

- **Please provide information on the current situation on human rights of older persons and existing legislation, policies and programmes to protect and promote the human rights of older persons.**

#### **The Consolidation act on Social Services**

The Consolidation act on Social Services constitutes the main framework of Danish senior policy. The objects of the Act are to offer counselling and support so as to prevent social problems and to offer a number of general services designed to serve as preventive measures and at the same time to satisfy the needs resulting from impaired physical or mental function or special social problems. Older citizens are, in cases where they fall within the above definition, included in the Act.

As provided in the Act every Danish citizen is entitled to services free of charge if they are in need, regardless of their private economic abilities. According to the act all decisions concerning help to elderly people have to be taken as an individual and concrete decision by the municipality. The system of care-services is thereby decentralised with the legal responsibility for ensuring the elderly both practical and personal help placed at the local government level.

The system of care-services is to be regarded as help to self-help. The system of care-services provides additional help for assignments which the elders are, temporarily or permanently, unable or very difficult to perform on their own. Aid is provided and organized in close collaboration with the beneficiaries.

The main objective of the help provided is to make the recipients able to be an active part of the community. If this is not possible, efforts are made to help the elder in a position to handle as many tasks as possible. These tasks may include the elder and the care worker working together to perform various tasks, so the elder as far as possible participate in task execution.

Older people's human rights in Denmark are thereby, in relation to social service, characterized by an equal and free of charge access to care-taking services.

#### **Legal Guardianship Act**

According to section 5(1) of the Legal Guardianship Act, a guardian can be appointed if it is required for any person who is incapable of caring for his or her own interests due to a mental disorder, including severe dementia, impaired mental function or another type of serious health impairment. In this connection it should be noted that severe dementia particularly aims at dementia conditional on age. However, the provision regarding guardianship is not limited to the protection of older persons. The scope of guardianship pursuant to section 5 can be limited so that it only extends to financial affairs or certain specific assets or matters. It can also be limited so that it only extends to personal affairs or certain specific personal matters, cf. section 5(3). The task of the guardian is to safeguard the interests of the person under guardianship. The guardian acts as a legal representative of the person under guardianship and the guardian should to the widest possible extent cooperate with the person under guardianship. Any person under guardianship pursuant to section 5 is legally competent unless he or she has also been deprived of his or her contractual capacity pursuant to section 6 of the Legal Guardianship Act. According to section 6, a person may be deprived of his contractual capacity in connection

with a guardianship under section 5 comprising financial affairs if such a measure is necessary to prevent the person concerned from putting his property, income or other financial interests at risk of significant impairment of value or to prevent undue influence. The deprivation of the contractual capacity cannot be limited to particular assets or matters. Deprivation of contractual capacity can only be done in reference to the financial affairs of the person concerned and does not influence on his or her personal affairs. The target group of section 6 is persons who act actively and therefore are considered to be at risk of making high-risk economic decisions. However, it is the intention that deprivation of contractual capacity is only to be used to a limited extent.

### **Protection of elderly foreigners**

The Danish immigrations authorities have divided the countries, whose nationals are required to hold a visa in order to enter and stay in Denmark, into three groups – the so-called a) asylum-countries group, b) immigration-countries group and c) tourism-countries group. The immigration-countries group is divided into two sub-categories; one that require a certain attachment to a person residing in Denmark, and one which just require that there is a host in Denmark, regardless of the attachment between the applicant and the host.

Elderly foreigners have the same access to visa e.g. as other foreigners. Thus, according to the existing practice visas are as a general rule granted to nationals from the immigration-countries group with a requirement for a certain attachment to a person residing in Denmark who is accompanying older, frail family members, even if the person in question does not have the required certain attachment to a person residing in Denmark. This practice does not apply to applicants who are nationals from countries in the so-called asylum-countries group.

Practice regarding applicants from the other two groups (the immigration-countries group without requirement of attachment to the host in Denmark and the tourism-countries group) is not limited to applicants who have a certain connection to a person residing in Denmark, and visas can therefore as a general rule be granted to applicants from these two groups who wish to accompany an older and/or frail family member to Denmark.

### *Family reunification*

According to the Danish Aliens Act, family reunification can – provided that certain conditions are met – be granted to a) spouses, registered partners and cohabiting partners and b) children under the age of 15.

The Danish Aliens Act provides elderly persons with the same access to e.g. family reunification as younger persons. Though, the explanatory memorandum to the Aliens Act refers to Denmark's international obligations, including the prohibition of discrimination. In instances where an elderly person is not able to fulfill the requirements because of age or age related issues the rules may be derogated. Thus, the rules regarding family reunification can in general be derogated with reference to severe illness and severe disability, and the requirement that the person living in Denmark is self subsistent is considered fulfilled if the person living in Denmark is a pensioner. An elderly person may – if exceptional reasons make it appropriate – acquire family reunification with an adult child living in Denmark if there is evidence of further elements of dependency, involving more than the normal, emotional ties, between parent and child, cf. European Convention on Human Rights article 8.

#### *Residence permit on humanitarian grounds*

A residence permit on humanitarian grounds can be granted to a foreign national, if significant humanitarian considerations warrant it. A residence permit on humanitarian grounds can for example be given based on a combination of circumstances, including an applicant's advanced age. A residence permit on humanitarian grounds based on an applicant's advanced age can also be granted to a widow or a widower, if among other circumstances the spouse is buried in Denmark.

#### *Permanent residence permit*

Aliens, who have held a Danish temporary residence permit for at least four years can apply for a permanent residence permit. With a permanent residence permit, the person in question no longer needs to apply for an extension of his/her residence permit but can reside in Denmark for as long as wished. In order to qualify for a permanent residence permit, the foreigner must obtain at least 100 points, awarded by meeting certain requirements – among these a requirement of being in regular employment, but this rule is derogated for old age pensioners.

#### *Acquisition of Danish nationality*

With respect to acquisition of Danish nationality older persons must fulfill the same conditions as other groups of applicants. Thus, there is no special legislation which applies exclusively to older persons.

- **Please provide information on existing legislation, policies and programmes to address discrimination against older persons, including measures to address multiple discrimination**

In May 2008 the Danish Parliament adopted the Act on The Board of Equal Treatment. The Board of Equal Treatment, which came into force on 1 January 2009, covers all fields of discrimination stipulated in the Danish anti-discrimination legislation today, including the Act on Prohibition against Discrimination on the Labour Market etc.

The Board may consider complaints on ground of gender, race, colour, religion or belief, disability, political opinion, age or sexual orientation, national, social or ethnic origin. An older person, who e.g. feels discriminated against on the labour markets due to that person's age, may thus bring the case before the Board. The Board may award compensation and set aside dismissals to the extent provided for by the said acts, etc.

The decisions made by the Board cannot be appealed against to any other administrative authority. Once the Board has made a decision about a complaint, either party may bring the matter before the courts. Where the decisions made by the Board are not observed, the Board shall, at the complainant's request and on his or her behalf, bring the matter before the courts.

- **Please provide information on existing legislation, policies and programmes to address violence and abuse against older persons in the private and public spheres.**

#### **The Danish Criminal Code**

The Danish Criminal Code – including part 24 on sexual offences, part 25 on offences of violence against the person, part 26 on offences against personal liberty, part 27 on offences against personal honour and certain individual rights and part 28 on offences against property – also apply to offences against older victims. Furthermore, it follows from section 81(11) of the Danish Criminal Code that in determining the penalty it shall in general be considered an aggravating circumstance that the offender has taken advantage of the victim's defenceless position. The provision aims at crimes which are committed towards vulnerable persons, including older persons.

### **The Consolidation Act on Social Services**

The Consolidation Act on Social Services includes provisions to protect frail, elderly people from abuse. To this end, the most important provisions are section 82 (1) and sections 124 to 131.

Section 82 (1) entails a commitment for the authorities to avoid care failures of persons with substantial impairment of mental functions who are unable to attend to their own interests. Sections 124 to 131 allow forcible measures and other restrictions of the right of self-determination, but set up strict limits for the use of such measures. The latter provisions apply to persons with substantial and permanent impairment of mental function who receive personal and practical help and socio-pedagogical assistance, under sections 83-87, treatment under sections 101-102, or social or other activities under sections 103-104, and who do not consent to measures under sections 125-129. It is a condition that the requisite professional documentation of the impairment of mental function is available.

The forcible measures and other restrictions of the right of self-determination, that are allowed in certain, narrowly defined situations pursuant to sections 124 to 131, include among other things the use of personal alarm or paging systems and the use of physical force in restraining a person.

The purpose of these provisions is on the one hand to enable the authorities to carry out their commitment to avoid care failures even when it is necessary to use for instance forcible measures to avoid bodily harm. And on the other hand to prohibit the use of any forcible measures and other restrictions of the right of self-determination in the system of long-term care for elderly people that are not absolutely necessary.

This is why there are very strict limitations on the lawful use of the mentioned measures. In order to avoid too broad an interpretation of the extent of the provisions, the description of the content of the measures, the use of which is allowed, is very precise. Furthermore, there are strict rules as to when the measures can be used lawfully. This includes among other things strict regulation as to what procedural steps must be observed before and while employing forcible measures and other restrictions of the right of self-determination. For instance, the mentioned measures may not be used unless the authorities have beforehand tried to obtain a person's consent to the desired initiative in all ways possible.

It is the general rule that the local authority is the body responsible for deciding in each concrete case whether an initiative shall be taken pursuant to one of the provisions concerning the use of forcible measures and other restrictions of the right of self-determination. This rule represents some form of protection

against abuse of frail, elderly people since it secures the authorities access to knowledge as to the extent of the use of such measures.

Decisions by the municipal council pursuant to one of the above mentioned provisions may be brought before the social complaints board in pursuance of the rules of Part 10 of the Act on Legal Protection and Administration in Social Matters. In some cases, it will also be possible to bring a case before the National Social Appeals Board if the board finds the case to be of general or principle interest.

Another safeguard against abuse of elderly people is the local municipal authorities' responsibility to supervise the carrying out of the tasks that fall within their responsibility. As part of this duty of supervision, the municipal council shall perform at least one announced and one unannounced visit every year in nursing homes etc.

In relation to protection against abuse of elderly people, the Ministry of Social Affairs further finds it relevant to mention a new initiative on reporting of unintended incidents in the social sector. This initiative is expected to draw attention to any potential problems of abuse against elderly people in the system of long-term care.

Furthermore, the Ministry of Social Affairs continuously works towards improving the quality of the long-term care system, among other things in order to prevent problems with abuse of elderly people. The ministry is among other things in the process of implementing recommendations from a national action plan on dementia. One of the intended outcomes of this work is the development of tools to help care workers improve their work with elderly people with dementia and severe behaviour disorders.

- **Please provide information on existing legislation, policies and programmes addressing old age sensitive services and facilities, such as those related to mobility, age-adequate design, long-term care, primary health care and adult and continuous education.**

### **Health care services**

According to Danish legislation all residents are entitled to public health care benefits in kind. There are no age-specific health services; except when there are professional reasons for this (e.g. age-conditioned screenings, preventive health examinations for children) Most of the primary and municipal services are aimed towards older persons as well as other citizens, e.g. the right to rehabilitation therapy, home nursing, preventive health and health promotion in the municipalities, special dental care etc.

A municipal healthcare service that is specifically relevant to older persons is the right to home nursing. The largest target group for home nursing is older persons.

All citizens in the municipality are entitled to home nursing. When prescribed by a general practitioner, the municipalities must provide home nursing free of charge. Moreover, the municipalities are obliged to provide all necessary appliances free of charge. Home nursing provides treatment and nursing at home for people who are temporarily or chronically ill or dying.

Home nursing ensures the possibility for older persons to stay in their home as long as possible. Furthermore home nursing complies with the principle of delivering care at the lowest and most efficient level.

The electronic medicine handling system "Det fælles Medicinkort – FMK" will provide doctors, practitioners, nurses and other healthcare professionals across the health care sector access to updated information about each citizen's consumption of medicine when necessary for the actual treatment. FMK is under implementation in the hospitals. On a longer term the system will also be implemented in the primary health care sector and then the municipal home nursing will also have access to the above-mentioned updated information in FMK.

#### *National plan of action for the elderly medical patient*

In spring 2010 the Danish Government made an initiative towards the making of a national plan of action for the elderly medical patient.

To ensure a strong professional foundation the Government has asked a steering committee commissioned under the National Board of Health to make a professional presentation for the national plan of action for the elderly medical patient.

The plan focuses among other things on:

- the strengthening of coherence in patient care
- better quality
- preventive initiatives to reduce the number of (re)admissions
- initiatives to support the initiatives of patients and relatives

The above will be supported by and based upon:

- Evidence and best practice
- Sharing of knowledge and implementation of best practice

The National Board of Health delivers its professional presentation for a national plan of action to the Danish Minister for the Interior and Health at the end of May 2011. After this the professional presentation will be included in a political process, where the Government will begin negotiations for a national plan of action for the elderly medical patient. The national plan of action for the elderly medical patient is expected to be finished in the autumn of 2011.

#### **Home care services**

The fundamental principles of Danish home care is that it should be offered on the basis of individual needs and that it is free of charge – except temporary help which has an income dependent user charge. The goal of the help offered is to allow elderly people to stay in their own homes as long as possible and to prevent the individual from further loss of physical and mental health. This means to help people in their own homes even when they need help to clean the house or get out of bed in the morning. All help according to the act on social service has to be seen in relation with the fundamental idea of "help to self-help". Today around 200.000 people receive permanent home care services with a number of care hours between 1.0 and 1.1 mio. being delivered every week to 25 pct. of all citizens aged 67 and older.

#### *Quality standards*

The local council is required to set up and publish so-called quality standards. The standards publish the quality and price requirements made to all suppliers

of personal and practical assistance. The quality standard must not only ensure providers information about the services, but also allow the citizens to fully know their rights in relation to the local authority. The quality of the standards and the actual services provided for the elderly must of course meet the requirements conditioned in the act on social services.

The quality standard and the operational goals, including the quality requirements made to the supplier, are tools which can ensure agreement between the policy goals, the actual exercise of authority and the service provider. According to the rules, at least once a year the local council is required to prepare a quality standard and follow up on the quality and management of the assistance.

### **Adult and Continuous Education in Denmark**

In Denmark, there is a tradition of improving the competences of the workforce beyond compulsory stages of education. Denmark is one of the countries where most people participate in education: adult education and continuing training, on-the-job competence development, and liberal adult education activities in their leisure time. The general notion is very much that learning is a lifelong activity.

The Danish legislation and programmes for adult and continuous education can be divided in four main areas: adult vocational training, non-formal adult education, the general adult education programme and adult higher education.

#### *Denmark's Strategy for Lifelong Learning*

In spring 2007 the Government drew up a report concerning Denmark's strategy for lifelong learning as part of European cooperation on education.

The strategy for lifelong learning includes nine objectives, including the following:

- A coherent education system from pre-school to higher education must provide the opportunity for everyone to acquire excellent basic skills, a qualifying education and a solid foundation for lifelong learning. There must be equal opportunities and room for all.
- The education programmes must be worldclass. The education system is to foster talent and be more accommodating to weak learners. Quality is given pride of place, and education must match the needs of the labour market and the society.
- There must be relevant, high quality adult education and continuing training for everyone in the labour market which matches the needs and puts particular emphasis on the need for lifelong skills upgrading for those with the lowest level of education.
- Systematic competence development in the workplace should be strengthened in both public and private enterprises.
- All forms of education and learning should be based on and build on the knowledge, skills and competences of individuals. In adult education and continuing training new and improved opportunities are to be created promoting visibility and recognition of an individual's prior learning.

In order to fulfil the overall objectives of education and lifelong skills upgrading, the Government has prioritised a number of specific goals and initiatives within the overall education system and in the area of adult education and continuing training.

For example a legislation on increased recognition of prior learning in adult education and continuing training, from general adult education to diploma level entered into force in 2007. The aim of the law is to create better opportunities for individuals to have their knowledge, skills and competences assessed and recognised within the adult education and continuing training system regardless of where they are acquired. This is to promote the participation by adults in adult education and continuing training and to improve their opportunities in the labour market.

### **The build environment**

The build environment in Denmark is regulated by The Building Regulations 2010 (BR10). BR10 regulates erection of new buildings, extensions to buildings, conversion of and any other alterations to buildings and any significant change of use of buildings as provided for in the Building Act or the Building Regulations; and with the demolition of buildings.

Chapter three in the Building Regulations contains general regulation with regard to accessibility to the build environment. This complex of regulation defines the level of accessibility and therefore mobility on a general basis in Denmark.

The Building Regulations do not regulated on the basis of age and the Danish regulation in this area is aimed towards all citizens.

Nevertheless it is possible the general initiatives in the area of Danish Enterprise and Construction Authority can contain single initiatives aimed at elderly people.

- **Please provide information on existing legislation, policies and programmes concerning social protection measures as well as the right to work and the right to social security with regard to older persons.**

### **Labour market situation in Denmark in relation to older workers**

The prohibition against discrimination on the labour market due to age is specified by the discrimination act (see Consolidation Act nr. 1349 of 16 December 2008), which among other things, contains provisions that implements the Council's directive 2000/78/EF of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Along with other European countries, Denmark is in a process of significant population ageing, where the working age population is shrinking. Therefore, also Denmark consider ensuring that older generations can stay longer in the labour market as a key opportunity for tackling the challenge of demographic ageing.

#### *Progress in employment by raising the retirement age*

Several initiatives and policies have been introduced over the last 10 years to change the incentives and the culture in order to raise the retirement age and ensuring that older generations can and will stay longer in the labour market.

I.e. under the heading of "senior policy", a number of special initiatives by the Ministry of Employment have been targeted at achieving a better integration of



older workers on the labour market. The primary focus is to rise the retirement age, by influencing the companies to hold on to the older workers for longer time, for instance by introducing special senior arrangements.

Between 2010 and 2012 a total of DKK 12 million (around EUR 1.6 million) is given to different projects aimed at increasing job security for older workers. These projects all aim at influencing the maintenance practices of older workers in Danish companies by giving advice about senior policies at the firm level. A special web-site has been established by the Ministry of Employment with information and advice about senior policies at the firm level ([www.seniorpraksis.dk](http://www.seniorpraksis.dk)).

*Job recruitment and access to employment for older unemployed workers*

Job recruitment and access to employment for older unemployed workers is also in focus of policies and initiatives to combating age discrimination in employment.

Concerning the targeting of older workers in active labour market policy, they in principle have the same rights and obligations as other unemployed individuals. Thus they have the right to unemployment benefits or social assistance and to receive job-training and other offers according to the active labour market policy.

During the last 10 years, financial assistance is given to the self-activation of unemployed older workers in their creation of networks and activities to develop new areas of employment. In July 2010, there were 22 networks located all over Denmark with a total of around 1.600 members.

As concerns the right to social protection, please see previous answers.

- **Please provide information on existing legislation, policies and programmes to enhance participation and active engagement of older men and women in community, political and cultural life.**

The Consolidation Act on Social Services states that individuals with permanent physical or mental impairment can receive different types of aids if the equipment could significantly mitigate the impact of the impairment or could significantly ease the daily life. The help is provided on the basis of a specific and individual assessment. Examples include various mobility aids, including walkers and crutches, and assistive devices for use in cooking and eating, including specially designed utensils and cutlery.

All municipal councils shall offer rehabilitation measures to remedy the impairment of physical function caused by a disease which is not treated in connection with a stay in hospital.

Rehabilitation may include both somatic and psychiatric patients, patients with a somatic rehabilitation needs. For example can the local council offers of rehabilitation be appropriate for a elderly person who is impaired after prolonged bed rest at home because of flu, but the offer is also given to elderly who have been injured by a fall, and are of a need to reclaim lost or reduced functional ability.

The purpose of rehabilitation is to ensure that the citizens achieves the same level of functionality and thus are able to participate in the society to the same extent as before rehabilitation.

- **Please provide information on existing legislation, policies and programmes to ensure access to justice and judicial remedies for violations of the rights of older persons, including references to specific mandates of institutions such as national human rights institutions to address their rights.**

According to the Danish Administration of Justice Act, victims and offenders have access to assistance, including legal assistance, in connection with the hearing of a criminal case. These rules also apply to older people. Furthermore, the Danish Administration of Justice Act states that the police or the prosecution shall inform the court if particular consideration is needed in connection with the appearance of a witness in a criminal case due to for example the age of the witness.

Regarding enforcement of prison sentences, the Danish Act on Enforcement of Sentences, etc. states that the Minister of Justice or the person so authorised may decide that a convicted offender must be placed in a hospital, in family care, in a suitable home or an institution temporarily or for the entire or remainder of the sentence when due to for example the convicted offender's age.

Furthermore, the Danish Administration of Justice Act contains a rule on court hearings where for example hearing impaired people participate, cf. section 149(5). This rule also applies to older people.”

As previously mentioned in May 2008 the Danish Parliament adopted the Act on The Board of Equal Treatment. The Board of Equal Treatment, which came into force on 1 January 2009, covers all fields of discrimination stipulated in the Danish anti-discrimination legislation today, including the Act on Prohibition against Discrimination on the Labour Market etc.

The Board may consider complaints on ground of gender, race, colour, religion or belief, disability, political opinion, age or sexual orientation, national, social or ethnic origin. An older person, who e.g. feels discriminated against on the labour markets due to that person's age, may thus bring the case before the Board. The Board may award compensation and set aside dismissals to the extent provided for by the said acts, etc.

The decisions made by the Board cannot be appealed against to any other administrative authority. Once the Board has made a decision about a complaint, either party may bring the matter before the courts. Where the decisions made by the Board are not observed, the Board shall, at the complainant's request and on his or her behalf, bring the matter before the courts.