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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Thirty-third session

SUMMARY RECORD OF THE 35th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 10 November 2004, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fourth periodic report of Denmark

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Fourth periodic report of Denmark (E/C.12/4/Add.12; E/C.12/Q/DEN/2; HR/CESCR/NONE/2004/6; HRI/CORE/1/Add.58)

At the invitation of the Chairperson, the members of the delegation of Denmark took places at the Committee table.

Mr. VINTHEN (Denmark), introducing his country's initial report (E/C.12/4/Add.12), said that the effective and independent monitoring of compliance with international human rights standards was a priority for his Government, both at home and abroad. Great importance was attached to meeting the economic, social and cultural needs of the Danish population, to which about 50 per cent of the national budget was allocated. Solidarity with peoples in developing countries was reflected in spending on development assistance, which would remain significantly higher than the United Nations target of 0.7 per cent of GNP.

While the Government had repeatedly stressed respect for the international human rights instruments that Denmark had ratified, it did not believe that it was necessary to incorporate those instruments into domestic legislation. Such action would change nothing, since the instruments had already been invoked in, and applied by, Danish courts. Domestic case law concerning the Covenant had been established, thus demonstrating Danish lawyers' and judges' familiarity with it.

Several initiatives had been launched to promote the integration of newly arrived immigrants, recognized refugees and long-term residents, including the adoption of legislation improving vocational training and employment possibilities, and increasing the number of Danish language courses. The Danish Institute for Human Rights had been established, with an annual budget of 6 million Kroner. The Institute was competent to handle individual complaints of discrimination on grounds of race and ethnic origin.

Employment rates, already among the highest in the world, would be increased in order to maintain the Danish welfare system at its current level in the future. Several measures had been adopted to increase the supply of labour, such as ensuring that unemployed persons returned to employment as quickly as possible, encouraging young persons to complete their education promptly, and urging older people to take later retirement.

Ms. LYKKE THOMSEN (Denmark) said that her Government had, over several years, consistently demonstrated a willingness to increase the degree of responsibility assumed by the Greenland authorities. The parliamentary Joint Commission on Self-Governance

had established two working groups to examine (a) economic and business development, and (b) minerals and subsurface rights. And it had requested the Danish Ministry of Justice to study the constitutional procedure for the transfer of additional powers to Greenland.

Steps had been taken towards enabling Greenland to have an independent foreign policy, and to allow it to exert influence on matters that concerned the territory directly. Those steps were in accordance with the Prime Minister's stated aims of influence and cooperation, as defined in the 2004 Itilleq Declaration. The Declaration had been applied when Denmark and the United States of America had signed agreements in August 2004 updating the 1951 defence agreement, and also covering economic, technical and environmental cooperation in Greenland, in the context of the upgrading of the Thule radar facility.

The CHAIRPERSON invited Committee members to put questions to the delegation.

Articles 1-5 of the Covenant

Mr. ATANGANA asked under what circumstances a decision would be taken to remove a judge from office, and whether that procedure was invoked in addition to disciplinary action.

It would be useful to know the number of cases in which the Covenant had been invoked before Danish courts since consideration of the State party's third periodic report.

Mr. MALINVERNI asked whether any human rights treaties had been incorporated into Danish legislation and, if so, what differences in juridical regime had ensued.

He requested additional information on how competence to receive individual complaints was shared between the Danish Institute for Human Rights and ordinary courts.

It was difficult to understand why the age of 24 had been selected as the minimum age for foreign spouses to qualify for family reunification, particularly since such a provision was at variance with several international instruments, including the Covenant. He enquired whether that provision had achieved the purpose of reducing the risk of forced and arranged marriages with the aim of obtaining a residence permit.

Additional information should be provided on specific educational measures to combat discrimination, particularly in the light of the high number of acts of discrimination that had reportedly occurred in the State party.

Mr. SADI said that it was difficult to understand the Government's position on incorporating the Covenant into domestic legislation, given that it was a central issue for the Committee, which had issued clear guidelines stating that the Covenant should either be incorporated or faithfully reflected in States parties' legislation. It would be useful to learn the results of the assessment that had been undertaken on whether domestic law and practice were in conformity with the Covenant, and what steps had been taken to ensure such conformity. It was unclear how the State party had reached the conclusion that it fully respected the provisions of the Covenant. He would appreciate details of case law relating to the application of the Covenant.

He would welcome an assessment of the degree of success of the Government's policy on integrating people of different cultures and religions. It would also be useful to learn how the system of "aggregate ties" with Denmark and other countries was applied with regard to the right to family reunification and, in particular, how "aggregate ties" were measured.

Mr. RIEDEL said it was difficult to understand why the State party had not incorporated the Covenant into domestic legislation, particularly in the light of the Committee's General Comment No. 3. Despite adopting an exemplary position on human rights, why had Denmark not advocated incorporation of the Covenant, thus encouraging other States parties to follow suit?

Mr. KOLOSOV asked whether the decrease in the population of Greenland reflected a general national trend, or whether that decrease was specific to Greenland. Clarification should also be provided on reports that bilingual children in child-care institutions were not allowed to use their mother tongue.

Mr. TIRADO MEJÍA asked what was the Danish Government's position with regard to the draft optional protocol to the Covenant. He wished to know whether certain provisions of the Covenant were classed as "programmatic" because the Government was unable to fulfil them, and whether the Government's position on the recommendations of the Incorporation Committee had altered since the submission of the fourth periodic report. He enquired what was the composition of the Incorporation Committee (report, para. 52), whether it contained any civil society representatives and whether it took the Paris Principles into account in its work.

Mr. CEAUSU said that, on the issue of incorporation, the State party should bear in mind the provisions of article 2 (1) on the full exercise of the rights set forth in the Covenant. It should also take into account the General Comments that had been issued by the Committee, which were widely considered to provide a standard interpretation of the provisions of the Covenant. He asked why the Incorporation Committee had only recommended the incorporation into domestic legislation of three of the international instruments to which Denmark was a party, a recommendation that seemed discriminatory. He wished to know why the Government considered that incorporation of the Covenant would not be politically appropriate. The Government should re-examine the situation of the Covenant in relation to domestic legislation, and should ensure that all international instruments ratified by Denmark were granted equal treatment in terms of incorporation into Danish legislation.

He noted with satisfaction that Denmark had introduced a wide range of legislative provisions in an effort to combat xenophobia, and commended the administrative measures taken to strengthen police and public authority activities to eliminate racist propaganda. He asked how those provisions and measures were being implemented, and requested the delegation to provide specific examples of court cases and sentences for racially motivated crimes.

Ms. BRAS GOMES said that the European Commission against Racism and Intolerance had reported in 2000 that ethnic and religious diversity in Denmark was increasing, and that Danish society was reluctant to accept that change. She asked whether that was still the case, or whether efforts had been made to alter the situation and encourage integration of ethnic and religious minorities into Danish society. She wished to know how the role of the Board for Ethnic Equality could be strengthened. Why were women underrepresented in public and political life and in the private sector? And were efforts being made to encourage female participation?

Ms. IYER wished to know whether the Danish Institute for Human Rights only made recommendations or whether it helped to implement them. She asked what stage proceedings in the Thule case had reached, and whether tribal laws had been codified in Denmark.

Mr. KERDOUN asked whether there was a desire to increase domestic autonomy in Greenland; although it was not a member of the European Union (EU), Greenland still remained under the sovereignty of Denmark. In the referendum on home rule, 70 per cent of the population had voted in favour of autonomy. He wished to know whether the electorate who had voted in that referendum had been entirely Inuit, or whether any Danes had also participated.

Ms. BARAHONA RIERA enquired whether the Danish Institute for Human Rights had the authority to receive complaints about all types of discrimination and, if so, how many it received and what types of discrimination were the most common. Discrimination on a variety of grounds, including race, colour and sexual orientation, was forbidden by Danish law, and she wondered if any legal provisions prohibited discrimination on grounds of gender. She asked whether the Institute provided victims with legal assistance to enable them to go to court. Had any kind of positive discrimination measures been taken to promote equality for women in employment?

Mr. GRISSA asked why, despite the fact that men and women were officially equal before the law in Denmark, on average men earned more than women.

Ms. UNDALL-BEHREND (Denmark) said that the Incorporation Committee was not a government committee. It was chaired by a judge from the Supreme Court and a judge from the European Court of Human Rights, and members included representatives of the Danish Bar and Law Society, the Danish Institute for Human Rights, the University of Copenhagen, the press and the Board for Ethnic Equality. Her Government attached great importance to the provisions of the Covenant, but had chosen not to incorporate it into domestic legislation. Denmark had a dualist legal system, under which the Government was obliged to ensure that domestic legislation was brought into line with any international instrument it had ratified. In the event that a citizen did not agree that domestic legislation gave full effect to the provisions of an international instrument, he or she could invoke that instrument before the courts and administrative authorities. The courts applied two unwritten rules: the rule of interpretation, which stated that in case of doubt over the interpretation of domestic law, the interpretation that best complied with existing treaty obligations should be followed; and the rule of presumption, which presumed that the Danish Parliament had not intended to pass legislation that was contrary to Denmark's international obligations, under which new domestic legislation must be interpreted in accordance with existing treaty obligations.

The Covenant had been invoked three times before Danish courts, and had been mentioned in court recommendations, as had the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights. Although the European Convention on Human Rights had been incorporated in 1992, public awareness of human rights issues had increased considerably since that time, and the Covenant was well known among lawyers and justice officials, and among the public at large. Since it was not legally necessary to incorporate the Covenant, the Government considered that it would not be politically desirable to do so.

Mr. VINTHEN (Denmark) said that the Danish Institute for Human Rights only received complaints relating to racial and ethnic discrimination. The complaints mechanism within that body was new, and its competence had not yet been expanded to deal with all types of discrimination. His delegation would endeavour to provide further information on the Institute's work as soon as possible.

Ms. BARNHOLT (Denmark) said that the language policy in pre-primary education aimed to teach children Danish as early as possible, in order to prepare them for primary school. Bilingual children were not forbidden from speaking their mother tongue in pre-school education, but in many cases pre-school teachers only spoke Danish.

Ms. LYKKE THOMSEN (Denmark) said that positive steps had been taken towards expanding Greenland's autonomy, which was an ongoing process. The aim was to establish a way in which Greenland could remain within the unity of the Realm, but gain independence. Total independence was not being pursued at present for economic reasons. Greenland had initially joined the EU as a member State with Denmark, but had withdrawn in 1985. It had concluded a fisheries agreement with the EU and had been granted the status of an EU overseas territory. Efforts were currently under way to develop a partnership agreement between Greenland and the EU. Although the original negotiations on the fisheries agreement had been carried out by Danish officials with Greenland as an observer, that situation had since been reversed, and officials from Greenland now engaged directly in negotiations with the EU.

Regarding the referendum on home rule, she said that figures on the ethnic composition of the electorate who had participated had not been collected. Turning to the issue of population statistics raised by Mr. Kolosov, she said that there had been an error in the data submitted in the periodic report. On 1 January 2003, the total population of Greenland had been 56,676, with Danes and other nationals numbering 6,755; there had been 12,040 Greenlanders resident in Denmark.

Mr. VINTHEN (Denmark) said that the Thule case was still pending before the European Court of Human Rights.

According to a recent report of the Danish National Institute of Social Research, men earned 12 to 19 per cent more than women. The difference in wages was due to the fact that women were usually less educated and had less work experience than men. Other reasons included: the absence of some women from the labour market because of maternity leave and family responsibilities; the fact that many women worked part-time; and the tendency of men and women to keep to traditionally "male" or "female" sectors of the labour market.

Ms. UNDALL-BEHREND (Denmark) said that a judge could be removed from office on the grounds of absenteeism, serious illness or a criminal conviction.

Mr. MARTYNOV asked the delegation to provide data on Danish development assistance to other countries over the past few years. Did the Government take steps to ensure that the countries receiving such assistance gave effect to economic, social and cultural rights?

Mr. GRISSA said that the delegation's reply to his question concerning women's participation in the labour force seemed to contradict the information provided in the report. For example, in 2000, the activity rate for men had been only slightly greater than that for women and more women were enrolled in higher education than men. The differences in remuneration between genders must be due to unequal treatment of men and women in the labour force.

Mr. VINTHEN (Denmark) said that, in the provision of development assistance to other countries, no distinction was made between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. Human rights were the focus of all development assistance programmes.

Mr. KOLOSOV said that, according to some sources, members of national minorities were subjected to discriminatory treatment at employment centres. He wished to know whether that information was correct. A survey by the Documentary and Advisory Centre on Racial Discrimination had revealed that some teachers who could speak the same language as a child from a minority group were prevented from doing so. Was the Centre a reliable source of information?

According to the delegation, the population of Greenland was increasing. However, a Danish newspaper had recently indicated that child mortality in Greenland was four times higher than in Denmark and much higher than among similar ethnic populations in Alaska and Canada's North-west Territories. Poor living conditions, alcoholism among pregnant women and the lack of maternity hospitals in small towns and villages were among the factors contributing to the high mortality rates. He asked the delegation to comment.

Ms. BRAS GOMES said that in 2004 the Government had introduced a new bill with a view to restructuring government administration and social assistance. She wished to know how that bill would strengthen the protection of disadvantaged and marginalized groups and ensure their right to social assistance.

The Government had justified the introduction of a starting allowance by the need to promote the integration of foreigners into the labour market and Danish society. However, according to the Centre for Alternative Analysis, most people receiving that allowance were nationals of underdeveloped countries, which implied that they had been unable to find work. In April 2004, the Centre had concluded that people receiving the allowance had few possibilities of finding employment. She asked the delegation to comment on the situation.

She expressed concern that the new provision on the supplementary payment to spouses resulted in indirect discrimination against women, especially those from ethnic minorities, because they had difficulty in finding work. She was also concerned that women would become dependent on their spouse because they were no longer entitled to receive their own allowance.

Mr. CEAUSU asked whether immigrants were given a minimum period in which they were expected to learn Danish. It would also be useful to know approximately how many people enrolled in training and language courses every year and how many of those who completed the courses managed to find employment. What was the percentage of immigrants and descendants of immigrants among government employees? Finally, could the delegation explain why, according to the Ministry of Employment, there had been a significant reduction in the number of people receiving the starting allowance?

Mr. TEXIER asked whether the unemployment rate continued to decline. According to table 2 of the report, the only two categories where the unemployment rate had risen were persons aged 55-59 and women. Was that trend continuing? Data on unemployment in Greenland and on clandestine employment in Denmark would also be welcome.

He would be interested to know whether the minimum wage was sufficient for the employees concerned to ensure decent living conditions for themselves and their families, in accordance with article 7 of the Covenant. Had the Government received complaints from women concerning violations of the equal pay for equal work principle?

The World Trade Organization had requested the Government to amend its legislation to ensure equality between nationals and non-nationals with regard to the right to form trade unions and organize collective bargaining. Had the Government taken steps to do so?

Mr. MARTYNOV said that, according to some sources, employment had started to fall sharply in 2003; unemployment among young graduates had doubled over the past two and a half years; and the number of the chronically unemployed had increased by 50 per cent over the past three years. At the same time, the Government had cut funding for education and vocational training. He asked whether the Government planned to increase such funding.

He wished to know how the Government had reacted to the concerns of the European Commission that, in order to secure the support of certain sectors of the population, mainstream political parties in Denmark tended to portray immigrants as a problem to society, thereby contributing to a climate of xenophobia and intolerance. That might possibly lead to the adoption of restrictive policies with regard to immigrants, refugees and asylum-seekers.

He wished to know why cases involving occupational mental health were on the increase. Did the Government intend to withdraw its reservation under article 7 (d) of the Covenant and ratify ILO Convention No. 174 concerning Prevention of Major Industrial Accidents?

He asked how the Government was dealing with the phenomenon of wage-dumping, which had resulted from the influx of workers

from East European countries into Denmark following the enlargement of the EU. Those workers had the right to stay three months and earned the same wages as they would have earned in their home countries.

In 2003, the Government had proposed a ban on agreements between employers and trade unions under which workers were forced to join a particular trade union. However, one of Denmark's major political parties had later withdrawn its support for such a ban. Could the delegation comment on the current situation?

Mr. VILHELMSSEN (Denmark), replying to the question about employment centres in Denmark, said that an investigative journalist had rung up public employment centres in 2000 and 2004 masquerading as an employer who made discriminatory demands regarding prospective employees. After the 2000 revelations, the former Minister of Labour had issued recommendations to the public employment service since the Government and the Director of the National Labour Market Authority regarded such discrimination as absolutely unacceptable. As the recommendations had not been fully complied with, the Director had taken a number of steps to ensure that the public employment service did not engage in discriminatory placement activity or contribute to discrimination in the labour market. She had sent a letter to that effect to all staff members of the employment service and had asked the chief of the service to convene regular meetings on the subject. Staff guidelines on handling situations in which employers made discriminatory demands had been published, and standard letters and information material were sent out to the employers concerned. The authorities had also conducted their own tests, hiring external consultants to telephone employment centres and pose as employers seeking to impose unacceptable conditions. The preliminary results indicated that the problem was not as widespread as had been feared.

Ms. BARNHOLT (Denmark) said she was aware of the telephone interviews conducted by the Documentary and Advisory Centre on Racial Discrimination regarding children's right to use their mother tongue in 60 childcare institutions. Most of the institutions reported no problems among the children. In three or four institutions, however, there was a feeling that the children's cultural right to speak their mother tongue was being violated. The Ministry of Education and the Ministry of the Family were aware of the problem, and the general policy was to allow children to speak their mother tongue. Increasing emphasis was being placed on providing training courses in teaching Danish as a foreign language for teachers with a foreign background.

Ms. LYKKE THOMSEN (Denmark) said that Greenland's high child mortality rate was a matter of great concern. It was related to the harsh natural environment and the scattered settlement and demographic patterns. Greenland was working closely with the Arctic countries on the problem, inter alia through an ongoing Children and Youth Project in the framework of the Arctic Council. A prevention centre in Greenland focused on child health care and safety, and in 2003 a documentation centre on children and youth had been established. Both projects enjoyed support from the Danish health authorities and the Arctic Council. Although the infant mortality statistics were alarming, there had actually been a steady decline in the rate.

The overall unemployment rate in Greenland was 7.4 per cent. The rate was slightly lower for women than for men.

Mr. TORP (Denmark) said that, according to the findings of a study released the previous day, the starting allowance involving lower social assistance benefit had had a positive impact on employment. It should be borne in mind that the level of social assistance in Denmark was one of the highest in the world. The fact that it often exceeded prospective earnings from unskilled jobs advertised was a major problem. The starting allowance had been introduced to address that problem but the Government had been adamant when the bill was drafted that it should be compatible with Denmark's obligations under international treaties, especially with regard to the right to social security and an adequate standard of living and the prohibition of any form of discrimination. Everyone who was entitled to assistance on the basis of the new rates would receive as a minimum assistance corresponding to government educational support rates, which were the subsistence rates granted to students. In addition, the provisions of section 81 of the Active Social Policy Act and section 35 of the Integration of Foreigners Act had been retained. As a result, persons affected by the new rates could be granted assistance for reasonable specific expenses in cases where defrayal of the expenses would seriously undermine their ability to support themselves and their family. Foreigners covered by the Integration Act could also be granted assistance to cover specific expenses arising from their participation in the introductory programme.

Thus, the starting allowance scheme did not involve discrimination but was based on objective circumstances. Danish legislation did not abnormally restrict the access of foreign nationals to social assistance. Many countries applied eligibility criteria for full benefits based, for example, on the number of years a person had been active in the labour market. The starting and introductory allowances were non-discriminatory employment-promoting arrangements to ensure that people did not earn more from social assistance than from employment.

With regard to the spouse allowance in lieu of benefit to both spouses, availability for work was a prerequisite for the granting of assistance since the Danish system was based on the principle of self-support and spouses had a duty to support each other. Assistance could not be granted to a spouse who was not available for work. It would be surprising if the provision of social assistance to a family with a child amounting to the equivalent of some 2,000 euros was inconsistent with the requirements of the Covenant.

Mr. VILHELMSSEN (Denmark) said he had no data regarding undeclared work. However, the Government had recently introduced new measures that would increase the risk of detection and impose harsher penalties for social fraud of that kind.

Denmark continued to invest in education as part of its active labour-market policy, focusing on activation measures with an immediate impact. People who took part in job training schemes performed better in the short term than those attending more formal education courses. The Government had established employment and participation targets for the period up to 2010 involving, inter alia, better integration of foreigners into the labour market and society as a whole. Five centres had been established to monitor foreigners' skills and qualifications so that they could find appropriate employment. Courses in the Danish language and other subjects were provided and recent studies had indicated that the initiatives were having some positive impact.

The Government had introduced the employment activation measures in 2003, shifting its policy focus from quantity to quality, in

other words finding the right jobs for the right people as quickly as possible. All surveys to date had confirmed the positive impact of the scheme, which had motivated unemployed persons to engage in more intensive job-seeking activities.

The minimum wage was fixed through collective bargaining. The upward trend in wages in nominal terms was a source of concern because it was damaging Denmark's competitiveness at a time of economic downturn and could lead to an increase in unemployment, especially among young people and older persons. The Government was therefore seeking to control inflation in order to promote an increase in real wages and purchasing power. As a result, real wage increases averaging 1.8 per cent had been recorded for the past three years, which was quite a satisfactory figure compared with other countries. Moreover, the Danish labour market was flexible and productivity was high.

Mr. TORP (Denmark) said that the Danish minimum wage certainly provided an adequate standard of living. According to some studies, it far exceeded the minimum wage criteria applied by the EU.

The problem of wage-dumping related mainly to immigrant workers from Eastern Europe, who were now required to apply for a work permit. The Minister of Labour had also recently announced stricter controls to prevent wage-dumping.

Ms. BRAS GOMES, referring to the issue of the starting allowance, said that she had not questioned the level of benefits, which were clearly higher than in many other countries. On the other hand, the data for April 2004 indicated that the allowance had not had the anticipated impact on employment. She was therefore pleased to hear from the delegation that the situation had since improved. However, she had not followed its reasoning and would appreciate receiving more detailed figures illustrating the positive shift.

With regard to the spouse allowance, she did not question the eligibility criteria under the social security system but was worried that it would lead to women becoming more dependent on their spouses.

The meeting rose at 5.55 p.m.