asylum seekers who withdraw their application on asylum or whose application waives due to non-reported failure to appear at a meeting with the police or the Immigration Service;
- aliens whose residence permit automatically has lapsed;<sup>171</sup>
- aliens who have received a final decision on revocation or refusal of extension of a residence permit on any ground (i.e. including residence permits for refugees) and who have not left Denmark within the time-limit for departure;<sup>172</sup>
- aliens expelled by judgment where the departure has not been executed. If the alien has been issued with a residence permit as a refugee, prior to the return of the alien the Immigration Service must decide whether the alien can be returned. Within the period of the decision-making process, the expelled alien falls under the Immigration Service maintenance obligation;<sup>173</sup> and
- aliens expelled or refused entry into Denmark by administrative decision<sup>174</sup> where the

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166 The Aliens Act Section 42a (2).

167 The Aliens Act Section 42a (3) (ii), cf. the Active Act Section 2.

168 The Aliens Act Section 42a (3) (iv). As opposed to asylum seekers; see Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

169 The Aliens Act Section 42a (3) (iii). Further, exceptions apply if the alien resides lawfully in Denmark as a result of a formal permit or as a result of rules exempting from formal permits, cf. the Aliens Act Section 42a (3) (i).

170 See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, general remarks 4 and specific remarks Section 1, 27.  
Cf. [http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse\\_udl\\_m\\_ulovligt\\_oph.htm](http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse_udl_m_ulovligt_oph.htm), accessed on 16 February 2011.

171 Yet, it seems to be the situation that a final decision, and thus notification, is *not* required; contrary above note 122. Consequently, the alien is covered by the Immigration Service's maintenance obligation if the residence permit has lapsed automatically due to for instance stay abroad, during the immigration authorities' subsequent decision-making process on the lapse.

172 This includes aliens whose application for extension of residence permits does not suspend enforcement of the time-limit for departure.

173 The Aliens Act Section 49a, cf. Section 31 on non-refoulement.

174 Cf. the Aliens Act Sections 25-25c and 28.

departure or refusal has not been executed (unless the alien is imprisoned).

Consequently, the Immigration Service defrays expenses of (1) *asylum claimants'* stay and necessary healthcare services until the alien is issued with a residence permit or the alien departs or is returned;<sup>175</sup> and of (2) the stay of and necessary healthcare services to *aliens* who are not asylum seekers, and *who are not entitled to stay* in Denmark under the rules of the Aliens Act Parts I and III to V if necessary for maintenance of the alien.<sup>176</sup> The content of the Immigration Service's support is discussed below.<sup>177</sup>

The Immigration Service may decide that an alien, who has *sufficient means* of his own, will not have his/her or his/her family's expenses of the stay and necessary healthcare services defrayed. If the alien has sufficient means of his/her own to pay for the expenses of his/her or his/her family's stay and necessary healthcare services, the Immigration Service may order him/her to do so.<sup>178</sup>

Notwithstanding the time-limit for departure determined, certain categories of rejected asylum seekers<sup>179</sup> who *cooperate concerning the departure and conclude a contract* with the Danish Immigration Service about an upgrading course and voluntary departure, shall leave only when the upgrading course in Denmark has been completed or is ended. This applies in situations where the alien until then has not cooperated on return, deportation has not been possible and voluntary return of the alien is possible.<sup>180</sup> A contract concluded means that the alien will not be deported as long as the alien comply with the terms of the contract. A contract does not, however, alter the fact that the alien is liable to removal, but must be considered a part of the alien's exit plan. If the alien violates the contract, the alien must leave immediately.

Rejected asylum seekers concluding a contract with the Immigration Service will receive offers on an upgrading course, financial support for the return to his/her home country and assistance on finding an accommodation and work in his/her home country.<sup>181</sup>

Aliens comprised by the Immigration Service maintenance obligation may not be offered assistance pursuant to the general social welfare legislation.<sup>182</sup> Assistance offered pursuant to the general welfare legislation is thus subsidiary to the specific welfare

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175 The Aliens Act Section 42a (1).

176 The Aliens Act Section 42a (2).

It should be noted that the wording of the provisions on asylum seekers and aliens staying illegally in Denmark is not identical. Thus, pertaining to aliens staying illegally in Denmark, it is stated that the alien will have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service if *necessary for maintenance* of the alien. Pertaining to asylum seekers it is merely stated that these aliens will have the expenses of their stay and necessary healthcare services defrayed. Hence, the points of departure are not identical; most likely due to the fact that asylum seekers are staying legally in Denmark (procedural stay). However, at this stage there is no basis for establishing differences in practice, cf. also the fact that the exceptions on the Immigration Service's maintenance obligations apply equally to both categories of aliens; apart from assistance under the Active Act.

177 Cf. 2.1 Reception, p. 34 ss.

178 The Aliens Act Section 42a (4) and Executive Order on Expenses for Asylum Seekers etc.

179 A contract about an upgrading course can only be concluded if major aid projects are planned or have been initiated as part of a reconstruction action in the relevant alien's country of origin following war, and if negotiations on readmission or on practical arrangements about readmission or acceptance of forcible return have been instituted, or if it impossible to institute such negotiations due to the situation in the country, cf. the Aliens Act Section 43c (2).

180 The Aliens Act Section 33a, cf. Section 43c and Executive Order on Rejected Asylum Seekers Cooperating Concerning the Departure.

181 Executive Order on Rejected Asylum Seekers Cooperating Concerning the Departure Section 1 and Part 2.

182 Provisional Guidance on the Municipalities' Involvement in Cases on Aliens Paragraph 8.

scheme established to the aliens concerned under the immigration legislation.<sup>183</sup> However, asylum seekers staying legally in Denmark may be encompassed by the social services legislation, when the asylum seeker is not allowed to reside in an asylum centre due to marriage contracted with a person residing in Denmark and when the alien hence falls under the spouse's maintenance obligation.<sup>184</sup> Thus, in exceptional cases asylum seekers may be entitled to assistance pursuant to the Active Act in situations where the asylum seeker is not encompassed by the Immigration Service's maintenance obligation.<sup>185</sup>

Further, aliens staying irregularly/illegally in Denmark may be offered acute/emergency assistance pursuant to the Active Act in exceptional situations based on considerations of necessity/emergency.<sup>186</sup> In addition, the Regions are obligated to provide asylum claimants and aliens not legally residing in Denmark acute/emergency health care.<sup>187</sup>

### 1.3 The role of human rights in cases on aliens irregularly residing in Denmark

Cases on aliens irregularly residing in Denmark brought before the courts are often about the compatibility of decisions, measures etc. with human rights, including the principle on proportionality.

Within the various bills on amendments of the Aliens Act, the Integration Ministry refers to Denmark's international obligations, including human rights. It is thus stated that the Danish immigration legislation must be administered in accordance with Denmark's international obligations. In addition, several provisions in the Aliens Act include a somewhat wide clause pursuant to which the immigration authorities may grant exemptions to the main rules on grounds of Denmark's international obligations, including human rights.

Although the compatibility with human rights of administrative decisions consequently seems to be guaranteed, the cases on the aliens in question brought before the courts usually deals with the administrative decisions' compatibility with the human rights. Hence, the courts of Denmark seem to have an increasing vital part to play in defining and watching the compliance with human rights.<sup>188</sup> The following examples of the courts' practice on aliens irregularly residing in Denmark will illustrate this.

In an unpublished judgment of 7 January 2011, the High Court ruled that the duty of an Iranian with exceptional leave to remain for 3 years to reside in Centre Sandholm and to report at the police 3 times weekly, receiving about 1 Euro a day in assistance

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183 Jens Vedsted Hansen in *Opholdsret og forsørgelse*, pp. 482 – 484 on the principles of subsidiarity when a specific maintenance arrangement to certain aliens has been laid down in the immigration legislation.

184 Cf. Guidance on the Active Act Paragraph 12, Provisional Guidance on the Municipalities' Involvement in Cases on Aliens Paragraphs 2, 6, 8, 12 and 19 and Communication on Amendment of the Active Act and the Aliens Act – Amended Rules for Persons Applying for Asylum or Family Reunification, and Persons Who are in Custody.

185 Communication on Orientation on Executive Order on Assistance for Asylum Seekers and Bill on Amendment of the Active Act and the Integration Act 2001/2 LSF 126 of 1 March 2002, specific remarks Section 1, 17 on starting allowance pursuant to Active Act for aliens staying legally in Denmark not comprised by the Immigration Service's maintenance obligation.

186 Sections 81 and 82, cf. Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 6.

187 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.2.

188 See speech of February 2011 from the Director of the Danish Institute for Human Rights on the court's role at <http://menneskeret.dk/nyheder/seneste+nyt/liste/direkt%c3%b8r-c3-+h%c3%b8jesteret+er+under+forandring>, accessed on 29 March 2011.

and free meals on the 'food allowance programme', were not deprivation of liberty or discrimination contrary to the human rights. The judgment has been appealed to the Supreme Court.<sup>189</sup>

In Ufr2011.726ØD the High Court dealt with the expulsion and deportation of a Kurdish Iranian expelled by judgment and the compatibility of the deportation with Article 3 ECHR. The alien was in need of continuous treatment for psychiatric illness. The High Court found that it was questionable whether the alien upon deportation to Iran had actual possibility of sufficient medical treatment. The High Court thus upheld the ruling of the District Court; ruling that compelling humanitarian considerations, i.e. the alien's health condition, conclusively was against expulsion.<sup>190</sup>

In Ufr2009.426HK the Supreme Court dealt with the administrative expulsion of and subsequent deprivation of liberty of the Tunisian being referred to as the reason for the adoption of the so-called *Tuneserlov* ('the Tunisian Act')<sup>191</sup> and the compatibility of these measures with Article 5 ECHR. The Tunisian was expelled administratively by decision made by the Integration Ministry on grounds of being deemed a danger to national security. The Supreme Court ruled that the National Police's claim on deprivation of liberty should not have been followed by the District Court and the High Court.<sup>192</sup>

In Ufr2006.2095/2HD the Supreme Court ruled that the refusal by the Integration Ministry of humanitarian residence permits for a family of three rejected asylum seekers with PTSD being ethnic Romas from Kosovo was not contrary to Article 3 ECHR or other international obligations. The aliens did not leave Denmark within the time-limit for departure and did not cooperate on return.

Further, the Supreme Court ruled that the decision on removal of cash allowance<sup>193</sup> was to be upheld. The Court thus found no exceptional reasons (such as health or minor children) against the removal of cash allowance.

The Supreme Court stated that the practice on issue of humanitarian residence permit is very restrictive, and that humanitarian residence permits may be issued only in exceptional cases according to the preparatory work of the provision.<sup>194</sup> The fact the UN authorities in Kosovo to a certain extent refused to cooperate on deportation of ethnic Romas and persons with PTSD was not in itself considered to give grounds to issue of humanitarian residence permits. Based on this, and on the fact that the Supreme Court found no insufficiencies in the basis for the administrative decisions, the Supreme Court thus found no reason for overriding the discretion of the Integration Ministry.

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189 See articles at <http://politiken.dk/indland/ECE1104223/iraner-paa-taalt-ophold-gaar-i-krig-med-staten/>, <http://jp.dk/indland/article2298298.ece>, <http://politiken.dk/indland/ECE1161179/iraner-paa-taalt-ophold-taber-principiel-sag-i-landsretten/>, <http://www.information.dk/255801> and <http://jp.dk/indland/article2298123.ece>, all accessed on 29 March 2011.

190 According to the Aliens Act Section 50a, where expulsion has been decided by a judgment sentencing an alien to safe custody or committal under the certain rules of the Criminal Code, the court, in connection with a decision under section 72 of the Criminal Code on variation of the measure that involves discharge from hospital or safe custody, decides at the same time on revocation of the expulsion if the alien's state of health makes it conclusively inappropriate to enforce the expulsion.

191 Act on amendment of the Aliens Act No. 1397 of 27 December 2008; please see more below Paragraph 1.2.5 on the background for this.

192 Cf. Ufr2008.2394HK where the Supreme Court referred the case on the court's evaluation of the justification of the deprivation of liberty of the Tunisian back to the District Court with the purpose of renewed and appropriate trial/evaluation. Subsequently, the District Court and High Court ruled that the deprivation of liberty was justified, which the Supreme thus overruled in its judgment in UfrU2009.426HK as mentioned above.

193 Pursuant to the then provision in the Aliens Act Section 42a (10) on the so-called 'lunch box programme'. The programme has now been succeeded by the 'food allowance programme', as described below Paragraph 1.2.2.2.

194 The Aliens Act Section 9b.

#### 1.4 Legal sanctions on offering assistance to illegally/irregularly residing migrants

A person or company<sup>195</sup> offering assistance relating to illegal entry, transit, stay of and work to aliens is liable to a fine or imprisonment for up to 2 years. This applies to:<sup>196</sup>

- any person or company who employs an alien not issued with the requisite work permit or does so in violation of the conditions laid down for the issue of a work permit;<sup>197</sup>
- any person or company who intentionally assists an alien in unlawfully entering or transiting Denmark;<sup>198</sup>
- any person or company who intentionally assists an alien in unlawfully staying in Denmark;<sup>199</sup>
- any person or company who intentionally assists an alien in entering Denmark for the purpose of entering another country unlawfully from Denmark;<sup>200</sup>
- any person or company who intentionally assists an alien in unlawfully entering or unlawfully transiting another country;<sup>201</sup>
- any person or company who for the purpose of financial gain assists an alien in staying unlawfully in another country;<sup>202</sup> and
- any person or company who by making shelter or means of transport available to an alien, intentionally assists the alien in working in Denmark without the requisite permit.<sup>203</sup>

A carrier or company who brings to Denmark an alien who upon his entry or in transit in a Danish airport is not in possession of the requisite travel document and visa is liable to a fine. This does not apply, however, on entry from a Schengen country.<sup>204</sup>

The first person sentenced in Denmark for hiding aliens illegally staying in Denmark was a priest (Leif Bork Hansen). The priest housed a family of 3 persons from Belarus for about 1 year. The High Court found that no considerations on necessity for the prevention of threatening damage were present, and thus found the priest's actions to be contrary to the Aliens Act.<sup>205</sup> The priest was sentenced a fine of DKK 2,500 - approximately Euro 333.<sup>206</sup>

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195 The Aliens Act Section 61.

196 The Aliens Act Section 59.

197 The Aliens Act Section 59 (4). it is considered an aggravating circumstance if the violation was committed intentionally, if, through the violation, a financial gain was obtained or intended for the benefit of the person concerned or others, or if the alien is not entitled to stay in Denmark, cf. Section 59 (5).

198 The Aliens Act Section 59 (7) (i).

199 The Aliens Act Section 59 (7) (ii). It is considered a particularly aggravating circumstance if the assistance was given for the purpose of financial gain, or repeatedly, or if the same sentence covers several offences of intentional assistance for an unlawful stay in Denmark, cf. Section 59 (8).

200 The Aliens Act Section 59 (7) (iii).

201 The Aliens Act Section 59 (7) (iv).

202 The Aliens Act Section 59 (7) (v).

203 The Aliens Act Section 59 (7) (vi). It is considered a particularly aggravating circumstance if the assistance was given for the purpose of financial gain, or repeatedly, or if the same sentence covers several offences of intentional assistance for an alien's unlawful work in Denmark, cf. Section 59 (9).

204 Cf. the Aliens Act Section 59a.

205 The then Section 59 (3).

206 Ufr1999.2082VD.

### 1.5 Recent or future legislative amendments with regard to irregularly residing migrants

Recently, there has been some debate in the Danish media concerning irregular/illegal residents and aliens with exceptional leave to remain (*duldung*).

One debate concerns illegal residents being *homeless* and their possibilities to gain access to shelters. Shelters receiving public subsidies pursuant to the Service Act do not receive reimbursement for housing aliens. However, following the media coverage of the death of two supposedly Eastern European persons, the Ministry of Social Affairs established an emergency fund for shelters housing homeless people who were not comprised by the existing housing offers in the winter cold.<sup>207</sup>

The private shelters' housing of aliens illegally residing in Denmark resulted in some debate, and on 8 December 2010 the police conducted a peaceful raid on the shelter 'A Warm Bed'. This resulted in the arrest of 69 foreign homeless persons.<sup>208</sup>

Following the debate on the providing of shelter to aliens illegally residing in Denmark and to aliens not able to provide for themselves, the Minister of Social Affairs issued a press release in December 2010 stating that the emergency shelters must not be abused as cheap hustles. According to the Minister, the emergency fund is established to assure that none will have to stay outside in the winter cold, regardless of their residence status. This does not, however, alter the fact that these aliens have arrived to Denmark without being able to supply for themselves and thus must leave Denmark. Further, the Minister aims at reinforcing the deportation of aliens staying illegally in Denmark.<sup>209</sup>

Another debate concerns illegal residents and their right to *medical assistance*. According to the Danish Red Cross and the Danish Medical Association, aliens residing in Denmark without a residence permit are not secured adequate medical care. Thus, the Danish Red Cross and the Danish Medical Association in cooperation with the Danish Refugee Council establish a medical centre specifically for illegal aliens.<sup>210</sup>

Also, a number of measures aiming at motivating, encouraging or advancing return or facilitating control with the alien have been adopted in the Danish Aliens Act.<sup>211</sup> In 2008, some of the control measures were tightened by the 'Tunisian Act' on grounds of national security (terrorism) and national order by the introduction of stricter rules on the police's control with the alien, on the alien's reporting duty at the police, on the possibility of

207 [http://www.sm.dk/Puljer/sociale-omraader/udsatte\\_voksne/noedovernatningssteder/Sider/Start.aspx](http://www.sm.dk/Puljer/sociale-omraader/udsatte_voksne/noedovernatningssteder/Sider/Start.aspx). See articles at <http://i.pol.dk/politik/ECE1127971/hjemloese-herberg-faar-14-millioner-kroner-af-staten/>, <http://politiken.dk/debat/ledere/ECE1132285/udenlandske-hjemloese-skal-ikke-fryses-ud/>, [www.dr.dk/Regioner/Kbh/Nyheder/Hovedstadsomraadet/2010/12/05/100418.htm&regional](http://www.dr.dk/Regioner/Kbh/Nyheder/Hovedstadsomraadet/2010/12/05/100418.htm&regional) and <http://politiken.dk/indland/ECE1137093/s-offentlige-herberg-til-udenlandske-hjemloese/>, all accessed 28 March 2011. It should be noted that there is no evidence of the death of the 2 European people being caused by refusals of shelter, see [http://borsen.dk/nyheder/medier/artikel/1/201561/bbc\\_beklager\\_fejl\\_i\\_udsendelse\\_om\\_danmark.html](http://borsen.dk/nyheder/medier/artikel/1/201561/bbc_beklager_fejl_i_udsendelse_om_danmark.html) and <http://www.dr.dk/P1/Detektor/Udsendelser/2011/02/16111537.htm>, both accessed on 28 March 2011.

208 See press releases from the police of 9 and 10 December 2010 on [http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/Aktion\\_081210.htm](http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/Aktion_081210.htm), [http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/Status\\_081210.htm](http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/Status_081210.htm), [http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/2010\\_12\\_09\\_denvarmeseng.htm](http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/2010_12_09_denvarmeseng.htm) and [http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/2010\\_12\\_10\\_envarmseng.htm](http://www.politi.dk/Koebenhavn/da/lokalnyt/Presse/Pressemeddelelser/2010_12_10_envarmseng.htm), all accessed on 13 April 2011.

209 <http://www.sm.dk/Nyheder/Sider/Vis%20Nyhed.aspx?NewsItem=555>, accessed on 5 April 2011.

210 See articles at [www.dr.dk/Nyheder/Politik/2010/12/22/110944.htm](http://www.dr.dk/Nyheder/Politik/2010/12/22/110944.htm), [www.dr.dk/Nyheder/Indland/2010/12/23/032206.htm](http://www.dr.dk/Nyheder/Indland/2010/12/23/032206.htm), [www.information.dk/telegram/254518](http://www.information.dk/telegram/254518), [www.information.dk/telegram/254503](http://www.information.dk/telegram/254503), [http://jp.dk/indland/indland\\_politik/article2286255.ece](http://jp.dk/indland/indland_politik/article2286255.ece) and [www.dr.dk/P1/P1Dokumentar/Udsendelser/2010/02/18110401.html](http://www.dr.dk/P1/P1Dokumentar/Udsendelser/2010/02/18110401.html), all accessed 28 March 2011.

211 The Aliens Act Sections 33a, 34-36, 42a (8)-(11) and 43c. Cf. *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 31- 32 and 125-126.

ordering the alien to reside at a specified accommodation etc.

The measures comprise aliens with exceptional leave to remain - *duldung*, who are non-deportable due to the prohibition on *refoulement*, not cooperating on return. This includes refugees or asylum seekers expelled by judgment on grounds of crime committed in Denmark, aliens expelled by administrative decision on grounds of serious threat to national security and aliens refused asylum due to the exclusion clauses in the Article 1F Refugee Convention.<sup>212</sup> In the Bill on the Tunisian Act it is stated that every alien on 'tolerated stay' may leave Denmark voluntarily. The fact that the aliens are in Denmark is caused only by the alien's refusal to leave voluntarily and the fact that Denmark cannot deport the aliens in question as such deportation would constitute a violation of Denmark's international obligations.<sup>213</sup>

The 'Tunisian Act' was adopted following the revelation of a person with exceptional leave to remain, expelled by administrative decision on grounds of suspicion (and not a sentence) of terrorism living close to the home of Kurt Westergaard (one of the makers of the Muhammad drawings) whom he was suspected of wanting to murder.

In January 2011, the High Court ruled that the duty of an Iranian with exceptional leave to remain for 3 years to reside in Centre Sandholm and to report at the police 3 times weekly, receiving about 1 Euro a day in assistance and free meals, were not deprivation of liberty or discrimination contrary to the human rights. The judgment has been appealed to the Supreme Court.<sup>214</sup>

Lately, some debate concerning stateless persons - mainly Palestinians - and the Integration Ministry's failure to comply with the *UN Convention on Reduction of Statelessness* has taken place. The newspaper 'Information' revealed that the Integration Ministry did not provide guidance for stateless persons on the entitlement of being granted Danish citizenship. Further, the Integration Ministry has not granted stateless persons - being entitled thereto pursuant to the UN Convention - Danish citizenship.<sup>215</sup> Following the revelation of the violation of the Convention, the opposition called for a consultation with the Integration Minister (Birthe Rønn Hornbech).<sup>216</sup> In addition, according to the Danish Institute for Human Rights, the Danish authorities have violated the *UN Handicap Convention* by not allowing aliens suffering from PTSD the possibility of being exempt from some of the requirements for acquiring Danish citizenship, although PTSD may be regarded as a handicap.<sup>217</sup>

The Integration Minister Birthe Rønn Hornbech has been removed by the Prime Minister and replaced with Søren Pind in March 2011.

The matter and the role of the Ministry of the State of Denmark in this are now to be examined by an examination commission established by the Ministry of Justice.<sup>218</sup>

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212 The Aliens Act Section 10 (1) and Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Part 1.

213 Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Part 1.

214 Judgment of 7 January 2011 by the High Court; the judgment has not yet been published; see articles at <http://politiken.dk/indland/ECE1104223/iraner-paa-taalt-ophold-gaar-i-krig-med-staten/>, <http://jp.dk/indland/article2298298.ece>, <http://politiken.dk/indland/ECE1161179/iraner-paa-taalt-ophold-taber-principiel-sag-i-landsretten/>, <http://www.information.dk/255801> and <http://jp.dk/indland/article2298123.ece>, all accessed on 29 March 2011.

215 See <http://www.information.dk/256007>, accessed on 29 March 2011, with references to more articles and information on the matter.

216 The consultation is available at the Parliament's web-TV at <http://www.ft.dk/webtv/video/20101/ifu/9.aspx?from=07-02-2011&to=07-04-2011&selectedMeetingType=Udvalg&committee=IFU&as=1#player>, accessed on 7 April 2011.

217 See <http://www.information.dk/telegram/261951> and <http://menneskeret.dk/nyheder/seneste+nyt/liste/ny+sag+om+konventionsbrud>, both accessed on 28 March 2011.

218 See press release from the Ministry of Justice at <http://www.justitsministeriet.dk/pressemeddelelse+M5ec417ed8d3.html> and article at <http://www.information.dk/telegram/264796>, both accessed on 7 April 2011.

A more recent debate concerns the police's deprivation of the liberty of asylum claimants in a so-called 'closed camp' ('Ellebæk') and its compliance with Article 3 et al. ECHR. Apparently, the detentions are inspired by the authorities' fear that the aliens concerned may flee. The debate was caused by research conducted by Amnesty International published in its member's journal AMNESTY, describing how vulnerable asylum claimants, such as pregnant women, mentally ill persons, victims of torture or trafficking, have been deprived of their liberty in the institution. Following this, the opposition called for a consultation with Integration Minister Søren Pind.<sup>219</sup>

The consultation revealed that none have knowledge on the number of detained persons attempting suicide or to otherwise harm themselves. As a consequence of this the Ombudsman and the Prison Service, respectively, have - according to the media - launched an investigation of the situation of self-harm and suicide attempts among the detainees.<sup>220</sup>

In May 2010 an Act amending the provisions on submission of applications for residence permits with the purpose of family reunification, labour migration and study of the Aliens Act - and other provisions - was adopted.<sup>221</sup> The Bill was introduced as a result of an overall service check of the Aliens Act and with the purpose of implementing parts of the agreements between the government and 'Dansk Folkeparti' ('the Danish People's Party').<sup>222</sup>

The amended provisions on submission of applications for residence permits were introduced following incidents with rejected Iraqi asylum seekers and the civil society. Following rejection of asylum for a number of Iraqi asylum seekers, the newspaper 'Politiken' established a centre having the purpose of hiring the rejected asylum seekers and paying them a salary, allowing the rejected asylum seekers to be issued with residence permits on the basis of employment pursuant to the provision on the *pay limit scheme*.<sup>223</sup> Also, organizations united in the organization 'Kirkeasyl' ('Church asylum') were involved in assisting the aliens by housing them in the Brorson Church and by establishing a temporary employment agency also having the aim of hiring the rejected Iraqi asylum seekers.<sup>224</sup> Thus, the legislative amendments had the purpose of preventing abuse of the rules on issue of residence permits on the basis of employment and other types of 'regular' migration. Further, the aim was to assure that applications on residence permits on the basis of 'regular' migration are not submitted by aliens illegally residing in Denmark or by aliens to whom a time-limit for departure of Denmark has been determined or by aliens whose application on a residence permit is already being processed. As a modification to the latter, an application for a residence permit on the basis of employment may be submitted by aliens whose application on residence permits is already being processed, provided the application suspends enforcement of the time-

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219 The consultation is available at the Parliament's web-TV at <http://www.ft.dk/webtv/video/20101/uui/10.aspx?from=07-03-2011&to=07-04-2011&selectedMeetingType=&committee=&as=1#player>. See article at <http://www.information.dk/263273> and Amnesty's research at [http://www.amnesty.dk/campaign\\_flygtninge/](http://www.amnesty.dk/campaign_flygtninge/), all accessed on 7 April 2011.

220 See articles at <http://www.information.dk/264642>, <http://www.information.dk/264119> and <http://www.amnesty.dk/nyhed/ombudsmanden-undersoger-selvmordsforsog-i-ellebaek>, all accessed on 7 April 2011.

221 Act on amendment of the Aliens Act No. 572 of 31 May 2010.

222 Bill on Amendment of the Aliens Act 2009/1 LSF 188 of 26 March 2010, general remarks Section 1.

223 The Aliens Act Section 9a (2) (iii).

224 The amendment is thus referred to by some as 'Lex Politiken'. See articles <http://www.kristeligt-dagblad.dk/artikel/335575:Danmark--Vikarbureau-vil-hjaelpe-til-asyl>, <http://www.b.dk/danmark/straffesag-om-kirkeasyls-penge-opgoer-om-politik-eller-ulovligheder>, <http://www.information.dk/241540>, [http://avisen.dk/praest-skjuler-irakere\\_113376.aspx](http://avisen.dk/praest-skjuler-irakere_113376.aspx), <http://kathrine.blogs.berlingske.dk/2010/06/10/politikens-irak-center-versu-vko/>, [http://politiken.dk/system/topicRoot/Politiken\\_Irak\\_Center/](http://politiken.dk/system/topicRoot/Politiken_Irak_Center/) and <http://politiken.dk/indland/ECE1228436/asylbureau-vinder-i-oestrelandsret/>, all accessed on 5 April 2011.

limit for departure.<sup>225</sup>

Consequently, as a main rule, applications on residence permits for 'regular' immigration can be submitted in Denmark, only if the alien has legal residence pursuant to the rules exempting from visa/residence permit or the EU rules or is issued with a residence permit, provided no particular reasons are against this, or if required by Denmark's international obligations.<sup>226</sup> 'Particular reasons' against the submission of an application in Denmark, may be if it is apparent that the alien in question does not meet the requirements for issue of the residence permit, or if the alien has already been rejected such residence permit. As part of the assessment on whether an application may be allowed submitted in Denmark, it must be included whether it is likely that the application may be processed during the alien's legal stay in Denmark or with a close relation to this. Thus, aliens with illegal stay in Denmark, aliens with a time-limit for departure and aliens whose application on a residence permit is already being processed may be allowed submission of applications on residence permits only if required by Denmark's international obligations, such as Article 8 ECHR.

Asylum seekers and other aliens with procedural (and thus legal) stay in Denmark are allowed submission of residence permits for 'regular' migration, unless particular reasons are against this (such as lack of qualifications and pro forma applications). However, aliens to whom a time-limit for departure has been determined and who are staying in Denmark during this time-limit (and thus are having procedural stay pursuant to the time-limit) are not allowed to submit applications for 'regular' immigration. This includes rejected asylum seekers.<sup>227</sup>

In December 2010, an Act amending the provisions on unaccompanied minors was adopted by the Parliament.<sup>228</sup> The Act is expected to result in the entry of fewer unaccompanied minors into Denmark by - among other things - the establishment of reception and care centres in the home countries, fewer unaccompanied minors issued with a residence permit for Denmark on grounds of lacking network in their home countries and more unaccompanied minors to be reunited with their families and relatives in their home countries.<sup>229</sup>

In 2010, an Act on amendment of the Aliens Act was adopted.<sup>230</sup> The Act introduced fees on applications for residence permits, appeals and reopening of cases in the areas of family reunification, studies and work.<sup>231</sup>

In 2011, a Bill on amendment of the Aliens Act was introduced by the Integration Ministry. The Bill aims at implementing Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.<sup>232</sup> The Bill was adopted by the Parliament on 30 March 2011.<sup>233</sup>

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225 Bill on Amendment of the Aliens Act 2009/1 LSF 188 of 26 March 2010, general remarks Sections 1 and 6.1.2 and specific remarks Sections 1, 5 and 6.

226 Act on amendment of the Aliens Act No. 572 of 31 May 2010 Sections 9 (18), 9a (4), 9c (5) and 9f (7).

227 Bill on Amendment of the Aliens Act 2009/1 LSF 188 of 26 March 2010, general remarks Section 6.2.1.

228 Act on Amendment of the Aliens Act and Integration Act No. 1543 of 21 December 2010.

229 Bill on Amendment of the Aliens Act and the Integration Act 2010/1 LSF 37 of 28 October 2010, general remarks Section 1.

230 Act on Amendment of the Aliens Act No. 1604 of 22 December 2010.

231 See [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/fee/](http://www.nyidanmark.dk/en-us/coming_to_dk/fee/), accessed on 24 February 2011.

232 Bill on Amendment of the Aliens Act, 2010/1 LSF 107 of 12 January 2011. It should be noted, that due to the Danish opt-out from European cooperation on Justice and Home Affairs, the Directive does not apply to Denmark. However, Denmark has opted-in as the Directive is considered to be a development of the Schengen acquis.

233 Act No. 248 of 30 March 2011.

## 2 Access to Reception and Emergency Reception

### 2.1 Reception

#### 2.1.1 *Applicable Legislation, Contents and Actors*

##### 2.1.1.1 Legislation

The Aliens Act Sections 42a-43 and, 46e govern reception (and assistance) in particular. These provisions establish a welfare scheme specifically for certain immigrants staying in Denmark. Consequently, the Danish Immigration Service (or the Police) has a *maintenance obligation* of asylum seekers and aliens illegally residing in Denmark.<sup>234</sup>

Reception pursuant to the immigration legislation is accessible for asylum seekers and aliens illegally residing in Denmark. Thus, the Immigration Service defrays expenses of (1) *asylum claimants'* stay and necessary healthcare services until the alien is issued with a residence permit or the alien departs or is returned,<sup>235</sup> and of (2) expenses of the stay of and necessary healthcare services to *aliens* who are not asylum seekers, and *who are not entitled to stay* in Denmark under the rules of the Aliens Act Parts I and III to V if necessary for maintenance of the alien.<sup>236</sup>

The Immigration Service's support covers the following aspects:<sup>237</sup>

- *Cash allowance and/or free meals*, if the alien is staying at an accommodation centre with a cafeteria service which the applicant is covered by.

The cash allowance consists of a *basic allowance* which is intended to cover expenses for food, personal hygiene items, etc. In addition, a *supplementary allowance* is provided for aliens who honor the terms of the contract concluded with the accommodation centre.<sup>238</sup>

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234 The Aliens Act Sections 42a-42h.

235 The Aliens Act Section 42a (1).

236 The Aliens Act Section 42a (2).

It should be noted that the wording of the provisions on asylum seekers and aliens staying illegally in Denmark is not identical. Thus, pertaining to aliens staying illegally in Denmark, it is stated that the alien will have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service if *necessary for maintenance* of the alien. Pertaining to asylum seekers it is merely stated that these aliens will have the expenses of their stay and necessary healthcare services defrayed. Hence, the points of departure are not identical; most likely due to the fact that asylum seekers are staying legally in Denmark (procedural stay). However, at this stage there is no basis for establishing differences in practice, apart from what follows from reductions of social benefits. Cf. also the fact that the exceptions on the Immigration Service's maintenance obligations apply equally to both categories of aliens - apart from assistance under the Active Act; please see below.

237 Cf. [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/conditions\\_for\\_asylum\\_applicants/conditions\\_for\\_asylum\\_applicants.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm), accessed on 16 February 2011. Cf. Kim U. Kjær, 'Afvisning og overførsel m.v. af asylansøgere', pp. 71-72. The Immigration Service's support was legalized by Act No. 292 of 30 April 2003.

238 An asylum seeker over 18 must make an agreement – a contract – with the accommodation centre to which they are attached. The contract states which courses and activities the asylum seeker is to participate in and which tasks he or she will be responsible for at the centre. If an asylum seeker refuses to comply with the terms of the contract with the centre, the Immigration Service can decide to reduce the cash allowance. Further, an alien lodged in one of the accommodation centres has a duty to assist in carrying out the tasks necessary to the running of the accommodation centre, cf. the Aliens Act Sections 42c and 42d and Executive Order on Education and Activation etc. of Asylum Seekers etc. Part 3.

Also, a *caregiver allowance* is provided for aliens with children.<sup>239</sup> In addition, goods (clothes etc.) may be provided.<sup>240</sup>

The cash allowance offered for rejected asylum seekers, asylum seekers in the Dublin phase and aliens illegally residing in Denmark is reduced significantly as compared to the cash allowance offered to asylum seekers.<sup>241</sup>

Further, the cash allowance may be reduced as a result of an alien *not cooperating on departure*.<sup>242</sup> Thus, the alien may be encompassed by the *food allowance programme*, resulting in the alien receiving the *basic allowance* for food, only, or - in cases where the alien is living at a accommodation centre serving free meals, no cash allowance. In practice, this programme is imposed on aliens who have not left Denmark within the time-limit for departure and are refusing to cooperate on return. In extraordinary cases, such as cases involving *unaccompanied children* or aliens with *life-threatening illness*, exemptions may be made. Families with *minor children* will receive a so-called child package every 14 days per child, containing fruit, soft drinks and sweets.<sup>243</sup>

If, upon departure control, the police establish that an alien refuses to cooperate on return, the police must recommend to the Immigration Service that the alien is placed on the food allowance programme.<sup>244</sup> If an alien has been placed on the food allowance programme for 4 weeks and still refuses to cooperate on departure, the police must recommend to the Immigration Service that the alien in question is transferred to a departure centre; a so-called *relocation order*.<sup>245</sup>

- *Housing at an accommodation centre*<sup>246</sup>

Rejected asylum claimants, aliens on 'tolerated stay' (*duldung*) who are non-deportable and not cooperating on return, and expelled aliens will be placed at the accommodation centres for aliens liable to removal (departure centres are Centre Sandholm or Centre Avnstrup). In extraordinary cases, such as cases involving aliens with *health problems* or cases where *Denmark's international obligation* requires it, exceptions may be made. The alien may further be subjected to additional measures aiming at advancing return and/or control, such as reporting duty etc.<sup>247</sup>

239 The Aliens Act Section 42b.

240 *Bekendtgørelse om udlevering af naturalieydelser til asylansøgere m.fl.* ('Executive Order on Delivery of Goods to Asylum Seekers etc.').

241 *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.5.3 and *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 74-80.

242 Circular on Promulgation and Departure Control in Cases on Asylum etc. Sections 7 (1) and (3).

243 The Aliens Act Section 42a (10) and (11). Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.5.3. See also [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/asylum/conditions\\_for\\_asylum\\_applicants/conditions\\_for\\_asylum\\_applicants.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/asylum/conditions_for_asylum_applicants/conditions_for_asylum_applicants.htm), accessed on 16 February 2011.

244 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 7 (1).

245 Circular on Promulgation and Departure Control in Cases on Asylum etc. Section 7 (2), the Aliens Act Section 42a (7).

246 It is the responsibility of the Immigration Service to provide and run accommodation centres. This may take place in cooperation with private organizations or societies or government bodies or municipalities, cf. the Aliens Act Section 42a (5) and Communication on Accommodation of Asylum Seekers.

247 The Aliens Act Sections 42a (8) and (9). Section 42a (8) on staying at a specified accommodation was adopted by *Lov om ændring af udlændingeloven og ægteskabsloven m.fl.* ('Act on Amendment of the Aliens Act and the Marriage Act etc.'), Act No. 365 of 6 June 2002; see Bill on Amendment of the Aliens Act and the Marriage Act etc., 2001/2 LSF 152 of 28 February 2002, specific remarks Section 1, 46 and general remarks Section 6. The scope of aliens encompassed by the provision was extended by Act No. 291 of 30 April 2003 and the 'Tunisian Act'. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.1.3, Bill on the Tunisian Act 2008/1 LSF 69 of 13 November 2008, general remarks, Parts 1, 3.1 and 3.2 and *Afviste asylansøgere og andre udlændinge i*

- *Necessary healthcare and social services*

Asylum seekers and aliens not legally residing in Denmark are not covered by the Danish National Health Service as they are not listed in the National Register of Persons. Yet, the Regions are obligated to provide asylum claimants and aliens not legally residing in Denmark acute/emergency health care.<sup>248</sup> Expenses for additional necessary healthcare and dental care are covered by the Immigration Service.<sup>249</sup> As for adult aliens, the Immigration Service covers the expenses for healthcare, provided it is necessary, urgent and/or pain-relieving. Aliens *under the age of 18* are entitled to healthcare similar to that of children who are residents of Denmark. Furthermore, asylum seekers may be referred to various types of treatment by the health staff at the accommodation centre, such as consultations with a general practitioner, initial consultations with psychologists, psychiatrists, midwives and medical specialists.

- *Education for children*<sup>250</sup>

Minors are subject to compulsory education and are offered education similar to that of bilingual student in the Danish public school. The teaching takes place at the accommodation centre or at the local public school.<sup>251</sup>

- *Education for adults*<sup>252</sup>

Rejected asylum claimants and aliens not legally residing in Denmark must attend education aiming at preparing the alien on a life in his/her homeland.<sup>253</sup>

As for *adult rejected asylum claimants* there is a distinction between rejected asylum claimants cooperating on return and rejected asylum claimants not cooperating on return. Consequently, rejected asylum claimants cooperating on return must attend education on terms similar to those of registered asylum seekers. However, this category may only be offered Danish lessons provided this may facilitate the alien's work in his/her home country.<sup>254</sup> As for rejected asylum claimants not cooperating on return, these aliens must attend education on terms similar to those of registered asylum seekers. However, this category may not be offered Danish lessons.<sup>255</sup>

Aliens not entitled to stay in Denmark, including aliens expelled by judgment or administrative decision and aliens who have received a final decision on lapse,

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- 248 *udsendelsesposition i Danmark* pp. 20- 23 and 36-44.  
The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.2 and *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 101-121.
- 249 Bill on Amendment of the Aliens Act 2002/1 LSF 157 of 29 January 2003, specific remarks Section 1, 3 and 4 and Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.
- 250 The Aliens Act Section 42g and Executive Order on Education and Activation etc. of Asylum Seekers etc. Part 2. See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 36.
- 251 *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.3.3.
- 252 The Aliens Act Sections 42e and 42f and Executive Order on Education and Activation etc. of Asylum Seekers etc. Part 4-7.
- 253 Executive Order on Education and Activation etc. of Asylum Seekers etc. Section 34 and 35 (7).
- 254 Executive Order on Education and Activation etc. of Asylum Seekers etc. Section 35 (8) and *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.3.3.
- 255 Executive Order on Education and Activation etc. of Asylum Seekers etc. Section 35 (9) and *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.3.3 and *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 88-98.

revocation or refusal of extension of residence permits issued on any ground (i.e. including refugees and all 'regular migrants') upon expiry of the time-limit for departure, are not entitled to attend education other than education aiming at preparing the alien on a life in his/her homeland.<sup>256</sup>

Moreover, the police defray the expenses for accommodation and stay of and necessary healthcare services to aliens staying in Denmark who submit an application on asylum and who are not registered as asylum seekers, if there is an immediate need for the police to make these arrangements.<sup>257</sup> The police's maintenance obligation comprises illegal immigrants - spontaneous asylum seekers - apprehended in areas close to the German border who may be returned to Germany according to the Danish-German agreement on return of asylum seekers. In practice, these aliens are accommodated at hostels, inns or the like until the time of - possible - return to Germany. The police may hand over the alien to the Immigration Service who then assumes responsibility of maintenance of the alien.<sup>258</sup>

The content of the assistance will differ in accordance with the phase of the procedure. Phase 1 is the phase where the alien is awaiting the decision on whether his/her case may be processed in Denmark (Dublin phase). As a main rule, the aliens are installed in reception centres with canteens and will thus not receive money for food, as they are not providing for their own household. The processing of the case may take up to 7 months, among other things due to the fact that it may be difficult to identify the alien in question. In situations where the police assesses that the alien in question does not cooperate on identification, it is possible to reduce the benefits granted to the alien concerned - the so-called motivation measures. At Centre Sandholm, these aliens will be put on the 'lunch box programme'. However, at Centre Hanstholm this will not be the case.

In phase 2, when the case is being processed in Denmark, the residents receive more benefits than aliens in the first and third phase.

In phase 3 or the deportation phase, the support is the most limited. These aliens are not offered activation and their allowance is removed. If residents in phase 3 are not cooperating on return, they are put on the 'lunch box programme' in the 'close-camp'. This means that they do not receive allowance and that their living conditions will be very similar to those in a prison.

### 2.1.1.2 Actors

The *Immigration Service* (or the police) assumes responsibility for supporting and accommodating asylum seekers and aliens staying illegally/irregularly in Denmark.<sup>259</sup> According to the Aliens Act, it is the responsibility of the Immigration Service to provide and run accommodation centres. This may take place in cooperation with private organizations or societies or government bodies or municipalities.<sup>260</sup> Further, the Immigration Service may decide that an alien falling under the Immigration Service's maintenance obligation is to be put on the food allowance programme.<sup>261</sup>

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256 Executive Order on Education and Activation etc. of Asylum Seekers etc. Section 35 (7).

257 The Aliens Act Section 43 (1). The police's maintenance obligation was specified by Act No. 425 of 31 May 2000. See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, general remarks 4 and specific remarks Section 1, 26 and 41.

258 Circular on the Processing of Cases on Illegal Border Crossing Pursuant to the Danish-German Border Agreement of 31 May 1954, cf. Kim U. Kjær, 'Frihedsberøvelse og andre tvangsforanstaltninger', p. 823.

259 Cf. the Aliens Act Sections 42a-42h on the Danish Immigration Service's *maintenance obligation*.

260 Cf. the Aliens Act Section 42a (5).

261 The Aliens Act Section 42a (10) and (11).

Also, the Immigration Service may decide that an alien falling under the Immigration Service's maintenance obligation, who has sufficient means of his own, will not have his or his family's expenses of the stay and necessary healthcare services defrayed.<sup>262</sup> These decisions made by the Immigration Service may be appealed to the Integration Ministry.<sup>263</sup>

In addition, the Immigration Service may decide that an alien must stay at a specific accommodation centre.<sup>264</sup> These decisions may not be appealed to the Integration Ministry.<sup>265</sup>

### *Accommodation operators*

*The Danish Red Cross* operates and administers most accommodation centres in Denmark.<sup>266</sup> As the operator of accommodation centres, the Red Cross has certain authorities pursuant to the Aliens Act.<sup>267</sup>

*The Jammerbugt Municipality* operates 2 accommodation centres.<sup>268</sup> As the operator of accommodation centres, the municipality has certain authorities pursuant to the Aliens Act.<sup>269</sup>

*The Thisted Municipality* operates 3 accommodation centres.<sup>270</sup> As the operator of accommodation centres, the municipality has certain authorities pursuant to the Aliens Act.<sup>271</sup>

### *Authority of the accommodation operators and authority of the immigration authorities*

The accommodations operators' handling of the tasks relating to the maintenance of aliens is under the authority of the Immigration Service. The accommodation operator handles the administration in connection with the aliens' stay; tasks, activities and education and pays out cash allowance.

The accommodation operator shall prepare a contract for an alien over the age of 18 who falls under the Immigration Service's maintenance obligation. If no agreement on the contents of the contract can be reached, the accommodation operator determines the contents. These decisions may be appealed to the Immigration Service.<sup>272</sup>

The accommodation operator pays out allowances and supplements and decides on whether these are payable. These decisions may be appealed to the Immigration Service.<sup>273</sup>

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262 The Aliens Act Section 42a (4).

263 The Aliens Act Section 46 (2).

264 The Aliens Act Section 42a (7) and (8).

265 The Aliens Act Section 46 (2).

266 Section 42a (5). The contract between the Immigration Service and the Red Cross is available at [http://www.nyidanmark.dk/NR/rdonlyres/50EF576E-216F-4247-BF8A-65985FA8FCED/0/samlet\\_kontrakt\\_drka\\_1halvaar\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/50EF576E-216F-4247-BF8A-65985FA8FCED/0/samlet_kontrakt_drka_1halvaar_2011.pdf), accessed on 7 February 2011.

267 Sections 42c-42h and 46e.

268 The contract between the Immigration Service and the municipality is available at [http://www.nyidanmark.dk/NR/rdonlyres/40DF559A-7FE2-4BFF-B1E2-1997F8415E67/0/samlet\\_kontrakt\\_jammerbugt\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/40DF559A-7FE2-4BFF-B1E2-1997F8415E67/0/samlet_kontrakt_jammerbugt_2011.pdf), accessed on 7 February 2011.

269 Sections 42c-42h and 46e.

270 The contract between the Immigration Service and the municipality is available at [http://www.nyidanmark.dk/NR/rdonlyres/6DFC8B79-E16F-4987-97F9-C6081ED4705D/0/samlet\\_kontrakt\\_thisted\\_2011.pdf](http://www.nyidanmark.dk/NR/rdonlyres/6DFC8B79-E16F-4987-97F9-C6081ED4705D/0/samlet_kontrakt_thisted_2011.pdf), accessed on 7 February 2011.

271 Sections 42c-42h and 46e.

272 The Aliens Act Section 42c (2), cf. Section 46e.

273 The Aliens Act Section 42b (11), cf. Section 46e.

The Immigration Service or the accommodation operator may order an alien to carry out the tasks necessary to the running of the accommodation centre.<sup>274</sup> The accommodation operator determines whether an alien shall participate in activation by carrying out other tasks in connection with the running of the accommodation centre and implementation of the tuition. These decisions made by the accommodation operator may be appealed to the Immigration Service.<sup>275</sup>

The accommodation operator determines whether an alien shall attend tuition. These decisions may be appealed to the Immigration Service.<sup>276</sup>

Further, the accommodation operator must offer activation, tuition etc.<sup>277</sup> The Integration Ministry may decide that the tuition may be given in collaboration with schools, educational institutions and providers under the Ministry of Employment, the Ministry of Cultural Affairs, the Ministry of Education and the Integration Ministry or be replaced by tuition offered by them.<sup>278</sup>

### 2.1.1.3 Conditions for Access

The general condition to receive reception pursuant to the Immigration Service's maintenance obligation is that it is *necessary*.

Thus, as a main rule, exceptions apply to the Immigration Service's maintenance obligation if an alien is married to a person issued with a residence permit for Denmark. In such case, the spouse has the maintenance obligation.<sup>279</sup>

In addition, the Immigration Service's maintenance obligation does not apply if (1) an asylum seeker<sup>280</sup> is entitled to maintenance under other legislation, apart from being entitled to maintenance assistance under the Active Act,<sup>281</sup> and if (2) an alien staying illegally in Denmark<sup>282</sup> is entitled to maintenance under other legislation, including assistance under the Active Act.<sup>283</sup>

Also, the Immigration Service may decide that an alien falling under the Immigration Service's maintenance obligation, who has sufficient means of his own, will not have his or his family's expenses of the stay and necessary healthcare services defrayed. Further, the Immigration Service's maintenance obligation does not apply if the alien resides lawfully in Denmark as a result of a formal permit or as a result of rules

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274 The Aliens Act Section 42d (2), cf. (1).

275 The Aliens Act Section 42e (4), cf. Section 46e.

276 The Aliens Act Section 42f (7), cf. Section 46e.

277 The Aliens Act Sections 42e-42g and Executive Order on Education and Activation etc. of Asylum Seekers etc.

278 The Aliens Act Sections 42f (8) and 42g.

279 The Aliens Act Section 42a (3) (ii).

280 The Aliens Act Section 42a (1).

281 The Aliens Act Section 42a (3) (iv).

282 The Aliens Act Section 42a (2).

283 The Aliens Act Section 42a (3) (iv). See Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

It should be noted that the wording of the provisions on asylum seekers and aliens staying illegally in Denmark is not identical. Thus, pertaining to aliens staying illegally in Denmark, it is stated that the alien will have the expenses of his stay and necessary healthcare services defrayed by the Danish Immigration Service if *necessary for maintenance* of the alien. Pertaining to asylum seekers it is merely stated that these aliens will have the expenses of their stay and necessary healthcare services defrayed. Hence, the points of departure are not identical; most likely due to the fact that asylum seekers are staying legally in Denmark (procedural stay). However, at this stage there is no basis for establishing differences in practice, apart from what follows from reductions of social benefits. Cf. also the fact that the exceptions on the Immigration Service's maintenance obligations apply equally to both categories of aliens; apart from assistance under the Active Act.

exempting from formal permits,<sup>284</sup> or if the alien's place of residence is unknown.<sup>285</sup>

Pertaining to where and when to apply for assistance pursuant to the immigration legislation, it is merely stated in the Bills on amendments of the Aliens Act etc. that the Immigration Service makes the evaluation of whether the alien is comprised by the Immigration Service's maintenance obligation.<sup>286</sup> Further, it is stated that the receipt of assistance presupposes that the alien wants to be encompassed by the Immigration Service's maintenance obligation. If the alien does not want to be encompassed by the Immigration Service's maintenance obligation, this does not result in an entitlement of being encompassed by the general social welfare legislation.<sup>287</sup> Regarding *aliens illegally residing in Denmark*, it is merely stated at the Immigration Service's website that the alien may 'request' for maintenance. As a main rule, this will be conditional on the alien taking up residence at an accommodation centre.<sup>288</sup>

### 2.1.2 *The Condition of Regular and/or Legal Residence*

Reception pursuant to the immigration legislation is accessible for asylum seekers and aliens illegally residing in Denmark, as described above, upon decisions of the Immigration Service or accommodation operator.

### 2.1.3 *Litigation and Disputes*

Based on the information obtained, there seems to be no particular disputes between central and local government.

## 2.2 Emergency reception

### 2.2.1 *Applicable Legislation, Contents and Actors*

#### 2.2.1.1 Legislation

The applicable legislation on social services and health care is composed mainly of the Health Act, the Service Act, the Active Act and the corresponding executive orders and guidance.

The *Health Act* states that persons with residence in Denmark are entitled to medical assistance. Residence is defined as being listed in the National Register of Persons. Persons with a temporary stay and who do not reside in Denmark, have access to acute/emergency assistance, only.<sup>289</sup>

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284 The Aliens Act Section 42a (3) (i).

285 The Aliens Act Section 42a (3) (iii).

286 Bill on Amendment of the Aliens Act 2002/1 LSF 157 of 29 January, specific remarks Section 1, 12.

287 Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

288 [http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse\\_udl\\_m\\_ulovligt\\_oph.htm](http://www.nyidanmark.dk/da-dk/Ophold/asyl/forsoergelse_udl_m_ulovligt_oph.htm) (available in Danish, only), accessed on 22 February 2011.

289 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7.

The Service Act states that any person legally residing in Denmark is entitled to assistance pursuant to the Act.<sup>290</sup> Aliens with a temporary stay in Denmark, e.g. tourists, are entitled to acute/emergency assistance, only.<sup>291</sup>

The *Active Act* states that in exceptional situations of emergency, the municipalities may provide isolated acute/emergency assistance for any person staying in Denmark.<sup>292</sup>

As for medical assistance not covered by the legislation, the *Danish Medical Association*<sup>293</sup> being an interest group of Danish doctors, in association with the *Danish Red Cross* and in cooperation with the *Danish Refugee Council* established a medical centre specifically for aliens staying illegally in Denmark, as the organizations find the health care provided for these aliens to be insufficient.

Further, following the debate in the Danish media on foreign homeless people not being entitled to shelter in the winter cold, the Ministry of Social Affairs established an *emergency fund for shelters* housing homeless people who were not comprised by the existing housing offers in the winter cold with the legal basis in the Finance Act. The emergency fund has been distributed to various shelter organizations, such as church organizations. The private shelter 'A Warm Bed' received almost half of the special emergency fund.<sup>294</sup>

The *women's crisis centres* provide shelter to women who are victims of abuse or possibly of trafficking.<sup>295</sup> In November 2010, the Ministry of Justice approved the practice by the police in Central and Western Jutland on placing foreign prostituted women illegally residing in Denmark at the crisis centres<sup>296</sup> instead of imprisoning them.<sup>297</sup> In October 2010, the police in Central and Western Jutland had ceased this practice due to the questionability of whether such practice was compatible with the Aliens Act. However, according to the National Police and the Ministry of Justice, placing foreign women illegally residing in Denmark in crisis centres is not a violation of the Aliens Act. Yet, a specific assessment of which measures may be necessary to apply in order to ensure the presence of the alien must be conducted in each case. Further, the National Police will inform the other police districts of the experience gained by the police in Central and Western Jutland and the possibility of applying such practice.

### 2.2.1.2 Contents

Medical treatment pursuant to the Health Act and to the Executive Order on Entitlement to Treatment at Hospitals etc. for aliens not having residence in Denmark encompasses acute treatment in situations of accidents, sudden illness, birth, impairment of chronically diseases etc. Further, persons not residing in Denmark are entitled to treatment in

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290 Section 2 (1).

291 The Purpose Guidance Paragraphs 14, 17 and 21.

292 The Active Act Sections 81 and 82. Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 6.

293 Official website [www.laeger.dk](http://www.laeger.dk).

294 Official website [www.sletogret.dk/akut/](http://www.sletogret.dk/akut/).

295 The official website of the national association for women's crisis centres is [www.lokk.dk](http://www.lokk.dk).

296 With the legal basis in the Aliens Act Section 34.

297 With the legal basis in the Aliens Act Section 36. The measures on deprivation of liberty in Section 36 are applied when the less intrusive measures in Section 34 are insufficient, as described above Paragraph 1.2.2.1.

Retsudvalget 2010-11, REU alm. del, endeligt svar på spørgsmål 36, 30 November 2010, available at <http://www.ft.dk/dokumenter/tingdok.aspx?/samling/20101/alm-del/reu/spm/36/svar/760229/924645/index.htm>, accessed on 5 April 2011.

Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>298</sup>

Assistance pursuant to the Service Act encompasses a wide selection of guidance and assistance, such as personal and practical assistance, special support for adults, special support for children and their families, residential accommodation, assistive technology etc.

Emergency assistance pursuant to the Active Act includes assistance in special circumstances in the shape of cash for covering single expenses, medical care, maintenance of children etc. on more specified conditions.<sup>299</sup>

Assistance offered by the medical clinic established outside the legislation comprises various types of medical assistance.

Assistance pursuant to the emergency fund for shelters and assistance at the women's crisis centres comprises housing, meals or the like.

### 2.2.1.3 Actors

The *regions and municipalities* organize the assistance pursuant to the Health Act and the Service Act. The municipalities organize the assistance pursuant to the Active Act. The immigration authorities issue guidance and newsletters for authorities dealing with aliens and immigration legislation, and the organizations must report illegal immigrants to the immigration authorities.<sup>300</sup> Further, Danish (immigration) legislation is based on a principle of division of sectors, meaning that aliens irregularly residing may receive assistance within one sector, only. Regarding medical care, this means that the regions are obligated to provide asylum claimants and aliens not legally residing in Denmark acute/emergency health care,<sup>301</sup> while expenses for additional necessary healthcare and dental care are covered by the Immigration Service.<sup>302</sup>

As for medical assistance not covered by the legislation, the *Danish Medical Association*<sup>303</sup> being an interest group of Danish doctors, in association with the *Danish Red Cross* and in cooperation with the *Danish Refugee Council* establish a medical centre accessible for aliens staying illegally in Denmark, as the organizations find the health care provided for these aliens to be insufficient. The immigration authorities do not have authority over them.

*A Warm Bed* is an independent, private organization for shelters funded by private

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298 The Health Act Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

299 The Active Act Part X.

300 See <http://www.nyidanmark.dk/da-dk/publikationer/SearchPublications.htm?SearchType=publications&SubType=Nyhedsbrev&Keywords=Nyhedsbrev+til+kommunerne+og+KL> and [http://www.nyidanmark.dk/da-dk/Info\\_til/medarbejdere\\_i\\_kommuner/info\\_til\\_medarbejdere\\_i\\_kommuner.htm](http://www.nyidanmark.dk/da-dk/Info_til/medarbejdere_i_kommuner/info_til_medarbejdere_i_kommuner.htm), both accessed on 22 February 2011.

301 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.2 and *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 101-121.

302 Bill on Amendment of the Aliens Act 2002/1 LSF 157 of 29 January 2003, specific remarks Section 1, 3 and 4 and Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

303 Official website [www.laeger.dk](http://www.laeger.dk).

foundations and donations. Also, the organization received almost half of the special emergency fund set up by the Ministry on Social Affairs to help homeless in the winter cold who were not comprised by the existing offers. Further, the church organizations received part of the emergency fund and provide shelter. The immigration authorities do not have authority over them, but public subsidies may be earmarked for specific purposes.

*The women's crisis centres* provide shelter to traded women or women who are victims of abuse.<sup>304</sup> The interest organization for the women's crisis centres, LOKK, is funded by private and public subsidies. The immigration authorities do not have authority over them, but public subsidies may be earmarked for specific purposes.

*The Committee for Underground Refugees*<sup>305</sup> is a Danish humanitarian, independent organization providing assistance to refugees in terms of legal and medical assistance for underground refugees. The immigration authorities do not have authority over them.

*The Danish Refugee Council*<sup>306</sup> is a private humanitarian cooperative organization involved in various capacities in the treatment of asylum cases. The Council further offers advice, services (interpretation etc.) and assistance to asylum seekers and refugees. The immigration authorities do not have authority over them, but public subsidies may be earmarked for specific purposes.

#### 2.2.1.4 Access

Persons staying in Denmark have access to these benefits. The general conditions for emergency reception is *emergency*, i.e. the need of acute, necessary assistance.

#### 2.2.2 The Condition of Regular and/or Legal Residence

The *Health Act* states that persons with *residence in Denmark* are entitled to medical assistance. Residence is defined as being *listed in the National Register of Persons*. Persons with a *temporary stay* and who *do not reside in Denmark*, including pending a procedure, have access to acute/emergency assistance, only. Full legal status is thus required for access to full medical assistance.<sup>307</sup> Yet, stays in Denmark for a longer duration than 3 months may, when considered reasonable, be given equal status to residence in Denmark.<sup>308</sup> Further, persons not residing in Denmark are entitled to treatment in Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>309</sup>

The *Service Act* states than any person *legally residing* in Denmark is entitled to

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304 Public subsidies from for instance the Ministry of Integration and the Ministry of Social Affairs, see <http://www.lokk.dk/Puljerogfonde/> and [http://www.nyidanmark.dk/NR/rdonlyres/4DEC2019-9D2F-4C8B-AE0B-E636FA9ADEA8/0/fakta\\_om\\_integrationsministeriets\\_satspuljer\\_og\\_samarbejdsprojekter.pdf](http://www.nyidanmark.dk/NR/rdonlyres/4DEC2019-9D2F-4C8B-AE0B-E636FA9ADEA8/0/fakta_om_integrationsministeriets_satspuljer_og_samarbejdsprojekter.pdf), both accessed on 5 April 2011.

305 Official website [www.flygtningeunderjorden.dk](http://www.flygtningeunderjorden.dk).

306 Official website [www.drc.dk](http://www.drc.dk).

307 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc.. Sections 4-7.

308 Executive Order on Entitlement to Treatment at Hospitals etc. Section 7.

309 The Health Act Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

assistance pursuant to the Act.<sup>310</sup> This means that any alien who has legal - permanent or temporary - stay in Denmark pursuant to the Aliens Act is entitled to assistance; including pending a procedure. Aliens with a *temporary stay* in Denmark, e.g. tourists, may be offered acute/emergency assistance, only.<sup>311</sup>

The *Active Act* states that any person *legally residing in Denmark* is entitled to - ordinary - assistance pursuant to the Act.<sup>312</sup> Legal stay is defined as the right to reside in Denmark without a permit or pursuant to a valid residence permit. Legal stay thus comprises stays in Denmark during the processing of an application on residence permit (i.e. pending a procedure), stays on visas or exempt from visas and extended visits.<sup>313</sup> Further, the Act states that in situations of emergency, the municipalities may provide acute/emergency assistance in exceptional situations based on considerations of necessity/emergency for any person staying in Denmark, including *aliens not legally residing in Denmark*.<sup>314</sup>

*Health assistance not governed by the legislation*, and assistance pursuant to the *emergency fund* for shelters offered by the private organizations, and assistance offered by the *crisis centres* are accessible for all, including *aliens irregularly residing in Denmark*.

Every person staying in Denmark, including irregular/illegally residing migrants, may be offered acute/emergency health assistance comprised by the health legislation and emergency assistance comprised by the *Active Act* when there is an acute need of assistance; i.e. urgency, necessity etc.

Further, according to the *Health Act*, persons not residing in Denmark are entitled to medical treatment in Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>315</sup>

### 2.2.3 Litigation and disputes

Following the references in the Danish media on the lack of medical assistance provided for aliens irregularly/illegally residing in Denmark,<sup>316</sup> the Minister of Interior and Health was asked a question by a member of the Danish Parliament on this. In his reply, the Minister stated that the rules on the matter and the possibilities of providing medical assistance are clear, but it seems that the health personal's knowledge on the rules and the possibilities of providing medical assistance are not sufficient. Thus, the Minister intends to issue guidelines for the regions on the matter.<sup>317</sup>

Also, there seems to be some disputes between private organizations and the public authorities on assistance for aliens illegally residing in Denmark. As an example of this, it has been debated whether the establishment of medical centres for aliens illegally

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310 Section 2 (1).

311 The Purpose Guidance Paragraphs 14, 17 and 21.

312 Section 3 (1).

313 Provisional Guidance on the Municipalities' Involvement in cases on Aliens' Paragraph 2 and 8 and Guidance on the *Active Act* Paragraph 12.

314 The *Active Act* Sections 81 and 82. Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 6.

315 The *Health Act* Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

316 See above Paragraph 1.2.5.

317 Folketinget 2009-2010, S 1285 svar på offentligt, available at <http://www.ft.dk/samling/20091/spoergsmaal/s1285/svar/695310/813072.pdf>, accessed on 5 April 2011.

residing in Denmark is legal and whether it may be imposed on the doctors providing medical care for aliens illegally residing in Denmark to report these aliens to the authorities.<sup>318</sup>

### **3 Access to Assistance**

#### **3.1 Assistance pursuant to the Immigration Legislation**

As has been set out above (part 2.1) the Sections 42a-43 and, 46e Aliens Act establish a welfare scheme specifically for certain immigrants staying in Denmark. Consequently, the Danish Immigration Service (or the Police) has a maintenance obligation of asylum seekers and aliens staying illegally in Denmark.<sup>319</sup> This type of support includes both material and financial forms of support. We refer to part 2.1 (p. 30 ss) for the discussion.

#### **3.2 Assistance pursuant to the Active Act**

##### **3.2.1 *Applicable Legislation, Contents and Actors***

###### **3.2.1.1 Legislation**

The *Active Act* and the corresponding guidance and communications state that any person legally residing in Denmark is entitled to assistance pursuant to the Act.<sup>320</sup> Further, in situations of emergency, the municipalities may provide acute/emergency assistance for persons staying in Denmark.<sup>321</sup> Assistance pursuant to the social welfare legislation, such as the *Active Act*, is subsidiary to assistance offered by the Immigration Service pursuant to the Aliens Act.<sup>322</sup>

###### **3.2.1.2 Contents**

Ordinary assistance pursuant to the *Active Act* includes a selection of assistance for maintenance, such as social security and starting allowance.

Emergency assistance pursuant to the *Active Act* includes assistance in special circumstances in the shape of cash for covering single expenses, medical care, maintenance of children etc. on more specified conditions.<sup>323</sup>

###### **3.2.1.3 Actors**

Assistance pursuant to the *Active Act* is organized by the *municipalities*. The *Ministry of Employment* assumes responsibility of the Act and reimburses (parts of) the municipalities' expenses on more specified conditions. The immigration authorities issue guidance and newsletters for authorities dealing with

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318 See <http://jp.dk/indland/article2285395.ece>, [http://jp.dk/indland/indland\\_politik/article2286255.ece](http://jp.dk/indland/indland_politik/article2286255.ece) and <http://www.information.dk/telegram/254518>, accessed on 30 March 2011.

319 The Aliens Act Sections 42a-42h.

320 Section 3 (1).

321 The *Active Act* Sections 81 and 82.

322 Please see above Paragraphs 1.2.1.2 and 1.2.2.2 and below 3.2.2.2.

323 The *Active Act* Part X.

aliens and immigration legislation, and the organizations must report illegal immigrants to the immigration authorities.<sup>324</sup> Further, Danish immigration legislation is based on a principle of division of sectors; meaning that irregularly residing aliens may receive assistance within 1 sector, only; please see below Paragraph 3.2.2.2 for an elaboration.

#### 3.2.1.4 Access

Ordinary assistance pursuant to the Active Act is accessible for any person legally residing in Denmark, including aliens.<sup>325</sup>

The general condition to receive *ordinary* assistance for maintenance pursuant to the Active Act is *financial need*, i.e. the person is not able to supply for him-/herself.<sup>326</sup> Persons must apply for assistance to the municipalities.

Emergency assistance is accessible for any person staying in Denmark in need of assistance during temporary difficulties (exceptions apply to certain categories of pensioners),<sup>327</sup> thus including aliens irregularly residing in Denmark in exceptional situations based on considerations of necessity/emergency.<sup>328</sup>

The general conditions to receive *acute/emergency* (survival) assistance are

- the applicant has experienced changes in his/her situation; social events, such as illness, pregnancy and birth, unemployment, divorce etc.;
- if the applicant were to incur the expenses him-/herself, this would complicate the applicant's and his/her family's possibility of future self-support;
- the expense must occur as a result of non-foreseeable needs;
- the expense must be a single expense (as opposed to running costs);
- the expense must be reasonable;<sup>329</sup>
- the application on assistance must be submitted to the municipality prior to defray of the expense.

#### 3.2.2 The Condition of Regular and/or Legal Residence

The Active Act states that any person *legally residing in Denmark* is entitled to - ordinary - assistance pursuant to the Act.<sup>330</sup> Legal stay is defined as the right to reside in Denmark without a permit or pursuant to a valid residence permit. Legal stay thus comprises stays in Denmark during the processing of an application on residence permit (i.e. pending a procedure), stays on visas or exempt from visas and extended visits.<sup>331</sup> Pertaining to exceptional leave to remain - *duldung*, it is not clear whether this is considered legal or illegal stay. While the Guidance from 1998 characterizes *duldung* as legal stay, a newsletter for the municipalities of 2009 from the Immigration Service states that

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324 See [http://www.nyidanmark.dk/da-dk/publikationer/SearchPublications.htm?SearchType=publications&SubType=Nyhedsbrev&Keywords=Nyhedsbrev+til+kommunerne+og+KL+andhttp://www.nyidanmark.dk/da-dk/Info\\_til/medarbejdere\\_i\\_kommuner/info\\_til\\_medarbejdere\\_i\\_kommuner.htm](http://www.nyidanmark.dk/da-dk/publikationer/SearchPublications.htm?SearchType=publications&SubType=Nyhedsbrev&Keywords=Nyhedsbrev+til+kommunerne+og+KL+andhttp://www.nyidanmark.dk/da-dk/Info_til/medarbejdere_i_kommuner/info_til_medarbejdere_i_kommuner.htm), both accessed on 22 February 2011.

325 Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 18.

326 See for instance Section 14 on the municipalities as a main rule not offering assistance to persons with capital above DKK 10,000.

327 Erik Jappe in *Enkeltudgifter – Aktivlovens § 81* p. 12.

328 The Active Act Sections 81 and 82. Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 6.

329 Erik Jappe in *Enkeltudgifter – Aktivlovens § 81* pp. 11-25.

330 Section 3 (1).

331 Provisional Guidance on the Municipalities' Involvement in cases on Aliens' Paragraph 2 and 8 and Guidance on the Active Act Paragraph 12.

duldung is not considered legal stay in Denmark. The Immigration Service further states that the municipalities must refer the alien to the Immigration Service which is to decide on possible assistance for the alien.<sup>332</sup>

In addition, in situations of emergency, the municipalities may provide acute/emergency assistance for an *alien not legally residing in Denmark* in exceptional situations based on considerations of necessity/emergency.<sup>333</sup>

Rejected asylum seekers refusing to cooperate on return, fall under the responsibility of the immigration authorities. Such aliens are thus not entitled to assistance pursuant to the Active Act. Asylum seekers are not entitled to assistance pursuant to the Act as a specific welfare scheme has been established for these aliens. Asylum claimants are thus comprised by the Immigration Service's maintenance obligation.<sup>334</sup> However, asylum seekers staying legally in Denmark may be encompassed by the social services legislation, when the asylum seeker is not allowed to reside in an asylum centre due to marriage contracted with a person residing in Denmark and when the alien hence falls under the spouse's maintenance obligation.<sup>335</sup> Thus, in exceptional cases asylum seekers may be entitled to assistance pursuant to the Active Act in situations where the asylum seeker is not encompassed by the Immigration Service's maintenance obligation.<sup>336</sup>

If the alien does not want to be encompassed by the Immigration Service's maintenance obligation, this does not result in an entitlement of being encompassed by the general social welfare legislation.<sup>337</sup>

### 3.2.3 Disputes and Litigation

Based on the information obtained, there seems to be no particular disputes between central and local government.

## 3.3 Assistance Pursuant to the Service Act

### 3.3.1 Applicable Legislation, Contents and Actors

#### 3.3.1.1 Legislation

The *Service Act* and the corresponding guidance state that any person legally residing

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332 See <http://www.nyidanmark.dk/NR/rdonlyres/COFFA0BC-EA6A-457A-8C31-A8DEF4FA1B72/0/NyhedsbrevtilkommunerneDECEMBER2009.pdf>, accessed on 22 February 2011.

333 The Active Act Sections 81 and 82. Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraph 6. It should be noted that in situations where the Immigration Service is to decide on the alien's right to reside in Denmark, the alien's stay during the processing of the case may be considered procedural and thus legal stay.

334 Provisional Guidance on the Municipalities' Involvement in cases on Aliens Paragraphs 6, 8 and 12.

335 Cf. Guidance on the Active Act Paragraph 12, Provisional Guidance on the Municipalities' Involvement in Cases on Aliens Paragraphs 2, 6, 8, 12 and 19 and Communication on Amendment of the Active Act and the Aliens Act - Amended Rules for Persons Applying for Asylum or Family Reunification, and Persons Who are in Custody.

336 Communication on Orientation on Executive Order on Assistance for Asylum Seekers and Bill on Amendment of the Active Act and the Integration Act 2001/2 LSF 126 of 1 March 2002, specific remarks Section 1, 17 on starting allowance pursuant to the Active Act for aliens staying legally in Denmark not comprised by the Immigration Service's maintenance obligation.

337 Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

in Denmark is entitled to assistance pursuant to the Act.<sup>338</sup> Additionally, in situations of emergency, the municipalities may provide acute/emergency assistance for persons staying in Denmark.<sup>339</sup> Assistance pursuant to the social welfare legislation, such as the Service Act, is subsidiary to assistance offered by the Immigration Service pursuant to the Aliens Act.<sup>340</sup>

### 3.3.1.2 Contents

Assistance pursuant to the Service Act encompasses a wide selection of guidance and assistance, such as personal and practical assistance, special support for adults, special support for children and their families, residential accommodation, assistive technology etc.

### 3.3.1.3 Actors

Assistance pursuant to the Service Act is organized by the *municipalities*. The *Ministry of Social Affairs* assumes responsibility of the Act and reimburses (parts of) the municipalities' expenses on more specified conditions.

The immigration authorities issue guidance and newsletters for authorities dealing with aliens and immigration legislation, and the organizations must report illegal immigrants to the immigration authorities.<sup>341</sup> Further, Danish immigration legislation is based on a principle of division of sectors; meaning that irregularly residing aliens may receive assistance within 1 sector, only.

### 3.3.1.4 Access

The Service Act states that *any person legally residing* in Denmark is entitled to assistance pursuant to the Act.<sup>342</sup> This means that any alien who has legal - permanent or temporary - stay in Denmark pursuant to the Aliens Act is entitled to assistance. Aliens with a *temporary stay* in Denmark, e.g. tourists, are entitled to acute/emergency assistance, only.<sup>343</sup>

The general conditions to receive assistance are *social and/or financial need*.

Applications must be submitted to the municipalities.

## 3.3.2 The Condition of Regular and/or Legal Residence

The Service Act states that any person *legally residing* in Denmark is entitled to assistance pursuant to the Act.<sup>344</sup> This means that any alien who has legal - permanent or temporary - stay in Denmark pursuant to the Aliens Act is entitled to assistance; including pending a procedure. However, aliens with a *temporary stay* in Denmark, e.g.

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338 Section 2 (1).

339 The Purpose Guidance Paragraphs 14, 17 and 21.

340 Please see above Paragraphs 1.2.1.2, 1.2.2.2 and 3.2.2.2.

341 See <http://www.nyidanmark.dk/da-dk/publikationer/SearchPublications.htm?SearchType=publications&SubType=Nyhedsbrev&Keywords=Nyhedsbrev+til+kommunerne+og+KL> and [http://www.nyidanmark.dk/da-dk/Info\\_til/medarbejdere\\_i\\_kommuner/info\\_til\\_medarbejdere\\_i\\_kommuner.htm](http://www.nyidanmark.dk/da-dk/Info_til/medarbejdere_i_kommuner/info_til_medarbejdere_i_kommuner.htm), both accessed on 22 February 2011.

342 Section 2 (1).

343 The Purpose Guidance Paragraphs 14, 17 and 21.

344 Section 2 (1).

tourists, are entitled to acute/emergency assistance, only.<sup>345</sup>

### 3.3.3 Disputes and litigation

Based on the information obtained, there seems to be no particular disputes between central and local government.

## 3.4 Assistance Pursuant to the Health Act

### 3.4.1 Applicable Legislation, Contents and Actors

#### 3.4.1.1 Legislation

The *Health Act* and the corresponding executive order state that persons with residence in Denmark are entitled to medical assistance. Persons with a temporary stay and who do not reside in Denmark, have access to emergency assistance, only.<sup>346</sup> The regions are obligated to provide asylum claimants and aliens not legally residing in Denmark acute/emergency health care. Expenses for additional necessary healthcare and dental care are covered by the Immigration Service.

#### 3.4.1.2 Contents

Medical treatment pursuant to the Health Act and to the Executive Order on Entitlement to Treatment at Hospitals etc. for aliens not having residence in Denmark encompasses *acute treatment* in situations of accidents, sudden illness, birth, impairment of chronically diseases etc. Further, persons not residing in Denmark are entitled to treatment in Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>347</sup>

#### 3.4.1.3 Actors

Assistance pursuant to the Health Act is organized mainly by the *regions* (and the municipalities). The immigration authorities do not have authority over them as such, but the organizations must report illegal immigrants to the immigration authorities. Further, Danish immigration legislation is based on a principle of division of sectors; meaning that aliens may receive assistance within 1 sector, only. Consequently, the regions are obligated to provide asylum claimants and aliens not legally residing in Denmark acute/emergency health care.<sup>348</sup> Expenses for additional necessary healthcare and dental care are covered by the Immigration Service.<sup>349</sup>

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345 The Purpose Guidance Paragraphs 14, 17 and 21.

346 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7.

347 The Health Act Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

348 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7. Cf. *Rapport fra ekspertudvalget vedrørende forholdene for asylansøgere i andre lande* Part 3.2.6.2 and *Afviste asylansøgere og andre udlændinge i udsendelsesposition i Danmark* pp. 101-121.

349 Bill on Amendment of the Aliens Act 2002/1 LSF 157 of 29 January 2003, specific remarks Section 1, 3

#### 3.4.1.4 Access

The Health Act states that *persons with residence in Denmark* are entitled to - ordinary - medical assistance. Residence is defined as being *listed in the National Register of Persons*. Persons with a temporary stay and who do not reside in Denmark, have access to acute/emergency assistance, only. Every person staying in Denmark has access to acute medical assistance.<sup>350</sup>

Stays in Denmark for a longer duration than 3 months may, when considered reasonable, be given equal status to residence in Denmark, allowing the person in question full treatment pursuant to the Act.<sup>351</sup>

The general condition to receive acute assistance is *emergency*, i.e. the need of acute assistance.

#### 3.4.2 The Condition of Regular and/or Legal Residence

The Health Act states that persons with *residence in Denmark* are entitled to medical assistance. Residence is defined as being *listed in the National Register of Persons*. Persons with a *temporary stay* and who do not reside in Denmark, have access to acute/emergency assistance, only.<sup>352</sup> Stays in Denmark for a longer duration than 3 months may, when considered reasonable, be given equal status to residence in Denmark, allowing the person in question full treatment pursuant to the Act.<sup>353</sup> Further, persons not residing in Denmark are entitled to treatment in Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>354</sup>

Every person staying in Denmark, including irregular/illegally residing migrants, may be offered acute/emergency health assistance comprised by the legislation when there is an acute need of assistance; i.e. urgency etc.

Further, persons not residing in Denmark are entitled to medical treatment in Denmark, when it is not reasonable to refer the persons to treatment in their home country, or the persons will not endure to be transferred to a hospital in their home country.<sup>355</sup>

#### 3.4.3 Disputes and litigation

Following the references in the Danish media on the lack of medical assistance provided for aliens irregularly/illegally residing in Denmark,<sup>356</sup> the Minister of Interior and Health

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and 4 and Bill on Amendment of the Aliens Act etc. 1999/1 LSF 264 of 30 March 2000, specific remarks Section 1, 27.

350 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc., Sections 4-7.

351 Executive Order on Entitlement to Treatment at Hospitals etc. Section 7.

352 The Health Act Sections 7-8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Sections 4-7.

353 Executive Order on Entitlement to Treatment at Hospitals etc. Section 7.

354 The Health Act Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

355 The Health Act Section 8, cf. Section 80 and Executive Order on Entitlement to Treatment at Hospitals etc. Section 6.

356 See above Paragraph 1.2.5.

was asked a question by a member of the Danish Parliament on this. In his reply, the Minister stated that the rules on the matter and the possibilities of providing medical assistance are clear, but it seems that the health personal's knowledge on the rules and the possibilities of providing medical assistance are not sufficient. Thus, the Minister intends to issue guidelines for the regions on the matter.<sup>357</sup>

Also, there seems to be some disputes between private organizations and the public authorities on assistance for aliens illegally residing in Denmark. As an example of this, it has been debated whether the establishment of medical centres for aliens illegally residing in Denmark is legal and whether doctors providing medical care for aliens illegally residing in Denmark may be required to report these aliens to the authorities.<sup>358</sup>

## 4 Implementation and National Practice

### 4.1 Actors Involved

#### 4.1.1 *Identification of the Actors*

##### *The Immigration Service*

Section 42a Aliens Act determines which categories of aliens the Immigration Service must maintain. Thus, according to the provision, the Immigration Service has a maintenance obligation of asylum seekers and aliens with illegal stay. The Immigration Service is a governmental, national organisation and its source of financing is allocated by the Finance Act.

According to the Immigration Service, the fact that it has a maintenance obligation of aliens with illegal stay, is one of the reasons why the concept of emergency reception does not exist in Denmark. In Denmark there is no competition within the area and thus no one provides reception which may substitute for the offer provided by the Immigration Service. Immigration is a [central] governmental matter in Denmark. There may be a few crisis centres, for instance for traded women or battered/abused women, providing assistance. The Danish Red Cross provides reception and assistance in accordance with the contract concluded with the Immigration Service.

It should be noted that exceptional leave to remain (*duldung*) is regarded by the Immigration Service as illegal stay. However, the Immigration Service recognizes the protection need of the aliens in question and thus does not apply measures aiming at advancing return to this group of aliens who are comprised by the Immigration Service's maintenance obligation.

While the Immigration Service considers exceptional leave to remain (*duldung*) as illegal stay in Denmark, the Thisted Municipality, Hanstholm Accommodation Centre, and the Aarhus Municipality consider such stay to be legal – at least *de facto*.

##### *The Ministry of Employment, the National Labour Market Authority*

To the extent a person has legal stay, is not able to supply for him-/herself and does not have access to maintenance from the Ministry of Refugees, Immigration and Integration,

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357 Folkettinget 2009-2010, S 1285 svar på offentligt, available at <http://www.ft.dk/samling/20091/spoergsmaal/s1285/svar/695310/813072.pdf>, accessed on 5 April 2011.

358 See <http://jp.dk/indland/article2285395.ece>, [http://jp.dk/indland/indland\\_politik/article2286255.ece](http://jp.dk/indland/indland_politik/article2286255.ece) and <http://www.information.dk/telegram/254518>, accessed on 30 March 2011.

the Ministry of Employment is indirectly involved, as the legislation on maintenance providing the benefits for these person's maintenance foundation, belongs under the jurisdiction of the Ministry of Employment. It is noted that a requirement on self-support applies to most aliens, or these aliens are maintained by others, usually a spouse. Further, the Ministry is indirectly involved in the area of providing assistance to aliens illegally residing in exceptional cases of emergency based on considerations on necessity. The Ministry is a governmental, national organisation and its source of financing is allocated by the Finance Act.

#### *The Ministry of Social Affairs*

The Ministry assumes responsibility of the Service Act but does not take decisions pursuant to this Act affecting the aliens in question. The Ministry is thus indirectly involved in the area of providing assistance. Pertaining to the emergency fund for shelters, however, the Ministry takes decisions on the distribution of subsidies to private or voluntary actors offering shelter/housing to homeless persons regardless of their residence status.

The Ministry is a governmental, national organisation and its source of financing is allocated by the Finance Act.

#### *The Ministry of Interior and Health*

The Ministry assumes responsibility for the Health Act and issue guiding comments to all in the need thereof. The Ministry does not have deciding powers and does thus not take decisions on the providing of assistance. The regions administer the legislation in accordance with the guidance from the Ministry.

The Ministry is governmental, national and the source of financing is allocated by the Finance Act.

#### *The Region Central Jutland*

Pertaining to health professional treatment, the granting thereof is governed by the Health Act. Pertaining to the interpretation of the medical benefits, the interpretation lies within the regions – the decisions are made medically as opposed to administratively (for instance on whether an alien is to be treated at a Danish hospital or is to be referred to treatment in his/her home country). The region issues guidelines for the hospitals. Pertaining to health benefits and acute treatment, these benefits are provided by the hospitals, the practice sector and to a less extent by the private hospitals in relation to the rules on free and extended free choice of hospital. The region is a regional public authority and its sources of financing are grants from the State. There may be a less degree of self-income within areas with partial user charge – primarily within non-health areas.

#### *The Thisted Municipality, the Hanstholm Accommodation Centre*

The Centre Hanstholm is an accommodation centre for asylum seekers in phase 2, whose case has been adopted for the processing in Denmark and who are referred to the Centre. Further, the Centre has residents in phase 1 and also a limited number of aliens expelled by judgment. The Centre does not have aliens with exceptional leave to remain. The Centre considers that exceptional leave to remain (duldung), is considered legal stay in Denmark – at least de facto.

In principle, asylum seekers who have received the final rejection on their application

for asylum (phase 3) are to be sent to the Centre Sandholm. However, due to resource issues, this is not always possible.

The Thisted Municipality is a local municipality contracting with the Immigration Service. Thus, the Immigration Service and the Thisted Municipality have concluded a contract on the operation of the asylum centre. Among other things, the contract governs the asylum centre's payment of allowance to the residents, tuition and health care.

The Hanstholm Asylum Centre receives money per resident for the purposes of administration, activities etc. according to a fixed rate. Consequently, the Asylum Centre receives a framework amount of money pursuant to the contract concluded with the Immigration Service.

There are various rates for various residents; thus far more money is granted for children in the age of 6-16 years, than for adults.

In addition, the centre receives private donation from the locals, which they are always grateful to receive.

#### *The Aarhus Municipality*

The municipality makes authority decisions on providing benefits pursuant to the Active Act and the Service Act, respectively, as well as other legislation.

The welfare boards do not provide assistance, but determine the practice for the municipalities' assistance.

The Municipality considers that procedural stay pending a procedure and also exceptional leave to remain (duldung) constitute legal stay. Exceptional leave to remain is considered legal stay as the aliens in question are entitled to stay in Denmark.

The Aarhus Municipality is local and its sources of financing are the Finance Act and municipality taxes.

To some benefits granted there is State reimbursement. The scope of the State reimbursement may vary for maintenance assistance.

#### *The National Police, the National Aliens Department*

Pertaining to the police's maintenance obligation pursuant to Aliens Act Section 43 (1), the police defray the expenses of an asylum seekers' stay only if the alien in question cannot be taken to an accommodation centre. In such situations, the police will accommodate the person in question overnight. Further, the police will defray the expenses for transportation to the accommodation centre and also expenses for interpretation.

Pertaining to aliens with illegal stay, the Immigration Service has a maintenance obligation of these aliens pursuant to the Aliens Act Section 42a (2). Usually, aliens with illegal stay will be detained and thus fall under the Prison Service. Certain categories of aliens are not detained, however. This includes minors, ill persons and also women with children. Such aliens are transported to Centre Sandholm, operated by the Danish Red Cross, and are thus comprised by the Immigration Service's maintenance obligation. At the accommodation centre, it is to be decided by the immigration authorities whether the alien's case must be processed in Denmark.

Consequently, reference is made to the presentation of the Immigration Service's maintenance obligation of asylum seekers and aliens with illegal stay.

### *Non-State Actors*

#### *The Danish Red Cross<sup>359</sup>*

The Danish Red Cross operates most asylum centres and thus takes decisions on reception and assistance according to the contract with the Immigration Service and pursuant to the legislation.

Further, the Danish Medical Association, the Danish Refugee Council and the Danish Red Cross have entered into an agreement on offering health assistance for the aliens concerned. This is caused by the fact that the standard in Denmark prescribes that persons who are ill must receive assistance.

Such offer is expected to commence before the Summer of 2011, and the medical clinic in Copenhagen will be manned by volunteer health personnel. The project has generated much interest from several doctors who offer to work free at the clinic. Simultaneously, these doctors have their practice to attend to, but yet they want to be a part of the humanitarian work.

The Danish Red Cross is a humanitarian, non-State organization with governmental financing. The asylum centres are administered pursuant to the contract concluded with the Immigration Service, however. The sources of financing are the contract concluded with the Immigration Service (usually signed for 1 year). Further, the Danish Red Cross occasionally applies for funding for projects outside the contract from various sources. As an example of this, the Red Cross just received DKK 1 million from the 'TRYG foundation' for a pilot project regarding compensating special needs education for young persons with double diagnoses in the age 17-25 years.

#### *The Committee for Underground Refugees*

The Committee provides counselling and arrangements of medical assistance for all refugees and underground aliens, parallel with the Danish Refugee Council as far as refugees are concerned. In addition, the Committee collaborates with the Danish Refugee Council on specific areas pertaining to the establishment of a medical clinic for aliens residing illegally in Denmark.

The Committee is non-governmental and national. The office is located in Copenhagen, but assistance is provided on a national basis. The Committee is privately financed through private donations in the shape of continuous contributions. In addition, the Committee receives National Lottery money (for 1 year at the time). Apart from this, the Committee applies for and receives money from various funds in connection with project-oriented initiatives.

#### *The National Organization for Women's Crisis Centres LOKK*

LOKK and the women's crisis centres take decisions on providing assistance in the shape of a basic offer, comprising of a housing offer, food, laundering, medical assistance, institutions, possibly means, and also counselling, guidance and case handling.

The LOKK is national and the crisis centres are local. The LOKK receives governmental funding and is a NGO. The 44-45 crisis centres further receive municipal subsidies and also private contributions from foundations etc.

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359 The Danish Red Cross does not consider itself to be a NGO, according to the interviewee. However, within this report, the Danish Red Cross is categorized as a non-State actor rather than a State actor due to the humanitarian, non-political and neutral nature of the organization.

### *The Danish Medical Association*

As the point of departure, the Medical Association does not take decisions affecting the aliens concerned in its day-to-day work. However, upon the establishment of the medical clinic for migrants, offering medical assistance for the aliens concerned, the Medical Association will take decisions indirectly affecting the aliens in question.

The Medical Association is a private, non-State interest organization for doctors, being national and comprising of regional associations. The Medical Association is funded by private means, esp. membership contingents.

### *A Warm Bed*

A Warm Bed provides room at the shelters for homeless persons. It is a private shelter organization, non-governmental and national.

A Warm Bed's sources of financing are the emergency pool for shelters established by the Ministry of Social Affairs (DKK 1, 3 million) and private donations. Thus, the Roskilde Festival donated DKK 516,000 last summer and DKK 600,000 in December. Moreover, donations from various private persons and companies is received in the shape of clothes, shoes, sleeping mats, sleeping bags, field rations and food. Also, a number of artists support A Warm Bed, organize exhibitions, make music videos etc. from which the proceeds benefit A Warm Bed.

Further, A Warm Bed is planning for a sponsor board at the main entrance, to allow for companies to 'adopt a bed' (i.e. to have their logo on a bed for the prize of DKK 2,000 a month), a hustle for backpackers where the residents may pay the costs of a homeless person while paying for their own night.

Moreover, A Warm Bed runs a free newspaper, financed by sponsors, commercials/ advertisements. The proceed benefits the shelters. Further, A Warm Bed is working on an idea with having a large kitchen in the courtyard of their newly established premises, from which ethnic food will be offered for sale for the local area.

#### *4.1.2 Basis for Assistance and Reception*

The actors are either involved on the basis of legislation (the Immigration Service, the Ministry of Employment, the National Labour Market Authority, the Ministry of Social Affairs and the municipalities), a contract concluded with the Immigration Service or on a voluntary (humanitarian) basis.

The Region Central Jutland is involved due to legislation (the Health Act). The regions may act only in accordance with an explicit legal provision, including EU law.

Municipalities like the Thisted municipality are involved due to a political decision made by the local council of Thisted Municipality on the operation of an asylum centre. Such a decision is made against the background of an inquiry by the Immigration Service on the operation of an asylum centre on certain conditions. Three municipalities operate asylum centres. At the moment there are 20-25 asylum centres in Denmark. The centres are special centres (such as centres for unaccompanied minors), accommodation centres (such as the Hanstholm Centre) or reception centres (Auderød and Sandholm). Pertaining to the Danish Red Cross, which operates most asylum centres, things are

different, as the Red Cross is informed by the Immigration Service that there is a need for a children centre, for instance. Subsequently, the Red Cross asks a municipality whether an asylum centre may be situated in the area. Hence, the Red Cross must collaborate with the municipality.

The Danish Red Cross acts on a voluntary and humanitarian basis: it is the task of the Red Cross to prevent and defeat human distress, suffering and discrimination and to assist vulnerable groups based on humanitarian considerations. Further, the asylum centres are administered pursuant to the contract concluded with the Immigration Service and pursuant to the legislation.

The aim of the medical clinic for undocumented migrants is also to get the authorities to take over the task in time, once the need of such clinic is substantiated.

The Committee for Underground Refugees is involved on a voluntary basis; the Committee finds that there is a need for assistance not covered by anyone else, in particular as regards aliens residing illegally in Denmark.

The National Organization for Women's Crisis Centres (LOKK) is involved as a consequence of the legislation as well as a decision within the NGO organization, having the purpose of preventing and defeating the consequences of violence in close relationships; i.e. humanitarian basis.

The Danish Medical Association is involved as a consequence of the conventions and the legislation as well as a political decision on enforcing the Hippocratic Oath. The doctors want to honor their Hippocratic Oath and to assist persons in the need thereof, but the system is rigid. The Medical Association has noted the difficulties for doctors in handling patients not issued with a CPR number and not recorded within the system. Thus, the aim is to ensure the access to assistance of these persons.

A Warm Bed acts on a voluntary basis, out of need. The values are humanitarian, human rights and social accountability.

#### *4.1.3 Evolution in Offering, Facilitating or Subsidizing Assistance/Reception*

##### *4.1.3.1 Evolution in the assistance, reception and emergency reception offered, facilitated or subsidized by local governments, in terms of granting these benefits, limiting or refusing them, and their contents*

Local governments (regions and municipalities) operate in accordance with the existing legislation. Immigration is thus a central governmental affair. Consequently, the local governments do not have autonomy as such in offering assistance etc., but provide assistance pursuant to the legislation. Thus, the municipalities and the regions need a legal ground for their decisions.

However, assistance pursuant to the Section 81 of the Active Act is granted by the municipalities on a discretionary basis. Guiding criteria for reasonable and necessary fixed expenses are determined for the assessment of needs.

The Ministry of Employment states that while social security previously was granted to these aliens, the lower starting assistance is usually granted to these aliens today.

The Hanstholm Accommodation Centre states that broadly speaking the rates are at the same level. However, four to five years ago, an important change occurred, as more

money was granted to children. Thus, school children between the ages of 6 and 16 years are granted a lot of money. The means are accompanied by requirements imposed on the asylum centres, as the centres must provide ordinary school, school dentist, spare time activities etc. for the children.

The Hanstholm Asylum Centre is pleased with the fact that the conditions for children have improved, although there is always room for improvement. Being an asylum seeker in Denmark is not easy. The fact that becoming an asylum seeker is not the result of a sudden, convenient and easy impulse is felt to be overlooked. On the contrary: applying for asylum is a deliberate and expensive action. Often, asylum seekers have sold all their belongings and/or borrowed money in order to be able to go to Denmark and apply for asylum. Further, many of them have been carried by human traffickers, who have promised them happiness in Denmark, and often the cost of going to Denmark is DKK 150,000. Being an asylum seeker, an alien can do nothing but wait. The waiting and the idleness is particular hard on the asylum seekers. This is illustrated by the fact that in the Hanstholm asylum centre within one year five suicide attempts have occurred.

The Aarhus Municipality states that the level has been the same for several years – with few adjustments. The starting assistance was adopted in July 2002.

The Thisted Municipality assessed that the municipality was able to operate an asylum centre and that more jobs would be created within the municipality.

#### 4.1.3.2 Evolution in the assistance, reception and emergency reception offered, facilitated or subsidized by non-governmental organizations in terms of granting these benefits, limiting or refusing them and their contents

The Danish Red Cross has more funds allocated for improving conditions for children over a period of years. Further, it is now possible for families with young children from certain countries who have resided for a long time in the asylum centres (above three years) to move to annexes in connection with the asylum centres. The Danish Red Cross appreciates this. However, the Red Cross miss financial focus on other vulnerable groups as well, such as victims of torture, aliens with exceptional leave to remain and single men in general (the largest group of asylum seekers).

The Committee for Underground Refugees sees two opposing movements at work in Denmark. The official, public (governmental and municipal) offers are consistently cut down. On the other hand, the number of volunteers joining the private, independent organizations has increased. The civil society is thus reacting to the official policy through practice.

The Committee is consistently agitating for refugees and the rights of refugees. Consequently, the Committee does not approve of the official policy, but the Committee does, however, approve of the involvement of the civil society. Pertaining to the official policy and debate in Denmark, the Committee misses focus on the big difference between migrants and refugees. Migrants, travelling to Denmark with the purpose of residence and work for a shorter period of time, have more resources than refugees, for instance. It is the opinion of the Committee that one cannot demand the same from refugees as one requires from migrants. Thus, the rights of refugees must be recognized. Further, benefits to refugees should not be removed as refugees are an exposed/vulnerable group comprised by international rights.

According to The National Organization for Women's Crisis Centres there has been a minor, vague increase in cases and the requests.

The Hanstholm Accommodation Centre as well as the Danish Red Cross state that more funds have been allocated for improving conditions for children.

#### 4.1.4 *Future Changes*

The expectations about future changes are limited.

For the Ministry of Social Affairs and as far as the emergency pool is concerned, changes are intended to be acute, ad hoc and not permanent.

The Aarhus Municipality states that possibly an adjustment of the starting assistance may be expected. This is a political question on the immigration policy to be followed in Denmark. If 'Dansk Folkeparti' ('Danish People's Party') continues to be a part of the governmental foundation, more reductions may be expected.

The Danish Red Cross also expects more cost reductions.

The Committee for Underground Refugees expects more offers from the civil society – more voluntary assistance. Further, the Committee states that over the years, such voluntary assistance may possibly become public assistance.

The Ministry of Interior and Health expects, as far as free acute hospital treatment is concerned, no changes. The report from the Ministry of Employment on the accumulation of the entitlement to welfare benefits for newcomers is based on an accumulation principle being introduced overall. Within this, a waiting period/accumulation period for (full) health benefits is referred to. The principle is based on the idea that newcomers have not contributed to the healthcare system, and thus will have access to full (and cost-free) health benefits only after a certain accumulation period.

The Thisted Municipality and the Hanstholm Accommodation Centre expect that no increase will occur. The residents get by with the money they are offered. It is thus not as much a question on money as it is a question of establishing a centre where staff is available for the residents. It would be very preferable if the processing of the cases were faster, as the waiting period causes illness. This applies even more for aliens in phase 3 due to the uncertainty on when the police may pick them up.

The Aarhus Municipality expects under the Active Act possibly an adjustment of the starting assistance, as it is being debated whether this particular assistance is too low.

A Warm Bed is working on a number of initiatives, including the establishment of a transit room and a health room.

## 4.2 Availability and Forms of Reception and Assistance

### 4.2.1 *Assistance/Reception Offered*

The Immigration Service provides accommodation, health assistance, pays out benefits and also provides assistance for a stay with substance to asylum seekers and aliens with illegal stay. While aliens with legal stay are entitled to assistance from the municipality, aliens with illegal stay are entitled to assistance from the Immigration Service.

### Assistance by the Immigration Service

Pertaining to reception in particular, the Immigration Service provides a medical screening. In addition, an introduction course for asylum seekers on their rights and duties is organized.

Pertaining to health assistance, the aliens in questions are not covered by the ordinary Danish National Health Service. As a consequence of this, the Immigration Service offers the necessary health assistance. In acute situations, the regions provide acute assistance. The Immigration Service adjusts its level of assistance with the health authorities' definitions of what may be regarded as acute. Further, children are given a status equal to that of Danish children and receive the same assistance as Danish children. Moreover, social measures may be taken in situations where a child is in need of for instance a support person or placement. In these situations, the Immigration Service cooperates with the municipal authorities.

As basic assistance, the aliens in question are provided with either food at the centre or financial aid paid for maintaining their own household (basic allowance). In addition, other benefits in the shape of caregiver allowance and supplementary allowance are provided. The supplementary allowance is a kind of allowance or salary earned when the alien in question complies with the conditions in the contract concluded.

Assistance for a stay with substance is provided through tuition and activation.

The rates for the benefits granted to asylum seekers and aliens with illegal stay pursuant to the Aliens Act Sections 42a and 42b in DKK per day for 2011 are as follows:<sup>360</sup>

		Centre with provision of free meals [cantina]			Ordinary centre ['self-household']				Supplementary allowance
		Basic allowance	Caregiver allowance	Reduced caregiver allowance	Supplementary allowance	Basic allowance	Caregiver allowance	Reduced caregiver allowance	
<b>Non-registered</b> [phase 1]	Married or cohabiting	÷	8,35	÷	8,35*	39,61	58,38	41,7	8,35*
	Above 18 years	÷	8,35	÷	8,35*	50,03	58,38	41,7	8,35*
	Unaccompanied	÷	8,35	÷	8,35	50,03	58,38	41,7	8,35
	Below 18 years, not part of parents' family	÷	8,35	÷	8,35	50,03	58,38	41,7	8,35

<sup>360</sup> 1 DKK is approximately 0,13 EUR.

		Centre with provision of free meals [cantina]				Ordinary centre ['self-household']			
		Basic allowan- ce	Care-giver allow-ance	Reduced caregiver allowance	Supple- mentary allowance	Basic allowan- ce	Caregiver allowance	Reduced caregiver allowance	Sup- plem- entary allow- ance
<b>Non-registered</b> [phase 1] Above 18 years Unaccompanied Below 18 years, not part of pa-rents' family	Married or cohabit-iting	÷	8,35	÷	8,35*	39,61	58,38	41,7	8,35*
	÷	8,35	÷	8,35*	50,03	58,38	41,7	8,35*	
	÷	8,35	÷	8,35	50,03	58,38	41,7	8,35	
	÷	8,35	÷	8,35	50,03	58,38	41,7	8,35	
<b>Registered or final rejection</b> [phase 2 and 3] Above 18 years Unac-com-panied Below 18 years, not part of pa-rents' family	Married or cohabit-iting	÷	29,19	÷	29,19	39,61	79,22	41,7	29,19*
	÷	29,19	÷	29,19*	50,03	79,22	41,7	29,19*	
	÷	29,19	÷	29,19*	50,03	79,22	41,7	29,19	
	÷	29,19	÷	29,19	50,03	79,22	41,7	29,19	
<b>Manifestlyun- founded applica- tions</b> Above 18 years Unaccompanied Below 18 years, not part of parents' family	Married or cohabit-iting	÷	÷	÷	÷	39,61	50,03	41,7	÷
	÷	÷	÷	÷	50,03	50,03	41,7	÷	
	÷	÷	÷	÷	50,03	50,03	41,7	÷	
	÷	÷	÷	÷	50,03	50,03	41,7	÷	
<b>Food allow-ance</b> [phase 3] Above 18 years Unaccompanied Below 18 years, not part of pa-rents' family	Married or cohabit-iting	÷	÷	÷	÷	39,61	50,03	41,7	÷
	÷	÷	÷	÷	50,03	50,03	41,7	÷	
	÷	÷	÷	÷	50,03	50,03	41,7	÷	
	÷	÷	÷	÷	50,03	50,03	41,7	÷	

		Centre with provision of free meals [cantina]				Ordinary centre ['self-household']			
		Basic allowan- ce	Care- giver allow- ance	Reduced caregiver allowance	Supple- mentary allowance	Basic allowan- ce	Caregiver allowance	Reduced caregiver allowance	Sup- plem- entary allow- ance
<b>Registered or final rejection</b> [phase 2 and 3]	Married or cohabit-iting	÷	29,19	÷	29,19	39,61	79,22	41,7	29,19*
	Above 18 years	÷	29,19	÷	29,19*	50,03	79,22	41,7	29,19*
	Unaccom- panied	÷	29,19	÷	29,19*	50,03	79,22	41,7	29,19
	Below 18 years, not part of parents' family	÷	29,19	÷	29,19	50,03	79,22	41,7	29,19

<b>Manifestly unfounded applications</b>	Married or cohabiting	÷	÷	÷	÷	39,61	50,03	41,7	÷
	Above 18 years	÷	÷	÷	÷	50,03	50,03	41,7	÷
	Unaccompanied	÷	÷	÷	÷	50,03	50,03	41,7	÷
	Below 18 years, not part of parents' family	÷	÷	÷	÷	50,03	50,03	41,7	÷
<b>Food allowance [phase 3]</b>	Married or cohabiting	÷	÷	÷	÷	39,61	50,03	41,7	÷
	Above 18 years	÷	÷	÷	÷	50,03	50,03	41,7	÷
	Unaccompanied	÷	÷	÷	÷	50,03	50,03	41,7	÷
	Below 18 years, not part of parents' family	÷	÷	÷	÷	50,03	50,03	41,7	÷

\* Paid when the contract concluded is complied with.

Basic allowance: Is paid in advance, cf. the Aliens Act Section 42b (1).

Caregiver allowance and reduced caregiver allowance: Is paid in advance, cf. the Aliens Act Section 42b (7).

Supplementary allowance: Is paid in arrears, cf. the Aliens Act Section 42b (8).

To give an example: the Hanstholm Accommodation Centre provides housing, teaching, health care and assistance on how to proceed in the administrative system. All the residents at this centre take care of their own household, meaning that they prepare their own meals. The centre does not have a cantina. The centre provides assistance for helping the aliens in question through the system, such as in connection with an alien receiving a letter with rejection on their application on asylum. It further informs the residents on their rights at the asylum seekers course. Hanstholm asylum centre does not, however, provide legal advice, but refers to the counselling of the Danish Refugee Council. This separation of functions can contribute to maintaining residents' trust into the centre's staff.

Assistance facilitating the aliens' exercise of hobbies and religion is provided. As an example of this, a room is provided for aliens who are Muslims for the purpose of the Friday prayer. Further, contact with other Christians is arranged.

Hanstholm accommodation centre has a strong focus on the single human being and his/her entitlement to privacy and respect. Thus, one does not enter a person's room without knocking first. Further, the residents are allowed to decorate their rooms freely, and all rooms have a private bathroom. In addition, there is TV with 60 channels and a PC in every room.

The assistance provided is determined by the contract. The extent of the assistance provided is dependent on the alien's status. The rights are few – the duties more.

As far as asylum claimants who have received a final rejection on their application for asylum is concerned, these may be separated into 2 categories: 1) asylum seekers cooperating, who will have rights on terms equal to those of the aliens in phase 2, and 2) asylum seekers not cooperating, who will have fewer rights.

As an example of the assistance provided, a single mother is entitled to 2 rooms. Health care may be offered only in urgent or life-threatening circumstances. Thus, health care may not be offered if the illness is not life-threatening. Knee operations, cosmetic surgery or the like are thus not provided. Required operations, such as the changing of a cardiac valve are offered, though. Prior to operations, the asylum centre must ask the Immigration Service's permission to cover the costs.

Reception and assistance in the Red Cross reception centre Sandholm consists of acute reception available night and day: housing, food, health screening, clothes and hygiene packages. Within the first seven days of residence, a contract is concluded with the alien at the so-called 'job centre'. The contract consists of three elements: 1) necessary tasks relating to the operation of the accommodation centre, such as cleaning, tidying-up etc.; 2) internal tuition, education; and 3) internal activation and training at the centre. If the alien does not wish to conclude a contract, the regime is unilaterally decided by the Red Cross and the alien is not given supplementary benefits (allowance).

The supplementary allowance is paid every 2 weeks. At centres with cafeteria, the allowance currently consists of:

- 1<sup>st</sup> phase: for a single person DKK 117 (depends on hours worked/number of days in school); for a family with 2 children DKK 468 (DKK 117 per child; the first DKK 234 depends on hours worked/number of days in school);
- 2<sup>nd</sup> and 3<sup>rd</sup> phase: for a single person DKK 408.50 (depends on hours worked/number of days in school); for a family with 2 children: DKK 1,634 (DKK 408.50 per child - only for the first 2 children; the first DKK 817 depends on hours worked/number of days in school).

In case of illegal absence the alien will lose his/her supplementary allowance accordingly.

An alien in the 2<sup>nd</sup> phase has full rights, which includes means for internal tuition and activation, external tuition and training. However, lack of financial means within the Danish Red Cross for the establishment of external tuition may limit the actual access to tuition etc. Asylum seekers do not have free access to the educational system in Denmark.

An alien in 3<sup>rd</sup> phase cooperating on return has rights on terms equal to those of aliens in 2<sup>nd</sup> phase. Aliens not cooperating on return may not attend external training. However, exceptions are possible in exceptional cases.

An alien not fulfilling his/her obligations pursuant to the contract concluded loses the allowance accordingly. For aliens older than 60 or aliens with serious physical or psychological health problems, exceptions may be made pursuant to a special contract.

Young aliens in the age 17-21 are entitled to more educational lessons (20-25 per week) than adults above 22 years (10 lessons per week).

Aliens whose spouse or family has the maintenance obligation are in principle not allowed to attend tuition. However, the Red Cross allows them to attend internal tuition.

Aliens with exceptional leave to remain (duldung) have rights equal to those of aliens in the 2<sup>nd</sup> phase.

### *The Active Act*

Under the Active Act, starting assistance is usually granted by the municipalities to aliens legally residing in Denmark when the person has no resources. The starting assistance typically consists of fixed monthly amounts, possibly supplemented by assistance for single expenses. The starting assistance is lower than social security granted to Danish citizens. Starting assistance supports aliens seeking for work, but is granted also to aliens who are unable to work due to health problems. Apart from this, the child allowance granted to aliens issued with a residence permit is lower than that granted to Danish citizens for the first 4 years of the aliens' stay. A newly arrived

alien is thus granted one fourth of the level of assistance to Danish citizens. To the Committee for Underground Refugees, this is an example of discrimination. Some assistance may be provided to aliens illegally residing; it will cover necessary costs emerging from specific circumstances in cases of emergency. Thus, it is not to be understood as the legislator having deliberately chosen that persons with illegal stay are comprised by the Act. It is more based on the idea that the Active Act ensures that those persons, who find themselves in situations not considered in other legislation, do not suffer. The Act in many ways constitutes the lowest financial and social safety net. Undoubtedly, persons with illegal stay fall under the police's/immigration authorities' jurisdiction and their grants cover the expenses related to the needs of this group of persons. However, considerations on necessity may entail that the municipalities should pay out money pursuant to Sections 81 and 82 Active Act without decidedly getting into trouble upon the accountancy.

The rights vary according to the category of aliens. The status of EU citizens and Nordic citizens is thus different than that of third-country nationals in general. Maintenance assistance pursuant to the Active Act consists of starting assistance, since social security is only available to persons who have stayed in Denmark for seven years out of the past eight years, or in another EU/EEA country if the aliens in question are considered workers and the entitlement to social security is decided according to the EU rules. The size depends on the person's age and civil status. Persons below the age of 25 are thus granted a lower assistance, corresponding that of the State Education Grant. Further, persons with children, a caregiver's supplement to the starting aid may be granted. However, the supplement is offered to a maximum of 2 children per household. In addition, isolated assistance may be granted pursuant to the Active Act. Pertaining to the Active Act, the municipality makes decisions on assistance for maintenance (social security, starting aid, etc.) and also assistance in isolated cases pursuant to Section 81 and part X in general. As it has been explained, assistance granted to asylum seekers pursuant to the Active Act is subsidiary to the maintenance obligation of the Immigration Service. In situations where an alien resides with his/her spouse, who then has the maintenance obligation and relieves the Immigration Service of its duties, the municipality may thus provide assistance to the asylum seeker in question.

#### *The Service Act*

Pursuant to the Service Act, municipalities may provide assistive technology and measures helping persons with a legal stay who are functionally hindered. The benefits are means-tested.

Under the emergency pool, the Ministry of Social Affairs may support private persons or volunteers offering beds for persons regardless of their residence status.

The Integration Ministry has the maintenance obligation of aliens staying in Denmark in relation to housing, food, clothes and health assistance. Aliens who do not want to turn to the immigration authorities, may find themselves in a legal void when in need of more than acute assistance as offered by the regions, if they do not want to make themselves known to the Integration Ministry.

Pursuant to the Health Act, full health benefits are granted to persons with residence in Denmark, i.e. whose address is listed in the national register. Further, cost-free acute hospital assistance is provided to all staying in Denmark.

The regions are not allowed to offer reception. According to the Executive Order on Entitlement to Treatment at Hospitals etc., the regions may continue the hospital treatment of patients beyond the acute phase. Such support will be based on a concrete, discretionary medical assessment whether the circumstances require this. In such non-acute situations, the regions may charge the costs to the beneficiary, but may also omit

charging depending on the circumstances.

The definition of acute hospital treatment is a concrete medical assessment performed by the doctor at the hospital use to making such decisions on a daily basis. The concept is in general expanded. Acute cases are cases requiring treatment here and now at a hospital level. Thus, life-threatening situations are not required. The Integration Ministry is planning to issue guidelines for the regions on the rules.

The region of Central Jutland observed that the health benefits and the definition of 'acute' may change over time due to financial resources and the medical research in the sense that the professionals gain more insight into diseases. Further, the evaluation of 'acute' may depend on the specific patient, as the health professional must include other possible diseases in the concrete assessment.

Pertaining to the Service Act, the municipality makes decisions on the granting of aid and assistive technology etc.. This encompasses handicapped persons and persons in general who have problems as well as financial aid, apart from assistance related to maintenance. Among other things, the municipality places unaccompanied refugee children.

The Active Act and the Service Act comprise everyone with legal residence in Denmark, including "procedural stay" pending a procedure. This means that aliens with illegal stay in Denmark are not entitled to ordinary assistance pursuant to these acts. If the staff at the municipality learns of aliens with illegal stay in Denmark, the staff contacts the police which then deal with the alien and the alien's possible return etc.

NGOs reported possible frictions here. Women whose application on family reunification is being processed and whose spouse has the maintenance obligation are not covered by the Immigration Service's maintenance obligation. As a result, money is charged for midwife care although the regions/municipalities must bear the expenses. The actual practice varies from one hospital to another and often depends on either the alien's or the authorities' knowledge of the legislation. In cases where the Committee for Underground Refugees assists with counselling, the bill issued for these health expenses is annulled.

In situations where the spouse is not able to bear the expense of the health care, the municipality defrays the expense. However, this will have consequences for the man's possibility of for instance being issued with a permanent residence permit, due to the fact that aliens are not allowed to have any debt to public authorities or to have received social benefits upon the issue of a permanent residence permit. Thus, there is a grey area, and social rights are more of a theoretical nature than an actual one.

#### *Assistance by NGOs*

The Committee for Underground Refugees offers counselling and arranges medical assistance for all refugees and underground aliens, in parallel with the Danish Refugee Council as far as refugees are concerned. Counselling is provided on a weekly basis. In addition, the Committee collaborates with the Danish Refugee Council on specific areas pertaining to the establishment of a medical clinic for aliens residing illegally in Denmark. In principle, "underground refugees" are encompassed by the Immigration Service's maintenance obligation, but they do not have actual access to benefits as they are afraid to turn up at the authorities due to the risk of being apprehended.

The reception and assistance from the National Organization for Women's Crisis Centres LOKK and the women's crisis centres consist of a basis offer, comprising a housing offer, food, laundry, medical care, hospital care, counselling, guidance and case handling. Further, certain crisis centres offer ethnic conflict mediation.

The assistance is provided to women exposed to violence, threats, forced marriage and other abuse. The assistance is primarily provided to women staying legally in Denmark but who are not yet issued with a residence permit.

In particular regarding women losing their basis of residence as a consequence of leaving their partner, the LOKK provides counselling and guidance for introducing a residence application on a different basis, or to return to the home country. When introducing an application, these women have procedural stay pending the procedure.

As far as women staying illegally in Denmark are concerned, the LOKK may provide counselling and assistance for further action, possibly returning to their home country. When in contact with women staying illegally, the LOKK contacts the police and may thus offer assistance to the women up to the point where the police execute the possible return of the women.

A special plan applies to women with illegal stay who have been the victim of trafficking. According to this plan, the women are entitled to stay in Denmark for twice 100 days before deported. Within this period, the LOKK may provide a housing offer for the women.

Also, the practice by the Central Jutland police on placing women staying illegally in Denmark at crisis centres as opposed to detaining them, has been approved by the Ministry of Justice in 2010.

Women staying illegally in Denmark may possibly receive emergency assistance from the municipalities.

A Warm Bed receives persons in its shelter and screens him/her for a couple of days to find out who he/she is. The residents at the shelter must sign an agreement allowing A Warm Bed to examine lockers; for instance A Warm Bed contacts the authorities upon suspicion of theft. It is important for A Warm Bed to cooperate well with the police and other authorities, and A Warm Bed emphasizes transparency and openness in its work. At the shelter, the persons concerned are provided with beds, respect, boundaries, community etc. A Warm Bed provides food twice a day, which includes one cooked meal. The residents have the possibility of cooking their own food which they often do together. A Warm Bed is open 24 hours a day from the month of November; in summertime accommodation is provide from 23 to 7. A Warm Bed adapts to the weather and other housing offers and has the possibility of reacting when there is a need thereof. As a main rule, A Warm Bed is closed in the daytime, but if a resident is in need of staying during these hours, this is possible.

If a resident causes problems, he/she may be excluded at first for 24 hours. Upon possible exclusion, the person will receive a survival package, consisting of sleeping mat, sleeping bag, coating for minus 35 degrees, warm clothes and field rations.

A Warm Bed offers the residents to stay as long as they require. Also, A Warm Bed is happy to contribute in processing the persons concerned within the system. However, A Warm Bed misses legal expertise. A Warm Bed may pay the expenses covering the alien's return.

A Warm Bed works on various levels. Currently, the organization is working to establish a transit room in Rumania, Bucharest, being able to receive the aliens concerned in their home country and strengthen the local community by bringing resources to the community to ensure that the aliens will not just return. The open borders within the EU have not been accompanied by funding for social work, and human beings will naturally go to countries in which they expect to make enough money to be able to supply for themselves and their families.

A Warm Bed further works on the establishment of a 'health room', including a mobile health room, where A Warm Bed will be able to provide ordinary medical assistance, dental care etc.

### *Interpretation of necessary means of subsistence in the reception, emergency reception and assistance legislation*

In Denmark, no national poverty limit has been adopted. Most of the interviewees state that the rates adopted in the legislation are an expression of what constitutes necessary means.

In the accommodation centres, the residents receive money to support themselves and their expenses for medicines are covered. All expense for health care is covered by the centre. Thus, the residents are self-supporting and the amounts are fixed. It is not possible to grant an exemption from the size of the granted amount. As an example, a single resident is paid DKK 1,028 every 14<sup>th</sup> day.

Under the Active Act the starting aid and the caregiver's supplement are determined by statute. The granting of isolated assistance pursuant to the Section 81 Active Act is based on discretion, but guiding criteria are included.

The Danish Red Cross states that necessary means is understood as means covering the basic needs i.e. food and clothes. The Committee for Underground Refugee refers to a study conducted by the Danish Institute for Human Rights on the benefits provided and the costs of living in Denmark and concludes that the means provided pursuant to the immigration legislation are not sufficient in practice. As an example of the high costs, expenses for transportation may be mentioned. Accommodation centres are often located far away from the larger cities and Denmark is a very expensive country to travel within. Thus, the aliens in question are not in a position to travel within Denmark as the costs are too high. Consequently, several costs are not genuinely covered by the amount of the benefits granted.

Further, A Warm Bed states that aliens staying illegally in Denmark cannot be granted survival assistance. Special rules apply to EU citizens. Pertaining to medical assistance, the yellow NHS medical card is a prerequisite for access to ordinary assistance. According to A Warm Bed, there is a conflict between the Hippocratic Oath and the Health Act.

### *The differences in benefits between entitled and unentitled migrants*

In Denmark, there is no distinction between entitled and unentitled migrants as such. Thus, most of the interviewees did not make any difference.

#### *4.2.2 Beneficiaries under the Existing Framework*

##### *Beneficiaries of social benefits in general and the criteria for receiving social benefits*

The interviewees agree that criteria such as nationality, age etc. do not apply. Aliens with legal stay (including pending a procedure) may be entitled to assistance from the municipalities pursuant to the general welfare legislation (or the Integration Act) or from the Immigration Service pursuant to the Aliens Act as far as asylum seekers are concerned. Aliens in illegal stay are entitled to assistance from the Immigration Service pursuant to the Aliens Act and may exceptionally be entitled to isolated benefits from the municipalities. The municipalities have a reporting duty to the Immigration Service in situations where an alien is in need of continuous maintenance assistance (above 6 months). It is then up to the Immigration Service to assess whether the alien in question must be returned for reasons of maintenance.

Every person staying in Denmark is entitled to urgent medical assistance from the regions/hospitals.

Assistance pursuant to the Service Act may differ when a person has temporary stay in Denmark. In situations where an alien is a tourist or is issued with a short time visa for instance, the nature of the aid will be temporary.

The decisive criterion for social benefits under the general welfare legislation is the status of the alien's stay – whether the stay is legal or illegal.

The decisive criterion for ordinary health benefits under the Health Act is whether the person has residence in Denmark, i.e. the listing of an address in the national register. Urgent medical assistance is granted to every person staying in Denmark. The decisive criteria for urgent medical assistance are thus whether the medical assistance is acute and necessary. Since aliens staying illegally in Denmark are not citizens of the region, they have no access to regional health care and must seek for the national government's assistance. Such aliens may only be offered acute treatment by the regions.

As an example of this, a situation where the region and the Immigration Service had to clarify the coverage of health benefits for an alien suffering from cancer. The man was convicted of a crime, serving the sentence and expelled from Denmark. He was in need of cancer treatment. It had to be clarified what could be offered for the man and who was to bear the expenses. The clarification resulted in the man's stay being given equal status to residence in Denmark (stays in Denmark for a longer duration than 3 months may, when considered reasonable, be given equal status to residence in Denmark). The region hence had to pay the expenses for the treatment.

For non-acute treatment, general criteria/requirements for receiving the treatment in question may be applied. The requirement will concern the patient's cooperation and understanding of the medical preconditions for the subsequent result of the treatment. Such criteria may be based only on professional medical reasons and may not be applied in relation to a single group of persons, only. The assessment must be made based on a concrete medical assessment, and must not be performed as a general administratively statement.

The decisive criterion for social benefits under the Aliens Act is the phase of the alien's case. The phase of the case of the alien in question will be of significance in relation to assistance other than health assistance. Health assistance is steady through all the phases. The benefits and the centres may vary through the phases. Regarding the centres, an alien in phase 3 may thus be sent to a deportation centre and other measures may come into play if, for instance, an alien does not cooperate on return. Pertaining to age, special considerations may be made for children in connection with for instance health treatment. Further, special considerations may be made to aliens of great age or poor health. As an example of this, a special contract may be concluded with the person in question, thus exempting the alien from school and activation, yet still allowing the alien to earn supplementary allowance.

Also, special consideration is shown for unaccompanied minors. Unaccompanied minors are thus not required to conclude a contract but is paid full supplementary allowance (usually, children are not paid these benefits as the benefits are paid to their parents).

#### *Obstacles in gaining access for those who are entitled*

In general, the interviewees agree that the main obstacle in gaining access in when the alien does not make him-/herself known to the authorities.

The Immigration Service states that an alien will always have access to assistance from either the Immigration Service or the municipalities. It cannot be ruled out that such aliens may receive assistance from humanitarian organizations despite of the fact that the aliens stay illegally in Denmark. When the alien resides with a spouse who has the maintenance obligation, the Immigration Service or the municipality may assist if

the spouse is not able to handle the task. The Immigration Service may thus provide assistance for isolated expenses or take over the maintenance completely on the condition that the alien will reside in one of the Immigration Service's centres. The Hanstholm Accommodation Centre states that aliens in phase 1 and 3 may be subjected to measures aiming at motivating on collaboration. The Centre further states that all residents at Hanstholm Asylum Centre receive money for their own household, as the Centre does not have a cantina. No obstacles exist as the aliens receive what they are entitled to in accordance with the phase of their case. It is further noted that the aliens all along have the possibility of restoring their cooperation, allowing them to receive more benefits again.

The Ministry of Interior and Health states that with regard to prostitutes and trafficked women, the regions have launched an initiative to offer additional health care, advice and guidance. The Ministry was addressed by the Danish Red Cross and the Danish Medical Association regarding a private initiative on medical assistance for aliens staying illegally in Denmark. The status of this initiative is not known to the Ministry.

The Aarhus Municipality has indicated that as far as the Service Act is concerned, there are difficulties in relation to unaccompanied refugee minors who do not have a person with parental rights and responsibilities. Decisions pursuant to the Service Act must be made in relation to a person with parental rights and responsibilities – and thus cannot be made in relation to children. Thus, the Regional State Administration must appoint a person having parental rights and responsibilities in relation to whom a decision pursuant to the Service Act may be made. Often, a lawyer or a family member is appointed as having parental rights and responsibilities. Following such appointment, a decision pursuant to the Service Act on placing the unaccompanied minor outside the home (i.e. outside the family member's home) may be made. The Municipality further states that interpretation may constitute a practical problem. Also, women at the crisis centre constitute a specific issue, according to the Municipality, when losing their basis for residence upon leaving their abusive partner.

The Danish Red Cross states that undocumented migrants do not have the financial possibility of funding health assistance.

The Committee for Underground Refugees states that there is no system to apply for benefits as such. Aliens applying for family reunification and whose spouse has the maintenance obligation do not have access to benefits comprised by the Immigration Service's maintenance obligation. Further, asylum seekers with procedural stay (pending a procedure) have limited access to medical assistance, only, as the Immigration Service guarantees. Consequently, these aliens have access to acute and pain relieving treatment, only. Also, it is noted by the Committee that aliens with procedural stay are often forced not to receive benefits otherwise entitled to, as this would have negative implications for their future stay in Denmark (due to the requirements on self-support upon the issue of most residence permits).

The National Organization for Women's Crisis Centres LOKK, states that Danish citizenship or permanent stay is a prerequisite for social, permanent benefits in Denmark. In cases of emergency, every person may receive assistance from the municipalities, however. Some crisis centres have private means, allowing them to provide assistance instead of the municipalities.

The Danish Medical Association states that there are obstacles in relation to medical assistance as the legislation and definition of the concept of acute is not clear. Also, there is a lack of information on the relevant legislation. The Danish Medical Association, the

Danish Refugee Council and the Danish Red Cross have thus entered into an agreement on offering health assistance for the aliens concerned. This is caused by the fact that the standard in Denmark prescribes that persons who are ill must receive assistance. Such offer is expected to commence before summer 2011, and the medical clinic in Copenhagen will be manned by volunteer health personnel. The project has generated a lot of interest from several doctors who offer to work free at the clinic. Simultaneously, these doctors have their practice to attend to, but yet they want to be a part of the humanitarian work. At this point it is difficult to estimate the size of the background population and diseases, as the persons in question often do not allow themselves to be registered anywhere.

The groups of aliens who are expected to have need for health assistance in particular, are rejected asylum seekers, persons without work permit and women who have been thrown out by their spouse. The latter often lose their residence permit upon divorce and often do not want to leave Denmark due to their children.

#### 4.3 Reception and Assistance by Local Governments and Non-governmental Organizations

##### 4.3.1 *Beneficiaries*

*Major categories of migrants in reception or emergency reception or receiving assistance offered, facilitated or subsidized by local governments and non-governmental organizations*

Currently 4,500 persons are accommodated in the local centres under the Aliens Act. Previously, the number of asylum seekers was 1,700. The estimate for 2011 is 4,800 asylum seekers which correspond with the number for 2010. The situation in the Middle East may change the numbers, though.

They primarily consist of asylum seekers, including those in phase 3 (the deportation phase). There is a very small group of aliens with illegal stay who have not applied for asylum.

The composition of this group depends on the political situation. Currently, the majority of asylum seekers are from Afghanistan, Syria, Iran and Russia. There is an increase in the number of unaccompanied minors, which led to an amendment of the Aliens Act. There has been a large increase of Kurds from Syria applying for asylum in Denmark. Compared to the neighbouring countries, this group is thus clearly over-represented. Lately, Afghans have constituted the largest group of asylum seekers. Further, there has been an increase of asylum seekers from Iran. At Centre Hanstholm, 18 different nationalities are represented; from Sri Lanka in East to Cuba in West. Thus, Nigeria, Venezuela, Iran, Iraq, Syria and other countries in the Middle East, Somalia, Sudan, Uganda, Chechnya, Russia and stateless Palestinians.

The Ministry of Employment, the National Labour Market Authority has not specific figures on this group for the matters coming under its responsibility.

##### *Future changes in the composition of this group*

The Immigration Service adapts to the groups arriving to Denmark. There are different ways of handling this, and the Immigration Service may make a special effort, use task force etc. to respond to these changes. The Red Cross expects an increase in asylum seekers from Libya and from the Middle East in general due to the political situation there.

The Committee for Underground Refugees expects that more voluntary migrants and fewer forced migrants will come to Denmark. Consequently, immigrants with a temporary stay will dominate as compared to immigrants who arrive to Denmark to ask for protection or family reunification.

#### 4.3.2 *Relationship with Central Government Policy*

The interviewees in general agree that the local authorities act on the basis of the legislation. Further, contracts have been concluded between the Immigration Service and some municipalities or between the Immigration Service and the Danish Red Cross on the operating of accommodation centres.

The Hanstholm Accommodation Centre indicated that there has been an interest in breaking the Red Cross' monopoly on operating the asylum centres. Thus, the State wanted more players and consequently involved the municipalities. As the Red Cross has a mandate for being an advocate of various groups of aliens due to the humanitarian basis of the Red Cross, the Red Cross expresses more criticism. As opposed to this, the municipalities are a part of the governmental machinery and more compliant.

Pertaining to medical assistance, the Danish Red Cross and other organizations asked the Minister of Interior and Health for a meeting at which they intended to explain their project on the medical clinic for undocumented migrants. The Ministry of Interior and Health found, however, that the aliens in question are already receiving sufficient health assistance and declined the invitation for a dialogue. This may possibly be interpreted as an implicit rejection of the project.

The Committee for Underground Refugees applies for non-political funds, such as funds from the National Lottery. On the other hand, however, the government has a political interest in limiting the contributions or assistance offered by non-governmental organizations. The so-called Iraq centre established by the newspaper Politiken with assistance from private donations, is an example of that. The purpose of the centre was, among other things, to hire rejected Iraqi asylum seekers and thus facilitating the issue of residence permits on grounds of work. There was a political interest in closing down the centre. Subsequently, the Aliens Act was amended in spring 2010, thus obstructing the operation of the centre. In combination with the tone applied to shelters not allowed to house aliens, measures such as these are regarded by the Committee as smear-campaign-like and as throwing suspicion on private organizations.

The National Organization for Women's Crisis Centres LOKK assists illegally residing migrants in getting to their home countries. Generally speaking, the position of the government is that as long as the assistance is provided within the realm of the law, this is acceptable.

The Ministry of Social Affairs established the emergency pool for shelters during the winter months. NGOs perceive the central government, through the Ministry of Social Affairs and mainly their supporting party 'Dansk Folkeparti' ('the Danish People's Party') as strongly opposed to NGOs supporting aliens.

A Warm Bed has tried various initiatives, such as assistance for returning the aliens staying illegally, but there is no political support for this. The political climate in Denmark is very marked by 'Dansk Folkeparti' ('the Danish People's Party') and their immigration policy.

*The position of local governments offering, facilitating or subsidizing assistance, reception and emergency reception on national policy*

According to The Hanstholm Accommodation Centre the political composition of governments at municipal level is similar to that at the national level. The motive of operating an asylum centre is the fact that the municipality is able to perform the task and that it creates jobs within the municipality.

*Tensions between central policy and local policy with regard to offering assistance/reception/ emergency reception*

The interviewees in general agree there are no such tensions, as immigration is a central governmental matter in Denmark and as the local authorities execute the governmental work.

The Immigration Service has a good working relationship with the municipalities on the location of the asylum centres. Currently, three municipalities operate asylum centres. Pursuant to the Aliens Act Section 42j, the Minister of Integration has special powers upon the construction of asylum centres in relation to the Plan Act.

The regions administrate pursuant to and in accordance with the legislation. Thus, the regions' tasks/services are determined by the legislation. This means it is determined by the State what services the regions must provide. The region's money is earmarked only in relation to pool money. Thus, where the money is not earmarked, regional/local priorities are made. Pertaining to health benefits, the region's task are fulfilled out of a concern of professional health care, rather than for reasons of immigration policy. However, the legislation may have a different aim from that of the purely health professional.

*Coherence between decisions on offering assistance/reception/emergency reception at the central level and those at the local level in individual cases*

In general, the interviewees agree that there is coherence as the local authorities and organizations operate on the basis of the legislation and/or a contract, and as the complaint (welfare) boards ensure coherence. Further, contracts concluded on the operation of asylum centres are accompanied with dialogue, feedback, supervision and inspection.

The Committee for Underground Refugees identifies two movements working in opposite directions in Denmark: the official, public (governmental and municipal) offers are consistently cut down, on the one hand, whereas there is an increase in volunteers joining the private, independent organizations. Civil society is thus reacting to the official policy through practice.

Further, A Warm Bed states that when receiving subsidies from the emergency pool, the initiative is subjected to the Service Act and things are thus being put into a system in which the persons concerned must be recorded and treated as clients as opposed to human beings. Also, the possibility of acting ad hoc is cut off. A Warm Bed refuses to record its users and to drop its values on treating its residents with respect and humanity, and on allowing the residents to take responsibility for their own life and to be involved.

There are agreements between central and local governments, as a number of municipalities operate asylum centres and execute the governmental work. Further, there are agreements between central and non-governmental organizations, as the Danish Red Cross and the Danish Refugee Council handle the practical contact with aliens. Thus,

these organizations play a role as providers and have their expenses reimbursed by the Immigration Service.

#### 4.4 Needs and Access to Assistance, Reception and Emergency Reception

##### 4.4.1 *Identification and Coverage of the Needs*

The interviewees in general agree that the needs encountered are the basic needs, including interpretation. The interviewees to a certain extent agree that the basic needs are covered within the system.

The Immigration Service covers the basic needs: food, accommodation, health benefits and a meaningful stay. The Immigration Service has a system within which various circumstances may be taken into account and within which the aliens are not made out to be more different than they are. Further, there may be groups with special needs, such as unaccompanied minors, women in general, trafficked women and women with children. Also, there may be a need of providing an interpreter, to take care of persons who have been exposed to torture etc. The Immigration Service and the operators have knowledge on and experience with many different situations and are thus able to take various circumstances into account.

The starting assistance under the Active Act is in principle paid in fixed amounts on a local level, – but with supplements for persons providing for children below 18. Special needs may further be covered by supplementary benefits.

The Ministry of Social Affairs provides bed and food. The homeless are mainly in need of a housing offer which is facilitated by the emergency pool. Children – unaccompanied minors – have special needs for a representative, support, personal assistance and tuition. The Children Office of the Ministry of Social Affairs is involved in certain tasks pertaining to unaccompanied minors.

The Ministry of Interior and Health does not investigate the needs as this comes under the Integration Ministry's jurisdiction. The Integration Ministry has issued guidelines for medical treatment and stated what the aliens in question can be granted. Giving birth is not considered acute, unless it occurs other than on the due date or complications emerge.

The Region Central Jutland recognizes that the persons in question must experience a great need for information on their rights. In this connection, the regions have an obligation to provide information for all persons on the benefits they are entitled to.

For the Hanstholm Accommodation Centre the overall need is that to be allowed to stay in Denmark. Otherwise, the need is to have as good a life as possible, in privacy, trust, respect and feeling at home. The concrete needs for health benefits are high. For 60 % of those who are ill, the causes have been identified as psychosomatically. Happiness of their children and contact with the family in their home country, as well as television in their own language, are also important. The rules at the Centre respect privacy.

According to the Danish Red Cross, apart from the basic needs, many aliens want to have the possibility to work at the ordinary labour market. Also, they wish for more

traineeship and more tuition. The needs for activation, traineeship and tuition are not fully covered as this is not possible due to legal and financial circumstances. The Danish Red Cross would like to be able to offer more internal and external tuition. The presence of psychosomatic diseases is underlined.

The Committee for Underground Refugees states that as far as asylum seekers are concerned, the basic physical needs are covered pretty well. The conditions at the asylum centres are fairly good. The housing standard at the asylum centres is good, and the aliens receive clothes, medicine and necessary goods. However, they do have problems with money for transportation. Moreover, they are not offered preventive medical care. Further, they are not entitled to work and study.

The Danish Medical Association has gained experience in the other Nordic countries. Through visits in Oslo, Stockholm and Göteborg, the Association has learned that the migrants concerned suffer mainly from stress-related diseases. Further, the persons concerned suffer from the illnesses which usually occur in an ordinary practice. The established system does not meet the needs. This is caused by the limitation which lies within the concept of acute. For instance stress and milder types of psychiatric illnesses are not considered to be acute. Psychoses ought to be comprised by the concept of acute, but this is not clearly defined.

A Warm Bed identifies employment as the main need. The residents originate from countries in which they have no financial possibilities and wander around in Europe. The very basic needs and the need to feed their family are not covered. A Warm Bed strives to cover the basic needs of food and shelter.

#### *4.4.2 Access to Assistance, Reception and Emergency Reception*

*Criteria to gain access to assistance, reception and/or emergency reception and evaluation of their impact on meeting the needs*

The decisive criterion for social benefits under the general welfare legislation is the status of the alien's stay – whether the stay is legal or illegal, as stated by the Ministry of Social Affairs and the Aarhus Municipality. The Aarhus Municipality further states that the persons concerned must belong to the target group and must fulfil the requirements laid down in the legislation, applying equally to all with legal residence. Further, the Municipality states that a person with procedural stay and below 25 years is granted a lower maintenance assistance (pursuant to the Active Act), corresponding to study grants. If the person in question has legal stay only, and not work permit, he/she will not be able to supplement his/her income.

The decisive criterion for ordinary health benefits under the Health Act is whether the person has residence in Denmark, i.e. whose address is listed in the national register. Urgent medical assistance is provided for every person staying in Denmark. The decisive criteria for urgent medical assistance are thus whether the medical assistance is urgent and necessary, as stated by the Ministry of Interior and Health and the Region Central Jutland.

The decisive criterion for social benefits under the Aliens Act is the phase of the alien's case, as stated by the Immigration Service and the Hanstholm Accommodation Centre. According to the Hanstholm Accommodation Centre, the application of these criteria sufficiently meets the needs for assistance.

The Committee for Underground Refugees states that aliens staying illegally in Denmark do not have actual access to benefits. Aliens with procedural stay do have access to benefits. Further, the Committee states that as far as aliens in the application phase or rejection- or deportation phase, the assistance provided is all in all reasonable. As far as recognized refugees are concerned, however, these are treated unreasonable.

#### *Evolution the criteria*

Most of the interviewees agree that overall the criteria have not changed. However, the Committee for Underground Refugees finds that the criteria have changed, resulting in a less beneficial social position of the aliens in question. Before, the issue of residence permit resulted in the granting of social rights on terms equal to that of Danish citizens. Now, aliens have less social rights. Thus, in the long term, aliens are denied the possibility of obtaining rights on terms equal to that of Danish citizens. As for asylum seekers in particular, however, their rights have not changed.

#### *Additional selection criteria*

The interviewees agree that no additional selection exists in relation to assistance/reception. Yet, the Immigration Service states that causes relating to resources may result in uneven fulfilment of special requests.

#### *Legal and practical obstacles in gaining access*

In general, the governmental authorities find that no obstacles exist.

The Region Central Jutland does, however, state that regarding non-acute medical treatment, legal as well as practical circumstances may cause obstacles to immediate treatment in relation to the decision on who are to defray the expense. This issue was addressed also by the Ministry of Interior and Health. The Ministry thus stated that there has been a need of clarification between the Integration Ministry's and the region's coverage. The need of clarification does not mean that the person in question does not receive assistance, but is only a question on which authority must defray the expense, according to the Ministry.

The Ministry of Social Affairs states that the determination of the residence status of an applicant for assistance and whether the person in question belongs to the target group may not always be an easy task. However, a further investigation of the person's background and situation may be conducted within 1-2 days, within which the person may reside at the accommodation. Also, disagreement may occur between 2 municipalities on who must provide assistance. The Service Act does, however, solve this situation as the provision states that the municipality within which the person has had his/her address registered recently, is responsible.

The NGOs (including the Danish Red Cross), however, find that legal, practical as well as financial obstacles exist which are not all met on another level.

The Danish Red Cross states that asylum seekers in 3<sup>rd</sup> phase not cooperating on return have fewer rights. This is mentioned also by the Hanstholm Accommodation Centre that finds that no obstacles exist and that aliens have the possibility of restoring their cooperation, thus allowing them to receive more benefits. Further, the Danish Red Cross states that there are geographical problems as well as capacity problems caused by the small asylum centres being located in the country side, which may be met by transferring the alien concerned to another accommodation centre. Further, the Danish Red Cross states that there are financial problems with the funding of ordinary health assistance, as well as medical assistance for aliens illegally residing in Denmark, and also refers to the subjective interpretation of human rights provisions.

The Committee for Underground Refugees states that obstacles exist in relation to the uncertain procedure to aliens whose spouse has the maintenance obligation. Further, the Committee states that obstacles exist in relation to medical assistance, and also that the needs are not met at another level. This is why plans to establish a medical clinic for aliens staying illegally in Denmark are prepared, according to the Committee. The clinic will offer acute as well as regular assistance.

The National Organization for Women's Crisis Centres LOKK, states that persons not turning to the crisis centres will experience financial difficulties. Further, the LOKK states that not many turn to the crisis centres and refer to figures from a research report.

The Danish Medical Association states that the concept of urgent medical treatment constitutes a practical as well as a legal obstacle. Partly, the concept of acute is vague, and partly there is a lack of knowledge on the Health Act's provisions on free acute treatment.

A Warm Bed states that if one does not have legal stay and the yellow NHS medical card, one does not have access to benefits pursuant to the social security legislation. One may be provided with urgent medical assistance, but not with follow up treatment. A Warm Bed further states that pertaining to whether the needs are met on another level, there are doctors performing pro bono work, and also doctors recording the treatment on a different CPR number. A Warm Bed precisely strives to cover the needs not covered by the established offers, according to A Warm Bed.

#### *4.4.3 Identification of Vulnerable Groups and Urgent Circumstances*

Overall, the interviewees agree that special attention is paid to vulnerable groups (mainly children, women and ill persons) and to urgent circumstances. Most of the interviewees refer to the special centres established (for women, unaccompanied minors or ill persons) or the special efforts made (trafficked women, children and special accommodation).

The Immigration Service provides a special women's centre, centres for unaccompanied minors and a care centre (Kongelunden).

Pertaining to pregnant women whose spouse has the maintenance obligation, the spouse must bear the expenses for medical assistance. The Immigration Service may cover the expenses for medical treatment in exceptional cases only.

In situations where there is a special need, persons may be granted permission to private accommodation without the loss of the benefits from the Immigration Service. For instance, an elderly diabetic having problems with the control of his/her medicine, may be accommodated with his/her children if they are able to assist in nursing.

In addition, annexes have been established for families having a difficult time. A family with an autistic child may be in need of peace, and may be accommodated at an annex. The family will thus continue to be connected to the asylum centre without having to stay there.

Further, special housing have been established for families originating from certain countries and who have stayed in Denmark for a certain period of time upon the final rejection of asylum. This may be the case where it would be beneficial for the children to attend an ordinary school.

Yet, the Hanstholm Accommodation Centre does state that there is not enough space at the special centres.

The Danish Red Cross states that the group of undocumented migrants is exposed to all the problems following from not being entitled to stay in Denmark.

Also, the Committee for Underground Refugees states that theoretically, foreign children have rights equal to those of Danish children. However, due to slow procedures etc. the actual access is different. Further, pertaining to rejected aliens, the Committee states that there is not enough focus on vulnerable groups.

The regions provide additional assistance to trafficked pregnant women and additional health care with advice and guidance for prostitutes and trafficked women. Pregnant women receive extra money.

If people have a hard time, the Centre will assist in finding external training. This will be the case where it will either benefit the person to get away, or the person has an education he/she will be able to use in the external training (for instance a mason who will thus become acquainted with and gain experience on the Danish labour market).

Aliens above 60 or experiencing health problems may be exempt from activation.

So-called deportation hindered persons, i.e. persons who do not cooperate on return or where travel documents cannot be obtained, are provided for by the Immigration Service up to the point where departure may occur.

#### *4.4.4 Refusal and Termination*

An alien will not end up not being entitled to some kind of assistance/reception in Denmark. The interviewees in general agree that the only situation in which an alien does not have access to assistance/reception is when the alien does not make him-/herself known to the authorities.

However, the Committee for Underground Refugees states that in theory, aliens staying illegally in Denmark have social rights. In practice, however, these aliens do not have social rights as the fear of being apprehended prevents them from exercising the rights. The international conventions state that there must be an actual access to – among other things – health care, which is thus not the case, according to the Committee.

Further, A Warm Bed states that persons who, ultimately, do not have access to assistance end up at A Warm Bed. Ultimately, the persons concerned commit crime in order to be able to survive, according to A Warm Bed.

#### *Termination*

It may occur that an alien may choose to be housed at a centre no longer. In situations where an alien has fled from a centre many times, the alien in question may be placed at a special centre.

#### *4.4.5 Issues*

##### *For local governments*

The Hanstholm Accommodation Centre states that the negative press coverage is

problematic and that the public opinion and the policy in Denmark are generally not positive towards aliens. Hanstholm Asylum Centre is located in the centre of the city of Hanstholm, and while there are 330 residents at the accommodation centre there are 3,000 inhabitants in Hanstholm. To the residents, it is a huge advantage that they have easy access to everything and that they are closer to having a normal everyday life. Conversely, the Asylum Centre and its residents are very visible within the townscape. At Hanstholm Asylum Centre much effort is thus being put into making the Asylum Centre and its residents a part of the local community. The Asylum Centre strives at communicating to the local community that the Centre houses 300 different human beings, as opposed to 300 asylum seekers. As part of this endeavour, the Asylum Centre has arranged for the Centre to have a team within the local football club. Further, all its residents may get a fishing license, allowing them to fish with the local people. In addition, the Centre arranges open house, has volunteers associated with the Centre, and Lars Enevold Andersen gives lectures at any given occasion.

The Aarhus Municipality states that there are no problems, and that the system is well organized and well regulated by various acts.

#### *For non-governmental organizations*

All of the NGOs (including the Danish Red Cross) find funding to constitute a problem.

The Committee for Underground Refugees finds giving information to both asylum claimants and aliens staying in Denmark about procedures and rights difficult. As far as the lack of access to medical assistance is concerned, the main problem would be solved by the establishment of the medical clinic for aliens staying illegally in Denmark. First, probably only in Copenhagen though.

A Warm Bed states that things are put into an inflexible and inhumane system when the private initiative is subjected to the Service Act. Further, there are problems with cooperation between the NGOs, according to A Warm Bed.

#### *Financial aspects*

The Ministry of Social Affairs and the Ministry of Interior and Health state that there is no financial limit for the benefits granted pursuant to the Service Act and the urgent medical treatment, respectively, as the assistance is provided on a need-basis.

None of the NGOs (including the Danish Red Cross) or the Hanstholm Accommodation Centre finds the means to be sufficient.

The Hanstholm Accommodation Centre as well as the Committee for Underground Refugees state that the need for legal aid is not always met, and that the Danish Refugee Council does not receive enough funding for offering legal aid. Since the Hanstholm Asylum Centre is located far away from Copenhagen where the Refugee Council is located, the Council is not able to visit the Centre as often as they would like to.

A Warm Bed further states that the emergency pool for shelters is not permanent and covers only the winter months.

#### 4.5 Prohibitions on Supporting Irregularly Residing Migrants and Regularly Residing Migrants who are not yet Admitted

Many of the interviewees naturally refer to the legislation within their specific jurisdiction. Thus, not all of the interviewees refer to the prohibitions in the Aliens Act Part 9 on assistance in entering, transiting, staying and working illegally (mainly Section 59).

The Danish Red Cross further states that in some situations there is a legal obligation to offer aid – for instance if persons are in danger, and that it is the assessment of the Danish Medical Association that it is not punishable to assist pursuant to the Health Act (the Hippocratic Oath). The other way around, doctors and other health personnel may lose their authorization if they do not assist persons in need. The Region Central Jutland also states that everyone has a duty to assist people in need thereof pursuant to the Criminal Code. Further, doctors are bound by their Hippocratic Oath, and other health personnel have similar obligations. For the Committee for Underground Refugees, doctors must be allowed to treat anyone without having to take immigration policy into consideration. In addition, the Hanstholm Accommodation Centre states that based on the Hippocratic Oath, doctors have an obligation to provide medical assistance. The establishment of the medical clinic for aliens staying illegally in Denmark is thus justified by humanitarian considerations. In line with this, the Danish Medical Association states that the prohibition does not apply to humanitarian assistance. Besides, it would be contrary to the Hippocratic Oath if the doctors do not provide assistance for all in need thereof without political considerations or the like, according to the Association.

In addition, the Committee for Underground Refugees states that providing counselling is not considered active assistance in staying underground.

##### *Sanctions on aiding irregularly residing migrants to remain in the country*

As mentioned above, many of the interviewees refer to the legislation within their specific jurisdiction. The Ministry of Social Affairs explains that pursuant to the legislation on social affairs there is an information obligation on circumstances pertaining to benefit fraud. The Ministry of Interior and Health deems that it would be punishable for the health personnel to use public means for the purpose of providing assistance unauthorized, i.e. assistance without a legal basis in the legislation.

For the Aarhus Municipality, aiding is punishable, but not the type of assistance provided by the municipality. In case of decisions without legal basis, the municipality does not receive State reimbursement; the municipal council may be sentenced fines in situations of systematic violation of the legislation.

The Danish Red Cross states that in some situations it will be punishable to aid, while in others there is a legal obligation to offer aid, for instance if persons are in danger. Pertaining to medical assistance, a jurist is currently drafting a legal opinion on this. It is the assessment of the Danish Medical Association that it is not punishable to assist pursuant to the Health Act (the Hippocratic Oath). The other way around, the doctors and health personnel may lose their authorization if they do not assist persons in need.

Active assistance in staying underground is punishable with up to two years imprisonment. This means that housing, hiring or issuing documents are punishable. Thus, facilitating an alien's illegal stay in Denmark is punishable.

According to the National Organization for Women's Crisis Centres LOKK, authorities and private persons are not allowed to assist in illegalities. Consequently, the police must

be contacted if one becomes familiar with aliens staying illegally. Thus, LOKK informs the woman in question of the fact that the police will be contacted. Once the police are informed, LOKK may assist the woman until she is returned.

#### *Applicability of the sanctions on offering assistance/reception/emergency reception*

In general, the interviewees agree that the assistance offered by them does not fall under that prohibition.

#### *Exceptions for aid offered out of humanitarian concern*

The interviewees replying to this question in general agree that medical aid provided by doctors is justified by humanitarian considerations. Also, the doctors are obligated to provide such assistance based on their Hippocratic Oath, according to the interviewees.

## 4.6 Tensions with human rights

### *Legal obligation to offer assistance, reception or emergency reception based on human rights*

The Immigration Service states that although not bound by it, Denmark fulfills EU's Reception Directive – apart from the access to the labour market.

The Ministry of Employment refers to the Danish Constitutional Act, and the Ministry for Interior and Health refer to the Danish Constitutional Act, EU law as well as international conventions as containing such legal obligation. Further, the Ministry of Interior and Health refers to the report from the Ministry of Employment on the accumulation principle, accounting for the Ministries' position on the human rights. Among other things, it is apparent from the report that the ECHR does not form the legal basis for a right to health, according to the Ministry of Interior and Health.

The Region Central Jutland refers to EU law and states that international conventions are interpreted into the Danish legislation.

The Aarhus Municipality states that it is presupposed that the legislators have accounted for the various human rights provisions in the Danish legislation. However, the Handicap Convention may be of relevance to the municipalities.

All of the NGOs (including the Danish Red Cross) and the Hanstholm Accommodation Centre state that human rights contain such legal obligation to provide assistance. The Hanstholm Accommodation Centre further states that it is the duty of the State to secure human rights, and that 'watchdogs' watching the political system is desirable, based on the assumption that everyone needs to be checked occasionally. Further, the Centre states that based on considerations on human rights, Amnesty is obligated to assist. Among other things, Amnesty has put much focus on exceptional leave to remain. Unfortunately, they are not being paid attention to, and human rights play a different role, according to the Accommodation Centre.

The Danish Red Cross further states that pertaining to medical assistance, health assistance is governed by the Danish legislation. Undocumented migrants are thus entitled to acute treatment. Further, concerning asylum seekers, minimum requirements have been adopted by the EU, but these do not bind Denmark due to the Danish judicial

reservation. Despite of this, Denmark fulfils the minimum requirements. Conventions and law are controversial, and Conventions are not law until implemented in the Danish legislation. When the Conventions are not implemented in the Danish legislation, this weakens the legal position of the person concerned, according to the Danish Red Cross.

The Committee for Underground Refugees further states that human rights obligations comprise the basic end for assistance, while the other end is composed by the national interpretation of these obligations. The access to health is mentioned in several international conventions. Pertaining to the conventions, the problem is the interpretation – in particular the interpretation applied by the various countries, according to the Committee.

The National Organization for Women's Crisis Centres LOKK, further states that the UN Convention's definition of violence and abuse is the basis of the LOKK's work and is wider than the Danish Criminal Code's definition of violence.

A Warm Bed refers to the UN Convention Chapter 25 as the basis for providing human beings in need with aid.

#### *Implementation of these obligations*

The Ministry of Employment does not rely on additional legal documents but states that the administration is obviously in accordance with Denmark's international obligations.

The Region Central Jutland relies on judgments on delimitation problems regarding the criteria on who must be offered assistance and what kind of assistance must be provided. As an example of this, kidney patients not understanding the medical preconditions for the result of the treatment may be mentioned. In situations where the subsequent success of the operation is not ensured, a kidney transplant may be refused based on a concrete, medical assessment.

The Hanstholm Accommodation Centre and the Danish Red Cross further rely on the contract concluded with the Immigration Service.

The Danish Medical Association relies on international conventions like the UN Convention on Economic and Social Rights, the Women's Rights Convention and the Children's Rights Convention, all obligating to provide assistance, including to unborn. Further, there is Article 35 of the EU Charter on Fundamental Rights and Article 11 of the Social Charter Article 11. The conventions determine that health benefits are universal and that there is a right to health to which there is an obligation in assisting to obtain.

#### *Paramountcy of human rights over migration policy*

The Committee for Underground Refugees, the Danish Medical Association and A Warm Bed, state that human rights are paramount over migration policy. The Danish Red Cross did not find this question relevant as there is no distinction between entitled and unentitled migrants in Denmark as such.

#### *Differences in view between central government, local government and non-governmental organizations*

The Ministry of Interior and Health states that certain differences in opinion exist.

The Hanstholm Accommodation Centre states that no differences exist, but that tension is positive, based on an assumption of the necessity of 'watchdogs'.

The Aarhus Municipality states that the perception is that the various human rights provisions have been taken into account in the legislation, but that cases before the courts often deal with human rights.

The Committee for Underground Refugees states that there are no differences between local and central governments as the local governments merely administer the rules. The Committee further states that there are differences between NGOs and the central government, as the government has changed its position on human rights over the past 10 years. This has resulted in the NGOs unintentionally being in opposition to the government, according to the Committee. The Committee further states that certain benefits are being reduced.

The National Organization for Women's Crisis Centres LOKK, states that there are differences and that Denmark has not incorporated the human rights Conventions into Danish legislation. Yet, the Danish State claims to comply with the human rights. However, the LOKK further states that Denmark is repeatedly criticized from various parts.

The Danish Medical Association states that there are differences and that many NGOs have put focus on the human rights but have been dismissed by the government.

A Warm Bed states that there are differences and that the politicians do not want to honor the EU agreements in practice. Further, A Warm Bed states that there is no humane responsibility in the social work from the governmental part, and that the human rights in general are being restrained. On 31 March 2011, the Supreme Court passed a judgment in the case on 50 of A Warm Bed's users having been arrested in connection with a police raid and subsequently expelled. The Supreme Court stated that the expulsions were illegal as the persons concerned are EU citizens. Currently, A Warm Bed is scrutinizing the judgement.

#### *Evolution in the approaches and interpretation of human rights*

The Ministry of Employment, the Aarhus Municipality and the Danish Medical Association state that there is no evolution.

The Aarhus Municipality states that human rights are an integrated part when legislating in Denmark and further states that judgments from the EU forcing Denmark to adapt a different interpretation are a prerequisite for evolution.

The Danish Medical Association states that judgments from the Court of Human Rights are a prerequisite for evolution.

The Hanstholm Accommodation Centre states that the conventions are being subjected to narrow interpretations in general, resulting in other countries coming closer to Denmark (which did not change its stand). Also, the Centre states that the presentation of evidence in refugee cases constitutes a problem as well as interpretation. It is very difficult for refugees to satisfy the burden of proof. Further, refugees often experience the feeling of not being translated or interpreted correctly. There may be a lack of interpreters, or the interpreters are not competent enough.

The Danish Red Cross states that the Danish Red Cross has entered into a dialogue with the Immigration Service concerning aliens with exceptional leave to remain and their reporting duty at the police, interrupting the aliens' education, according to the Danish

Red Cross.

The Committee for Underground Refugees states that the Danish government has changed its position on human rights within the past 10 years and now sees human rights as annoying and inconvenient – and as sort of a religion, resulting in the NGOs unintentionally to be in opposition to the government. Further, nationalism and economy dominate a lot more than the value of human beings to the government. The Committee further states that certain benefits are being reduced.

The National Organization for Women's Crisis Centres LOKK, states that there are amendments to the Aliens Act every half year; continuous amendments which may go both ways. Thus, improvements as well as deteriorations occur.

A Warm Bed states that while NGOs attach great importance to the human rights, the central government repeatedly violates the human rights as well as the EU rules.

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*Forslag til Lov om ændring af udlændingeloven* ('Bill on Amendment of the Aliens Act'), - resulting in Act No. 572 of 31 May 2010 - 2009/1 LSF 188 of 26 March 2010, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=131029>

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The website of the Ministry for Refugee, Immigration and Integration and the Immigration Service at [www.nyidanmark.dk](http://www.nyidanmark.dk)

## 6 Persons interviewed

The following persons have been interviewed:

- Pernille Brinch Nissen, Head of Provision Division, The Immigration Service
- Leo Torp, The Ministry of Employment, the National Labour Market Authority, Administrator with the National Labour Market Authority
- Jørgen Witsø-Lund, Senior Advisor of the Law and International, Daniel Yuki Bujandic, Jurist and Administrator with the Law and International, and Rune Kamstrup, Political Science Major and Administrator with the Support Office, the Ministry of Social Affairs
- Jette Vind Blichfeldt, Chief Consultant to Hospital Policy, The Ministry for Interior and Health
- Tina Leutholtz, Jurist at the Health Secretariat, the Region Central Jutland<sup>361</sup> 1 face-to-face interview on assistance provided pursuant to the Health Act
- Lars Enevold Andersen, Head of Hanstholm Accommodation Centre, the Thisted Municipality, the Hanstholm Accommodation Centre<sup>362</sup>
- Birgitte Täck and Jakob Lawaetz, Jurists within the Social Security Department and the Social Services Department, Aarhus Municipality
- Kim Liin, Deputy Police Superintendent, the National Police, the National Aliens Department
- Birgitte Steno, Head of Adult and Young Education, and Ebbe Munk-Andersen, Coordinating Doctor, the Danish Red Cross
- Michala Clante Bendixen, Spokeswoman for the Committee for Underground Refugees
- Peter Michael Toft, Legal Consultant with the National Organization for Women's Crisis Centres LOKK
- Christina Lumby Rasmussen, Consultant with the Danish Medical Association
- A Warm Bed

The specific interviewees were chosen based on the assumption that these are the most dominant actors in the legal area. It should be noted that actors other than the ones interviewed may provide assistance for the aliens in question. The list above is thus not exhaustive, but includes other regions and municipalities and non-State organizations such as the Danish Refugee Council,<sup>363</sup> other shelters, legal aid offices<sup>364</sup>, special centres and the church organizations. The interviewed non-State actors are the actors deemed to be the most dominant actors within the area.<sup>365</sup>

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361 It should be noted, that all of the 5 Danish regions are actors on the same terms (and thus not only the interviewed region). Another region was asked for an interview, but did not respond to the inquiry.

362 It should be noted that all of the 98 Danish municipalities are actors on the same terms (and thus not only the interviewed municipalities). Another municipality was asked for an interview, but was apparently not able to participate.

363 The Danish Refugee Council kindly referred me to the Danish Red Cross, as the organizations have an internal division of tasks pertaining to aliens, which is why no interview has been conducted with the Danish Refugee Council.

364 Apparently, no lawyers in Denmark deal with the social rights of the aliens in question. The reason for this is most likely the fact that the aliens in question usually do not have means for covering the costs of hiring a lawyer. Also, the knowledge on the matter seems to be limited. As an interview has been conducted with the Committee for Underground Refugees and with the Danish Red Cross, the area thus seems to be covered as well as possible under the given circumstances.

365 The Aliens Act Section 42a (4) and Executive Order on Expenses for Asylum Seekers etc.