

## Denmark Immigration Detention Profile

Profile Updated: April 2016

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### INTRODUCTION

In recent years, Denmark has introduced increasingly restrictive policies regarding migrants and asylum seekers. A measure that received widespread attention and criticism was the January 2016 amendment to the Aliens Act allowing police to search asylum seekers and seize cash and valuables worth more than 1,300 Euros. Other controversial proposals have included the temporary postponement of the right to family reunification, new restrictions on the ability to obtain a permanent residence permit, and the shortening of the length of temporary residence permits.[1]

A November 2015 amendment to the Aliens Act concerns immigration-related detention. The amendment reportedly provides “special circumstances” for detaining asylum seekers, including the detention of asylum seekers who are part of “massive arrivals,” and weakens the judicial review of detention.[2] The [Council of Europe’s Commissioner for Human Rights](#) commented about the law, “I am concerned that the possibility of making increased use of detention in specific circumstances, combined with the elimination of important legal safeguards regarding detention, could lead to detention being used disproportionately and indiscriminately in respect of asylum-seekers, in contradiction with Article 5 of the ECHR which protects the right to liberty.”[3]

Denmark has also enforced laws that punish citizens who provide basic forms of assistance to undocumented non-citizens. In March 2016, a high-profile Danish advocate for children’s rights was prosecuted and fined 3,000 Euros for helping transport Syrian refugees who sought to walk from Germany to Sweden. Under the Aliens Act, transporting undocumented non-citizens is a crime of human smuggling. According to police statistics, almost 280 people were charged under this provision during September 2015 – February 2016.[4]

Despite its restrictive approach to immigration, Denmark does not face the same migratory pressures as its neighbors. In 2014, 14,680 people applied for international protection in Denmark, compared to 20,935 in 2015.[5] By comparison in 2015, 44,970 persons sought international in the Netherlands, 162,450 in Sweden, and 476,510 in Germany.[6] In 2013, Denmark apprehended 395 undocumented persons and only 515 in 2014. These are among the lowest apprehension rates in Europe, with only Latvia and Luxembourg reporting lower total apprehensions in 2014.[7]

None of the institutions involved in immigration detention—including the Immigration Service and the Prison and Probation Service—appear to maintain comprehensive statistics on the numbers of people placed in immigration detention annually. In response to a request from the Global Detention Project (GDP) for statistics in March 2016, the Prison Service provided only daily averages for the country’s two

immigration-related facilities used to confine immigration detainees, which was an average of 78.5 in 2015. When the GDP reiterated its request for annual statistics, the Prison Service said that they collect only average daily statistics.[8] Previously, in 2013, the Prison Service responded to a joint freedom of information request from Access Info Europe and Global Detention Project by providing similarly partial data.[9] Likewise, in its response to the GDP's March 2016 information request, the Immigration Service was not able to provide the annual detention statistics.[10]

## LAWS, POLICIES, PRACTICES

The 1983 Aliens Act ([Consolidation Act No. 863 of 25 June 2013](#)), which has been amended several times, regulates Denmark's immigration policy, including entry conditions, residence permits, and expulsion and detention of non-citizens. The [Danish Immigration Service](#)—which is under the Ministry of Immigration, Integration and Housing—is the agency responsible for implementation of immigration and asylum policies, including asylum procedures, family reunification, and visas.

**Grounds for detention.** Article 36 of the Aliens Act provides a general ground justifying detention, according to which non-citizens may be detained if non-custodial measures are deemed insufficient to ensure enforcement of a refusal of entry, expulsion, transfer or retransfer of non-citizen (article 36(1)). The same provision spells out several more precise grounds for detention: a person who has applied for residence permit can be detained if he refuses to stay at a place designated by the authorities or fails to appear for an interrogation at the police or the Immigration Service (article 36(2)); asylum seekers can be detained if they do not assist the authorities in substantiating the asylum application, including by failing to appear at interrogations by the police or Immigration Service, concealing information about his identity, nationality or travel route (article 36(4)); non-citizens to be deported may be detained if they do not cooperate with the police in making arrangements for deportation (article 36(5)-(8)).

The November 2015 amendment (L 62) to the Aliens Act will reportedly add a new paragraph to article 36 according to which the police will also be entitled to detain an asylum-seeker in the context of his arrival to Denmark, for the purpose of verifying his identity, conduct registration and establish the basis for his/her application.[11] UNHCR expressed concern about the risk of a arbitrary detention because of the amendment, highlighting that the purpose of detention is only to protect public order, and not, for example, to facilitate administrative expediency.[12]

**Statistics.** The Global Detention Project was not able to learn the number of migrants detained on an annual basis in Denmark. The annual statistical yearbook published by the Danish Immigration Service does not include detention statistics.[13] The annual publication of the [Prison and Probation Service](#) (which is the institution that manages the facilities where migrants are detained), titled "The Danish Prison and Probation Service: In Brief," provides solely average daily statistics. According to this publication, an average of 50 people were held on immigration-related charges each day in 2009 and 92 in 2014.[14]

In March 2013, the Prison and Probation Service responded to the joint Access Info and Global Detention Project request for information giving daily average figures for detained non-citizens: 86 in 2012, 65 in 2011, 53 in 2010.[15] The Global Detention Project contacted both the Immigration Service and the Prison and Probation Service, yet none of these institutions were able to give the total number of migrants detained annually. However, the Prison and Probation Service told the Global Detention Project that on average the daily population in 2014 was 91.1 persons in Ellebaek and 1.3 in Aabenraa, compared to 77.1 and 1.4 in these institutions in 2015. A new facility in Vridsløselille, which opened in early 2016, confines on average 57.1 persons on a daily basis.[16]

**Length of detention.** Like [Sweden](#), Denmark introduced a time limit on immigration detention in order to comply with the [EU Returns Directive](#). Previously, the lack of maximum permissible limit of immigration detention drew criticism from human rights monitoring bodies, including the UN Special Rapporteur on Torture and the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#).[17]

Following an amendment, the Aliens act sets out that the initial period of detention is not to exceed six months. The court may extend this period by another 12 months if deportation arrangements take longer because of detainee's lack of cooperation in the return process or delays in obtaining the necessary travel documents (article 37(8)). In 2016, the UN [Committee against Torture](#) found the total length of detention of asylum seekers of 18 months "excessive" and recommended Denmark to reduce the length of administrative detention of asylum seekers authorized under the Aliens Act for as short a period as possible, bearing in mind that detention should be used as a measure of last resort.[18]

According to government sources, the average time a person spent at the Ellebaek facility in 2016 was 29 days.[19]

**Judicial review.** According to Article 37, any non-citizen deprived of liberty under Article 36 must be brought before a court of justice within three days in order for the court to "rule on the lawfulness of the deprivation of liberty and its continuance" (Art. 37(1)). The person must also be assigned legal counsel (Art. 37(2)). According to government sources, detainees are always informed of the reason of their detention in a language they understood.[20]

Following his 2009 visit to Denmark, the [UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#) welcomed the fact that a mandatory habeas corpus procedure existed and that free legal aid was provided to all aliens in detention. However, the Rapporteur noted that according to information received during his visit, in the preceding five years, on only two occasions had the court not confirmed the prolongation of detention when requested by the police. Furthermore the Special Rapporteur was informed that about 50 percent of detainees at the Ellebaek centre during that period accepted an automatic prolongation of their detention by signing a document to that effect in advance. The Rapporteur found that the de facto procedure of legal challenge of deprivation of liberty under article 37 of the Aliens Act was not sufficiently effective.[21]

According to UNHCR, the November 2015 amendment to the Aliens Act restricts review of detention. The amendment authorizes migration authorities, during periods of high numbers arrivals, to declare “special circumstances,” which temporarily suspends some safeguards. A declaration of “special circumstances” is to be publically announced before its implementation, and the resulting measures are primarily intended to apply during a period of 14 days, with the possibility of extension. During the periods declared “special circumstances” a hearing does not take place within 72 following the arrest but “as soon as possible” and only at the request of the applicant. In this context, courts only assess the legality of the detention, and do not rule on the duration of its possible extension. Following a decision on the legality of detention in a particular case, there is no right for another review within four weeks.[22]

UNHCR expressed concern over postponement of judicial review of detention and making reviews dependent on the request of the detainee. As the UN body noted, “Such a situation could also lead to arbitrariness, in that during times of high influx, decisions might be taken in haste, and the need for an automatic review of the legality of detention by an independent court of law be more important than ever.”[23]

**Minors.** Minors can be detained at the Ellebaek facility with their parents in a special unit for families.[24] At the time of the CPT’s 2014 visit the facility confined one minor. The Committee highlighted that it did not consider the Ellebaek facility as a suitable location to hold children because it did not provide an appropriate environment nor did it offer the necessary support that a child requires. It therefore recommended the country to put an end to the detention of children at Ellebaek centre.[25] According to the statistics provided by the Prison and Probation Service, Ellebaek and Aabenraa prison confined a total of 119 minors in 2011 and 146 in 2010.[26]

In 2011 the UN [Committee on the Rights of the Child](#) noted with concern the absence of a legal framework to facilitate the granting of residence permits to child victims of trafficking. The CRC urged Denmark to ensure that children who are suspected victims of trafficking not be imprisoned as a result of conditions that are the consequence of them being trafficked and that they be provided with specialized assistance.[27]

**Alternative to detention.** The Aliens Act provides a number of non-custodial alternatives to detention, including: confiscation of passports; the payment of a bail; residence at “an address determined by the police”; and reporting to the police at specified times. If the person fails to abide by these measures, he/she can be forced to wear an electronic monitoring device (article 34). In 2014 the European Commission reported that out of these measures, only residence restrictions, confiscation of passports, and reporting were employed in practice.[28]

**Criminalization.** Part IX of the Aliens Act contains “penalty provisions.” Article 59(1) provides for a fine or imprisonment for up to 6 six months for non-citizens who enter or leave Denmark at a non-designated passport check-point; stay in Denmark without the requisite permit; or by deliberate misrepresentation secures admission in to Denmark or documents.

**Regulation of conditions of detention.** The Aliens Act does not explicitly designate places where migrants are to be detained. It provides that immigration detainees

shall not be subject to other limitations to liberty than required by the purpose of the deprivation of liberty and the maintenance of order and security at the place where the alien is detained. Non-citizens are entitled to receive visitors, letters and communicate with the outside world. The Aliens Act sanctions the use of solitary confinement when this is judged necessary for obtaining the information needed for assessing the legality of the non-citizen's stay in Denmark or possibility to issue a residence permit. The maximum length of solitary confinement is 4 weeks (article 37).

## DETENTION INFRASTRUCTURE

Denmark appears to use three facilities for the purposes of long-term immigration detention—two dedicated facilities and one prison with a specialized section.

The longest standing immigration facility is the **Ellebaek Prison and Probation Establishment for Asylum-seekers and Others Deprived of their Liberty** (formerly Sandholm Prison), which as of 2014 had a standard capacity of 118 (and a surge capacity of 137).[29]

In early 2016, Denmark opened a new facility at **Vridsløselille Prison**, a former prison now used exclusively for immigration related reasons, which has a capacity of 240.[30] Reportedly as of March 2016 rejected asylum seekers were locked in their cells at Vridsløselille Prison for 23 hours a day because the facility lacked the necessary personnel to ensure that detainees could securely walk freely around the facility.[31]

The country also has a specialized 10-persons unit in **Aabenraa Prison** for holding non-citizens on immigration charges.[32] Previously there was a similar unit also in Tønder prison.[33]

In addition, non-citizens may be confined in **Vestre Fængse Prison**, separately from other prisoners, for very brief periods—a day or two—before being transferred to the Ellebaek facility. In 2015, 497 migrants passed through Vestre Fængse.[34]

Refused asylum-seekers facing deportation are housed in the **Departure Center Sjælsmark**. [35] The centre opened in early 2015 on the premises of a former military base. As of March 2016 the centre was able to accommodate 130 persons, but this was planned to be extended to 400-700. Although it reportedly resembles a penitentiary—it is run by the Prison Service, has high metal fences, and employs armed guards—it does not operate like a detention centre because although people are obliged to stay overnight in the centre they can leave the facility during the day. Absence for a few days is sanctioned with detention at the Ellebaek centre. They are checked while leaving or re-entering the centre and there are guards inside the premises. Most of the rooms are double-rooms, there is a nurse, and food is served three times per day.[36]

The Ellebaek detention centre, Vridsløselille prison, and Aabenraa Prison are run by the Danish Prison and Probation Service, which is the institution managing prison establishments in Denmark. The Sjælsmark departure centre is managed by the

Immigration Service, but the Prison and Probation Service provides the personnel. [37]

The Prison and Probation Service informed the GDP that migrants have been occasionally kept in remand prisons. Reportedly, 127 non-citizens were detained in remand prisons in 2012, 82 in 2011, and 63 in 2010.[38]

**The Ellebaek detention centre.** Denmark's main secure dedicated immigration detention centre, the Ellebaek centre, was opened in late 1989 following criticism voiced in the country's Parliament over the practice of detaining migrants in remand prisons. The Ellebaek facility is run by the Prison and Probation Service, which is part of the Ministry of Justice. The facility is located on the site of former military barracks 25 kilometres north of Copenhagen. As of 2014 the standard capacity of the centre was 118. The capacity was 40 in 1990.[39]

There have not been any recent reports of overcrowding in Ellebaek. Statistics the GDP has collected concerning the centre's daily detainee population also do not show overcrowding. For instance, in February 2014 the centre was holding 105 non-citizens, of whom 87 were asylum seekers and 18 pre-removal detainees. The detainee population comprised three women and one minor.[40] On 8 May 2008, Ellebaek confined 58 non-citizens, while in February 2008 72 people, including 8 women.[41] According to government sources, 41 non-citizens were detained at the facility on 1 November 2008, while 73 on 7 November 2015.[42]

As of 2008, the facility was made up of five detention units, reportedly allowing for the separation of different categories and nationalities of detainees. There was one unit for women and another, small one, for families. Detainees suspected of planning to escape were detained in a high security unit. In addition the facility tends to confine asylum seekers separately from pre-removal detainees. Up to three people share 18m<sup>2</sup> cells.[43]

In 2008, the centre was visited by both the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and UN Special Rapporteur on Torture. Both international bodies noted that material conditions were "on the whole adequate" and "satisfactory" but below the standards found in the Danish prison establishment. In addition the CPT found that detention units were in run-down state, most of the cells needed cleaning, and recreational areas appeared in a bad state of repair. The CPT thus recommended to clean and refurbish the detention units, improve the bedding arrangements and make the environment more appealing.[44] During its 2014 visit, the CPT again noted that the material conditions were generally adequate but basic and run down and carceral and thus recommended Denmark to maintain the centre in a decent state of repair.[45]

The penitentiary-like character of Ellebaek has repeatedly been the focus of criticism. During its 2016 review of Denmark, the UN Committee against Torture reported that Danish officials consider the centre's prison-like structural layout and fixtures to be necessary for security reasons. The Committee recommended Denmark to alter the layout and fixtures so as to change the carceral appearance of the centre.[46]

These recommendation echoed observations make by the CPT in 2008. The Committee observed that detainees were free to move between units during the day

and could participate in a variety of activities offered at the centre, including very basic remunerated work and at least one hour outdoor exercise. That notwithstanding the CPT noted that the regime was based *mutatis mutandis* on that applicable to remand prisoners in Danish prisons, which did not reflect sufficiently the specificity of the establishment's functions and limited the number of activities available. In the CPT's view, both detainees and staff would benefit from a regime especially tailored to an establishment holding foreign nationals who are not serving sentences, but who are being detained administratively with a view to enforcing deportation.[47] Similarly, the centre used the same disciplinary system as prisons, however it did not have a security cell.[48]

As of 2008, the Ellebaek facility employed 55 full-time staff members, as well as three part-time security guards, four workshop supervisors, a teacher, a pedagogue, a gym instructor, and a maintenance worker. The CPT noted that the general atmosphere was relatively relaxed but it received several allegations of verbal abuse and rude behavior with racist connotations.[49]

There are two nurses on duty during weekdays and a doctor visits the centre twice per week. Access to medical care outside these days is possible in emergencies but it is the responsibility of prison officers to identify the detainee's need for medical attention. There also does not appear to be access to mental health assistance at the facility. Detainees who require psychiatric care have been transferred to the hospital adjacent to Western Prison in Copenhagen or the psychiatric department of Hillerød Hospital.[50]

In 2016 the UN Committee against Torture found that admission procedures at the Ellebaek centre during which decisions on fitness of non-citizens for detention and identification of victims of torture were made by a nurse, were inadequate. The Committee also expressed concern at the lack of a system for treating victims of torture upon their identification during immigration detention. The Committee recommended Denmark to: **(a)** put in place procedures for the systematic screening and medical examination of alleged torture victims by qualified personnel throughout the asylum process, including at places of detention such as the Ellebaek Prison; and **(b)** ensure that victims of torture are not held in places of deprivation of liberty and have prompt access to rehabilitation services.[51]

Following its 2014 visit the CPT also urged Denmark to ensure that all newly admitted detainees are as soon as possible clinically assessed by a medical doctor or a fully qualified nurse reporting to a doctor. In addition, the CPT said that specific screening should be put in place to identify victims of torture.[52]

In 2013, the Medical Group of Amnesty International Denmark released a highly critical report regarding the treatment of victims of torture. Of 43 immigration detainees examined by Amnesty, it found that 22 had been subjected to torture in their country of origin. Amnesty expressed concern about the lack of an appropriate monitoring system to ensure that victims of torture and other vulnerable persons were exempted from detention.[53]

Detainees are not allowed to keep their mobile phone and several have complained about expenses and procedures surrounding the use of the pre-paid phone cards. In 2015 the CPT recommended that authorities permit detainees to use their phones.

## Endnotes

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