

sundhedsmæssig bistand. Komiteen udtaler blandt andet følgende:

»The Danish report recalls, with respect to *social assistance*, that under Section 37 of the Act of 19 June 1974 on social assistance, subsistence benefit (*kontanthjælp til underhold*) is payable to persons who cannot provide for themselves or their families, and confirms that this applies not just to nationals, but to all persons present in the country. The report clarifies that this form of assistance is categorised as temporary assistance if it lasts for less than one year. Longer periods are considered as constituting permanent assistance. The Danish authorities do not consider that the Charter confers a right to receive permanent social assistance benefit on non-nationals. The Committee observes that this view contradicts the wording of the Charter and the Appendix to the Charter.

According to the report, where a non-national is found to be in need of permanent assistance, the possibility of repatriation may be envisaged, subject to the restrictions laid down by international agreements. Section 4.2 of the Social Assistance Act provides that non-nationals who have been lawfully resident in the state for at least three years and anticipate obtaining a permanent residence permit are not subject to repatriation. The Committee refers the Danish authorities to its case law on the obligations of Contracting Parties towards nationals of other contracting parties who are legally resident or regularly working within their territory: such persons must enjoy the same rights as nationals to social and medical assistance, no length of residence

requirement may be imposed and such persons may not be repatriated on the sole ground that they are in need of assistance (Conclusions XIII-4, p. 61) The situation in Denmark as outlined above, clearly fails to respect these requirements.«

Det er altså komiteens opfattelse, at bistandslovens § 4, som i det væsentlige var svarende til aktivlovens § 3, er uforenelig med bestemmelsen i socialpactens art. 13 om social- og sundhedsmæssig bistand.

På denne baggrund må centret finde det betænkeligt at udstrække retsvirkningerne af bestemmelsen i aktivlovens § 3, uden at spørgsmålet om foreneligheden med Danmarks internationale forpligtelser på det socialretlige område har været genstand for nærmere drøftelse. Centret skal endvidere påpege, at bestemmelsen vil kunne give anledning til betydelig usikkerhed i relation til Den Europæiske Menneskerettighedskonvention, ikke mindst konventionens art. 8. Så vidt centret er orienteret, verserer der p.t. en ombudsmandssag blandt andet om dette spørgsmål. Også på andre områder – f.eks. i forhold til voldsramte kvinder – kan det umiddelbart være vanskeligt at forudse lovforslagets konsekvenser. Det er derfor centrets opfattelse, at en nærmere regulering af spørgsmålet om eventuel hjemsendelse af udlændinge vil kræve en væsentlig mere omfattende forberedelse og debat end den, der er gået forud for fremsættelsen af L 86.

Centret vedlægger kopier af det omtalte uddrag fra ekspertkomiteen og af art. 13 i the European Social Charter.

Med venlig hilsen

MORTEN KIÆRUM
direktør

Kopi til socialudvalget v. formand Villy Søvnald