

# WELL-FOUNDED FEAR

– CREDIBILITY AND RISK ASSESSMENT  
IN DANISH ASYLUM CASES



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REFUGEES WELCOME

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## **Well-founded fear – credibility and risk assessment in Danish asylum cases**

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### **THANK YOU!**

Nadia Awwad has been my intern whilst writing the report, and she has been a priceless help. She has assisted by developing questions and performing interviews, read through background information, done research on statistics, made reference lists – and not least, posed critical questions to me and shared my enthusiasm for the subject.

During the work on the report we have interviewed a number of people who have given us important information, but who have not always agreed with each other. Asylum lawyers and former members of the Refugee Appeals Board are quoted with their names in the text: Marianne Vølund, Jens Bruhn-Petersen, Niels-Erik Hansen, Thomas Gammeltoft-Hansen, Jesper Lindholm. From the Danish Refugee Council, Eva Singer and Lene Mølgaard Kristensen have answered questions. A former and a current employee at LGBT+ Denmark have answered questions and supplied me with anonymous cases. The Immigration Service has taken time to answer a long list of questions in writing as well as during a short meeting; and the Refugee Appeals Board, DIGNITY and Danish Red Cross have helped to clarify important details.

We have also spoken to a number of people who, for different reasons, didn't want their names in the report: a handful of experienced interpreters in very different languages, a couple of representatives who have been present at a large number of interviews, and two former caseworkers from the Immigration Service's asylum office. Last but not least: a selection of female and male refugees from different countries who have all been granted asylum within the last seven years. We have chosen deliberately to not include rejected asylum seekers, as their own situation might influence the description of their experiences.

A special thank you to asylum lawyer Marianne Vølund, professor in migration Martin Lemberg-Pedersen and Signe Korntved for reading through the whole manuscript and giving valuable comments. And a huge thank you to Luise Valentiner and Daniel Lewis for helping with the translation to English.



***“The phrase ‘well-founded fear of being persecuted’ is the key phrase of the refugee definition. Although the expression ‘well-founded fear’ contains two elements, one subjective (fear) and one objective (well-founded), both elements must be evaluated together.”***

Note on Burden and Standard of Proof in Refugee Claims, UNHCR 1998 (30)

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*The goal in determining an asylum case is, basically, to evaluate whether the applicant has a well-founded fear of persecution for one or more enumerated grounds.*

*The credibility assessment must be exclusively about whether the applicant's explanation is plausible; this should not be confused with an assessment of whether the evidence is sufficient.*

*The burden of proof lies in principle on the applicant, but both the applicant and the interviewer share the duty to ascertain and evaluate all the relevant facts. At the same time it is often clearly dangerous and/or impossible for the applicant to obtain supporting physical evidence. For this reason, it's often sufficient if the applicant is able to give a coherent and plausible account of the persecution and the reason for his/her fear. This is a humanitarian judgement, and there is no need for certainty, only likelihood.*

*The assessment and the conclusion/decision must include precise references to key points in the case and a summary of the aspects in favour and against granting asylum status. Taking such a decision is a professionally demanding and difficult task, requiring considerable knowledge, skills and good judgement.*

From Interviewing Applicants for Refugee Status, UNHCR 1995 (2)

# INTRODUCTION AND CONCLUSION

“You must respect a rejection and return home when you have had your asylum case thoroughly assessed in several instances.” All politicians agree on this, from the far right to the far left.

You are only entitled to asylum if you are in danger in your home country. But how do the Danish authorities know whether people are telling the truth, and how dangerous it is in these distant home countries? Are the decisions thorough and correct? It's complicated to judge an asylum case – and very far from accurate science and black or white answers.

This report starts with a fact-based and neutral chapter 1, explaining the Danish asylum procedure and the whole concept of asylum in layman's terms. In chapters 2 and 3, I point out in a more subjective way the weaknesses of the assessments, and in chapter 4 I present ten recommendations to improve the system.

The most important problem is that the outcome of a case depends far too much on chance and on the individuals who participate: the profile of the applicant, the knowledge and attitude of the caseworkers and the decision makers; the quality level of the interpreters, and the political atmosphere in the country.

The headlines of the ten recommendations are:

1. Education and certification of interpreters
2. Better screening for vulnerable people
3. Assessment of all aspects of an asylum case in one procedure
4. Development of a new test to measure age in the Nordic countries
5. Participation in a common asylum policy and work to revise the Dublin regulation
6. Provision of independent information to the applicant on procedure, rights etc.
7. Fewer and shorter interviews with a revised structure
8. Sound recording of interviews
9. Improvement of the training of caseworkers
10. Changing the composition and strengthening the rule of law in the Refugee Appeals Board.

The critique and the recommendations are based on a number of qualitative interviews and discussions with approved refugees, asylum lawyers, former members of the Refugee Appeals Board, scholars, caseworkers, interpreters, other NGOs and the Immigration Service; as well as on my own 14 years of experience with refugees.

Michala Clante Bendixen





## Sandholmlejren



# CHAPTER 1:

## HOW IS AN ASYLUM CASE ASSESSED?

### INTRODUCTION + THE LEGAL ARTICLES

#### **What is an asylum seeker, a refugee and an immigrant?**

An asylum seeker is a person who asks for protection as a refugee, but who still has not had their case assessed. The persons who arrive on their own and apply for asylum are called spontaneous asylum seekers (as opposed to quota refugees, who are brought here).

You are a refugee when a state or an international body has recognized that you are a refugee – also called being granted asylum. There are two kinds of asylum: convention status and protection status. You should be granted asylum if you are persecuted by authorities in your home country or by somebody that the state cannot protect you against, or if you are at risk of the death penalty, torture or grave abuse. If you are a victim of famine, extreme poverty or natural disasters, the Danish state is not obliged to grant a residence permit.

A rejected or failed asylum seeker has been through the procedure and been given a negative decision, which means that the state has assessed that this person doesn't need protection.

An immigrant or migrant has left her/his home country more or less voluntarily: typically to work, marry or study.

Roughly speaking, the state is obliged to give refugees residence permits and basic rights in society, but for migrants the state is allowed to put up certain criteria and restrictions (i.e. for family reunification, work permits, access to education). Citizens from EU, Nordic countries and Turkey have special rights when living in Denmark.

Who should get asylum and who should be rejected?

- An Afghan woman, fleeing a forced marriage?
  - A Christian couple from Iran, risking the death penalty if their faith is exposed?
  - A family from Syria, escaping a city destroyed by bombs?
  - A lesbian woman from Cameroun, fearing being killed by her own family?
  - A teenager from Morocco, who has lived on the streets his whole life?
  - A political activist from Bangladesh, who has spent years in a prison?
  - A man from Eritrea, who's run away after 10 years of forced military service?
- Each case depends on how the individual's credibility and risk is assessed during the asylum procedure.

## What does the law say?

Asylum cases fall under national legislation as well as international and European conventions and agreements that Denmark has signed. The most important guidelines are the UNHCR Handbook (7) which is so-called “soft law”, and practice at the European Court of Human Rights (ECtHR), which is “hard law”. In short, Denmark must follow some rules, but is free to do it in its own way and make its own assessment.

An asylum case is assessed in two steps: first all relevant facts in the case must be established, and then it must be decided whether the person falls under the definitions of the UN Refugee Convention and other relevant conventions which Denmark is obliged to obey.

There are 4 kinds of refugees in Denmark:

**7(1):** Convention refugees

**7(2)** Protection refugees with an individual motive

**7(3):** Protection refugees without an individual motive (war refugees)

**8(1) + 8(2):** Resettlement refugees / quota refugees

You don't need to apply for each status separately, and can apply on the whole for “asylum”, and the authorities will look at the case in a prioritized order, where 7(1) is the “best”. Read more about status on page 67.

## THE DANISH ALIEN ACT AND THE CONVENTIONS

**Art. 7.** On application, a residence permit is given to a foreigner if the foreigner is covered by the UN Refugee Convention of July 28th 1951 **(A)**

**(2).** On application, a residence permit is given to a foreigner if the foreigner on returning to her/his home country will be at risk of the death penalty or being subject to torture or inhuman or degrading treatment or punishment. An application as mentioned under section 1 is also considered as an application for residence under (1). **(B)**

**(3).** In cases covered by section (2), where the risk of the death penalty or being exposed to torture or inhuman or degrading treatment or punishment has its roots in a very serious situation in the home country characterized by arbitrary violence and attacks on civilians, a residence permit is given with regard to a temporary stay. An application as mentioned under section 1 is also considered as an application for residence under (1) and (2). **(C)**

**(4).** Residence permits under sections (1) and (2) can be denied, if the foreigner has already obtained protection in another country, or if the foreigner has close bonds to another country where the foreigner must be expected to obtain protection. (Safe third country).

**(A) UN Refugee Convention 1951, article 1A:**

The term “refugee” shall apply to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

**UN World Declaration on Human Rights, article 14:**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**(B) UN Convention against Torture, article 3:**

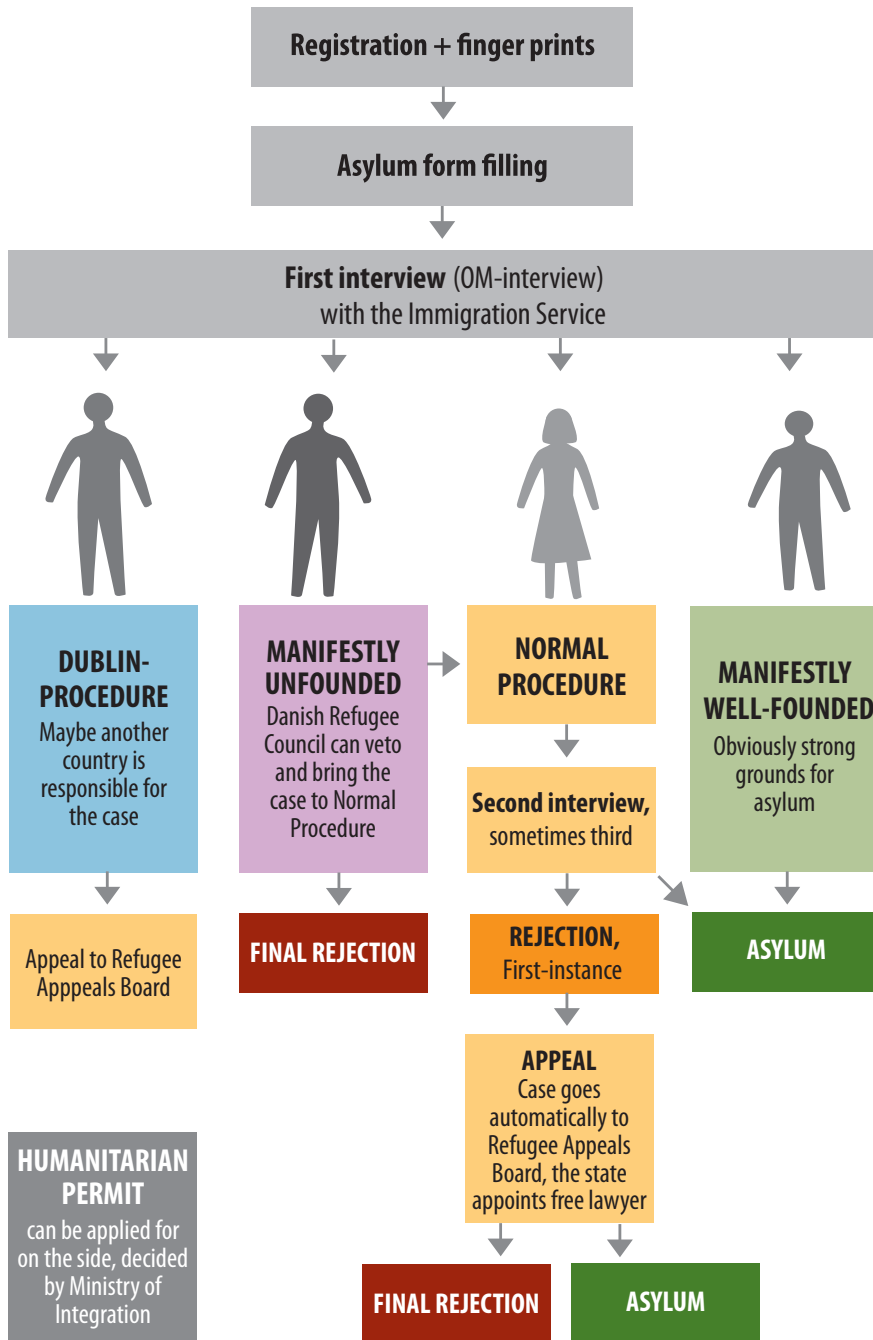
1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

**(B+C) The European Convention on Human Rights, article 3:**

“Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

- Conditions falling under a humanitarian residence permit (serious illness, effects of torture, famine or other threats against survival) in the Danish Alien Act art. 9(b) may also be covered by article 3, but are assessed in a separate procedure, see more on page 86.
- The principle of 'non-refoulement' is part of all the conventions mentioned above. The principle prohibits the state from deporting or returning people to a country where they may be exposed to human rights violations, and to countries which may pass them on to a country where that might happen.
- Even if you are at risk and in need of protection, you can still be excluded from asylum, if you have committed human rights violations against others in your home country – these are called exclusion clauses. An impossible situation often arises, where on the one hand the state will not let the person enjoy rights as a refugee, but on the other hand it is not possible to return that person because of a risk of torture or the death penalty. The same happens with refugees who receive an expulsion sentence for a crime committed in Denmark – they end up on Tolerated Stay in a deportation centre indefinitely.

## THE DANISH ASYLUM PROCEDURE



## THE PROCESS OF AN ASYLUM CASE

### The reception

An asylum case usually starts when a foreigner is stopped on the Danish border or in Kastrup airport without a passport and visa for valid entry, and decides to ask for asylum. Quite often, the person was on her/his way to Sweden and did not choose Denmark as the destination.

Other people seek the authorities actively and ask for asylum – this can occur after entering the country legally on a temporary visa, or it can even be someone who already has another kind of residence permit, usually because of family reunification.

The first registration takes place in Sandholm, which is the reception centre for asylum seekers. The centre is situated north of Copenhagen, close to Allerød. The centre is run by the Danish Red Cross, but it holds offices for the Immigration Service and the police as well.

New arrivals are registered by the police and get a personal identity card issued with a photo, based on the person's own information, with their name, date of birth, nationality and date of entry. If you bring personal ID-papers of any kind with you, the police will ask to have those. The police take photo and fingerprints (biometrics), which are fed into the database of EURODAC\*, and you will be asked if you have ever had a visa issued for the Schengen area. In 2019 it was decided that this task must be moved from responsibility of the police to Immigration, but it has still not been established exactly how it will be done. A video about the procedure will be shown, which lasts 20 minutes and is available in 19 languages.

Next, you will be installed in a room by the Red Cross and will eat for free in the canteen. You can come and go as you want, but visitors must be approved at the gate. You are not allowed to live outside the centre. In the centre, there is a health clinic for necessary treatments, and you will be called in for a health check after arrival.

Unaccompanied minors will get a personal representative from the Red Cross and are accommodated in special centres. However, many are called in for an age test and are likely to be judged to be over 18 years (see more on page 58).

Quota (or resettlement) refugees do not come to Sandholm but rather directly to the municipality where they are supposed to live, as they have already been through interviews and selection before their arrival in Denmark.

\*) Digital fingerprint registry for the countries that signed the Dublin agreement. In short, the agreement means that you can only get your asylum case treated in one of the countries which signed the agreement. Usually this means the first country where your fingerprints were taken, but visas and family members can also be decisive for which country is responsible for opening the case.



## Asylum form filling

The first step in the procedure is an invitation to fill out a form in writing, answering questions about your name, date of birth, place of birth, latest address in home country, spouse, children, parents, siblings, date of departure, travel route, why you have left your home country, and what you fear will happen if you are sent back.

In the form you are informed that all information will be treated confidentially, that you have a duty to supply all relevant information, and that it is punishable to give false information. The form is available in 27 languages, and you can answer in any language – it will be translated by an interpreter. Illiterate people are offered to fill out the form with an interpreter. You can ask to have a copy of your finished form.

The Immigration Service has tried out an extended form which might replace the first interview, but it has not been decided whether or not to introduce it.

If you come from certain countries which are considered safe, the case is treated in the Manifestly Unfounded Expedited procedure (ÅGH). The list includes all EU-countries plus Norway, Switzerland, Iceland, Albania, Australia, Bosnia-Herzegovina, Canada, Japan, Kosovo, Liechtenstein, Macedonia, Moldova, Mongolia, Montenegro, New Zealand, Serbia, Georgia, USA and parts of Russia. The chance of being granted asylum when coming from these countries is extremely small

## Interview with the Immigration Service

The next step is an appointment for an interview with Immigration, the so-called "OM-samtale". A caseworker will conduct this interview with an interpreter.

The purpose of the interview is in the first place to establish the identity of the asylum seeker and decide whether the case is to be handled in Denmark or in another country. If your fingerprints or evidence of a visa has been found in another country, Denmark can ask that country to take over the case according to the Dublin agreement. In that case, the interview will be quite short and only about identity, travel route and family relations. This happens in 20-25% of all cases, and Denmark, reversely, receives a smaller number of asylum seekers from other countries.

If the case is to be treated in Denmark and not by the ÅGH-procedure, the next decision is whether it should proceed via the Normal Procedure (NP) or as a case that is Manifestly Unfounded (ÅG). The latter can happen for some nationalities if the applicant has neither in the form nor during the interview told about matters that might lead to asylum. The ÅG-procedure leads directly to a rejection without access to appeal at the Refugee Appeals Board. However, the applicant will first be offered an interview with the Danish Refugee Council, which must agree or disagree with Immigration's decision. In the 10-15% of cases where they disagree, the case is then handled through the Normal Procedure.

The Normal Procedure leads to a second interview with Immigration, called “Asyl-samtale” or “NP-samtale”. This interview is normally not conducted by the same caseworker who made the first interview, and it will also most often be handled by another interpreter. The questions posed are an elaboration of the first interview and the asylum form, sometimes after verification or control of the information, with more focus on the asylum motive. The applicant may also be called in for a third or fourth interview, called “Gen-samtaler”, if Immigration finds it necessary to investigate the case further.

- All interviews take place in a small office in the barracks of Immigration in the Sandholm Reception Centre. They last between three and eight hours and are always carried out with an interpreter, chosen from Immigration’s list. The applicant and the interpreter sit beside each other with a small table between them, and the caseworker sits behind a desk with a desktop computer.
- Between the first and second interviews, the applicant will normally be moved from Sandholm to one of the accommodation centres, which are all situated in Jutland at the moment.

Before the interview the caseworker informs the applicant about the rights and duties of the authorities and the applicant. A text in a very formal, juridical language is read out loud. Applicant, caseworker and interpreter then sign the document.

The caseworker will then ask, through the interpreter, if the two understand each other. Then the interview starts. The caseworker will ask questions based on a number of key questions and will write a summary of the translated answers in Danish on the computer.

The first questions are about schooling, family relations, work and accommodation. If there is doubt about the nationality of the applicant a number of questions will be asked concerning local issues in the country, and the area, which the applicant claims to come from – e.g. the colours of the flag, currency, names of famous people, and names of rivers and cities.

The interview will then move on to political activities and conflicts with the authorities, focusing on instances of detention or arrest, and finally on military service. There will also be questions about travel abroad, stays in other countries and entrance to Denmark. At the end, the asylum motive in itself will be discussed: what is the reason for asking for protection, and what exactly does the applicant fear will happen to them if returned to their home country?

Often, the caseworker will jump back and forth between the issues, because the various questions may be connected, and there can be a need for elaboration or clarification – also in relation to what was written in the asylum form.

During the day there will be a lunch break and the applicant will be told that she/he can ask for a break when needed. The caseworker will also take breaks along the way, to get the summary right or check information. At the end of the day, the summary is printed out and the interpreter is asked to translate it from Danish to the applicant's language, one page at a time – and misunderstandings and errors can be corrected. Corrections are added below the summary. The summary of the first interview is usually 10-15 pages and the second interview summary can be even longer.

The summary of the interview is not a precise transcription; it is rewritten in the special “asylum language” which is used by Immigration as well as the Refugee Appeals Board. Example of a sentence: “Presented the applicant with the fact that authorities have not made attempts to arrest her, in spite of having had the opportunity to do so, she has explained that the authorities in (country) are working differently than authorities in Denmark”. The summary does not contain descriptions of the applicant's tone of voice, reactions or body language.

### **First-instance decision**

A few weeks after the last interview, the applicant will receive a letter with the decision – the Immigration Service is first-instance. If the decision is positive, the whole letter is in Danish with a few sentences about why you have been granted asylum and which status you have been given. If you have not been granted status 7(1), there will be a short paragraph in your own language about how to appeal the choice of status. Read more about the three different statuses on page 67. All statuses are temporary and only given for one or two years at first. The letter contains information on which municipality (kommune) you will be placed in, and around 15 pages of general information about rights and duties, amongst others how you might lose your permit. The applicant is, of course, not able to read all this information at this time, having not yet received Danish language lessons.

If the decision is negative, the first paragraph will inform you that the case is automatically passed on to the Refugee Appeals Board which is the second-instance, and that you will get a lawyer appointed for free. The next two or three pages will explain why the applicant was not found credible or at sufficiently high risk to be given protection. Specific parts of the applicant's own information will be highlighted. This letter is translated into the applicant's own language.

### **Appeal, second-instance**

Subsequently, the Refugee Appeals Board will send a letter to the applicant with a list of lawyers to choose from. The state pays for the lawyer and the interpreter. When the lawyer has received all the files from Immigration, the applicant is called in for a meeting at the lawyer's office with an interpreter chosen by the lawyer. Usually it takes six to 12 months before the board sends the files to the lawyer. A serious and careful lawyer will typically have a meeting of four to six hours with the applicant.

Before the meeting, the lawyer has read the asylum form, summaries and decision, and will ask the applicant about the points where Immigration found weaknesses in the story. Maybe the applicant can supply further documentation or clarify misunderstandings.

The lawyer then writes a legal proceeding where she/he argues for why the applicant should be granted asylum. Jurisprudence in other similar cases, background information and guidelines can be referred to, and control translations can be submitted. The members of the board are expected to read all the files in advance.

The board which is “similar to a court”, takes the final decision in an asylum case. In fact, the board is a number of parallel boards working simultaneously. They consist of three members, each with one vote. A judge is the Chair, another member is from the Ministry of Immigration and Integration, and the last member is appointed by The Danish Bar and Lawyers Council.

The board meeting takes place in Copenhagen; with the applicant and her/his lawyer present and an interpreter provided by the board.

The lawyer will open the meeting by asking the applicant questions, then Immigration asks questions, and finally the board members will do the same. Finally, the lawyers will proceed, then the Immigration. Normally, the board meeting takes two hours, but it can take up to four or five hours; the three members of the board will normally vote for up to an hour afterwards. While they do that, the applicant is waiting outside with the lawyer and the person from Immigration. The decision – which is final and cannot be appealed – is translated orally by the interpreter. A written copy of the summary and the decision is handed to the applicant. If it's a rejection, a deadline of seven days is given to leave the country.

### **Humanitarian residence permit**

As soon as it is decided that a case must be opened in Denmark, it is possible to apply for a humanitarian residence permit – also after a rejection. These cases are handled by the Ministry of Immigration and Integration in a separate procedure, administered by a very hard practice – meaning that only a few people are granted this permit every year, and normally only due to life-threatening illness for which there is no treatment in their home country. This assessment is included in the general asylum procedure in most other European countries

## WHO MAKES THE DECISION IN AN ASYLUM CASE?

### Immigration Service decision

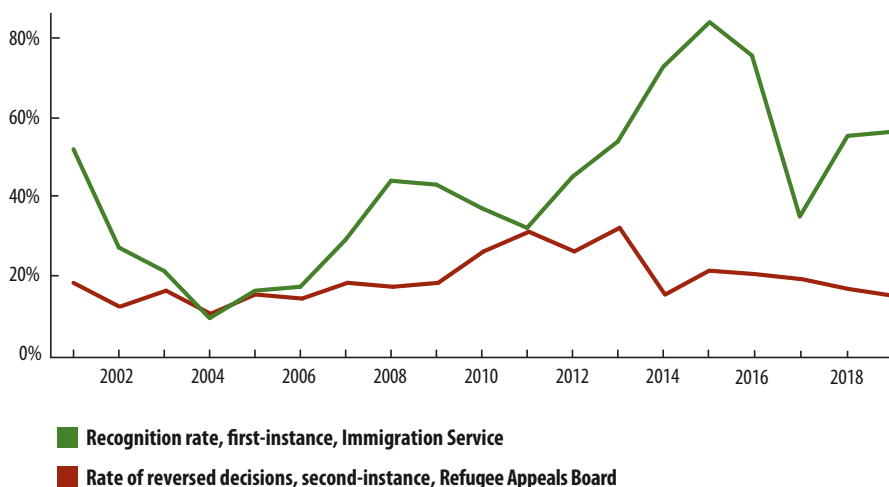
There are five asylum offices in Immigration plus an office for country of origin information. Three of the offices handle new (spontaneous) applications. The caseworker who carries out the interview is also the one who makes the decision. However, all decisions must be approved and signed by a person from the leading team in the office or an experienced employee with competence to sign.

Caseworkers in Immigration must have an academic background, yet not necessarily legal. For many, this is their first proper job after university and they use it as a stepping stone in their careers. New employees go through a two-week training program covering asylum law, case handling, conduction of interviews, interview techniques and cultural understanding. Afterwards there is a period of theoretical and practical training, sitting in on other's interviews and conducting interviews in the presence of a colleague.

Statistics for first-instance decisions can be found at [nyidanmark.dk/numbers](https://nyidanmark.dk/numbers). The latest figures are released with a one-month delay and an annual report for the previous year is released around May.

In 2019, Immigration opened 2,241 new asylum cases. However, 33% of these people already had a residence permit, usually based on family reunification (called remote registrations). This is a new phenomenon. The recognition rate in total was 57% in first-instance, but this figure includes the remote registrations who were all Syrians and Eritreans, with an almost 100% chance of getting asylum. The recognition rate for newly arrived is therefore much lower at 29%. By March 2020 there were around 800 pending cases with Immigration.

### RECOGNITION RATE FOR FIRST- AND SECOND-INSTANCE, DENMARK 2002-2019



## Refugee Appeals Board decision

The board consists of a chairman, 24 deputy chairmen who are all judges, 19 members from The Danish Bar and Lawyers Council and 37 members from the Ministry of Immigration and Integration – a total of 81 members. The actual boards are put together by the chairman or a deputy chairman, randomly from day to day. The board's three members each has one vote.

In 2016 the board was cut back from five to three members, by request from former minister Inger Støjberg. The two members who were removed had been appointed by the Ministry of Foreign Affairs and the Danish Refugee Council. This issue is discussed on pages 94-95.

The decisions of the board are final, as the only place in the Danish legal system. This means that asylum cases cannot be appealed to the courts. Further, the board is not under the surveillance of the Ombudsman.

The only way to overturn a decision is to apply to reopen at the board. This requires that at least one of the following criteria is met:

- 1) New, important information which was not available at the time of the rejection, and which the board has not seen before
- 2) Evidence of something crucial that the board did not believe
- 3) A radical change of the situation in the home country
- 4) A change in practice for similar cases
- 5) A new asylum motive, arisen after the decision (e.g. exposure in the media or conversion to another religion).

Few cases are reopened, and even fewer end up being overturned. Most rejections given allege a lack of credibility, which makes it very hard to change afterwards.

On [fln.dk](http://fln.dk) you can see all decisions from the board in a short and anonymous version, and you can search for decisions on certain countries or issues. You can also see all the background information (COI) used by the board (in English).

Although the decisions by the Refugee Appeals Board is second-instance, the Immigration Service must generally follow the ruling of the board and adjust their decisions accordingly, as the board is a higher authority. Therefore, if Immigration starts rejecting cases which would previously have been granted asylum, a number of trial cases will be selected and await the decision of the board. This happened recently for Syrians from Damascus.

The formal independence from first-instance can be questioned, as one of the board members comes from the Ministry of Immigration and Integration which is



also in charge of the Immigration Service. The whole construction of the Refugee Appeals Board is unique, and has been criticized a lot over the years. This is discussed further in chapter 4.

Most cases are decided unanimously. If the result is a majority decision, it will be noted in the decision. Arguments from the minority, however, will not be included.

In 2019 the board overturned 16% of the cases. The waiting time was, on average, 435 days. By January 1st 2020 there were 601 pending cases with the board. There were 289 applications for re-opening cases, whereof 78 cases were re-opened plus 44 cases were sent back to Immigration.

## WHAT IS THE DECISION MAINLY BASED ON?

### Status and conventions

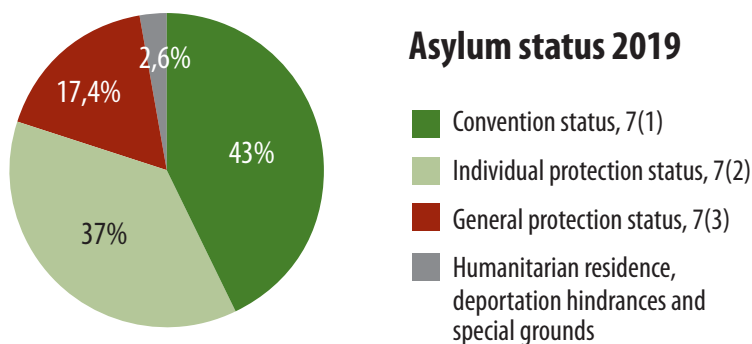
The UN Refugee Convention was created after World War II based on a wish to secure a “haven” for people who were in danger in their own country. In large numbers, Jews, Roma, homosexuals and other minorities had been refused entry to Denmark, amongst other countries, and had been returned to concentration camps in Hitler's Germany – this was supposed to never happen again. The word “persecution” is therefore the essence of the Refugee Convention which falls under the Danish Alien Act art. 7(1).

Many people think that you will get asylum if there is a war going on in your home country. But that is a misunderstanding. Usually you must have been exposed to persecution to get asylum. However, situations exist where it's life-threatening for anyone to stay, e.g. because of war, and therefore you cannot be returned to the dangerous area. Or you might be at an individual risk of the death penalty, torture or inhuman treatment in your home country. This falls under other conventions, mainly The European Convention of Human Rights, and therefore also gives a right to protection. In the Danish Alien Act this falls under art. 7(2) and 7(3).

Read more about status on page 67.

#### Examples:

- A man from Eritrea who escaped forced military service and left the country illegally will get asylum under art. **7(1)**.
- A woman from Afghanistan who has left her husband and received death threats from the husband's family will get **7(2)**.
- A woman from Syria who 'just' ran away from the general war will get **7(3)**.



### Special circumstances in asylum cases

In all cases, thorough and individual assessments should be made to judge whether the asylum seeker falls under one of these definitions. But it's not as easy as it sounds.

The UNHCR (United Nations High Commissioner for Refugees) is the highest international body for the Refugee Convention, which has been signed by 145 states. The definition of persecution in the convention is open to interpretation and does not include precise guidelines to how a case must be investigated and decided. The UNHCR has published decent handbooks, guidelines and recommendations – but at the end of the day, each state is free to do things in their own way – and most countries don't really have a procedure as such. Denmark is one of the countries which has a serious and thorough procedure but, as this report shows, there are still weaknesses in it.

The three basic problems in an asylum case are:

- 1) That someone's identity and their country of origin cannot always be verified, as most asylum seekers do not enter with a valid passport.
- 2) That the asylum motive (persecution and risk) most often is based entirely on what the applicant says. You cannot – like in court cases – call upon witnesses etc.
- 3) That the assessment on credibility and risk must be done in Denmark, in a very different culture, based on country reports which are ever-changing pictures of the immediate situation and only describe general issues.

An asylum case in general is based on the applicant's own account of what will happen to them if they go back home.

In Denmark, this account consists partly of a written statement (form) and one or more oral interviews. Both take place through an interpreter, who translates the applicant's language into Danish.

It is the applicant's own responsibility to describe her/his case as convincingly as possible, and the authorities must assess the likelihood and the risk, yet no actual proof in the case can be demanded.

### **Credibility and risk**

This part is a short description of how credibility and risk form the core of an asylum case – read more about credibility in chapter 2 and about risk in chapter 3.

Credibility is mainly about establishing the following facts:

- the identity of the applicant
- the applicant's account, mainly what she/he fears upon returning back home.

It is impossible to judge the risk, if the identity and the story doesn't seem credible. The credibility is most important in cases with a very personal asylum motive, e.g. political activities, and somewhat less so in cases about the persecution of a minority group or with a generally high risk for everybody from that geographic area.

#### **CREDIBILITY**

- **IDENTITY OF THE APPLICANT**
- **STORY OF THE APPLICANT**
  - CHRONOLOGY
  - DETAILS
  - LIKELIHOOD
  - CONSISTENCY
  - NATURAL REACTIONS
  - IN LINE WITH BACKGROUND INFORMATION
  - SIMILAR TO OTHER STORIES

#### **RISK**

- **GENERAL RISK IN HOME COUNTRY**
- **APPLICANT'S INDIVIDUAL RISK**
  - PRACTICE
  - COURT RULINGS
  - BACKGROUND INFORMATION
  - LEGAL/ILLEGAL DEPARTURE
  - TIME ASPECT
  - IFA (INTERNAL FLIGHT ALTERNATIVE)
  - STATUS

**When credibility is assessed, the authorities focus on:**

- whether the chronology of the story makes sense
- whether the applicant can provide details about time, names, events, dates
- whether the story seems likely according to common sense and logic
- whether there is consistency in the different accounts of the story (form, first and second interview, information given to the lawyer and the answers given later to the Appeals Board)
- natural physical reactions
- whether the information is consistent with general background information
- whether the story sounds like other stories from the same area.

If the applicant cannot answer satisfactorily from these criteria, the authorities will turn the case down and will typically use one or more of the following words when arguing the rejection: “diverging, elaborating, created for the situation, incoherent, inconsistent, remarkable, unlikely, striking, not self-experienced.”

**Example:** A man who used to work as a steward for the Afghan airline asks for asylum because a security adviser to the Afghan president had asked him to poison the president as part of a planned coup, but instead he ran away and now fears being killed by the plotters of the coup. He has evidence of his identity and his job. However, his application is rejected because the authorities find his account unlikely, incoherent, not self-experienced or credible and, because he did not, at first, mention this as his motive for seeking asylum and also refused to tell the name of the security advisor.

**When risk is assessed, the authorities focus on:**

- whether the situation poses a concrete danger for the applicant?
- what Danish practice is in similar cases – and the practice at the ECtHR\*?
- what the background information says about similar situations?
- whether the applicant has left her/his country legally or illegally, and asked for asylum promptly upon entry to Denmark?
- whether the events are so far back in time that the danger might have passed?
- whether the applicant may be safe in another part of her/his home country, e.g. the capital city (internal flight alternative)?
- which convention the case falls under, and thereby which asylum status?

If a rejection is given because of the risk assessment, it is most often argued that the danger is “solely based on the applicant's own assumption”, that the risk is of a general nature and not targeted at the applicant, that it seems unlikely that the applicant could have been of interest to the authorities in her/his home country, or that the case is a private conflict in which the applicant must ask her/his own authorities for protection.

\*) The European Court of Human Rights

Credibility and risk are often linked in an asylum case, e.g. the assessment on whether a threatening letter from the Taliban is genuine or not: if it's genuine, there is a concrete risk, but if it's fake, the person can be judged as not credible for that reason alone. And genuine letters from Taliban are in fact black and white photo-copies, maybe with a handwritten scribble added...

**Example:** Even if the Danish authorities believe that a person from Uganda is LGBT+, this is not enough to be granted asylum in Denmark. There has to be an individual asylum motive, and if this is judged to be not credible, they will reject the case. If the individual story is found credible, the applicant will normally be granted asylum, but that rarely happens. This illustrates that the risk is seen as low if there are no concrete threats.



# CHAPTER 2:

## CREDIBILITY

### KEY ELEMENTS AND WEAKNESSES IN THE ASSESSMENT OF CREDIBILITY

Credibility is the basic element of an asylum case, and there are a number of reasons why it is very difficult to make such an assessment. In this chapter we will look at all the many aspects of this in the Danish asylum system.

As mentioned before, credibility is mainly about:

- the identity of the applicant
- the story of the applicant; most importantly what she/he fears might happen upon returning home.

It's impossible to judge the risk if the basic identity and story is not found credible. In other words: how can you judge if a person is at danger in her/his own country, if you are not sure of which country and which person you are talking about?

The majority of rejections in Denmark are given due to a lack of credibility. And there is no doubt that many asylum cases do contain larger or smaller elements of untruthfulness or unlikelihood. However, both international and Danish guidelines state that incoherent, incorrect, vague or inconsistent statements from the applicant should only weaken their credibility if it concerns the core of the asylum motive (19).

The guidelines from the UN also emphasize that a distinction must be made between the general credibility of the applicant and the parts of the account which may not be coherent. There are, however, examples of unclear chronology and diverging details leading to rejections in Denmark, even if it only concerned irrelevant details.

When dealing with a country with a high risk of the kind of abuse an applicant is fearing, the bar for credibility should be lowered – this doesn't always happen. Besides, the structure of the interview itself may be a reason why misunderstandings arise, or that the applicant never got the opportunity to explain him/herself in the most favourable way and bring forth all details correctly.



### **Conditions which may affect the assessment negatively:**

- Hindrances and risks on the path to applying for asylum make it almost impossible for applicants to stick to the truth throughout their perilous journeys. Smugglers, for example, influence them on the way.
- Everything happens via an interpreter, and there is no certified education or test for interpreters in Denmark – this poses a great risk for misunderstandings and errors.
- A large part of the applicants are traumatized to various degrees, which makes it especially hard for them to live up to the demands to recall, retell, maintain an overview and concentrate (20, 37).
- The asylum procedure is not optimal in its construction if the purpose is to bring forward the entire truth. Besides, there are big differences between the applicants' abilities to account for their stories convincingly.
- Even healthy people without trauma remember a specific situation in different ways and will change their narratives – witnesses to crimes can, for instance, be very unreliable without benefiting from it (32).
- The decision maker's personal perception of truth, reality, risk and human behaviour becomes decisive, and cultural differences can be a big problem.
- In the Danish system there is a preconceived assumption that the applicant is lying, and a tendency to reject an applicant as being the natural choice. For instance, a new caseworker's very first task during the initial training is to write a rejection, and by far most of the rejections are given based on a lack of credibility.

The asylum form and the first interview with the Immigration Service determine the credibility, as everything you later add or modify is seen as “elaborating” or “diverging” – even if it concerns details that the lawyer has asked the applicant to elaborate upon. Many important details don't come up until the meeting with the lawyer, when the applicant feels safe and the lawyer can explain what is important to the case.

Even if the applicant is informed initially that she/he has the responsibility to “present everything that has relevance for the case”, many applicants are not aware of what is important and not important – and at the same time, some may choose to leave out certain things out of fear of hurting others if that information came out.

Many applicants have survived torture or are traumatized to some degree. This constitutes a special problem with regards to the way interviews are conducted and the

way credibility is judged, as especially memory, focus, chronological overview and retelling of episodes is very hard for traumatized people.

Rejections due to the lack of credibility usually contain one or more of these expressions:

“diverging”  
“not plausible”  
“conspicuous”  
“created for the occasion”  
“elaborated”  
“incoherent”  
“inconsistent”  
“unconvincing”  
“not self-experienced”  
“unlikely”  
“remarkable”  
“lacks meaning”

All these words express personal judgment, not factual assessment. They are all influenced by prejudice, preconception, stereotyping, impressions, moods, preferences and a lack of knowledge.

The extract below contains the mentioned expressions eight times in a single paragraph.

The Refugee Appeals Board cannot recognize the account of the applicant as fact. The board finds that the explanation seems unlikely and was created for the occasion. We gave weight to the fact that the applicant gave diverging and elaborated explanations of how many Talibaners were present during his arrest, and whether he was hit on the ear or on the eye, or whether the Taliban also hit him under the feet, which the applicant mentioned later. The applicant has also given diverging accounts about what the Taliban wanted him to do, at first saying they wanted him to poison food and then they wanted him to bring explosives and finally whether it was fruit or meat they wanted him to poison. The board also finds it unlikely that the applicant went back to his home after the arrest by the Taliban, knowing that he would not keep the deal he had made with the Taliban. Finally, the board also finds it remarkable that the authorities came to the applicant's home the day after he had escaped, a claim which rests on the applicant's own explanation, that he was wanted by the authorities, whom by his own explanation he had himself told about the Taliban's detention of him, and what they wanted him to do.

**Example:** LGBT+ person from Uganda. In this case, Immigration and later also the Refugee Appeals Board, had been suspicious of the fact that two women could consider having intercourse in the house of one of them, when a mother-in-law might occasionally stop by. This should not be considered an unlikely risk to take, especially when the applicant admitted that they were drunk. This was, by the way, one of the few LGBT+ cases from Uganda where the decision was positive in the end.

- came to her little shop. Informed the applicant that the case worker at the interview with Immigration found it remarkable that they had intercourse in the home, when considering that her mother-in-law came to the house. Also informed that the applicant has replied to this, that they had been drinking, and they didn't think anybody would come.

In international law there is a principle of “the Benefit of the Doubt” (18). In asylum cases it means that if a risk cannot be dismissed, the applicant must be given a residence permit. Since it's a question of grave abuse or even a matter of life and death, it is better to grant asylum to ten people too many rather than to one too few. However, we rarely see this principle mentioned directly in the decisions.

*“There is a lack of humanitarian considerations in the decision process. Some external conditions determine that you can get asylum simply for coming from a specific country, but when it comes to individual motives I think it's very hard to figure out if that really is fair. No, I probably don't really have confidence in the decisions being fair. There has been a set direction which also influences the extreme focus on finding errors, so they can be caught on credibility. You are looking for their weaknesses... maybe not so much in the first interview, but in the second.”*

*- Red Cross representative for unaccompanied minors*

## REASONS FOR LYING

A large part of the treatment of asylum cases takes its starting point in a suspicion that the applicant is lying about her/his identity and asylum motive. It has not always been like this – when the first groups of refugees came to Denmark their stories were believed, and the reception was handled by the Danish Refugee Service and the Ministry of Justice. Hungarians from Austria in 1956, Polish Jews in 1968, Vietnamese boat refugees from 1975 to the 1980s. It wasn't until 1983 that an actual law about foreigners was passed and the Refugee Appeals Board was established. Since then there has been a rising focus on control and suspicion of fraud – today, the Immigration Service spends a great deal of their time checking data and calling people who have already been granted asylum back in for interviews.

At the same time, it has become increasingly difficult to enter Denmark (and Europe). In a not so distant past, it was possible to seek asylum in the Danish embassies, and travellers did not get their passports and visas checked until they arrived at the Danish airport where they could ask for asylum. It was also much easier to enter legally and get permission to stay for other reasons – visiting visas, family reunification or work permits. As it becomes more difficult to enter as a migrant, the number of “fake” asylum applications rise. It is, however, important to keep in mind that during the period with the highest amount of applications (2014-2016) there were very few unfounded cases.

Today it is almost impossible to ask for asylum in Denmark without first having paid human smugglers large amounts of money for fake papers and transport, without having travelled thousands of kilometres or without lying and abusing the visa system. Along the way, the applicants have usually tried to stay in other countries closer to their home but had to give up. An increasing number of people are being exposed to abuse and rape – or they die – on their way here. The Dublin rules, the internal border fences within the EU and the Frontex-controlling of the exterior borders have together brought the number of asylum seekers in Denmark from the record high of 21,300 in 2015 to the record low of 2,700 in 2019 (4).

You can say that the entire system today requires a certain amount of lying and cheating – you won't get far away from Afghanistan, Syria or Eritrea if you insist on being completely honest and law-abiding. And if you are persecuted by your home country's authorities, leaving legally can be difficult.

During the journey, many are told by the smugglers and fellow citizens that they can't count on getting asylum based on their own, true story – no matter how agonizing that story might be. They are told that it's better to copy another story, exaggerate their own story or even to say that they come from another country where the situation is worse.

As a result of all this it is sadly inevitable that most asylum cases contain elements of lies. It can be necessary things like entering Denmark on a fake passport and visa but immediately telling the truth about your identity to the border police. It can be serious fraud like giving a false name and nationality throughout the process. Yet it can also be things like changing parts of your story for fear of harming somebody else, omitting things that you are too ashamed to tell, or exaggerating real events.

Of course, it's important to reveal if people are lying about their identity and their asylum motive – you should not get asylum on a fake identity and a fake story. The problem is that it's so hard to judge, and that minor mistakes may look like deliberate fraud. There is a serious risk of rejecting people who are actually in danger by judging them as not credible on the wrong grounds.

## IDENTITY AND DOCUMENTS

### Documents, name and date of birth

Very few people in the world have a passport. In large parts of the world, it makes no difference when you were born – newborn babies aren't registered and birthdays aren't celebrated. And in many countries there is no efficient civil registry, no real addresses with road names, house numbers or post codes.

As mentioned earlier, it's rarely an advantage to show a genuine document from, for instance, Afghanistan if you are on the way to Europe – it might be better to throw it away and buy a fake passport with a visa. Even people who have brought real passports or ID cards often lose them on the way. Irreplaceable marriage certificates, birth certificates, graduation certificates, family photos etc. are being lost on the long, dangerous journeys – or you simply couldn't bring any of this with you if you had to flee in a rush.



*Extract from marriage certificate, Eritrea*

It's a fact that many people are unable to produce any kind of personal identification when asking for asylum. And the documents that are produced may be difficult to verify as they are easy to forge. It is also not possible to contact the authorities in their home countries for verification, as this might present a danger to the applicant and her/his family. The Immigration Service has established a National ID Centre to examine foreign documents, but they can rarely be quite sure of their findings.

Recently, Immigration had to accept that marriage certificates from a specific church in Sudan contain a typo in the stamp.

The issue of birth dates is difficult, as many people do not know their own. Even the year can be uncertain, further complicated by the fact that some countries like Iran, Afghanistan and Eritrea use another calendar than ours – so dates and years have to be recalculated which can lead to errors and misunderstandings.

The spelling of a name also creates problems, as many countries use other alphabets than ours, and therefore our spelling of a foreign name is, in fact, a kind of phonetics. The same name can be written differently on a registration with UNHCR in Ethiopia and on a marriage certificate. There are also examples of a person having two genuine documents from the same country with differences in both spelling and date of birth.

According to article 31 of the Refugee Convention, the state must not prosecute a refugee for using false documents to reach safety. However, in Denmark refugees get 40 days in prison for entering on a false passport if they don't say the word "asylum" at exactly the right time.

### Nationality

If the authorities are in doubt about an applicant's nationality they have various methods to check it. During the first interview you might be asked questions about local matters in the country and the area you claim to come from – e.g. the denomination of bank notes, the largest church in town, national holidays or the distance between two places. You may also be asked to point out certain places on a blank map.





Most people are able to answer such questions correctly – but not everyone. Women in certain cultures never deal with larger amounts of money, a church may be called something different by locals than the official name, Independence Day may be mistaken for a religious feast by the applicant, the direct road between two cities may not be accessible for civilians because it's reserved for military purposes and the river may just be called "the river"...

When a large number of Eritreans suddenly arrived in 2014, Immigration were very eager to check whether some of them might actually be Ethiopians claiming to be Eritreans as this would improve their chances of getting asylum significantly. This turned out to be an exaggerated concern. Almost all of them could answer questions in great detail about Eritrea and language tests confirmed their origin.

On the other hand, Immigration unveiled systematic fraud with the identities of more than a hundred people who arrived at the same time in 2017 and claimed to be stateless Bidoons from Kuwait yet turned out to be Iraqis. There were signs that an organised team of smugglers were behind the many fake cases (21). At the same time, genuine Bidoons can still arrive.

The case of the fake Bidoons led to a political demand of increased control. In 2019, several millions of DKR were allocated to scan the cases of 800 Syrians who arrived during 2015-2016 and were fast-tracked through the system to decrease waiting times. Immigration checked their nationalities carefully but found no 'fakes' among them. Thus, the few who lie create suspicion for the majority who don't lie – but the control mechanisms in Immigration and the Board are meticulous.

### **Language tests**

Language is used as an indicator of where a person comes from. Which language/s does she/he speak, and with which accent or dialect? Danish authorities normally use a Swedish company called Verified who have a number of linguistic experts in many languages.

In the example on the next page, a language test was carried out. It confirmed not only that she spoke Tigrinya which is the main language in Eritrea, but also that her accent was from the area in Eritrea that she claimed to come from. Nonetheless, Immigration writes in the rejection of her case that "Tigrinya is also spoken in parts of Ethiopia". This is, in fact, a disregard of the clear result from the language test.

A language test can give an unreliable or misleading result if the applicant comes from a border area, stayed a long time in another area than her/his own, or has parents who speak another language than the local.

The UNHCR guidelines recommend that if the interpreter expresses doubt or suspicions about the applicant's language, a test should be carried out, but the assessment of the interpreter should never determine the decision.

**Example:** A young woman of around 19 years from Eritrea arrived together with the large group of other Eritreans asking for asylum in 2014. She could not answer the questions about Eritrea or her local area satisfactorily, and even at the Refugee Appeals Board she seemed confused and incoherent. The summary reveals big problems in the communication of questions and answers. She was also not able to explain why she is at risk in Eritrea. Her case was turned down with the argument that she could not possibly be from Eritrea and have travelled here directly. Even her lawyer later commented on the case: "Some people just don't want to help themselves". However, a language test had shown that her dialect is compatible with the one from the area she claims to come from, and UNHCR confirmed that she had been registered in their refugee camp in Ethiopia like the others.

During the attempt to reopen her case a number of witness statements were collected from Eritreans living here who could confirm that she had grown up in a village in their area. It should have been brought forward much earlier in the process that she was a very vulnerable and fragile girl who was not able to answer these kinds of questions: she was illiterate, had lived isolated in a rural area, had been abused on the journey, and possibly had genetic mental weakness. Neither Immigration, nor the lawyer or the Board had understood that she really wasn't able to reply correctly.

Asked applicant if she knows anything about Eritrean history, which she denies. Asked applicant if she had heard about any big events taking place in Eritrea, to which she replies that there was a war. Asked applicant when this took place, which she doesn't know. Asked applicant if it was in her lifetime or before, to which she replied that she was 1 year old. Asked applicant if there has been a war after she was 1 year old, which she confirms. Asked applicant when this was, to which she replied that it was maybe 10 years ago. Asked applicant if it's correctly understood that there have been 2 different wars, which she confirms.

## INTERVIEW TECHNIQUE, SET-UP AND EDUCATION OF CASEWORKERS

The interviews at Immigration is by far the most important element in an asylum case, and this is where credibility is established. But is it possible at all to assess in a neutral way whether a person speaks the truth, when the interview situation is so unfavourable for the applicant – and the caseworkers are not sufficiently prepared?

### **Background and training of the decision makers**

The caseworker who conducts the interview and writes down the summary is also the one who makes the decision to grant or reject asylum. But the decision must be approved by a team leader or another experienced colleague.

To become a caseworker with the Immigration Service you must have an academic education, but not necessarily a law degree. Most caseworkers are young and this job is often their first, which they won't keep for long. First, they go through a training program of two weeks of asylum law, asylum case processing, conducting interviews, interview technique and cultural understanding. After this, there is some practical and theoretical training, sitting in on colleagues' interviews and conducting interviews under the presence of a colleague. Thus, the education is limited, and mainly peer-to-peer training, before carrying out the decisions.

The Immigration Service used to invite the Danish Refugee Council, asylum lawyers and Danish Centre Against Torture DIGNITY to do courses for the caseworkers, but that has stopped. In recent years, Immigration has focused on internal training and is now following a Norwegian model called KREATIV. This training is a combination of theory and practice done by teachers from University College Copenhagen and a psychologist.

*"We had internal training. A combination of classroom tuition and peer-to-peer training, under supervision of a more experienced employee. The course in interview technique came quite late after I started. The intention was different, but because of a large influx (of asylum seekers) it took a year before I did the course with the relevant experts etc."*

*- Former caseworker in the Immigration Service's asylum department*

The individual caseworker has an important influence on both the quality of the interview and the decision. And this goes for the educational background as well as the personal profile (including age, ethnicity, gender, political attitude, personal experience) and how the person feels on that day.

*"At first, the caseworkers are very young and insecure but after a few years they get so tough that you can hardly recognize them, some even become aggressive. But there are big differences; of course some are nice and friendly – and if there is a representative or some kind of observer present, it's a whole different story. Interpreters are also treated differently. They treat me better and are less rude because I'm totally fluent in Danish and translate to a high standard."*

*- Interpreter with many years of experience in asylum cases*

Research shows that decisions based on gut feeling and taken under duress and time pressure are more likely to be wrong (10, 11). Working as a caseworker with the Immigration Service is no doubt both mentally demanding and stressful.

*"It was extremely hard... You get involved in the story but you also have to finish on time, and you can't focus on the individual human being. To work with asylum you must be robust. You will be tested on many parameters. And then, the next day you must do the same again..."*

*- Former caseworker in the Immigration Service's asylum department*

The most serious problem may be the fact that decision makers in asylum cases are influenced by all the pitfalls described in this chapter (like cultural differences, the interview set-up, the trauma of the applicant, indirect political pressure), but they may not be aware of it (9).

*"You can also grant asylum at Immigration even if the person should not have had it. At one time I had a colleague who liked young girls. He sometimes made positive decisions just because he thought the applicant was beautiful."*

*- Former caseworker in the Immigration Service's asylum department*

*"In early days, there was a strong team of law graduates in Immigration who were specialized and passionate about it. They could proceed at the Board and argue against the lawyers. Today they don't argue at all – everything is about small inconsistencies which are not realistic. They don't study the political situation in the country. It's all about the number of rejections."*

*- Former caseworker in the Immigration Service's asylum department*

The decision maker subconsciously tends to make the applicant's story fit into her/his own preconceived picture (9). And the starting point is a rejection, both statistically and politically: the first task for a newly employed caseworker with the Immigration Service is to write a rejection, and the recognition rate for newcomers was 29% in 2019 by Immigration. At the appeals board, only 16% of the negative decisions were overturned.

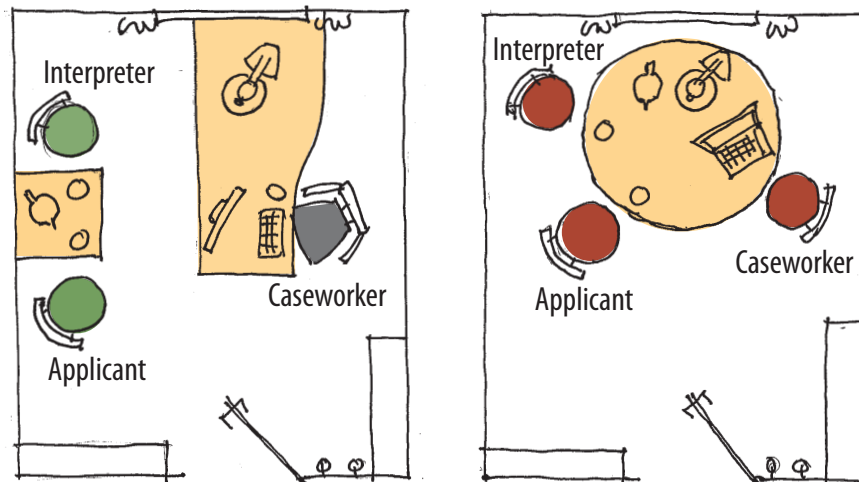
## Physical set-up

The applicant is on unfamiliar ground and has never been there before, the caseworker is on home ground in her/his own office with post cards and children's drawings on the wall. The interpreter works for Immigration, has an identity card with the Immigration Service's logo around their neck and usually knows the caseworker already. The caseworker sits behind an office desk in front of a desktop computer – physically distanced from the applicant, and most of the time she/he will look at the monitor and write. The applicant and the caseworker use different toilets, even though the barracks are small and only hold around eight offices each. The applicant gets a voucher for lunch at Sandholm's canteen, whilst the caseworker and the interpreter eat in the Immigration Service's staff canteen which offers a very different kind of dishes.

*"Halfway through I felt very much under pressure – I felt like shouting and running out, I panicked. She told me to answer Yes or No, but I couldn't, I had to explain. At one point I asked for a break, to get some air and regain my composure."*

*- Refugee from an African country*

A more equal and relaxed set up would be a round or oval table the three could sit around, and the caseworker could work on a laptop. There is also no need to distance the applicants from the employees by having separate toilets and canteens.



*To the left a sketch of the set-up today, to the right a proposal for improvement, based on UNHCR's recommendations.*

## Mental set-up

There is no doubt that being a caseworker is difficult, and that employees at the Immigration Service take their jobs seriously. It's tough to hear about all the terrible experiences and to sit across from scared and frustrated people every day. It's also mentally straining to gather all the often confusing and complicated information from the applicant. It's hard on a personal level to make decisions which have serious consequences for the applicants, to be responsible to superiors, and also privately to have to defend your job with friends and family. Nonetheless, the caseworker has the mental advantage and the formal power in relation to the applicant on all parameters:

Caseworker	Asylum seeker
<i>a kind of colleague with the interpreter</i>	<i>nervous whether the interpreter can be trusted</i>
<i>has colleagues to ask for advice</i>	<i>alone, insecure about who might help</i>
<i>calm, relaxed</i>	<i>insecure, nervous, stressed</i>
<i>has tried it before, is prepared</i>	<i>has not tried it before, is unprepared</i>
<i>her/his job, professional</i>	<i>may barely understand the purpose</i>
<i>can decide the time schedule</i>	<i>can ask for breaks, but rarely does</i>
<i>has an academic education</i>	<i>probably has little or no education</i>
<i>has no personal interest in the case</i>	<i>the case is about deeply personal, intimate issues</i>
<i>the outcome does not affect her/him directly</i>	<i>determining her/his future life</i>
<i>at home in her/his own country and culture</i>	<i>a foreigner, unfamiliar with Denmark</i>
<i>active role: asks the questions and can interrupt</i>	<i>reactive/passive role: replies, and is interrupted</i>

The UNHCR and the EASO\* have a number of recommendations as to how an asylum interview should be conducted. On most points, the Immigration Service follows them formally – but the atmosphere in the room is still perceived by the applicant as being very stressful and unpleasant. Many questions also tend to be posed in an unfortunate way and confuse more than they clarify.

Immigration rarely follows the UNHCR guidelines to form open questions, to let the applicant tell the story freely, to avoid interruptions and to avoid jumping in events and chronology. That would help to create a conversation where the applicant relaxes, and has time to think about and choose her/his own words.

An example of an open question is: “You say that you were hiding at your brother’s place. But in your asylum form you only mentioned a brother who lives abroad. How many brothers have you got?”

The questioning from Immigration is more likely to be in the form of an interrogation, like this: “Now you are saying that you were hiding with your brother. But in your asylum form you wrote that your brother lives abroad. Can you explain that?”

Immigration’s internal instructions to caseworkers for the first interview from 2017 contains a number of good suggestions regarding which topics to ask about, but very little about how to phrase the questions. This paragraph from the instructions is an example of the deplorable tendency to look for errors and inconsistencies:

In cases where the applicant is going to NP-interview, it’s the job of the first interviewer (OM) to clarify the case. This means that if the applicant explains in a diverging way about some matters, it’s the responsibility of the OM caseworker to make sure that they are not caused by misunderstandings or translation errors, but the applicant should not be called in for questioning about the divergence until the NP-interview. If the applicant is going to a NP-interview and the caseworker noticed divergences in the account, a detailed note about it should be made on the case in EstherII (internal system, red)

*Extract from the internal instructions to caseworkers for the first interview, p 29*

The instructions point out that “no subjective assessments or remarks should be in the summary”. However, expressions like “pointed out to the applicant that...” and “seems unlikely that...” and “informed the applicant that this seems strange to the IS employee” are often made, and they often express obvious scepticism from caseworker’s side.

UNHCR recommends using a clear, precise and neutral language. But Immigration starts the interview by reading aloud two pages of general information in a semi-judicial Danish which is even difficult for the interpreters to translate: “You have been made aware that (...) with regards to the provision of the necessary basis of the assessment of the asylum application” (you try translating that!)

\*) The European Asylum Support Office (under EU)

Summaries and decisions from both Immigration and the Refugee Appeals Board are written in a formal, yet “insider” language and is not a true copy of the conversation; e.g. “the applicant has been made aware that...”, “on this basis it can no longer be predicated on...”

When an interview becomes an interrogation instead of a conversation, the applicant goes into defence mode, becomes nervous and will answer as briefly as possible. Besides, Immigration often jumps between subjects, which confuses the applicant unnecessarily. It would be more suitable to use clearly phrased questions in a chronological form, and afterwards to urge the applicant to give a free account of the asylum motive (see chapter 4, recommendations).

*“Your school?”, they will ask at the beginning. ‘I never went to school.’ Then they move on to other things. Then again later: ‘Now tell me, where did you go to school, and for how many years...?’ ‘I did not go to school, I already told you that.’ The order of the questioning is not always logical.”*

*- Interpreter with many years of experience in asylum cases*

UNHCR points out that the applicant should have access to add corrections or additions later on, but Immigration does not inform the applicant of this possibility. The applicant has the right to have a representative with them and can ask that the interview is conducted by a caseworker and interpreter of the same sex as the applicant, if this is important to the applicant and relevant to the case. However, nobody is informed of that either.

UNHCR also warns that caseworkers in some countries – and this is very much the situation in Denmark – work under an authority whose political agenda is to receive as few refugees as possible. This will inevitably influence their decisions, more or less consciously (54).

*“The 98 restrictive revisions are about looking after Denmark. This is done with concrete results, benefiting the Danes. Last year Denmark received the lowest number of asylum seekers in nine years. And that is good.”*

*- Inger Støjberg, former minister of integration, in video for Venstre 2018*

*“They would say that they pose good questions, but they don't. If you speak to a Dane like that it would be okay, but these are vulnerable people from another culture – half of them are crying during the interview, you need a different approach when talking to them. The caseworkers will sometimes slap the table and shout “shut up”. One had a button on the table, the kind you buy at a joke shop, which said “bullshit!” when he pushed it. It was for fun, but the applicants didn't get it, of course – he had been working there many years.”*

*- Interpreter with many years of experience in asylum cases*



The applicant ought to be prepared better before the interview (by an NGO or a lawyer) about the procedure, about rights concerning gender, interpreter, representative and corrections – and authorities should also make an effort to improve the atmosphere during the interviews. The caseworker should structure the questions better, and to a higher degree let the applicants themselves tell about their motivations. See more under recommendations in chapter 4.

### **Cultural differences and knowledge about the country of origin**

Most of the people who've applied for asylum in the past few years come from Syria, Eritrea, Afghanistan, Iran, Iraq & Somalia. All these cultures are very different from Danish culture. If you must assess whether a person is telling the truth and whether a story is likely and self-experienced, it's extremely difficult if you can't begin to imagine how this person's life has been. A Danish caseworker can hardly imagine how you live in a village in Iraq or how you live as a soldier in Eritrea.

**Example:** If a woman in Afghanistan was raped, it's extremely shameful and difficult for her to even talk about it. The caseworker will probably ask if she reported it to the police. This will create a deep gorge in the trust and the understanding between these two people as the applicant will assume that everybody (including the caseworker) knows that an Afghan woman can't report a rape without being accused of adultery.

Caseworkers and applicants have different ways of thinking, acting, reacting and expressing themselves physically and verbally, as well as different morals and ethics. Besides, there is a huge difference between their knowledge of the country where the risk is. To the applicant it's her/his home country, to the caseworker it's a totally unknown place, only experienced through photos and reports. The reports describe various conditions about the country, in general terms, but they don't provide an understanding of people's daily lives.

Immigration has a number of employees with ethnic minority backgrounds who might have a slightly better cultural understanding. However, many Danes with minority backgrounds have only been to the home country of their parents on holiday a few times. Amongst the 81 members of the Refugee Appeals Board, only four have a non-Danish name, and none of them are judges.

*"80% of the new caseworkers did not know where Iraq was on a map when they started their jobs. They are young, they are full of prejudice, to them the whole Middle East is the same. They go on a few courses, but nothing much. Lucky that they can search the internet during the interviews, haha!"*

*- Interpreter with many years of experience in asylum cases*

The guards did not trust each other, so they didn't discuss what was going on in the prison. The applicant adds that they were afraid that somebody might betray them to a superior.

The applicant was presented with the fact that he during the interview January 29th informed that he and the other prison guards felt bad about the superiors hitting the prisoners, which does not seem compatible with him not talking about the events with the other guards.

The applicant remarks to this that it was obvious for everybody what was going on behind the prison walls and it was discussed among the guards, but they didn't talk in detail about how the punishments were carried out in practice. However, they all had a bad conscience about the prisoners being exposed to violence.

The applicant shows a wound on his right upper arm that he claims comes from the punishment in the Barlavista prison.

The applicant was presented with the fact that earlier during the interview he had said that he was not familiar with the design of the prison cells, which does not seem compatible with him serving time himself in the same prison.

The applicant explains that he meant he had not seen the design of all the prison cells. His own cell was very small and dark. There was a bucket serving as a toilet – nothing else in the cell, not even a bed or a mattress.

During the 7 months he served his time in Barlavista, he was not allowed to leave his cell.

In the example above, an applicant is being questioned in a suspicious way. The caseworker finds it hard to believe that the job as a prison guard belongs under the forced military service in Eritrea, and that the applicant himself was detained as a prisoner for some time under dreadful conditions. A limited knowledge about conditions in the country of origin often makes the caseworker ask questions in a way that leads to misleading answers and makes the applicant's credibility seem weak.

**Example from Afghanistan:** “It seems unlikely that you would visit your girlfriend in her parents' house, knowing the risk of being caught.” To this, one could argue that people in love do foolish and risky things, and that this was the only way the two could see each other – in Afghanistan they don't meet out on town like we do here.

**Example of Palestinian from Lebanon:** “Applicant was informed that at the time he was only 12-14 years old, so it seems unlikely that he would have participated in armed fighting in the camps.” However, it's well known that small boys are fighting for PLO/Fatah, which the caseworker apparently didn't know.

How is a Danish caseworker supposed to judge what a natural reaction would be to having your house ransacked by the Iranian intelligence service and seeing your mother being beaten up badly? Or whether a 14-year old boy from Eritrea really walked a hundred kilometres on foot from his village into Ethiopia? And haven't we all experienced things that were totally unlikely, but nevertheless happened?

Cultural differences also make it hard to gauge if a person seems natural and convincing when telling their story or answering a question. Gestures and facial expressions can be very different from what seems natural to a Dane. For instance, it sounds to many Danes as if people are fighting when they are having a normal conversation in Somali or Tigrinya. And a young girl from Somalia will not look a stranger in the eye.

The interview situation in itself is also unfamiliar to many – especially to women and applicants without an education. Danes are used to sitting on their own in an office in front of an official, answering questions: in front of a student advisor, school headmaster, union consultant, social service caseworker, maybe even a friendly police officer. A woman in Somalia or Afghanistan has never done that. And for a man in Iran or Eritrea, it would be with sweaty hands and a palpitating heart.

*“They're afraid that I might support our home country's government. Because they still have family back there, and the people who helped them may get into big trouble. There is a huge difference, you see... when you come from totalitarian regimes and dictatorships, you don't trust anybody.”*

*- Interpreter with many years of experience in asylum cases*

The Danish system assumes that the applicant has full confidence in the Danish authorities from Day One and that they will volunteer exactly all those personal details which exposed them to a great danger in their home country: membership of political groups, escape from military service, adultery and homosexuality, names of other persons. We forget that most of the applicants grew up with a deep mistrust of authorities, and don't know who they can trust in Denmark. Must they really put their life in the hands of an unknown Danish caseworker and an unknown interpreter, just because they are told that the information will be treated confidentially? How can they know that the interpreter is not working for their country's embassy, and that the caseworker will not take a bribe? (22) It's often not until the meeting with the lawyer that the applicant feels completely safe and starts talking openly about everything – but then it's too late, and it will be dismissed as an “elaborating” or “diverging” explanation.

Two somewhat overlooked issues are shame and taboo. Asylum cases often include events which are shameful for the applicant – including things that won't seem sha-

meful to a Dane. It can be taboos like sexual orientation, abuse, adultery. But also lying or selfishness can be shameful to talk about. The applicant wants to give the interviewer a positive impression and will instinctively try to justify her/himself and cover things up which she/he is not proud of (54).

### **Memory and reproduction**

An asylum case is mainly founded on the applicant's information and especially the account of specific events, which relies upon a person's memory. Research shows that even healthy people have a limited memory and that it can change over time. If a person is asked, several times, to recall one event, she/he will typically remember more details each time – therefore it's problematic when rejections of asylum are given with reference to the applicant having “elaborated on her/his account”.

We've all experienced being unable to remember the name of a person who we actually know well or place some event in the wrong year – during an asylum interview, this can be catastrophic. People are particularly bad at remembering things that they don't find important.

Memory is affected by the situation you are in when you try to remember something – if you feel under pressure, have low self-esteem and regard the interviewer as being negative/critical, there is a higher risk that your memory will fail.

Research shows that if interviews are repeated, it's highly unlikely that you will give the same account of events every time – variations are normal (54).

### **Comparison of family members' accounts**

If a married couple or other members of a family arrive together and ask for asylum they will be interviewed – individually – at the same time, so they are not able to adjust their stories with each other. This also happens if only one person in the family has the asylum motive (most often the husband). Of course, it makes sense letting everybody explain what they experienced and what they fear. But it's problematic when the interviews are compared and used to cast doubt on the applicant's credibility. According to lawyers, there are more credibility rejections among couples than single persons.

*“A wife might, for instance, be asked about issues that only concern her husband. Either she doesn't know anything about it, or she only knows what he has told her. You remember second-hand information poorly, and he might not have told her the whole truth – for which there could be many good reasons.”*

*- Asylum lawyer Marianne Vølund*



Two people will remember the same event differently, therefore two different accounts from a married couple should not be used as indications that they're not telling the truth. Make a test yourself: find a married couple and ask them to tell you, separately, about their marriage ceremony. They will remember different things and probably disagree on several details.

In Denmark, children below 18 are not interviewed unless they arrive alone as unaccompanied minors. An exception is cases where parents ask for asylum on behalf of their children, e.g. forced marriage, but the child's account must never be used to weaken the parents' account. Children are interviewed by specially-trained caseworkers from the Immigration Service, but the Refugee Appeals Board has only recently had a seminar about how to talk to children

### **The importance of PTSD, trauma, torture and mental disabilities**

DIGNITY estimates that 30-50% of all newly arrived asylum seekers are traumatized, and that some have been exposed to torture (37). The journey to Europe is in itself so dangerous now that it causes trauma. Those who have travelled through Libya before surviving the boat trip across the Mediterranean tell horrifying stories, and very few arrive without any harmful experiences. Most of the younger women are raped by the smugglers, some systematically for several months (38).

In their home countries, many asylum seekers have experienced house searches, severe violence, torture and inhumane conditions in prisons, including rape and humiliations. They may also have witnessed family members or close friends being raped, killed or humiliated – feeling powerless or even being forced to watch or to participate. They have also quite often been exposed to bombings. All these violent actions could have been carried out by the national army, armed groups or civilians.

Shortly after arrival at the Sandholm Centre, everybody is called for a health check with a nurse from the Danish Red Cross, inquiring about chronic diseases, medication usage and current health problems. A structured questionnaire is used, specially designed to identify victims of torture. It has been developed in collaboration with DIGNITY and was introduced in 2017, after Denmark was criticized by the UN for not screening for victims of torture. Other vulnerable persons are not identified or registered systematically, like mentally disabled, victims of rape or other kinds of abuse. Trafficked persons are referred to the Danish Centre Against Human Trafficking. Even if someone shows signs of torture or other trauma, the access to treatment is very limited as they don't have a residence permit yet.

With the current procedure, most vulnerable persons are not identified at all; thus the decision makers who also conduct the interviews have no prerequisites for taking special precautions. A more thorough screening would also be a big advantage for the ones who end up getting asylum – in the municipalities the problem continues with a lack of examination, and treatment starting too late.

*“My caseworker was very nice and treated me gently, I think I was lucky. But I was not prepared at all. I was so scared, and I trusted nobody... I cried all the time. In Sandholm I had no doctor or psychologist appointed, they were too busy. One night I had to be admitted to a psychiatric hospital, they just gave me a lot of pills and sent me back again.”*

*- Young female refugee from Iran*

If the Red Cross finds signs of torture, the applicant will be asked to sign an agreement accepting that the information will be shared with the Immigration Service, but according to the Red Cross, Immigration never responds to these approaches. Indications of torture should cause Immigration to order a systematic examination of the applicant, to be ready prior to her/his first interview; presently, however, Immigration only makes a brief note in the case file. Torture examinations are very rarely and quite randomly carried out – the few ones that are made, are ordered by the lawyer if there is time before the meeting at the board, otherwise it doesn't happen until an application to reopen the case is submitted. None of the interviewees for this report had ever seen an examination ordered by the Immigration Service.

A torture examination can be ordered by the lawyer with Amnesty International Denmark Medical Group, or the Refugee Appeals Board can ask one of the forensic institutes to make one. But the Refugee Appeals Board does not always take the examination into account if there aren't clear physical signs on the applicant's body.

The UN Committee Against Torture has criticized Denmark several times for not performing torture examinations. In 2017 the committee stated that an applicant has the right to get an examination done – but this was dismissed by the Refugee Appeals Board. “We are aware of these views, but we find them too rigid,” the chair of the board, Henrik Bloch Andersen, said. The board maintained that the credibility will be judged first, and if it fails there is no need for a torture examination – but if the recommendation from the UN to do it the other way around was followed, then the examination might help explain why an applicant may seem not credible.

**Example:** Immigration rejected a male applicant from Sudan. From the beginning he had said that that he had been exposed to torture, but no torture examination was done. The information in the case became messy because it was not possible to get an interpreter who spoke his language. Three interviews were carried out with an interpreter with whom the applicant did not communicate properly. The lawyer ordered a torture examination before the board meeting which confirmed the applicant's account of rough torture during two imprisonments. The applicant was granted asylum by the Appeals Board, among other things with reference to the translation problems and the torture examination.

**Allegations:**

In 2003, when the applicant was 16, he was exposed to 2 weeks of imprisonment and torture, and that shortly after his release his village was exposed to a very brutal attack where the whole village was burned down, and many were killed.

Most of the divergences that Immigration has referred to in their decision concern the applicant's account of the escape from the village during the attack, and in which order he and his family were separated and reunited.

It cannot be required of the applicant that he should be able to remember all details of this intense and chaotic flight, pointing to the fact that he was only 16 years old, he had just been released after 2 weeks in prison where he had been exposed to torture, and when the applicant was asked to tell about his experience to the Immigration Service it was 11 years since it happened, and he had also been exposed to 2 months of imprisonment and torture 2 years before the interviews.

The applicant was arrested on the border between Chad and Sudan in 2013 and was tortured because they suspected that he belonged to the rebel groups.

*Extract from the lawyer's procedure in the case on the previous page.*

The after effects of violent experiences are in direct contradiction to the way an asylum case is assessed. If you suffer from PTSD, trauma or torture after effects, you will normally have several of the following symptoms:

- memory loss
- deliberate attempts to avoid memories
- concentration problems
- suppression of reactions = unnatural reactions.

PTSD is about unpleasant experiences suddenly returning – though not as memories that you can relate to and push aside. The memories come back without warning and you relive the situation like a movie scene in your head, feeling totally real. Physically it affects the body in the form of heart palpitations, difficulty breathing and sweating (13).

For many people, the interview situation in itself is very anxiety provoking. As described above, the applicant feels all alone in an unknown world, exposed to a kind of polite but suspicious interrogation about exactly the things she/he is trying so hard to forget. The reaction can be to try to avoid thinking back and therefore avoid answering questions. An emotional numbness can also take place, which can seem unnatural to the interviewer – as if the applicant doesn't care and is totally unaffected. Finally, "wrong" reactions may appear, like smiling or even laughing while telling something very unpleasant (54).



The authorities put onus on:

- chronology
- consequence
- details of time, names, events, dates
- natural physical reactions.

It's obviously almost impossible for a traumatized person to answer clearly, coherently, to remember details correctly and answer in the same way every time they are asked the same question, repeatedly, during the process. There can be months in between the interviews.

According to the guidelines and training at Immigration, consideration should be taken of the fact that traumatized persons, including torture survivors, are not able to remember everything and may not answer quite consistently. But first of all, as mentioned, there is no reliable system for identifying and registering incidence of trauma, so the caseworkers have no way of knowing which applicants are traumatized – it's all down to their gut feelings. Secondly, there is nothing in the summaries or decisions to indicate that special consideration is afforded to victims of trauma, if you judge by the number and formulation of the questions and the length of the interviews. A Master's thesis from 2013 proved that the risk of rejection was not lower if the word "torture" appeared in the case (14).

Finally, there is the question of the mentally disabled and mentally ill. Again, there is not necessarily a screening process or diagnosis. A caseworker may not be able to judge – through an interpreter – whether an applicant is retarded or has a mental disability which can make it impossible to answer questions in the expected way. There's an example of this with the young girl from Eritrea in the chapter about nationality on page 31.

210. It will, in any event, be necessary to lighten the burden of proof normally incumbent upon the applicant, and information that cannot easily be obtained from the applicant may have to be sought elsewhere, e.g. from friends, relatives and other persons closely acquainted with the applicant, or from his guardian, if one has been appointed. It may also be necessary to draw certain conclusions from the surrounding circumstances. If, for instance, the applicant belongs to and is in the company of a group of refugees, there is a presumption that he shares their fate and qualifies in the same manner as they do.

*Extract from UNHCR Handbook 2019, chapter about mentally disturbed persons (7)*

During latter years, Immigration has focused on conducting interviews with unaccompanied minors in a different way than with adults, and special caseworkers have been trained to do this. However, other professionals like pedagogues and psychologists could also be brought in to help interviewing vulnerable persons.

## Advantages and disadvantages of forms/interviews

Immigration recently tested a new, extended asylum form which, in some cases, was supposed to replace the first interview. This will increase the inequality between illiterates and highly educated applicants even more than now. On the other hand, the advantage of filling in a more detailed form instead of going through an interview is that you can choose your own words and you can see the precise translation afterwards. A well-prepared applicant can calmly sit down and get the chronology right from notes made in advance. She/he can control the narrative instead of being interrupted by the interviewer who jumps back and forth between questions.

The disadvantage of an extended application form is the lack of options to elaborate or clarify things which may not make sense to the recipient. It will probably lead to some very short and very inadequate accounts, where the focus is on irrelevant parts of the story. UNHCR recommends that form filling should only be used for fact-based information (place of birth, family etc.) and not to explain the asylum motive. In the recommendations at the end of chapter 4, we have tried to combine form and interview in a new way.

*"A longer form would be a downgrade. There are so many details that can't be written down. You have to tell it, and if a person has been tortured, it must be seen and registered!"*

*- Refugee from Syria*

*"A longer form would be a bad idea: You are very confused, you don't know how much to write or not write. Iranians don't answer shortly and precisely like Danes."*

*- Refugee from Iran*

*"The best thing would be a sound recording. I'm a big fan of a form, because you can control it. A case without a filled in form, followed by three long interviews, then you're completely lost. It can go totally wrong, you'll have so many inconsistencies..."*

*- Asylum lawyer Niels-Erik Hansen*

## First-instance decision affects second-instance

The Refugee Appeals Board confirms 85% of the Immigration Service's rejections, and the three board members usually vote unanimously. This could give the impression that the decisions are correct from the beginning, and that all the circumstances of the case point in the same direction. But it could also mean that once the applicant stepped into one or two of the credibility traps which the process of Immigration contains, it's very hard to get back out from them again. And the many unanimous decisions only show that the members of the board are trying to reach an agreement (49).

*"It's not a secret that with Immigration you don't get points for granting permissions, you get points for giving rejections. That's how it is. And if you want a divergence, you can find one that fits the occasion. You can rephrase the summary, so it looks like it should be a rejection – within the limits of the law. You are free to do that. I'm not saying that people do that, but they can."*

*- Former caseworker in the Immigration Service's asylum department*

The members of the board will get the asylum form, summaries and the decision from Immigration sent to them beforehand and are expected to read it all through. In many rejections based on credibility, all the way through the summaries you find an atmosphere of suspicion shining through, and the applicant appears like somebody with a weak story. Even if the lawyer tries to argue that Immigration is wrong, there is a tendency to believe Immigration rather than the applicant. The easy choice is to confirm, the hard one is to overturn. Once somebody said "ahh, that doesn't really seem likely", it will seem naive to say "yes, I really believe it".

In the confirmation decisions from the board, the assessment from Immigration is copied more or less verbatim, showing that the assessment of the board is based on the interview and the judgment from the Immigration Service.

*"I don't always agree with the decisions from the board, and some of the reason is, of course, that Immigration made mistakes from the beginning. For instance, we have won several cases at the UN Committee Against Torture, where a torture examination was not made in time."*

*- Asylum lawyer Niels-Erik Hansen*



*For unclear reasons the summary from the board is always written without change of paragraph, which leads to 10-15 pages of letters without spacing – very difficult to read.*

## THE IMPORTANCE OF INTERPRETERS

For various reasons, interpreters are some of the weakest links in the procedure. The most important problems are:

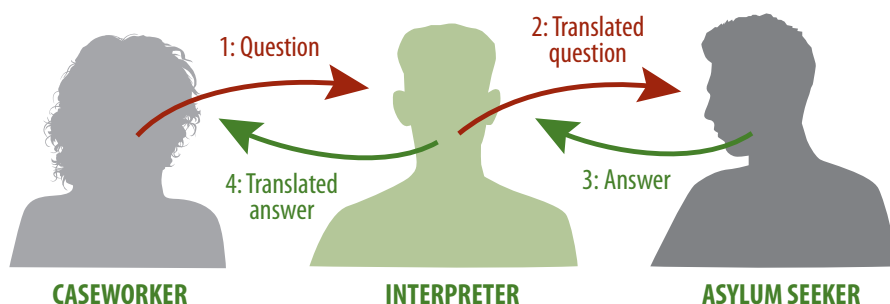
- Linguistic misunderstandings and mistakes, or personal interpretations
- Worries about whether the interpreter will pass on information from the case, and/or affect the outcome of the case.

Obviously, asylum seekers very rarely speak Danish, and even though some speak fluent English or French, which the caseworker may also do, all interviews must go through an interpreter as it's not the caseworker's job to translate. The asylum form is written in the mother tongue of the applicant and will be translated in writing afterwards. Interviews with Immigration, of which there are typically at least two, vary between three and eight hours, and a summary of 12-15 pages is written in Danish along the way, and translated verbally to the applicant at the end.

If the case continues to the Refugee Appeals Board, the initial meeting with the lawyer typically takes around four hours, with an interpreter chosen by the lawyer. The board meeting normally takes two hours, with an interpreter chosen by the board, and with an eight to 10 page summary, closely typed, in Danish. All these many hours of communication with the applicant is done with different interpreters.

It is not just a question of getting a message through from one person to another. The language or the dialect that the applicant speaks is in itself part of the credibility and identity assessment. And the exact expressions and choice of words are of significance with regards to the account and the asylum motive.

When all this goes through an interpreter who does not necessarily speak or write both languages to a sufficiently high level, and doesn't always work professionally with the ethical rules for translation, there is a big risk that the result may be flawed or misleading. Wrong decisions can be taken, and ultimately, the life of the asylum seeker could be at stake.



## Education and quality control

The first problem is the lack of education and quality control of the interpreters. Basically, anybody can become an interpreter today, there is no formal education for non-European languages, and no system for certificates or exams. The situation got much worse when the private company EasyTranslate won a public contract by offering the lowest price – with scandalous results. The contract is now suspended.

In 2018, the Public Accounts Committee (Rigsrevisionen) published a very critical report (15) about translation in Denmark, and the Danish Association of Certified Translators and Interpreters has also been warning for years about the enormity of the problem. This is not only in asylum cases but also in the courts and in the health sector, and it has serious repercussions.

In general, over the years things have deteriorated in Denmark in this field, whereas in Norway and Sweden things have improved by creating a state registry of authorized interpreters, and by educating translators with special areas of expertise.

**Examples:** “ill” translated to “leave” (Russian)  
“brother-in-law” translated to “brother” (Dari)  
“armed soldiers” translated to “men” (Somali)

An asylum seeker said that he lived close to the Iben Hanifah mosque. It was translated to ‘the applicant is a follower of the Islamic school Iben Hanifah’ which is a fanatical party.

Examples from an article about interpreters in Red Cross/New Times magazine, September 2013

In 2018, 77% of the interpreters were “mother tongue interpreters”, meaning that they speak and understand the other language but don't have an education in it. Maybe they spoke it with their family on a daily level, often with limited vocabulary and incorrect grammar. Besides, 112 of the interpreters worked in four or more languages – indicating that they don't all speak these as their mother tongue.

A good interpreter is fluent in both languages and attempts to reproduce what the two persons are saying as precisely as possible – without influencing the meaning. This requires a lot of practice, a large vocabulary and a good knowledge of the cultures of both languages.

From the National Police Guidebook to Interpreters: (16) “You are advised to prepare the first time you are going to do a certain kind of translation, for instance in a courtroom. This can be done by going through specific expressions of that trade.” However, there is no information about where to find specific terms or a correct translation of them. For many of the languages, there is no Danish dictionary.

## Correct choice of interpreter

The problem is not only solved by improving and controlling the level of the interpreters. The caseworker does not always know which language the applicant speaks best. Immigration often chooses the wrong interpreter, focusing only on whether the interpreter and the applicant “understand each other”, and this is established by asking the applicant, very briefly – through the interpreter! Very few will reply 'No' in a situation like this. During the interview, the applicant can pause and ask for another interpreter if the communication is bad. However, this very rarely happens as the applicant doesn't dare to criticize the interpreter, or is afraid to harm her/his own case by being “difficult” – and, ultimately, just wants the interview to end.

*“I had a French interpreter at the first interview – I was not nervous about him, but French is not my mother tongue. The interpreter at my second interview was from (a neighbouring country), that wasn't good, she spoke my language in a different way. I had to ask for many corrections afterwards. Especially at first, I didn't feel safe, I thought she might be a spy, so I was careful not to say too much – even if that was bad for the case, I understand that now. For instance, addresses, places... I changed them a little, I was afraid that somebody in my home country would be looked up.”*

*– Refugee from an African country*

Sometimes a Farsi interpreter might be used for a Dari speaking applicant, because the two languages are familiar (spoken in Iran and Afghanistan). But there are a number of words and expressions which differ – like with Danish vs. Norwegian – and this will inevitably create inconsistencies if one interview is done with a Farsi interpreter and the next with a Dari interpreter. If a Dane was accused of a serious crime in Saudi Arabia, she/he would not feel comfortable with a Norwegian or Swedish interpreter at the trial.

*“A serious mistake occurred because a Farsi interpreter had been used for a Dari speaking applicant. She said that she had been ‘sailing’ a relatively long distance – this was translated to ‘swimming’ which seemed totally unlikely. Such a mistake weakens the credibility of the applicant.”*

*- Eva Singer, leader of the asylum department at the Danish Refugee Council*

**Example:** In a case from Sudan, Immigration could not find anybody who spoke the applicant's language. The language can't be mentioned here, since both applicant and interpreter might be identified from it. Instead, an Arabic interpreter from Sudan was used, and Immigration referred to the applicant's language as “a local dialect”, which is wrong as it is an individual language. Three interviews were carried out with the same interpreter, in spite of the two only understanding each other to a certain degree, and the applicant became frustrated. During the lawyer's two meetings with him, she needed to have two interpreters: one to translate the applicant's language to Arabic, another from Arabic to Danish. *(continued next page)*

In the rejection from Immigration it's mentioned that "it seems remarkable" that some people should be able to recognize the applicant who lived a nine-day-journey from here. But this was a misunderstanding which the applicant had asked to have corrected during the control translation – he had said that you passed nine villages, a journey that takes 2-3 hours on foot. In spite of Immigration being aware of the translation problems, and that the applicant asked to have it corrected, it was used as an argument for rejection. The case was overruled in the board afterwards, among other things with reference to translation problems.

### **The importance of words and expressions**

The next problem is the significance that the authorities give to inconsistencies in the account. According to the UNHCR, interviews should be conducted as a conversation where the applicant has the peaceful opportunity to tell the story in her/his own way, and the focus should be upon understanding and assessing the described situation. But in practice it is often experienced as a suspicious interrogation with a deliberate focus on things that don't match up.

When everything is taken into account – the unequal situation, the anxiety and possible trauma of the applicant, the cultural differences and not least the various interpreters with varying levels of competence – then it can't be avoided that "divergences" will occur and might make the account seem "weak and insecure". As the examples show, a bad translation can be determining for both the credibility and the understanding of the story.

The Association of Danish Asylum Lawyers, the Danish Refugee Council and Refugees Welcome have all, for many years, recommended that a sound recording be made of all interviews, which could be used to verify mistakes or misunderstandings afterwards. This would also make the caseworkers more aware of their own behaviour and their way of posing questions.

*"If I happen to translate something wrong, then I will translate it the same way again during the verbal control translation – so another interpreter should do it. But that's difficult in practice. So, a sound recording would be even better. Yes, I think that for many of the good interpreters it would be a nice proof that the translation was correct."*

*- Interpreter with many years of experience in asylum cases*

*"If the interviews were recorded, I'm quite sure that the assessments would be different. The main problem in these cases is divergences, which very often are due to linguistic misunderstandings. It can be the interpreters or the applicant or the caseworker... but primarily the interpreter. If the interviews were recorded, you could find out if there really was an error or not."*

*- Former caseworker in the Immigration Service's asylum department*

## Amount of data and time

The amount of interviews with the same questions and the long time span increases the risk of inconsistencies. The more times you ask a person the same question, the higher the chance is that the answers will differ. It's good to be thorough, but in this case, it can be a problem in itself. When the facts of the case are in place and the asylum motive is described, there is no reason to conduct more interviews. If Immigration receives a negative or uncertain reply to a verification of a document, or the Office for Country of Origin Information supplies a piece of important information, then the applicant will be called in to reply to that.

*"I had a quite uncomplicated case with a married couple, in which I received 60 pages of summary for each of them + asylum forms. The four interviews were spread out over a year and then it easily takes another year before the case comes to the board. It becomes impossible to keep track of the many pages, and in the mentioned case I could see no other reason than Immigration trying to create inconsistencies by asking the same questions again and again."*

*- Asylum lawyer Marianne Vølund*

*"The first interview took five hours, with breaks. It was too much, I got tired. I had to ask for many corrections in the summary at the end, it was too stressful, I just wanted to get it over with but at the same time I knew it was important to correct things. Everything did not get 100% right."*

*- Refugee from an African country*

## The interpreter's personal profile

There are several issues around the interpreter as a person. First of all, the applicant will be suspicious towards the interpreter – can you trust someone who works for the authorities? What does it mean that the interpreter is bound to professional secrecy? Secondly, the interpreter may represent exactly the thing that the applicant escaped from – the regime or the ethnic majority in the home country.

This problem could to some extent be solved by introducing a short information meeting with an independent advisor before the first interview, during which the applicant would learn about the interpreter's confidentiality and ask for a certain type of interpreter. For example, would a Syrian Kurd trust a Kurdish interpreter, but not an Alawit interpreter.

There are examples of interpreters from Eritrea in support of the regime who have intimidated applicants, and of interpreters having expressed suspicions and negative attitudes towards sexual minorities. If Immigration or the board hears of things like these, the interpreter should be 'blacklisted', but there are examples of interpreters who worked for years after complaints had been filed against them.



**Example:** A female Syrian asylum seeker tells of how her interpreter at Immigration had Bashar al-Assad as a background picture on his smartphone. In the break, he asked about her family and assured her that there was no reason to run away from her area. At that time, her daughter and son were in prison in Syria, and she was terrified that this might hurt them. For that reason, she told almost nothing and was rejected. Later she was granted asylum by the board.

**Example:** One of the working Iranian interpreters has a son who is a mullah and travels back and forth between Iran and Denmark. Maybe one day the interpreter will be translating for a homosexual or a Christian convert, and it may influence the translation if the interpreter has a negative attitude.

### **The applicant's approval of the summary**

The procedure at Immigration has a very problematic, built-in “control” which puts the responsibility of a wrong translation on the shoulders of the applicant. When the long and exhausting interview is over, the caseworker prints out the Danish summary and asks the interpreter to translate the other way – from Danish to the applicant's language – one page at a time. The applicant signs each page and may ask for corrections which will be added at the end. However, if the purpose truly was to correct misunderstandings and agree on the account, then the caseworker could just change the text and save it again. When the correction is added on the last page, it looks as if the applicant changed her/his mind, and the incorrect version will be the first one you read. Besides, you also sign the page with the error on it.

The summary is written in a special, formal but “insider” language and is not a genuine reference of the conversation; e.g. “the applicant has been made aware that...”, “on this basis it can no longer be predicated on...”, “pointed the attention of the applicant to the fact that...”. It makes it difficult for the interpreter to translate and equally difficult for the applicant to recognize.

Try to imagine three tired people in the afternoon going through the same information and details once again... representatives say that caseworkers often urge the interpreter to finish quickly. A lawyer mentions a summary of 12 pages which had taken half an hour to translate, which is obviously not possible – other lawyers mention similar examples.

**The interview ended at 14:46**  
**The translation ended at 15:18**

*12 pages of summary, control translation to Tigrinya took 32 minutes*

Most of the refugees who were interviewed for this report said they just wanted it over with, even though they knew there were errors. In many summaries there are no corrections which indicate that many applicants just sign and say, “it’s fine”.

There is another problem, illustrated by the example below – this could be solved by calling in the applicant for the control translation the next day with another interpreter, and at the same time giving the option to add or correct things in the original summary. But it will take a lot of resources.

**Example:** The applicant used an Arabic word during the interview to signify that a document was “unauthorized”. The interpreter translated it to “fake”, another possible meaning. When he reads out the summary afterwards, he uses the same Arabic word. In this case, the applicant will not know that there is a misunderstanding.

#### *Recommendations from Refugees Welcome to asylum seekers today:*

- Stop the interview if you experience problems with the professional or ethical skills of the interpreter. Your asylum case is more important than some extra waiting time.
- Record the interviews on your smartphone (openly, you are allowed to do it).
- If you are fluent in English or French, insist on using this language for the form as well as all interviews. The interpreters in these languages are competent, have no connection to your home country and many caseworkers understand these languages too.

#### **Deaf asylum seekers**

A very small group of asylum seekers are totally without legal security in the Danish system: the deaf asylum seekers. Deaf people from countries outside Europe have almost never attended school and therefore they are not able to read and write. They have very rarely learned sign language, and if so, not the international version. Their only communication is usually with close family members with a homemade sign language.

This creates a hopeless situation where it is, in fact, impossible to ask them about their asylum motive, even with deaf interpreters and a sign language interpreter. Nevertheless, several have passed through the procedure – and some have been rejected. The Danish Deaf Association is running a project named Deaf Asylum Seekers, in which they have established deaf contact persons to break the isolation in the asylum camps.

## AGE TESTING OF UNACCOMPANIED MINORS

At the moment around 5% of new asylum seekers are children under the ages of 18 who arrive alone without parents or other guardians. The percentage reached 20% at one point. Except for the boys from Morocco who have a special profile, most of them come from Afghanistan and Syria. In 2018, a total of 237 arrived and only 37 were granted asylum.

To be younger than 18 gives you a number of advantages: you are not returned to another EU country as per the Dublin rules; instead, you are accommodated in a children's centre with more staff, you go to school, you get a representative from the Red Cross for the interviews, the asylum case is judged somewhat less harshly, and you can ask for family reunification for your parents and younger siblings. Last but not least, you can get a permit to stay on art. 9(c,3) – but only valid until you turn 18 – if you don't have any caregivers in your home country.

If a child is judged to be too immature to go through the asylum process, she/he will not get a permit to stay on art. 9(c,3) as previously. Rather she/he will have to live in an asylum centre for years, until mature enough. This is a new practice which has been criticized by the Danish Refugee Council.

The growing distrust towards asylum seekers has also had an effect on this area, and therefore the control measures have intensified to find out whether they are really younger than 18. The vast majority of those who arrive claim to be between 15 and 17 years old. Almost all of them pass through an age test now, unless they obviously look younger. In 2016, the Forensic Institute carried out 800 age tests and 70% of them were judged to be over 18.

The test is an attempt to get physical proof of their age – and the credibility is closely connected to the result. You will not necessarily get your case rejected because the test deems you older than what you said, but you are excluded from getting a permanent residence permit later if you lied about your identity, including your age. Often, the young people don't know exactly how old they are – see page 30.

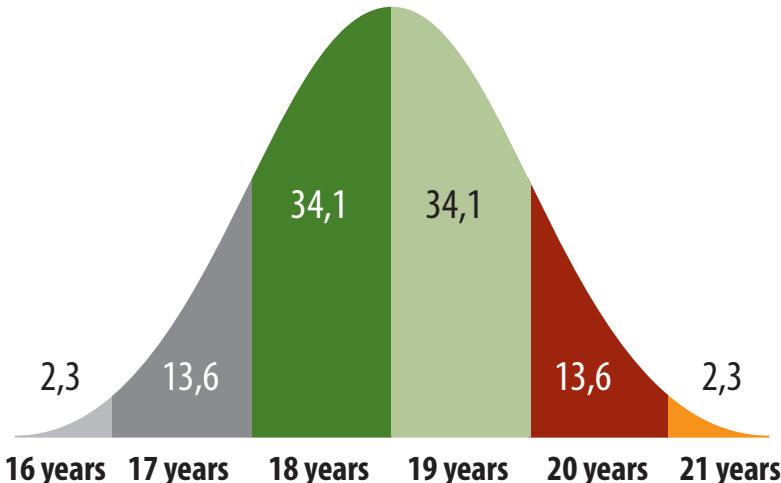
The age test is based on three elements: a doctor looks at the young person's undressed body, x-ray photos are taken of their teeth, and of the bones in their hand. Based on these three things, in which the hand is given particular significance, a written assessment is done with a calculation of probability. The method is called Greulich & Pyle (39) and it was developed in the 1950s in the USA. All three parts of the test have turned out to be highly unreliable, and will often show three very different age results, from which an average is taken.

The unreliability of the test has been subject to a constant and growing criticism in Sweden and Norway. A court decision in Norway dismissed the test as evidence, and a large part of Swedish doctors have refused to perform the test. The Swedish newspaper Svenska Dagbladet has published a series of more than 50 articles on the issue, in which journalists have pointed out a large number of errors. These other Scandinavian countries carry out the test in almost the same way as in Denmark, where the criticism has been surprisingly weak.

The net media Føljeton described a case in Denmark in which an Afghan pair of twins were found to be different ages and thus separated – however, later their real age was confirmed (17). There are also examples of the test results having been so wrong that the big sister was deemed to be younger than her little sister.

It's obviously very worrying that the authorities claim that a child is lying by referring to a clearly unreliable “test”, and thereby robs the child of a number of rights. This is a clear example of the principle of “the benefit of the doubt” not being applied – you can't prove their age but choose to treat them as adults. An insecure probability assessment is used as if it were documentation.

Age test is not only used for unaccompanied minors but also in cases of family relations. Lawyer Jens Bruhn-Petersen won a case at the High Court in 2009. The court found that his Afghan client was probably under 18 at the time when he applied to be reunified with his mother in Denmark – in spite of the age test showing an 84% probability that he was over 18. The court found that other factors of the case were crucial. This option does not exist for the unaccompanied minors when the age test is being used on its own.



*The green area shows the lowest of the most probable ages for a person. In this example, Immigration will decide that the age is 18 years.*

...problemer i Eritrea udover  
...et eller forfulgt på grund af din rac  
...lig social gruppe eller dine politiske ansku  
...udlændingelovens § 7, stk. 1.

...ved en tilbagevenden til dit hjemland vil være i risiko for at blive udsat for  
...at blive underkastet tortur eller umenneskelig behandling eller straf, og at du  
...udlændingelovens § 7, stk. 2.

...at du er udrejst af Eritrea illegalt, og at du dermed risikerer at blive underkastet umen-  
...skelig behandling eller straf.  
...opholdstilladelse efter udlændingelovens § 7, stk. 2.

በሰላም ጥርጥር  
እኔ ወላይት ወይን ወላይት ናብ ሰደተኞች ጥርጥር አካል ኸትጠርዓል ትኸሊል ኢኸ።  
የምዝገባውን አድራሻዬ 11-13, 1264 København K,  
እኔ ናይ ሰደተኞች ጥርጥር አካል፣ ንጉዳይክ ሠጣብጥልክ ጠባቢ ኸጠራልክ ይኸሊል እ  
ከክሊኑ ትኸሊል ኢኸ።  
ከክሊኑ ትኸሊል ኢኸ።

Udstedelse af opholdskort  
Du der allerede har fået optaget biometri, vil du modtage dit opholdskort, når du er blevet  
registreret i Det Centrale Personregister (CPR). Du skal tilmeldes CPR senest 5  
Uger efter at du er flyttet til den kommende bopælskommune. Kommunen kan hjælpe dig  
med at søge om CPR-nummeret. Din kommune kan hjælpe dig hermed.  
Hvis du ikke har fået CPR-nummeret inden 5 uger fra udstedelse af CPR-nummer, skal du venligst  
melde det til  
Din kommune kan hjælpe dig hermed.  
Hvis du ikke har fået CPR-nummeret inden 5 uger fra udstedelse af CPR-nummer, skal du venligst  
melde det til  
Din kommune kan hjælpe dig hermed.

## CHAPTER 3:

# ASSESSMENT OF RISK

### KEY ELEMENTS AND WEAKNESSES IN ASSESSMENT OF RISK

Risk and credibility are inseparable in asylum cases – if the credibility fails, then it's difficult to gauge the risk. And credibility is crucial, both with regards to the identity of the applicant and the asylum motive. But the two must be weighed against each other. If the risk is very high, the demands on credibility should be lower. And here it looks as if the Danish system has a weakness: credibility seems to be judged equally hard in all cases, and always before the risk is assessed.

The risk ought to be easier to judge than the credibility, as it can be based on general information and similar cases. But in practice it can be just as hard and there is heavy disagreement on these assessments.

The risk assessment is mainly about two things:

- the individual risk of the applicant
- the general risk in the area for the group of people that the applicant belongs to.

To be granted asylum, the individual risk must usually be concrete and convincing. But the general risk can also be so severe that the individual risk is not necessary. These two scenarios fall under different conventions and lead to different asylum statuses. See more about status on page 67.

The risk should be judged from a professional prognosis of what might happen and not, as the credibility, based on an estimate of what has happened. However, you only have the available background information – which is often flawed, imprecise, contradictory and out of date. Denmark doesn't monitor what happens to the people who go back home, whether voluntarily or by force. And the decision makers do not have the professional expertise required. Therefore, the assessments are made on a very questionable basis.

The UN Committee Against Torture recommends that, first of all, we have to consider if the home country of the applicant exposes people to systematic abuse and torture (a), then whether the applicant has been exposed to torture (b), possibly documented by medical examinations (c). And only after this, (f + g) is credibility mentioned (50). In the Danish system it's done the other way around: firstly any weakness in the credibility of the applicant is scrutinized, and afterwards the risk

in the home country is considered. Rejections based on credibility are often given without a torture examination having been made.

The burden of proof is very much on the applicant, who has limited options to support her/his claims. The principle of “the benefit of the doubt” is very rarely mentioned in the decisions, and there is never a recognition of the applicant's subjective fear, though both these elements are fundamental within asylum law.

In the ordinary legal system, witnesses and experts are often called upon, which in some asylum cases could add more nuances and more understanding – but it's almost never allowed in the Refugee Appeals Board.

## PRODUCTION OF EVIDENCE AND FORMING OF QUESTIONS

Actual evidence is not required in asylum cases, but the risk must be “probable”. And there is no demand for an imperative or strong risk, but on the other hand: a risk which can't be dismissed. When the Refugee Appeals Board overturns a rejection (i.e. grants asylum), they will often phrase it this way: “On these grounds, the board cannot dismiss that the applicant may be in an actual risk covered by the Alien Act art. 7(1).”

Asylum is about protection against future persecution or inhuman treatment, but the authorities will look at what has already happened when assessing the risk – if you have already been exposed to torture, it's seen as much more likely that it could happen again. A less consistent account should also be accepted from a person who probably has been exposed to torture. On the other hand, it's not a precondition to get asylum that you have already been persecuted.

According to the definition in the Refugee Convention, the applicant must have a “well-founded” fear of persecution. The authorities will try to assess the objective risk. But fear is subjective and should in fact be enough to grant asylum, particularly if the applicant has been exposed to persecution and is highly traumatized, e.g. because of torture (40).

*“If they are not clever people who can document their situation, they're lost, even if they have been through prison and exposed to inhumane things. If they can't prove it and they're not good at telling their story, the production of evidence can be a problem.”*

*- Interpreter with many years of experience in asylum cases*

## Burden of proof

According to the UNHCR the burden of proof lies, in principle, with the applicant, but as it's rarely possible for her/him to present actual documentation or proof, it will in practice be a task shared between the applicant and the caseworker to present, establish and judge the relevant facts of the case. There will usually be aspects that are impossible to prove, and in these cases the applicant must be given "the benefit of the doubt", if the account of the important parts of the story seems credible (7).

Danish law states that the applicant must present everything necessary to assess the case – a slightly narrower definition than the one from the UNHCR. The applicant does not always know what is considered most relevant to the case and will not be informed about it.

The authorities' contribution to the burden of proof is the available background information – the decision maker must help to find the most relevant and updated information about the situation of the applicant.

So, the burden of proof is mainly put on the applicant who has very limited options to strengthen her/his claims. The principle of "the benefit of the doubt" is seldom referred to, and the subjective fear of the applicant is not recognized.

*"Only reasonable doubt should be used to the benefit of the applicant. It means that if the person has explained her/himself in a consistent and plausible way (not in contradiction to general, known information) and in this way has established a general credibility, the benefit of the doubt should be given when it comes to a few "holes" in the account. In my view, the guidelines from the UNHCR recommend that this is done in more cases than the Refugee Appeals Board is doing it. It's especially relevant in cases where the applicant has mental challenges or is an unaccompanied child."*

*- Jesper Lindholm, PhD in human rights and asylum*

All the methods used in other parts of the legal system to establish a series of events and judge a case can't be used or aren't used in asylum cases: calling in witnesses and experts, sound/video recordings, DNA, medical examinations, documents.

Even if a person is considered credible, it may be hard to convince the Danish authorities that there is an actual risk to them. In the example on the next page, the information from the applicant is supported by background information: this is normal practice in Afghanistan, and in this case the brother-in-law would even get to take over significant lands and properties from his late brother.



**Example:** A single woman from Afghanistan asks for asylum because her husband died, and according to tradition she must marry her brother-in-law whom she does not like. She fears that the family will kill her for running away from him. She can't live alone as a woman in Afghanistan. The authorities reject her claim because they think parts of her account are unlikely, and her fear of the brother-in-law is based on her own presumptions only.

Lawyer Jens Bruhn-Petersen who is specialized in both asylum and criminal law, points out that it's very important to be aware of the burden of proof reversing in some cases. This goes for cases about the revocation of residence permits, internal flight alternative (IFA), exclusion causes and the cases where it's recognized that the applicant was in danger at the time of leaving the home country but finds that it's no longer relevant (e.g. because it was along time ago or there's been a change of government). In these cases, the state has the burden of proof.

The applicant does not always know the real risk in her/his home country and is often not aware of which factors are important in an asylum case. The applicant will often talk about matters that are not relevant for asylum and omit things of great importance. It's the caseworker's responsibility to help shed light on the relevant information – also if there is an asylum motive which the applicant is not even aware of. But as it is, being unaware of the rules often ends up hurting the applicant.

Many young people have fled Eritrea because of the hopelessness and oppression in the country, but they don't know exactly what the punishment might be if they evade the despised military service. Also, they don't know exactly what is going on in the prisons. Their parents and elder siblings have deliberately not told them how bad things are, and in general they are very ill-informed about their own society as well as the world outside.

They have a right to asylum for leaving the country illegally and evading military service, and they do get asylum. However, during the interviews they often fail to explain what the actual problem consists of – some just say “I couldn't live freely, and I couldn't have a decent future”. The day when conditions in Eritrea improve even slightly, they are at risk of having their permits revoked.

With regards to proof, a special situation arises in the cases where the exclusion causes of the Refugee Convention are used – it's usually only information given by the applicant her/himself which is being used to assess that the applicant has violated human rights towards others and should be excluded from asylum. Otherwise it's a legal principle that you should never be forced to incriminate yourself unknowingly.

It can also be too easy to get asylum, when cases are handled automatically:

*“A Syrian man between the age of 18 and 42, would automatically get 7(1). This was a political decision because if you were at risk of forced military service you were thus also at risk of being compelled to commit crimes violating the human rights of others. But it was far from everybody who might ever be recruited for military service in practice. If you have physical problems or if you are a Kurd or a Palestinian, you’d not get drafted.”*

*- Former caseworker in the Immigration Service’s asylum department*

## **Documentation**

The applicant is asked to present documents that may be relevant to the case. This is not just of her/his identity, as described in chapter 2. It may also be about the risk and the asylum motive, e.g. relevant newspaper articles, letters, certificates, internet correspondence, arrest warrants, photos etc.

For these kinds of papers, the same problems arise as for the identity documents: it may be hard to assess the authenticity of a letter from a local party office in Sri Lanka, a summoning to a court in Sudan, or a threat from the Taliban. And it’s even more difficult for the countries from which we see very few cases and for that reason have a limited knowledge.

The Danish authorities cannot contact the home country, as this might endanger the applicant further. That’s why the Foreign Ministry uses local embassies and consulates – who sometimes get back with a reply from an “anonymous source” whose identity not even the applicant’s lawyer knows, and therefore it’s difficult to query the information.

## **Left home country legally/failure to apply for asylum immediately**

If you arrived with a visa and a valid passport, or if you didn’t apply for asylum immediately, it has a direct negative influence on the total estimate of both risk and credibility, and is often mentioned in rejections. This is a sign of a misconception of “how a real refugee will act”. Even if you are at immediate risk, it may make sense trying to get out of your home country with a visiting visa, since you still might be able to make it through the airport despite having a conflict with the authorities; besides, the passport or successful passage through the airport may have been obtained with a bribe. The authorities in the home country consist of different offices who don’t always communicate – and civil servants are often open to a bribe.

For years, the Danish authorities have maintained that it’s impossible to exit the airport of Tehran illegally. Nevertheless, there are examples of this taking place. In Eritrea it’s normally completely impossible to obtain a passport for people who are not on good terms with the authorities, though lately a few people have got passports by bribing officials.

Immediately upon arrival to Denmark, you might need to calm down and rest a little – and many people are neither aware of their right to asylum, nor do they know where and how to apply. If you have a valid visa for other reasons, you may feel safe and relieved. And if you have a Green Card, why would you go to the Sandholm centre? These aspects should therefore not have any weight in the asylum case.

### Questions and interview

The way questions are phrased can have a great influence on the assessment of risk. Again, as with credibility, the questions ought to be open, and the applicant should be given a chance to explain in her/his own way and not be pushed into a misleading account of events.

Example of a closed question: “Which event led to you leaving your home country?” This does not allow the applicant to give a chronological and full account, as she/he fled after a long time of political opposition activities and not due to a specific event. Instead, the question should be: “Explain what happened which makes you fear returning to your home country.” The difference in phrasing is important, but so small that the interpreter might use the closed one even if the caseworker used the open one.

One of the questions always asked by the Immigration Service during interviews is: “Have you ever been a member of a political party or in other ways been politically active?” and if confirmed, whether you “can produce a membership card”? This is a Western idea of political activity which will give a misleading and weak answer if the activities of the applicant consisted of hiding people in her/his home, sending money or handing out pamphlets. In a dictatorship, mere suspicion of sympathizing with the opposition may be enough for someone to be imprisoned and tortured. As a result of this, the decision will often include a sentence like “We have found it important that you have never been a member of a political party or been politically active”.

Some asylum seekers say they found the questions irrelevant, and that they never had the option to explain, in detail, about the important issues of their case.

**Example:** A homosexual man from Iran has a relatively good chance of getting asylum. He might be well educated, live up to expectations, know how to present his case – and, as the level of risk in Iran is sufficiently high even if he is still in the closet, he doesn't need a personal story of persecution. The opposite would be the case of a lesbian woman from Uganda. She may not be good at explaining herself during interviews, she may be traumatized after abuse and it's difficult for her to persuade the Danish authorities that she has been exposed to individual and specific persecution, which is required.

## DIFFERENT STATUSES AND DEFINITIONS

As described briefly in chapter 1, there are four kinds of refugees in Denmark:

**7(1):** Convention refugees (UN Refugee Convention)

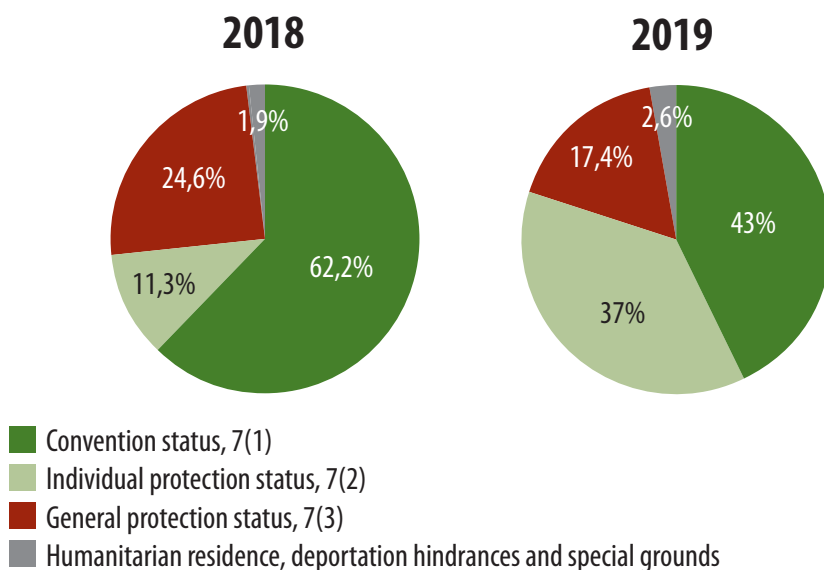
**7(2):** Protection refugees with individual motive

**7(3):** Protection refugees without individual motive (war refugees)

**8(1) + 8(2):** Resettlement/quota refugees (UN Refugee Convention + individual protection need)

The statuses granted because of individual risk give the safest kind of residence permit and the most rights. If you are granted asylum without an individual motive, you will lose it again as soon as the risk level in your home country drops, and you will have limited access to family reunification and education

## DISTRIBUTION OF ASYLUM STATUSES IN DENMARK

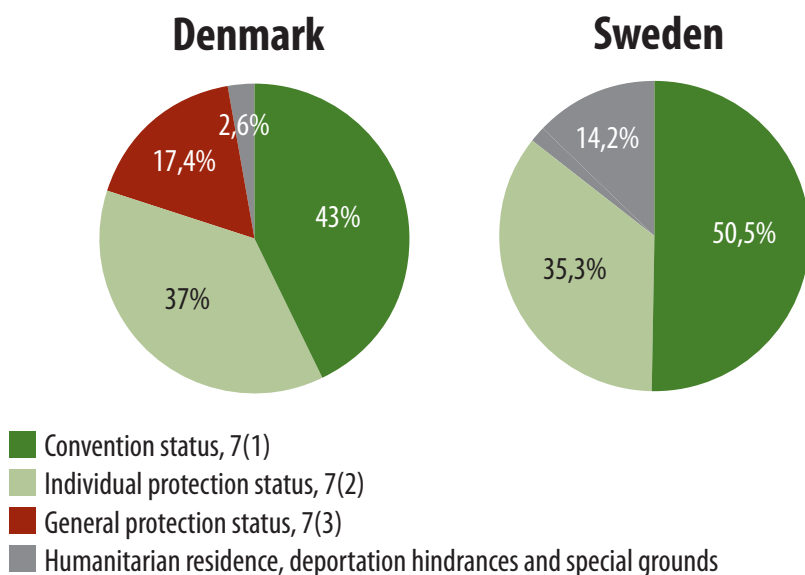


The choice of status is connected to the assessment of risk and it can seem illogical and unpredictable. For instance, the choice of status for Syrian refugees has changed a lot since the war broke out. In 2015, 70% of Syrians were given 7(1) but in 2018 that dropped to just 16% – the rest were given 7(2) or 7(3). This could be due to a change in the profile of the applicant, but it still seems like a very significant change.

The different countries in Europe have different statuses in their national legislation, and they assess the risk very differently. Read more about this on page 80.

For many years, Denmark granted a larger proportion of convention statuses than, for instance, Sweden but this changed from 2018 to 2019.

## DISTRIBUTION OF ASYLUM STATUS, DENMARK AND SWEDEN 2019



### Definition of a refugee according to the UN Refugee Convention of 1951:

“The term “refugee” shall apply to any person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

A frequent discussion is “who belongs to a particular social group” according to this definition. One could, in fact, argue that all women from countries such as Pakistan, Saudi Arabia and Afghanistan should be granted asylum, as both the legislation and the traditions of these countries oppress all women and expose them to risk as soon as they try to claim any kind of rights to be free. In reality, it's not even sufficient to belong to a smaller ethnic group which is unquestionably being persecuted, as for instance the Rohingya, the Yezidi or the Somali minority clans. In Denmark you need an individual asylum motive to get asylum according to the Refugee Convention.

Almost everyone from Eritrea is granted convention status in Denmark, even if they are not really persecuted for belonging to a special group, as everybody is drafted for military service. However, the Eritrean authorities consider it a political act of treason to evade the service, and this falls under the definition of the Refugee Convention.

LGBT+ persons get 7(1) – even though the risk might often be from civilians – because they can't ask protection from the authorities, and in some countries the violence might be encouraged by the authorities.

On the other hand, Afghans running from the Taliban do not get convention status, even though you could argue that they are persecuted for political, ethnic or religious reasons – and that the Taliban is actually in power in several parts of the country. The Danish Refugee Council wrote a letter to the Refugee Appeals Board about this in April 2019 (53), but the board merely replied that they did not agree with that interpretation.

### **Examples of art. 7(1):**

- A) Political activist from Iran, member of an illegal movement, tortured in prison
- B) Homosexual person from Uganda, activist
- C) Young man from Syria, evaded military service
- D) Young man/woman from Eritrea, escaped from national service and left country illegally\*

Many other conventions Denmark have signed contain an access and a right to protection against abuse, torture, inhumane punishment or degrading treatment, including the UN conventions on women, torture, disabilities, racial discrimination and children. The European Convention on Human Rights and its court in Strasbourg (ECtHR) also cover the asylum area.

\*) Note: Most refugees from Eritrea fall under both art. 7(1) (for evading military service) and under art. 7(2) (for leaving the country illegally which is punishable).

### **The European Convention on Human Rights, article 3:**

“Prohibition of torture: No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

In the cases with no “persecution” but where the person has a concrete and individual risk of inhuman treatment, death penalty or torture in the home country, it will fall under ECHR art. 3 as described above. This definition actually also covers humanitarian residence permits (art. 9b in the Danish Alien Act), when a person is at risk of losing her/his life, being exposed to serious suffering or having an exacerbation of a disability. The law is interpreted extremely rigidly in Denmark and according to many legal experts this is not in accordance with the latest court ruling at ECtHR, Paposhvili vs. Belgium 2017 (36).

#### **Examples of art. 7(2):**

- A) Woman from Pakistan, divorced from a violent husband after forced marriage, ran away because of the family's plans to kill her.
- B) Man from Iran accused of adultery with a married woman, risked the death penalty.
- C) Female doctor from Afghanistan, spouse kidnapped by the Taliban, received death threats.
- D) Unaccompanied minor from Eritrea.

If an applicant doesn't have an individual motive yet 'simply' comes from a very dangerous place, she/he will be granted asylum according to art 7(3). This is a new article introduced by Helle Thorning's government in 2015 as a direct consequence of the increased amount of Syrian refugees at the time. At first, asylum is just granted for a year and it can easily be revoked by law. Besides, it only gives limited access to family reunification and education – and, until recently, no rights to divorce.

#### **Examples of art. 7(3):**

- A) Woman from Syria, fled due to the civil war in her country.
- B) Man from Syria, older than 42 years, fled due to the civil war.
- C) Unaccompanied minor from Syria.

#### **Examples of art. 8(1) and 8(2):**

Quota refugees – or resettlement refugees – are chosen in collaboration with UNHCR, and for 38 years (with a break from 2015 to 2019) Denmark has received a number every year. They may have different asylum motives and thus fall under different conventions as other refugees. However, their paperwork from the UNHCR states “a durable solution”, and therefore it's very questionable that Denmark keeps them in a position in which they might lose their permit again.

*Source for all conventions: Danish Institute for Human Rights ([menneskeret.dk](http://menneskeret.dk))*





## COUNTRY OF ORIGIN INFORMATION (COI)

Country Of Origin – (COI) – reports are constantly being produced. These describe the countries that asylum seekers come from and they form the basis of the assessment of how dangerous the conditions are in each country: Who is in power in different areas, which minorities are exposed to persecution, how efficient the legal system is etc.

The Refugee Appeals Board has a large collection of general background materials on their webpage: [fln.dk](http://fln.dk). However, the latest reports are not uploaded, they are instead sent directly to the lawyers and the members by the secretariat. A larger and much more updated collection of COI can be found on the European [ecoi.net](http://ecoi.net) with 350,000 files, and 1,000 new ones added every month. Most reports are in English and searches can be made by country as well as by topic, e.g. “Afghanistan + forced marriage”.



The official Danish sources of the information are the Ministry of Foreign Affairs and the Immigration Service. Materials from various other organisations are also used, like from the Danish Refugee Council, Amnesty International, Freedom House and other international human rights organisations, as well as from the UNHCR. On top of that, you have the American Foreign Office's annual report (Country Report on Human Rights Practices) about the human rights statuses in a large number of countries, reports from the Canadian Refugee Board office for fact finding, reports from the EU working group (EURASIL), reports from other countries' authorities and, to some extent, newspaper articles from identifiable international magazines.

Lawyers can also present reports and articles in single cases that they, or the applicant, have found.

*“They [the Immigration Service] hadn't done good research, just a little on Google, but you can't find anything on a personal case like mine. I had the impression that they didn't believe me. They probably thought I was lying because they couldn't find information on such a situation.”*

*- Refugee from an African country*

Reports naturally contain general descriptions which can make it difficult to evaluate how a specific applicant fits into the picture. Besides, the various reports are based on information from different sources who can easily disagree between them – that makes it even more difficult.

COI are generally written by states (agencies, ministries), supranational actors (UNHCR, EASO, UNICEF) or independent international or national NGOs (Amnesty International, Human Rights Watch, Freedom House, Danish Refugee Council, NOAS).

The reports are usually based on interviews with local sources like embassies, NGOs, journalists and lawyers. Sometimes it's too dangerous for the authors of the COI to move around in a country, so they have to interview people from a neighbouring country. This happened with the Danish report on Somalia in 2015: the authors never left the airport in Mogadishu. The same was also the case years before during the Iraqi war.

The reports don't contain recommendations or advice on who to grant asylum to or not. They discuss the situations often referred to by asylum seekers – and they try to establish exactly what is going on, and how dangerous a place it is. There's a great margin for interpretation in the reports for the decision makers; basically, the same report can be used both to grant or reject asylum. For instance, the Danish authorities decided not to use their own report on Eritrea from 2014 and gave all Eritreans

asylum whilst the British authorities used the Danish report and turned down 66% of Eritreans in the first-instance in 2015 (24). Most of them did get asylum at the appeal level.

*“I see a problem with the practice of the board with regards to the AI Tash-cases. These are about Iranian Kurds who fled to Iraq because of the revolution and the war between Iran and Iraq back in '79-80. They stayed in some camps in Iraq and never returned home. Now their children are arriving and they haven't experienced conflicts of their own, but they might have some relatives in Iraq who have been active in the Kurdish exile parties. Until 2011 they automatically got asylum... In these cases, the board has not been able to decide where it stands. The legal situation is unclear, because you can't find arguments in each individual case; basically, the background information is used differently from case to case.”*

*- Lawyer Jens Bruhn-Petersen, asylum and criminal law*

The Eritrea report from 2014 (25) is an example of a state institution 'commissioning work', in essence, that a state needs a report to justify more asylum rejections. Luckily, this case is an exception, and most state reports are serious and professional, though they may still have a tendency to diminish the risk factors of a country.

When the infamous report on Eritrea was published in 2014, the UNHCR sent a public letter (13), stating that they were not the semi-anonymous “UN agency in Asmara” interviewed for the report. And that the report, in several places, didn't quote sources directly and only used the most positive half of the statements from UNHCR's office in Ethiopia.

In Denmark we have quite a unique phenomenon where the Immigration Service (state agency) and the Danish Refugee Council (NGO for refugees) in some cases make common fact-finding missions and write a report together. This is a highly questionable construction where, on one hand you could argue that the Immigration Service is using DRC to legitimize a report that can be used to reject asylum seekers – this happened with the Somalia report in 2017. Yet, on the other hand, the quality increases when two partly opposite interests must find common ground, which is illustrated by the scandalous Eritrea report from the Immigration Service itself from 2014, compared with the valid report the two made together in February 2020.

*“In our view, the reports are better when we participate. Slightly different angles are included. E.g. in the latest Eritrea report: a source replies that many people return home without any problems. It turned out that this was back in the 90s... So, the extra questions, extra focus on doubts and risk – that's what we can contribute with. The disadvantages are clearly that it might look like we are responsi-*

*ble for a change of practice. However, it's about fact-finding... There can also be disadvantages with regards to how we are viewed, both here and abroad."*

*- Eva Singer, head of the asylum department, Danish Refugee Council*

A weakness with the reports is obviously the time aspect as situations change constantly, and it takes time to make a report. It can seem like a report is already outdated when it's published. Also, the problems of a country could also have been very different at the time someone applied for asylum. Many of the reports referred to are several years old.

## DISAGREEMENTS AND CHANGES

### Conflicting information in COI

In a report from EASO\* about FGM (Female Genital Mutilation, female circumcision) in Somalia, the following contradicting statements appear on the same page (41):

- 1) "UNICEF Somalia indicates that 'there is no significant difference in the incidence of FGM/C between urban and rural populations or between different wealth quintiles and education levels'."
- 2) "In its 2016 report on FGM/C in South Central Somalia, the Danish Immigration Service (DIS) reporting on one source, indicates that: 'It is possible for some women to avoid having their daughters undergo the practice of FGM. The women able to withstand the social pressure to have their daughter subjected to FGM can be found in the urban centers of S/C Somalia. In urban centers, the communities are not as closely knit as in the rural areas'."

The same disagreement about this topic can be found in a case where the UN Committee on the Rights of the Child agreed with a complainant against Denmark and found that a mother wouldn't be able to protect her baby daughter against FGM in Somalia. However, the Refugee Appeals Board refused to reopen the case, referring to background information and three court rulings from ECtHR which, according to the board, showed that a resourceful mother in that region could prevent the mutilation of her daughter (26).

The Immigration Service published a fact-finding report about Somalia in 2015. Referring to that they started revoking a number of Somali refugees' residence permits after several years of living in Denmark – and this continued until 2019. In total, 1,350 refugees lost their permit although half of the cases were later overturned or sent back to the Immigration Service.

\*) European Asylum Support Office

The report contained partly descriptions of an improved security situation in Somalia – yet also contained 20 warnings about extremely bad security: particularly for children, women and returnees; that civilians were being injured or killed in targeted attacks with guns, bombs or grenades every week; and that Al-Shabaab was recruiting young boys and girls by force. Also, the authors had not dared to leave the airport.

A number of lawyers and legal experts criticized the Immigration Service for illegal practice by only using certain parts of the report and ignoring others. Michael Gøtze, professor in administrative law, told the Politiken newspaper in 2017, that Immigration made the decisions on a “too one-sided basis” and did not live up to its obligation to process asylum cases in an “adequate, balanced and neutral” way (27).

Something similar took place recently with Syrian refugees from Damascus. A fact-finding report co-written by the Immigration Service and the Danish Refugee Council in 2019 led to the Immigration Service – as the first country in Europe – revoking seven Syrian refugees' residence permits. The argument was that the general security situation was improved in Damascus – although the situation was still not stable. The individual risk of persecution from Assad's regime had, in fact, increased which led to the strange result that the seven who lost their permits under art. 7(3) at the Immigration Service were later, during their appeal, granted asylum under art. 7(1) and 7(2) by the board. Afterwards, hundreds of Syrians had their status changed from 7(3) to either 7(1) or 7(2).

Shortly after, however, the board confirmed the revocation of three women's residence permits – the board found that they could go safely back to Damascus, though at the same time one of the largest humanitarian crises took place in Idlib. And in spite of the Danish government assuring that they had no plans to make deals with Assad about deportations. So, if the women don't leave voluntarily they can face years in a Danish deportation centre.

*“We refer to the same reports but the authorities read them like the Devil reads the Bible. Many kinds of harassment are described in the reports and they are coherent with the accounts from the applicants. The travel guide lines for Cameroon says, for instance, that citizens from Schengen countries are advised not to show that they are homosexual. “Nobody is convicted”, the asylum authorities say – no, but some are charged, many are exposed to attacks, and there is no protection from the authorities.”*

*- Kristian Wilken, asylum counsellor at LGBT+ Denmark*

### **The impact of certain reports and court rulings upon risk assessment**

The European Court of Human Rights (ECtHR) is used to establish which background information is the most reliable when in doubt. A court ruling may therefore

change the line of risk assessment for all the European asylum systems for a certain period of time. The court has the final say when it comes to the states who signed the European Convention of Human Rights.

The UN does not have a court to define the interpretation of the Refugee Convention, just a number of committees which can disagree with states on single decisions and ask them to reopen a case and change the outcome. The committees will normally dismiss the complaint if there is a doubt concerning the credibility of the applicant, so the discussions are mainly about the risk assessment. The number of cases in which the committees have agreed with the complainant against the Danish Refugee Appeals Board have increased during the latter years, and the board has been visibly annoyed with this interference in their work. Most cases that have been reopened have been rejected once again. See more in chapter 4 about this.

It's typically lawyers and NGOs who complain about the Danish rejections to the European Court and the UN committees. In both systems there is a long waiting time; it easily takes between two and ten years before a case is finished – and this obviously means that courts and committees are always lagging behind.

A number of court rulings have forced the Refugee Appeals Board to change their practice, most significantly the case *Sufi & Elmi vs the UK* in 2011 (33). The court ruling said it was too dangerous for anybody to stay in Mogadishu so an individual motive was not needed. This forced Denmark to grant residence permits to around 150 Somalis who had been rejected and had been living in the asylum camps for years.

## RECOGNITION RATE, SOMALIS 2004-2019 (DENMARK, FIRST-INSTANCE)



Recently, many from that group have lost their residence permit again with reference to the report which said that Mogadishu was no longer entirely as dangerous as in 2011 – things fluctuates as you can see from the green curve in the chart opposite. Read more about this line of events in a number of articles on [refugees.dk](#) search 'Somalia'.

Below you see the first part of the letter sent to 1,350 Somalis living in Denmark. More than half of the ones who had their permits revoked, were overturned or sent back to the Immigration Service by the board. It is obvious that such a letter creates total panic and anxiety with the recipients. Also, slow case processing means that people must live for months, even years, without security regarding their future.

**We consider revoking your residence permit.**

We consider revoking your residence permit following article 19(1,1) of the Danish Alien Act, because of a renewed assessment of your case and the general conditions in Somalia.

According to our background information, the human rights and security situation in Southern and Central Somalia has improved since you got your residence permit in Denmark.

When a new court ruling comes from ECtHR, Denmark will never refuse to follow it. But in practice this may happen anyway, as a note will be made by the Ministry of Justice, interpreting the ruling in the narrowest way possible.

In 2014 we suddenly had a lot of asylum seekers from Eritrea arriving in Denmark. A part of the few ones who had arrived in the previous years had been rejected, so Eritreans tried to avoid Denmark. Then in 2013 something changed: the lawyer Niels-Erik Hansen got support from one of the UN human rights committees in a few Eritrea cases, which the board reopened and overturned. Shortly after, another lawyer got a case reopened and overturned for an elderly Eritrean woman who had been rejected for nine years. Since then around 4,000 Eritreans have been granted asylum in Denmark and only a few percent get turned down. The UN committees have in this way helped to change the practice, though this doesn't always happen.

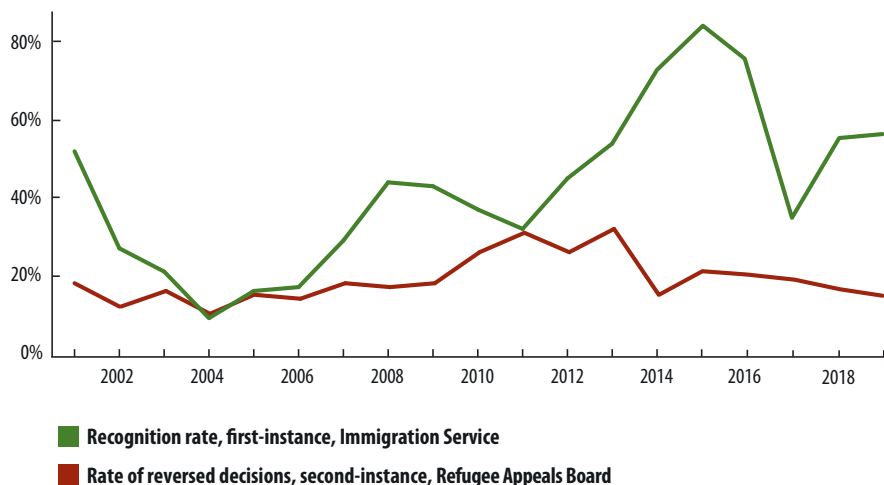
*“We hate being put in a situation where everybody from certain countries automatically gets asylum. And that was what was about to happen with Eritrea in 2014! It was just like Somalia again, and we just don't like that. And now Syria...”*

*- Asylum lawyer Niels-Erik Hansen*

## Periods with large variations in recognition rates

The recognition rate (the chance of getting asylum) has moved up and down since 2001, from 10% to 86%. The total rate mostly shows something about where the applicants come from. It makes most sense to look at one nationality at a time.

## RECOGNITION RATES IN DENMARK 2001-2019, FIRST- AND SECOND-INSTANCE



## Development in three EU countries' protection of Iraqis

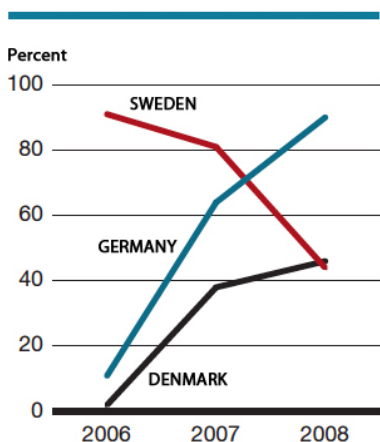


Chart from the newsletter Artikel 1A 03/2008, from Danish Refugee Council

## Iraq

After the invasion of Iraq in 2003, European countries disagreed – for many years – on how to receive the Iraqi refugees. Denmark was among the countries granting asylum to the lowest number: only 2% got asylum in 2006, rising to 46% in 2008. During the same period, Germany reached a level of 90% – but Sweden went the opposite way, going from 90% in 2006 down to 44% in 2008.

Half of the Iraqis arriving in Europe in 2007 ended up getting asylum in Sweden. This was not a sustainable situation, but instead of closing the border as they ended up doing in 2015, Sweden changed the risk assessment for Iraq and claimed that there was no longer an armed conflict. During this whole period UNHCR urged all states to grant protection to everybody from Southern and Central Iraq.

Today, Denmark still has one of the lowest recognition rates for Iraqis; in 2018 it was 0% while the EU, on average, gave asylum to 42% of Iraqi asylum seekers.

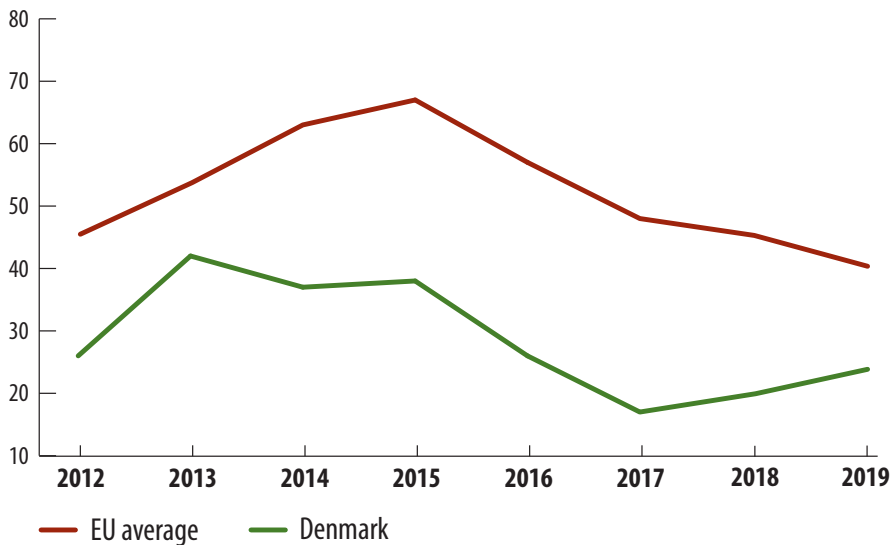
### Afghanistan

Danish armed forces went into Afghanistan in 2002 and withdrew in 2013, but there has been a civil war going on in the country since the 1980s. Different governments have been in power in different areas and the security situation has been very unstable. The Afghan refugees arriving in the 90s were running from the Mujahedin's and the Taliban's takeover and many were granted political asylum. But today, most are leaving the country because of civilian conflicts and the uncertain and insecure state of the country. Many are persuaded to adopt or copy a standard story from the smugglers, and then they are rejected for lack of credibility.

The number of civilian killings was at its highest ever in 2016 and in 2019 the number of Afghans fleeing was 350,000. Nevertheless, it has been increasingly difficult for Afghans to get asylum in Denmark and, as with the Iraqis, the rate is much lower than the average for the EU. In 2017, 83% of Afghan asylum seekers got a negative reply in Denmark. The same year, Amnesty launched a report about the country, warning that any return would be in breach of international law (34).

### RECOGNITION RATE FOR AFGHANS, DENMARK AND EU 2012-2019

First-instance

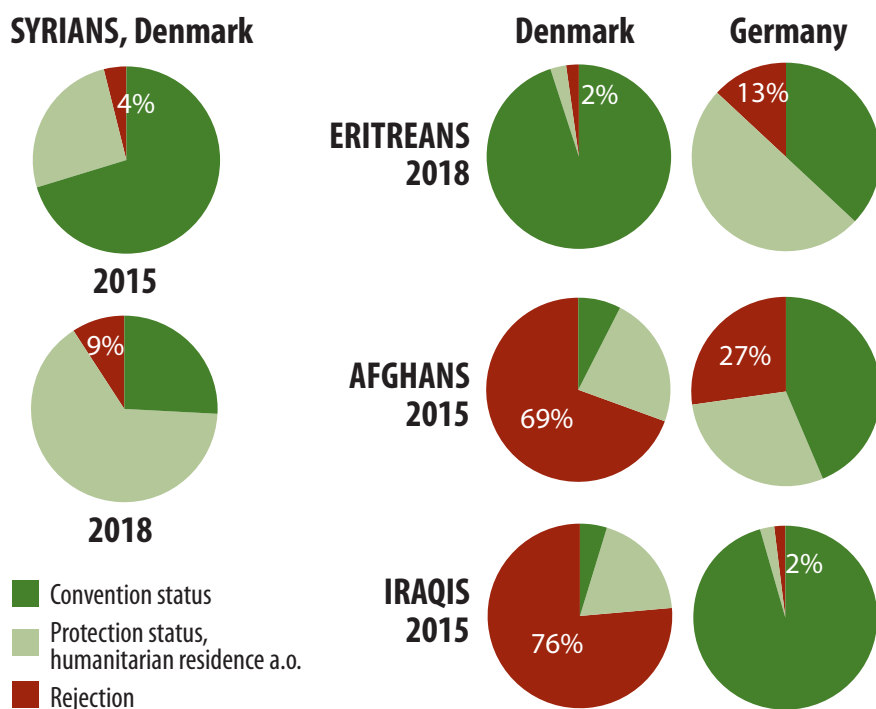




## Assessments from neighbouring countries (status + recognition rate)

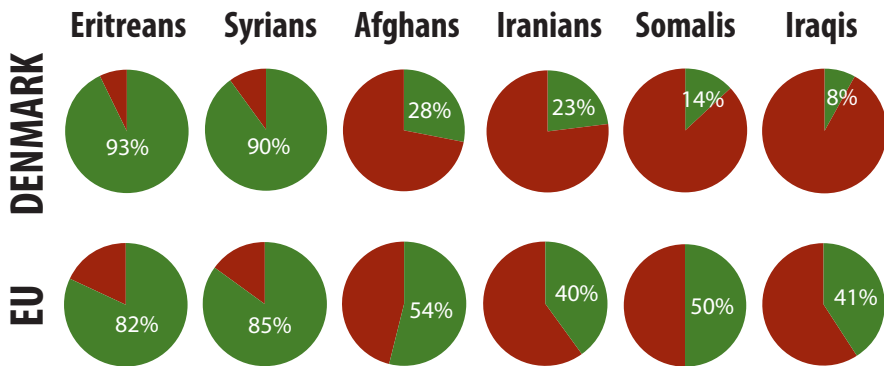
The Danish assessments have fluctuated over the years, and sometimes the choice of status seems illogical. But it becomes even more evident when comparing with other countries in Europe, e.g. our neighbouring countries Germany and Sweden. Since 2015 there has been a tendency in Europe to assess all cases more rigidly: fewer get asylum and, of these, even fewer get convention status. At the same time, a number of countries have introduced limitations to the right to family reunification, so that only convention refugees have the possibility to get their families here.

In comparison with our neighbouring countries, Denmark has a lower recognition rate for most nationalities which might be explained by the tough judgement of credibility. More Eritreans, however, get convention status in Denmark than in Sweden or Germany.



The chart above shows some of the most significant differences and changes in Denmark's and Germany's assessments of the same nationalities – both when it comes to rejections (recognition rate) and choice of status. It's quite worrying that two similar states can disagree to this extent. It also shows that Denmark has changed its view on Syrians.

## RECOGNITION RATE FOR THE LARGEST NATIONALITIES 2019



Figures from Eurostat

A new research project at Copenhagen University, which will take place over several years, will try to investigate why there are such large differences in the chance of getting asylum, e.g. for a Somali or an Afghan, depending on which EU-country you end up in. The project will start out with a focus on the Nordic countries, and is a collaboration between Copenhagen University's Faculty of Law (by professor Thomas Gammeltoft-Hansen) and the Department of Computer Science (by Tijs Slaats). With the assistance from new technology, a great amount of data will be processed in the form of decisions and legal documents. You can follow the project at: [tinyurl.com/yb7tndll](https://tinyurl.com/yb7tndll)

## LGBT+ CASES AND CHRISTIAN CONVERTS

The assessment and the development for these two groups have several similarities, legally speaking. For both groups, it's crucial to determine whether this person is in fact homosexual or is in fact religious (credibility). And then, whether you have the right to live openly with your sexuality or your faith in your home country, and which risk this amounts to (risk). But the two types of cases have moved in opposite directions when it comes to the balance between credibility and risk – both resulting in a decreasing amount of permissions.

The LGBT+ applicants come from countries where it's criminalized and/or taboo to have other sexual orientations, especially Africa, Russia and the Middle East/South-east Asia. Converts, in this context, are Muslims who have converted to Christianity and come from a Muslim country where it's illegal and/or dangerous to practice other religions, especially Iran and Afghanistan.

Religious belief falls directly under the definition of the Refugee Convention, but sexual orientation does not. However, persecution from sexual or gender reasons are now interpreted as belonging to a special group and therefore leads to convention status. For both types of cases, the practice of the Refugee Appeals Board has been fluctuating.

Asylum lawyer Marianne Vølund wrote to the UNHCR in Stockholm in 2011 and 2012 about a number of Afghan convert cases that the board had rejected because they did not think the conversion had been known to the Afghan authorities. This is the same as saying that the applicants could simply hide their faith upon returning back home. The outcome was a six page note from the UNHCR to the board in one individual case, pointing out that the authorities according to the Refugee Convention cannot make someone hide her/his religious faith to avoid persecution.

Applying the same standard as for other Convention grounds, religious belief, identity, or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution.<sup>21</sup> In fact, being compelled to forsake or conceal one's religious belief, identity or way of life where this is instigated or condoned by the state may itself constitute persecution, or be part of a pattern of measures that cumulatively amount to persecution in an individual case.<sup>22</sup> "Persecution does not cease to be persecution because those persecuted eliminate the harm by taking avoiding action."<sup>23</sup> Adopting such an approach would undermine the protection foundations of the 1951 Convention. Manifestations of religious belief cannot be expected to be suppressed in order to avoid a danger of persecution as long as the manifestations constitute an exercise of human rights. In the same vein, a statement by an applicant expressing the intention to abstain from

*Extract from the UNHCR letter*

The Refugee Appeals Board had to reopen a number of cases and made a change of practice. However, you can't say that there is a high risk for just being a Christian, so the demands were tightened in the evaluation of whether the conversion was real and very important to the applicant – in this way, the rejections were moved from risk to credibility (28). Quite a high level of knowledge about the Christian faith is required, because the faith must be a serious part of your life to become the reason for asylum. The majority are therefore now rejected with the argument that their Christian faith is not found to be convincing. For that reason, it's not necessary to look further at the risk.

Since the change in 2012, there has been an increase in the amount of conversion cases. Some of the rejected Iranians convert after arriving in Denmark, and in this way they have a new asylum motive after the rejection (it's called 'sur place').

However, by far the largest amount are rejected again because the authorities think they have only converted to get asylum – which is probably correct in many cases.

\*) UNHCR note 01.05.2012, case no. 116/ROBNC/2012

In the conversion cases it's quite naturally a serious disadvantage if the conversion took place after the rejection of asylum. But below is an example of a case where the account from the applicant was directly misquoted and misinterpreted:

*“The board directly copies the wrong arguments from the Immigration Service to make it appear as if A explained incoherently and changed his account. He didn't, though, which is clear when you read the summaries from the two interviews. He answered the questions in a very rational and precise way. At the first interview (three weeks after arrival in 2018), he could not call himself a Christian because he had not yet been baptized, but he said that he had been very interested in Christianity since he was a child. At the next interview (June 2019) he replies, again, that he is not baptized yet but goes to church and is learning more about Christianity. At the board meeting (February 2020) he was baptized and now calls himself a Christian. He is able to explain in detail about the Christian faith and the content of the Gospels, but still he gets a rejection with the argument that in Iran he never thought to convert, in spite of his explanations of being interested in Christianity since he was a child.”*

*- Asylum lawyer Marianne Vølund*

Precisely the same discussion that led to the change of practice by the board in 2012 is relevant to homosexuality, which can be seen in a court ruling from the Norwegian Supreme Court from May 2012, which also referred to a British ruling and Swedish practice (51), see extract below. Sexual minorities can also not be made to hide their sexuality which, on top of the risk asylum-wise, also prevents their human right to a family life (ECHR article 8).

- to avoid persecution. The question is, whether there is a well-founded fear of persecution, not what the applicant might do to avoid persecution. Such a demand would require that he was asked to give up the relationship which the convention protects. Besides, homosexuality is such a basic part of a person's identity that being asked to hide this would require caution in all situations. The people concerned would have a small chance of experiencing love and would have to live in constant fear. The threat of or the fear of persecution would be real, even if they were discreet.

However, in some of the LGBT+ cases, risk and credibility are judged in the opposite way. Even if the Danish authorities often believe that the person is LGBT+, they don't think this is enough in itself to get asylum in Denmark. An individual asylum motive is required, and the Danish authorities often decide to find this part of the story not credible – which leads to a rejection. If they do find the individual story of persecution credible, they will usually grant asylum.

According to asylum counsellor Kristian Wilken from LGBT+ Denmark, practice has been particularly inconsistent concerning applicants from Uganda. In Uganda, sex

with same gender is criminalized and the punishment goes up to lifetime. In practice, nobody gets convicted at the courts and a small group of LGBT-activists are living openly. However, a well-known activist was killed at his home by unknown perpetrators in 2011. To a large extent, LGBT+ persons are experiencing persecution, attacks, extortion and arbitrary arrests from both family, civil society and the police.

At the same time, LGBT+ persons cannot ask the authorities for protection if they are exposed to abuse and discrimination. Nevertheless, Denmark does not find the persecution systematic, and maintains that even if the situation is difficult, being LGBT+ is not in itself enough to be granted asylum. Only very few LGBT+ persons from Uganda have been granted asylum during the last three years, and according to Kristian Wilken it seems random who are being found credible and who are not. The chances are much better for applicants from the Middle East.

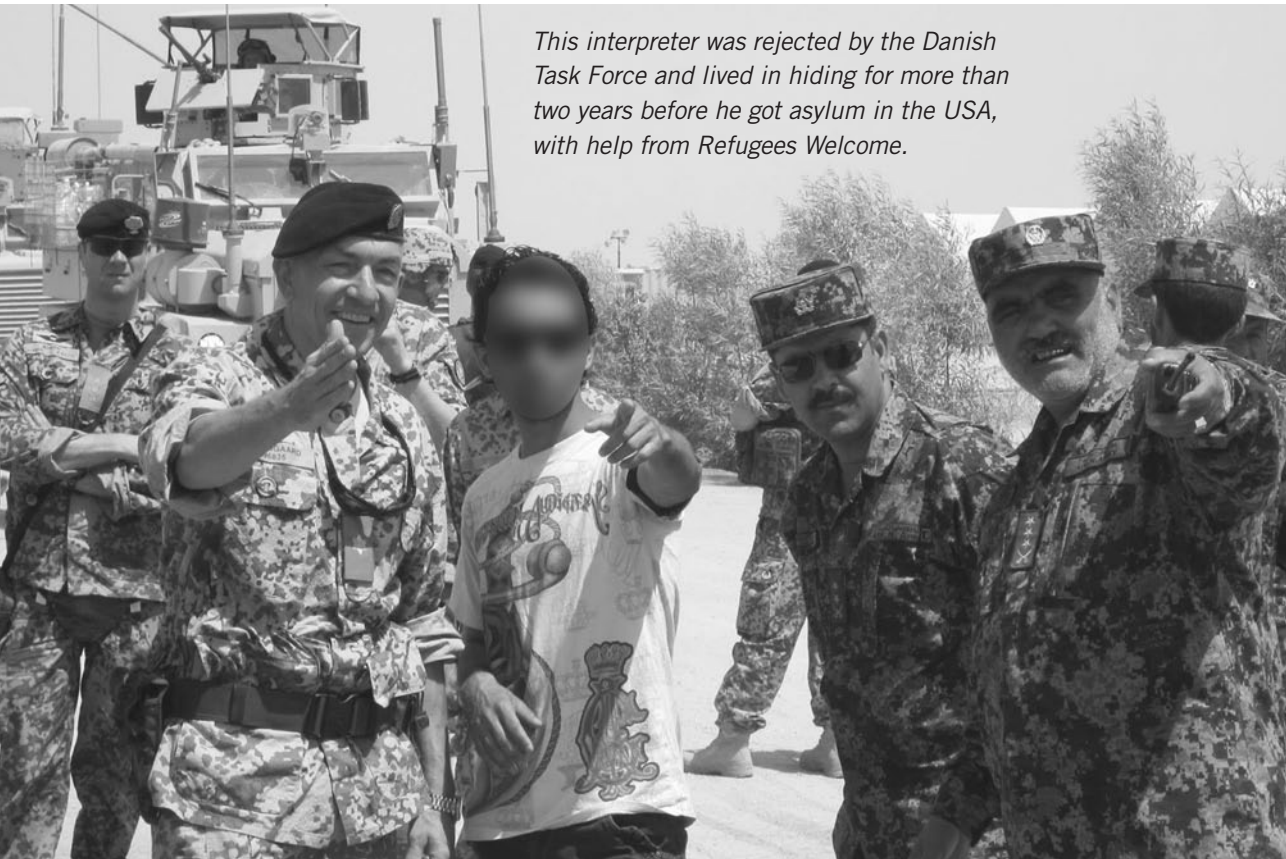
**Example:** Woman from African country. The Red Cross health examination was insufficient, but another one was made by a voluntary doctor. It showed that she had 17 scars on arms, foot and leg – from cigarettes, lashes with a belt, attacks, being dragged on a concrete surface, cut with a knife. She explained that the scars came from imprisonment in her home country and in Libya. Conclusion: Likely that she had been exposed to torture, she has symptoms on PTSD. The doctor's statement is included in the case before the decision in first-instance, but neither the Immigration Service nor the Refugee Appeals Board mention the statement at all. However, it's mentioned that she has a divergence between two dates: August 14th 2013 + August 13th 2014. The board finds it "remarkable" that somebody could know she was a lesbian without knowing her name, and "extraordinary" that she could participate in a funeral. The board dismisses the whole motive of conflicts in her home country but accepts that she is lesbian. All her information can be verified and documented, according to asylum counsellor Kristian Wilken from LGBT+ Denmark.

## INTERPRETERS FOR THE DANISH FORCES IN AFGHANISTAN/IRAQ

A special kind of risk assessment was done regarding the locals who had been working in Iraq and Afghanistan as interpreters for the Danish soldiers, both with language and culture. In both countries, the interpreters were considered traitors and they were exposed to threats, kidnappings and killings. While the Danish troops were in the country, the interpreters lived inside the safe camps, and some even participated in military actions, but when the soldiers left, they had to leave their interpreters to an insecure fate.

The Danish authorities recognized the problem quickly in Iraq and granted asylum to 300 interpreters and their closest families in 2007. But when the situation repeated itself in Afghanistan in 2013, the interpreters were left behind. After pressure from the Danish media, a special deal for the interpreters was made by the Danish parliament in collaboration with the British government, and the interpreters were (after far too long) called in for interviews in Kabul to judge their cases. Two years later, only eight of the 151 interpreters had been granted asylum. A new and better deal was never made. Some of the interpreters took the dangerous and expensive road to Denmark with smugglers – they were rejected by Immigration again but were granted asylum by the board. Several of the rejected interpreters lived in hiding for years in Afghanistan and ended up getting asylum in other countries.

*This interpreter was rejected by the Danish Task Force and lived in hiding for more than two years before he got asylum in the USA, with help from Refugees Welcome.*



The very different way the two groups of interpreters were treated, showed a political shift in which assessment of risk and credibility was abused. The Iraqi interpreters were all granted asylum for belonging to a special at-risk group – they did not require an individual motive as long as they could document their identity. The Afghans, on the contrary, were not seen as a group at special risk but had to prove individually that they had received actual threats – and the vast majority failed the extremely difficult credibility judgement. This was completely unreasonable, as the Afghan interpreters were at least as much at risk as the Iraqi ones, which was recognized by most of the other Western countries which had been present in Afghanistan.

Read a total overview of the whole case of the Afghan interpreters at [refugees.dk:tinyurl.com/yan3bupq](https://refugees.dk:tinyurl.com/yan3bupq)

*“It may be that one interpreter is telling a pack of lies, but when you send three civil servants to a country the size of France, there is no way of sorting things out properly. We are not in a situation in which we can afford to distrust these people – this is simply the cost of war. If just one of them dies because of an error in the administrative procedures – we have failed 100 percent.”*

*- Commander Mads Silberg who supported the interpreters' cases for years*

## HUMANITARIAN CONSIDERATIONS AND ILLNESS

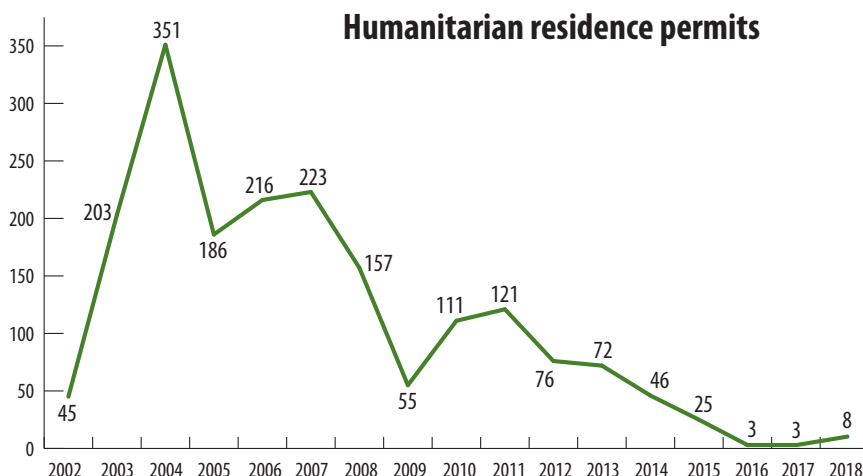
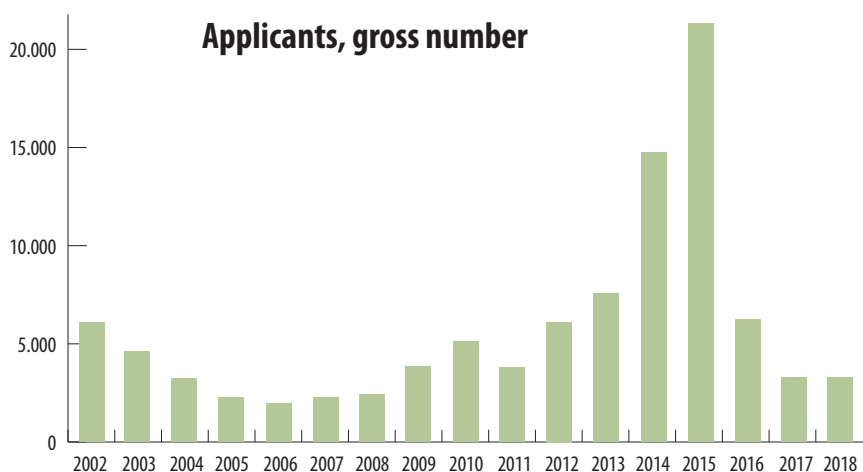
Denmark differentiates between many of the risk factors for applicants, and deals with them, illogically, through separate processes. In Sweden these things are all part of the same evaluation – including practical/bureaucratic hindrances that might arise to returning a person. To introduce a common procedure is one of the recommendations in this report, see chapter 4.

In short, the articles apart from asylum are very rarely used, even though a large part of asylum seekers could fall under one of these definitions.

**Persecution, inhuman treatment, death penalty and arbitrary bombings** are judged by Immigration Service with appeal access to the Refugee Appeals Board and falls under art. 7 in the Alien Act (asylum). 1,777 persons were granted a residence permit on these grounds in 2019.

**Hindrances to deportation and consideration to the best interests of the child according to the UN Convention on the Rights of the Child** is judged by Immigration Service with appeal access to the Immigration Board and falls under art. 9(c) in the Alien Act (special grounds). 23 people got a residence permit on these grounds in 2018. Read more about hindrances to deportation in ‘Asylum Camp Limbo’ (8).





**Serious illness without access to treatment in the home country, risk of deterioration of disability, risk of suicide, families with small children from countries at war, risks to single women and children in countries with famine; and the effects of torture** are judged by the Ministry of Immigration and Integration without interviews and without access to appeal. They fall under art. 9(b) of the Alien Act (humanitarian residence). Eight persons got a residence permit on these grounds in 2018. Read more about humanitarian residence permit in ‘The Character of Exception’ (43).

As the charts above show, since 2011 the number of humanitarian permits has decreased, despite the fact that many more asylum seekers arrived 2012-2016.



The court ruling *Paposhvili vs Belgium* (42), was passed by a unanimous Great Chamber of the European Court of Human Rights in December 2016. It clarified and extended the interpretation of art. 3 in the ECHR (risk of inhuman treatment). According to a number of experts on human rights, this ruling meant that the reasoning Denmark had been following since 2010 had been too tough with regards to illness and access to treatment – which in Denmark falls under art. 9(b), humanitarian residence (1). But after being ignored and dragged out for 18 months by minister Inger Støjberg, the Ministry of Justice sent out an interpretation of the ruling which did not find any basis to criticize or change the Danish practice (47). The radio station Radio24syv was nominated for Denmark's highest award in journalism for its coverage of this story.

As legal professor emeritus Eva Smith writes in 2020: “you wonder why the Danish civil servants are so busy adjusting the law to the changing political climate (48)”.

The burden of proof in these kinds of cases is totally unfair. In the above mentioned ruling it's specified that it doesn't have to be a life threatening illness, but just serious illness leading to great suffering or the deterioration of a disability for the applicant. The state has the obligation to investigate whether the necessary treatment for the illness is available in the home country – and prove it likely that the applicant is in fact able to access it. These three conditions have since 2010 been judged wrongly in Danish humanitarian cases.

Firstly, the applicant doesn't have full access to the Danish health system and therefore it's almost impossible to obtain an expert doctor's statement which is required. When treatment in the home country is investigated, the ministry uses an EU database called MedCOI which has been criticized for being unreliable and non-transparent. And finally, rejections are given even in cases where it's obviously impossible for the applicant to pay for the medicine or receive treatment or control at a hospital in the other end of a country like Afghanistan.

## CHAPTER 4:

# DISCUSSION AND RECOMMENDATIONS

### ARE ASYLUM ASSESSMENTS OBJECTIVE AND FAIR?

Asylum cases are obviously difficult to determine, as there is hardly ever any actual proof or documentation. As described in the previous chapters, the evaluation and thereby the decision depends largely on what the applicant her/himself is saying and how it is perceived. For that reason, the conditions around asylum forms, interviews and interpreters play an important role, as does the background information about the home country.

All asylum seekers should clearly have their case assessed in a neutral way where the chance of getting asylum depends on the risk in their home country, and not on their personalities or on their individual decision makers. Everybody should be equal in front of the law, and consideration should be taken to make up for the applicants' very different backgrounds. Gender, age, education level, language, culture, religion, sexual orientation, disabilities, illness, trauma... all these circumstances are very different from one person to the next. But do they influence the evaluation? Indeed, many things point in that direction.

The outcome of the case is too dependent on random elements, mainly in the form of the different people who take part: Did you meet somebody who explained the procedure to you? Who was your caseworker at Immigration? Who translated for you during the many meetings? Who was your lawyer? Who was at the board on that day? How is the Danish practice compared to that of other countries in Europe?

- The applicants are not prepared for the procedure, and they don't trust the Danish authorities and interpreters. They are also not informed about their rights and options.
- Correct and objective language interpretation is crucial, and on this point, Denmark has a serious problem which directly affects the assessment of the applicant's credibility.
- There is no sufficient screening to find out if the applicant is a vulnerable person or a torture survivor, and even if this comes out during the case processing, no adequate measures are taken.

- Caseworkers at the Immigration Service could be better prepared, both when it comes to interview technique and knowledge of the home countries. Immigration has tried to improve this during recent years, but there is still room for improvement.
- The amount and the length of interviews in the same case seems like a thorough processing, but together with the long waiting times it directly increases the risk that the applicant, the interpreter or the caseworker will describe the same situation a little differently every time – and this might lead to the incorrect assumption that the applicant is lying.
- The different aspects of an asylum case are treated in separate procedures, which demands a lot of resources and time, and is not suitable for judging the entirety of a human being's situation.
- Members of the Refugee Appeals Board don't get any training in asylum law, psychology or interview techniques, and the professionally competent members were removed in 2016. Originally, the board was introduced as a professional, politically independent body, but over time it has gone in the opposite direction. The construction of the board has some weaknesses that threaten the rule of law.
- Stereotypes and prejudice about how a “real refugee” would act influence the assessment of both credibility and risk.
- The background information about home countries can be insufficient, imprecise and outdated. Besides, it requires a deep knowledge of a country and a culture to determine whether a person's account from there is credible and likely. The same goes for assessing how big the described risk, in fact, is.
- With the Danish authorities, there is a strong suspicion towards the asylum seekers in general, and by far most of the rejections are given because of a lack of credibility. Focus is on control much more than on humanitarian considerations. From the political side there is a very clear desire to give more rejections, and that Denmark should be an unattractive country in which to seek asylum. This is not a good starting point for a neutral and correct case processing in respect to the conventions.
- The aspect of gender seems to be underestimated, both in relation to women, trans- and intersex persons. In almost all parameters, the whole asylum system is designed for men. This goes for the process as well as the definitions in the conventions, where 'male' asylum motives such as military service, torture, imprisonment and political activities are given much more weight than 'female' motives as forced marriage, rape, FGM and limited freedom rights. Besides, the understanding of LGBT+ persons' sexuality is weak and limited.

- Children are generally seen as a kind of luggage to the adult asylum seekers, without their own asylum motives and separate interviews, despite the fact that more than half of the world's refugees are children. The unaccompanied minors are met with suspicion concerning their age and are exposed to a completely unreliable test, which judges most of them to be over 18 years.
- Denmark and its neighbouring countries disagree to a great extent on the security level and conditions in the countries of origin – just as we disagree on how to interpret the conventions. For instance, in 2019 a Somali only had a 14% chance of getting asylum in Denmark but a 49% chance in Germany.

All of the above deficiencies make it very hard to carry out an objective and fair asylum decision, and the whole procedure is too influenced by random factors.

## **CAN ASYLUM DECISIONS BE INFLUENCED POLITICALLY?**

Denmark was an active participant in the preparation of the UN Refugee Convention and signed as the first country in the world in 1952. In 1983, the Danish parliament passed what was then seen as the most humane law on foreigners in Europe. A lot has changed since then. Today, Denmark is considered to be one of the most restrictive countries, and changing governments have since 2011 openly set the goal of having as few refugees arrive as possible. The former government even wrote directly into new restrictions of the law that they risk violating conventions (44), and the present government has maintained these laws.

According to the Danish Alien Act refugees have a legal claim on asylum if they fulfil the criteria of the law. Therefore, the evaluation should be professional and independent, and political goals to reduce the number of foreigners should be irrelevant (40).

The processing of spontaneous asylum cases (asylum seekers who arrive on their own) should be completely independent from political attitudes and changes. National authorities are supposed to judge the cases according to international and European conventions which Denmark signed many years ago. The UN and the court in Strasbourg (ECtHR) are continuously adding tools, guidelines, recommendations and interpretations on how to do this correctly. The states are free to make their own systems but there should be no direct political influence.

A government can, to some degree, regulate the right to asylum by changing national legislation. The controversial status 7(3) was introduced by Helle Thorning's government in 2015, with the direct purpose of making it possible to send Syrians

home as fast as possible. At the same time, it was made easier to revoke all refugees' residence permits in general. The required three-year waiting time for family reunification is awaiting a ruling at the Grand Chamber of ECtHR. Later, a long list of restrictive revisions to refugee rights have been passed, several of which are on the border of violating conventions. Changing governments have started to count and calculate upon the long delay in the human rights system: it takes many years from the time a new law is passed in Denmark and until a judgement is pronounced in Strasbourg.

*“The decision might be correct according to the law, but I don't always agree with the law. You can be at an interview with an arrogant 15-year old from Syria who never had a worry in his life: “You will get asylum, no matter what you say”. And then next day with an Afghan who is deeply traumatized and has been through a lot of horrible things: “I have no idea if you'll get asylum” ... because this system is so hard to understand.”*

*- Red Cross representative for unaccompanied minors*

The authority of first-instance, the Immigration Service, belongs directly under the Minister of Integration who can appoint directors and heads of office, and roll out new guidelines and instructions. This is 'direct political influence' which can even cross the line and become illegal. The most extreme examples of that since the Tamil case in the late 1980s are Birthe Rønn's illegal processing of young stateless persons' right to citizenship, and Inger Støjberg's illegal separation of young, married asylum seeking couples.

Until recently, the official website of the ministry displayed a large digital counter, proudly presenting the number of new restrictions introduced for refugees and foreigners – it's hard for an asylum seeker to have faith in fair and objective case processing from authorities who obviously do not want them in their country.

The clearest example of political interference in the actual asylum assessment was the infamous Eritrea report in 2014 when the Social Democrat Karen Hækkerup was a minister. A sudden rise in Eritrean asylum seekers led to a fact-finding mission to Eritrea, with the underlying aim of finding reasons to give rejections – as practice was to grant asylum to all Eritreans. At first, the minister said she had asked Immigration to initiate the mission – but she later denied that. The employees who went on the mission told the media that they had been pushed to make a report that could be used to justify rejections. They were immediately sent home on leave, and were later fired. The report was exposed to massive criticism from several of the sources quoted in it, amongst others, and Immigration decided not to use it for the asylum cases: all Eritreans were granted asylum after having been put on hold for six months. However, the report was never formally withdrawn, and the head of office who was responsible received a knighthood the following year (25).

The fact-finding report from 2017 on the security situation in Somalia was used to revoke a large number of residence permits, which also raised suspicions of a political agenda. Immigration only used the parts of the report mentioning improvements – not the parts that mentioned serious risk (27). The attitude toward Somalis in Denmark was very negative, which limited public protest.

Several employees at Immigration have described to the media, and in books, that they felt an indirect pressure. For this report, it turned out to be very difficult to get interviews from former employees – even if they could be anonymous. Only a few were willing to talk. None presently employed would answer questions. Even the interpreters were quite nervous to be quoted anonymously. It is worrying in itself that working with asylum cases is considered so controversial that people will not even talk about it anonymously, years after leaving the job.

The authority of second-instance in an asylum case should be totally independent from the first-instance, and in most other countries the second-instance is a court. The Refugee Appeals Board is neither totally independent nor a court. However, establishing the board back in 1983 was an attempt to make an expert evaluation independent from political influence. Originally, the board consisted of seven members, two of which were appointed by the Danish Refugee Council. Since then, the combination of the board has been changed and reduced several times, specifically removing the expertise.

*“To me, there is a problem in principle in having a representative from the Ministry of Immigration and Integration, which the Immigration Service as first-instance is also under. A court-like body as the Refugee Appeals Board must not only be impartial and objective, but also appear as such. I want to emphasize that I have never come across this as an actual problem. But it doesn't change the objective independence.”*

*- Thomas Gammeltoft-Hansen, former member of the Refugee Appeals Board*

*“... according to the Alien Act a head of office in the ministry is not allowed to instruct civil servants working as members of the board to vote in a certain way, it can be questioned, in principle, whether the individual civil servant can totally deny feeling pressure, especially when it has been a declared political goal to reduce the number of foreigners (including refugees) in Denmark. This suggests a certain degree of non-transparency concerning the actual independence of the ministry's civil servants.”*

*- Jesper Lindholm in his book Danske Asylafgørelser, 2014, p. 199 (40)*

The number of members of the board was reduced from five to three in 2016 during Inger Støjberg's period as a minister, which even the board's own chairman warned against at the time (45). The only two members who had some professional knowledge on the subject were removed: the Danish Refugee Council and the Ministry of Foreign Affairs. One of the three remaining members comes from the Ministry of Immigration and Integration which is also in charge of first-instance.

The decisions from the board are based on the interviews and the assessments from Immigration, and beside the fact that the members have no professional expertise, their personal profiles could also be of concern; Among the 81 members of the board, only four have a non-Danish sounding name, and among these none are judges. Also, the present chair of the board played an active role as a civil servant in the Tamil case, in which he suffered from serious amnesia on the witness stand (52).

In 2016, Michaël Benesty proved a systematic “bias” among the judges in French asylum cases. Some judges had a recognition rate close to zero, whereas other judges, in exactly the same kind of asylum cases, had a far higher rate of positive decisions (35).

Most people might assume that humanists and leftists are more inclined to grant asylum than conservatives and lawyers. This is not necessarily the case. A former caseworker in Immigration says that many of his former colleagues were leftist young women – but they were tough when it came to making decisions. The lawyers who were interviewed for this report also say that a couple of the board members appointed by the Danish Refugee Council almost always, through their questioning, gave the impression that the applicant should be rejected.

This kind of political influence is not only happening in Denmark, but also in neighbouring countries. Both Germany and Sweden have introduced limitations for family reunification for refugees, exactly as Denmark did, and at the same time there has been a decrease in granting the status which still gives access. In all three countries the chance of getting asylum has dropped, in general, during latter years – also for countries where no improvements have been seen.

## **IS THE RULE OF LAW SUFFICIENT?**

### **The Refugee Appeals Board**

In many ways, asylum cases are totally different from, for instance, criminal cases, as they are mainly based on the applicant's own account of her/his story and background information about another country. They should be guarded with maximal

legal protections, as the decisions have even more direct influence on life and death than other cases. Refugees have, in fact, a legal right to a residence permit if they live up to the requirements of the law (40). Unfortunately, in reality, it works the other way around. But it would also be impossible to judge asylum cases with the same guidelines as e.g. criminal cases, as they require expert knowledge. For this reason, it would not necessarily be better to move the decisions to the courts.

*“By removing the members appointed by the Ministry of Foreign Affairs and the Danish Refugee Council, the expertise on the situation in larger “refugee producing countries” has been removed, plus experience from the field, international refugee law and Danish asylum law. In this way, the foundation for asylum decisions has in principle become less informed, and the focus has probably moved more one-sidedly back to evaluation of proof and credibility.”*

*- Jesper Lindholm, PhD in human rights and asylum*

Holding a solitary place in the Danish legal system, there is no access to appeal to the courts. For instance, any kind of conflict between neighbors or action for damages can be appealed to the courts, and the last step can be a ruling by the Supreme Court – but not in a case about a person's chance of surviving a return to her/his home country. Any citizen can also make a complaint to the Ombudsman about the authorities' processing of the case but, since 1997, not about the cases in the Refugee Appeals Board. Any courtroom is open to the public and to journalists, unless closed doors are requested for special reasons – but the board is closed to access, as the information is strictly confidential, and it can be dangerous for the applicant and others if these are revealed. Witnesses and expert statements are often an important part of other kinds of court cases but are very rarely allowed by the board.

The Refugee Appeals Board has the final decision. At the same time, the combination of the board is problematic as it consists of two objective professionals (a judge and a member from the Danish Lawyers Association), but the third member lacks impartiality, as the Ministry of Immigration and Integration, who supplies the third member, is also responsible for the decision in first-instance (Immigration Service). This means that the second-instance is not independent and, in principle, there is a potential for political influence all the way. Besides, the secretariat for the Refugee Appeals Board has been under the Integration Ministry until recently, and from September 2020 it is moved to the new Return Agency, which will not make it any more independent.

*“How can you, as an employee in that ministry, be unaffected by the fact that the minister had a counter on the official webpage, proudly reaching more than 100 restrictive revisions? It seems very obvious that we have a problem with disqualification.”*

*- Asylum lawyer Niels-Erik Hansen*



*“The Legal Policy Institute has criticized the construction and combination of the Refugee Appeals Board for many years. We find that the board cannot be called “similar to a court”, and we recommend that the Ministry of Foreign Affairs appoints a member (as it was until 2016) and that the member from the Ministry of Immigration and Integration is removed and replaced by a member appointed by a relevant NGO like DRC or DIGNITY, alternatively one of the university faculties of law. Besides, we recommend the use of sound recordings, access to a lawyer during first-instance, access to call in witnesses and – in case the board is not adjusted to become more similar to a court – access to the Ombudsman. Finally, we warn against article 45(b) of the Alien Act which during the last 10 years has given the security services PET and FE access to exchange information with the board and forced the board to reject an applicant without informing the applicant or her/his lawyer of the real reason for the rejection – of consideration for the safety of the state. How often this happens, we cannot know, obviously.”*

*- Lawyer Bjørn Elmquist, chair of the Legal Policy Institute*

Could the cases just be processed under the same system as other court cases? In Sweden they have a court system for asylum cases, parallel to the normal court system. The first step is Migrationsverket (like the Immigration Service), then appeal access to the Migration court, and certain special cases can continue to the Migration high court. But that has other disadvantages, as the cases are then determined by civilian jury members who have neither qualifications for understanding the complex and heavy background material, nor knowledge of asylum law. Besides, the waiting times can be very long with three instances.

One of the good things about the relation between the two instances in Denmark is that Immigration is doing their best to adjust their policy to that of the board, as they are supposed to. In the United Kingdom there was a long period when more than half of the Eritreans were rejected in the first-instance but got asylum in the second-instance afterwards – that is not acceptable.

#### **The Refugee Appeals Board's own observation on proposed bill in 2016:**

*“... the proposed changes (...) are based on political opinions, at parliament, and (we) observe that the board with its current combination is working in a proper and suitable way. According to the experience of the board, multiple views in the decision process is a strength and adds more depth to the work of the board.”*

#### **Observations from the Institute for Human Rights on proposed bill in 2016:**

*According to the institute, the independence of the Refugee Appeals Board will be weakened when Inger Støjberg's civil servants make the first-instance decisions and then also participate in making the final appeal decisions in the board. “The principle of arm's-length would be much clearer if the employees from the ministry were not members of the board,” the director of the institute Jonas Christoffersen stated.*

**Recommendation for a new combination of the board from Legal Policy Institute:**

*Four members, of which the vote of the chair determines in case of equal votes. The member from the ministry should be removed, as she/he lacks independence from the first-instance. The member from the Danish Lawyers Association stays (independent, competent to judge evidence etc.). The member from the Ministry of Foreign Affairs is reinstated to provide knowledge about the countries of origin. A member is once again appointed by an NGO to secure professional civil qualifications (if not from DRC then Dignity, Institute for Human Rights or the universities' law faculties)*

All the observations to the proposed bill can be found on the Danish parliament's website (45).

**Are mistakes being made?**

In general, each case is being processed very thoroughly, and even after a residence permit has been given, you may be called in for checks anytime. Chances of getting asylum on a false profile or a made-up asylum motive are not good.

But how about the rejections? Is the principle of giving “the benefit of the doubt” respected? How large a margin for mistakes should be allowed in these types of cases, and should there be no consequences? Mistakes by Immigration have a chance of being corrected in the Refugee Appeals Board. But the mistake might be repeated: there are examples of rejections by the board which have been re-opened later and ended up with a permission, even if the core of the case was, in fact, unchanged. The board will also make sure to emphasize some other elements of the case, so that it does not appear clearly that they actually made a wrong decision in the first place.

There are also examples of rejected people who have been deported and have been exposed to exactly the violations, torture or killings that they feared. This does not lead to any reactions from the board, like for instance a visa to Denmark and re-opening of the case. A refugee does not get any kind of compensation for her/his 10 years in an asylum centre, or for the persecution which the board disregarded.

**Example 1:** A female journalist escaped from Iran with her daughter in 2000 and got rejected in 2003. Both interviews and decisions were full of mistakes and misunderstandings, among other things about the actual political conditions in Iran. She had been raped and tortured in prison, which was referred to as “harsh treatment” in the rejection form the board. There were several attempts to re-open the case, but it didn't happen until 2010 – because she had appeared in a Danish newspaper with her own name and photo, talking about her problems in Iran. In the original decision, a letter had been dismissed as a falsification, but the board was forced to withdraw that allegation. Her entire original asylum motive was put down as facts. But it was too late – 10 years in asylum centres had damaged both her and her daughter mentally and physically.

**Example 2:** An elderly woman from Eritrea was rejected in 2004. The board dismissed her political activities and did not believe that her husband had disappeared without a trace. After nine years of living in the asylum centres as rejected with serious consequences for her health, her lawyer succeeded, after several attempts, to re-open her case, and she was granted asylum in 2014. The decision mentioned that her son had been granted asylum in the US, which had no relevance to her own case.

**Example 3:** Two Afghan brothers arrived in 2010 and were rejected. The age test had declared them to be 19 and 12. In 2015 they were deported to Afghanistan by force, even though the Red Cross and their Danish “mother” had warned strongly that they were mentally vulnerable and had no network in the home country – it would therefore be irresponsible to leave the younger brother in the care of the older. Shortly after they arrived in Afghanistan, they got separated and the younger brother was found killed. The older was living for years in hiding in Iran and arrived back in Denmark in 2019 and asked for asylum once again (29).

There are also examples of a few lawyers who did not even have a meeting with the client before the board meeting – in this way, they deprived applicants of the protections of the rule of law. There are examples of completely inappropriate behaviour from both members of the board and interpreters. But it's almost impossible to have these individuals excluded and re-assess the case with reference to such incidents.

### **Other parts of the asylum procedure**

During the asylum process in general, the rule of law is weak. Except for the asylum form and a possible rejection from Immigration, nothing is translated to the applicant's language. All letters to the applicant and all the case files are in Danish, which the applicant has no chance of understanding. Immigration shows a short video upon arrival, available in 19 languages, but most of them don't remember anything from it. Immigration's webpage [nyidanmark.dk](http://nyidanmark.dk) is only in Danish and English, as opposed to the Swedish website from Migrationsverket where the most important parts can be read in 19 languages.

When interpreters are not tested for quality in any way, it also degrades the rule of law and leads to mistakes, insecurity and, in the end, wrong decisions. In Sweden and Norway only authorized and quality-checked interpreters are used.

The age tests are carried out in a scientifically unreliable way but are in practice being used as if they are indisputable, professional evaluations. This weakens the rule of law for children, as they can mistakenly be treated as adults.

The humanitarian assessments fall under article 3 of the ECHR and should get the same thorough and impartial processing as asylum cases. But today they are going through their own, separate procedure without interviews, forms or access to

documentation; and these are decided directly by the Ministry of Immigration and Integration. The number of permits is a proof of the problem: only a few persons receive a permit every year, usually after a processing time of more than two years. The permits are no longer made public. Ten years ago, around 100 persons were granted humanitarian stay every year.

## WHAT DO INTERNATIONAL RECOMMENDATIONS SAY?

In the previous chapters, references have been made to the most important articles in the conventions relevant to refugees, and how they are included in Danish legislation.

Guidelines and recommendations can mainly be found in the “UNHCR Handbook on Procedures and Criteria for Determining Refugee Status” (7), which is updated frequently; the latest version is from 2019. It contains chapters on interpretation of the various definitions and on how to conduct interviews, on the principle of the Benefit of the Doubt and special considerations for children and vulnerable persons. You could say it's a kind of “constitution” for refugee cases.

In 2013, the UNHCR together with the Refugee Fund of the European Commission launched “Beyond Proof – Credibility Assessment in EU Asylum Systems” (54). It's an easily-read report setting out the aspects and pitfalls which caseworkers encounter when trying to judge credibility. It builds partly on international asylum law and partly on the EU Qualification Directive and Minimum Standards Directive for asylum cases (5). Denmark is not bound by the EU in this area but could benefit from following the guidelines as a minimum.

In the “UNHCR Note on Burden and Standard of Proof” (30) from 1998 the question of production of evidence is laid down in connection to the basic definition of a refugee: “well-founded fear of persecution”, which holds both the subjective element “fear” and the objective element “well-founded”.

The European Court of Human Rights (ECtHR) has made a number of rulings to determine guidelines for assessing credibility and risk in asylum cases. Some of the most important rulings are mentioned here, but only a single extract has been chosen for each:

- **Saadi v. Italy (GC), no. 37201/06, ECHR 2008**

If the applicant claims to belong to a group exposed to systematic violations and degrading treatment, the court should consider whether there is serious reason to believe that such events occur, using sources for background information, and whether the applicant belongs to such a group.

- **F.G. v. Sweden (GC), no. 43611/11, 23 March 2016**

If there is a well-known general risk from a number of sources confirming violations, it's up to the state to investigate this risk on its own initiative.

- **R.C. v. Sweden, no 41827/07, 9 March 2010**

Because of the applicant's special conditions and circumstances, it might be necessary to give them "the benefit of the doubt" concerning their explanation and documents handed in.

- **M.A. v. Switzerland, no. 52589/13, 18 November 2014**

In the specific case, it was relevant for the assessment of credibility that there was a big difference in how first and second interviews were conducted. At the first interview the applicant was asked to explain briefly, while in the second he was asked to explain in detail.

- **N. v. Sweden, no. 23505/09, 20 July 2010**

If the applicant produced documents to support his credibility, it's up to the state to judge whether they are genuine or not to diminish the risk of violations of article 3.

### **Does Denmark have a problem adjusting to international guidelines and recommendations?**

Officially, Denmark adjusts to court rulings from the ECtHR, but they are often interpreted in a very narrow way. Appeals and recommendations from the UNHCR are often "noted" but very rarely lead to changes. The Refugee Appeals Board includes reports from the UNHCR on the same level as any other background material.

Every four years, all signatory states are examined by the UN to see how well they are respecting human rights, and criticism of Denmark on the asylum area has repeatedly been quite severe. Recently, a report by the European Committee against Torture from January 2020 got a lot of attention with its demand to close Ellebæk where rejected asylum seekers are held in closed detention.

During the last ten years there has been an increase in the number of cases in which a lawyer appealed a rejection from the board to one of the UN's human rights committees. In 2017 and 2018 alone, the UN has agreed with the complainant against the board in ten cases.

The UN Committee against Torture has, several times, criticized Denmark for not initiating torture examinations. In 2017, the Committee stated that the applicant has a right to have an examination done – but this was dismissed by the board. "We continue to listen to these views, but we find them too rigid," said the chair of the board, Henrik Bloch Andersen. In this way, the board maintains a practice where

credibility is judged first, and if that fails, there is no need for a torture examination – where if the recommendation from the UN was followed, the examination might explain why the applicant might not appear credible.

*“If just 10-15 years ago, the Refugee Appeals Board did not adjust to what the committees said, there would be media coverage and political statements about living up to our international obligations. But today there seems to be a general acceptance of a situation where the board can just disagree and maintain their decisions. This has been done more and more often, and it is a clear change.”*

*- Jesper Lindholm, PhD in human rights and asylum, to the newspaper Information, 2018*

### **IFA: Internal Flight Alternative**

A special, and increasing, problem for asylum decisions in Denmark as well as in other EU countries are the cases where the risk for the applicant is acknowledged – but a rejection is given with the argument that she/he can live in another part of the country where the risk is less evident – usually in the capital. In practice, this means that Denmark turns a refugee into an internally displaced person (IDP) – who form by far the largest part of displaced persons in the world. Cities like Kabul, Kinshasa and Damascus are already full of people who have fled from other parts of the country. The UNHCR is sheltering millions in tent camps and has to provide for their daily needs.

IFA has especially been used for Afghans in conflict with the Taliban. It is still discussed whether the Taliban can or will look for people from other provinces in Kabul. Besides, the UNHCR says that socio-economic considerations should be included with IFA, as this option should only be used if the person will be able to live a relatively normal life without severe problems in the safe part of the country. Also, the burden of proof for this lies with the Danish authorities.

## HOW ARE THINGS DONE IN OTHER COUNTRIES?

	France OPFRA	
Average case processing	Three to four months	
Caseworker profile	OPFRA and UNHCR conduct mandatory training programs for caseworkers on interview technique, evaluation of evidence and arguments for decisions.	
Quality check of interviews and outcome	Quality check of interviews, investigation of statements and decisions, using processes developed in collaboration with UNHCR.	
Representative during interviews	Allowed, can comment at the end of the interview. Comments are noted in the report.	
Extra...	Protection officer offered, if applicant wants it. Gender can be chosen.	
Interpreters	Interpreter must follow OPFRA's code of conduct and training program, especially designed for vulnerable persons. Gender can be chosen.	
Sound recordings	Mandatory by law. Used in appeal cases.	
Recognition rate first-instance 2019, Afghanistan + Somalia	Afghanistan: 63%. Somalia: 31%	
Safe countries/Manifestly Unfounded	OPFRAs board must vote for a country to be added, leading to the case going into Accelerated Procedure.	
Vulnerable groups	Mandatory to identify vulnerable groups: children, disabled, elderly, pregnant women, single parents with children, victims of trafficking, ill persons and victims of torture, mental and physical violence.	
Health screening	All applicants pass a health check and are offered a screening for potential vulnerabilities (trauma, PTSD, sexual abuse etc.). The information is passed on to the caseworker.	
Age assessment	Untill 2019, bone measurement, even when valid documentation for age. After criticism from the Ombudsman all personal data is registered for unaccompanied minors at Prefecture, while Child Protection Office can ask for help to determine a young person's age.	

All information is taken from the official websites of the various countries. The recognition rates for Afghans and Somalis are included as an example and comes from EUROSTAT.

Germany BAMF	Sweden Migrationsverket
Eight months	17 months
Caseworkers must finish a training program developed by BAMF.	According to the law, caseworkers must have an academic grade in law or politics.
BAMF division 232 makes quality check, internal audits and training of employees.	Quality check projects are developed between MV and UNHCR.
Allowed, not specified what the third person can/can't do.	Legal representative is offered and can comment during the interview.
-	-
No demands of the interpreters.	Interpreters must be approved and authorized. Authorization requires passing a test in law, economics and general issues.
Not mandatory, and not used in case of rejection.	Not mandatory and not used in case of rejection.
Afghanistan: 44%. Somalia: 49%	Afghanistan: 38%. Somalia: 31%
All EU countries are considered safe and lead to MU-procedure. Both chambers of parliament must approve if other countries are added.	Not used. No applicants can go to MU procedure or be rejected on the concept of safe countries.
Unaccompanied minors are considered vulnerable.	Not mandatory to identify vulnerable groups.
All applicants pass a health check.	Applicant is offered a health check, psysical and mental. The information is confidential and is not passed on to the caseworker.
BAMF is not responsible for age determination but refers all unaccompanied minors to the local youth officer (Jugendamt). Allegedly, benefit of the doubt is always given.	Bone measuring is given more weight than other sources of information which has been criticized by The Human Rights Commissioner of the European Council after a visit to Sweden.



## TEN RECOMMENDATIONS FOR IMPROVEMENTS

This chapter contains 10 recommendations to improve the Danish asylum procedure, when it comes to the assessment of credibility and risk. The recommendations aim to improve the rule of law and make the decisions more reliable. They originate from all the people we have interviewed (refugees, lawyers, interpreters, representatives, humanitarian organisations and former members of the Refugee Appeals Board) and state bodies such as The Public Accounts Committee, and from the EU and the UN. Several of the recommendations have been proposed over the last 20 years, among others by the Association of Asylum Lawyers and the Legal Policy Institute. Others are new ideas. Each recommendation might not be supported by all the interviewees or organisations, but all the recommendations are based on the many interviews and have been discussed and modified along the way.

### IN GENERAL:

#### 1. Education and certification of interpreters

Translation to and from other languages is crucial for the whole asylum case. The problems with translation also affect other areas of government such as the criminal courts and the health sector. Denmark has a huge and increasing problem with the quality control of interpreters, and this influences the assessment of asylum cases. Every single person interviewed for this report agreed that the fluctuating quality level among interpreters is worrying. A new education as interpreter should be established, in all possible languages and with the right to SU (study grant), state examination and access to specialization – perhaps inspired by Norway.

*“The Public Accounts Committee evaluates that the Ministry of Justice, the Ministry of Immigration and Integration, the Ministry of Health and the local regions are not, in an acceptable way, securing the use of interpreters. The Committee finds that the challenges to securing translation on an acceptable level applies for courts, asylum authorities and the health area, regardless of whether the officials are booking and using interpreters from the list of the National Police, translation companies or freelance interpreters.”*

*- Report from the Public Accounts Committee on public use of translation services, 2018*

*“There should be an education for interpreters at the bachelor level. They seem to think it's a temporary thing, this translation issue, but it goes all the way back to the Roman Empire. The salary should also be higher, as pay and quality is connected.”*

*- Interpreter with many years of experience in asylum cases*

## 2. Better screening for vulnerable persons

The short meeting with a nurse after arrival will far from always reveal a vulnerable person. The consultation should be more thorough and should more often lead to an examination from a doctor or a meeting with a psychologist. Red Cross doctors should be allowed to order a torture examination during the first part of the asylum procedure. Even if the applicant tells about torture, it very rarely leads to an examination. Documentation concerning torture is made too seldom and too late.

The authorities say they make special considerations for traumatization and vulnerability. But these will only be based on a gut feeling which may arise with the caseworker along the way – there should be a report on the case made by a health professional.

*“If they (the asylum authorities) reject asylum for a possible victim of torture or refuse to give him a medical examination with reference to his story being inconsistent and not credible, then they have not understood that his incoherent replies might in fact be due to his being exposed to torture. When victims of torture are asked to talk about the torture they will often be unclear about time and place, they are deeply affected by emotional anxiety reactions and are rarely able to account for what happened to them in a rational and chronological way...”*

*- Jens Modvig, doctor and head of department at DIGNITY, chair of the UN Committee against Torture. Politiken, 2016.*

The lawyers who have been interviewed for this report have all been working with asylum cases over 20 years. None of them had ever seen a torture examination ordered by Immigration, not even after the new practice was introduced in 2017, in which Red Cross had informed Immigration of their findings.

In the case below, the lawyer has ordered a torture examination, and it has been given some weight in the decision. This should not depend on whether the lawyer had time to and success with asking a voluntary NGO (Amnesty International Denmark’s Medical Group) but should be available for all torture survivors.

The majority of the board finds that the applicant has explained consistently and convincingly, and that the account seems self-experienced. The majority notes that the story of the applicant is supported by the torture examination presented by the lawyer. Even if the applicant’s explanations on some points seem less likely, the majority finds from the principle of Benefit of the Doubt, which especially should be in favour of torture victims and other serious abuse, to consider the account from the applicant as fact.

*"It's very important whether the applicant is traumatized or not. There is a crucial difference to how you are able to express yourself. You can't expect the same level of details and ability to explain. It's hard to know if sufficient considerations are being taken, and that's clearly a reason for concern."*

*- Thomas Gammeltoft-Hansen, former member of the Refugee Appeals Board*

*"If inconsistencies appear in the account during an asylum interview, it's important to examine the possible reasons for this. Inconsistencies are not necessarily the same as the information being untruthful, as there might be many reasons for those. It might be due to the memory being affected by trauma or illness."*

*- Charlotte Lau, deputy chief at the Immigration Service*

### **3. Assess all aspects of an asylum case in one procedure**

Asylum (art. 7), humanitarian grounds (art. 9b), best interest of the child (art. 9c,1), children without family network (art. 9c,3) and hindrances to deportation (art. 9c,2) should all be judged in the same procedure from the beginning, as it is done in Sweden. It will save both time and expenses.

As all these types of cases are about humanitarian protection and human rights, the single applicant should not be pushed around between different offices. Unaccompanied minors will, for instance, first have their asylum motive assessed by Immigration and the board, and after that Immigration looks at the family network – an unnecessarily long process, which often ends up with the child having turned 18 during the process.

Immature, unaccompanied children must wait for years in an asylum centre until they are judged mature enough for the asylum procedure. Instead they should be granted permits in the best interest of the child. Single women from Afghanistan, who are rejected, are advised by the board to apply for humanitarian residence with the ministry, though their situation no doubt falls under grounds for asylum. Syrian refugees have their residence permits revoked by the board, while the government assures that there will be no negotiations with Assad about deportations.

The authorities should look at all the aspects of one person's situation as a whole, and decide which articles are relevant for the case.

*"It's a really good idea to process all the aspects of a case as a whole. It's a totally insane waste of resources to spread it out on different offices. It's obvious to treat all of it at once. There has to be a big saving in that, and it will cut down the processing time. The only risk could be to undermine the choice of status, for instance if they started giving humanitarian permits to people who should have asylum."*

*- Lawyer Jens Bruhn-Petersen, asylum and criminal law*

#### **4. Develop a new age test in the Nordic countries**

The test which is used to determine the age of unaccompanied minor asylum seekers has turned out to be totally unreliable, as it's based on old and very limited data. Wrong age determination leads to violations of rights. All Nordic countries have the same problem. It would be a good idea to carry out a common Nordic research project, collecting reliable data from the whole world, to develop a more precise and reliable test.

#### **5. Participate in a common asylum policy and work on changing the Dublin regulation**

As long as Europe maintains the Dublin agreement, it's not fair for the refugees that there are such huge differences between recognition rates, status, procedures and rights in the various countries – it becomes a lottery which undermines the confidence in asylum cases being processed in a correct and just way. At the same time, it would be a great advantage for European countries in the long run to establish common standards (EASO is already working on it successfully) and fair distribution quotas, for instance inspired by the Danish model of distributing refugees between the municipalities.

Denmark should repeal the opt-out in this area and work to improve the standards instead of dropping out of the cooperation. The Dublin regulation needs some fundamental changes, so that the countries on the external borders of the EU are not responsible for all asylum seekers.\*

\*) From ECRE's study on the implementation of the Dublin Regulation III, commissioned by the European Parliament Research Service 2020 (46):

*"Assessing the data shows that Dublin III is not effective legislation as it does not meet its own objectives of allowing rapid access to the procedure and ending multiple applications. The hierarchy of criteria it lays down is not fully respected. It appears inefficient – financial costs are significant and probably disproportionate. Notable are the large investments in transfers that do not happen and the inefficient sending of different people in different directions. The human costs of the system are considerable – people left in limbo, people forcibly transferred, the use of detention. The relevance and EU added value of the Regulation in its current form should be questioned. The coherence of the Dublin Regulation is weak in three ways: internal coherence is lacking due to the differing interpretations of key articles across the Member States; coherence with the rest of the asylum acquis is not perfect; and coherence with fundamental rights is weak due to flaws in drafting and implementation."*

## FIRST-INSTANCE:

These suggestions should be seen as a whole, as they depend upon each other. The general recommendation to upgrade the quality of interpreters is an important condition. The overall goal is:

- That the applicant is better prepared and thereby better able to give the necessary and true information from the beginning
- That interviews should take less time and be more focused on the asylum motive
- That translation and summary is easier to check for mistakes and misunderstandings
- That fewer statements can be judged as inconsistencies and elaborations.

### 6. Independent information to the applicant on procedure, rights etc.

Very few new asylum seekers find their own independent counselling before the asylum procedure starts. All the refugees who were interviewed for this report had been totally unprepared and did not know their rights. The short video they were shown by Immigration did not make any impression on them. Other applicants who happened to get early counselling from the Danish Refugee Council or Refugees Welcome have said this helped them to trust the Danish authorities more, present relevant information and feel more comfortable.

Before the actual procedure starts, the applicant needs to be offered a personal information meeting of 30-45 minutes with an independent counsellor, for instance from the Danish Refugee Council, and receive printed information in their own language about the asylum procedure, rights, duties etc. It would be a good idea if, before the first interview, the applicant could prepare a timeline, gather relevant information, maybe ask for an interpreter with a certain profile and have the opportunity to draw attention to special issues. The meeting should not be an open offer but a scheduled meeting like the Manifestly Unfounded-procedure. An appointed representative, as used for unaccompanied minors and for all applicants in Sweden, would also solve many problems.

*"There is a need to give more information to the newly arrived – they have come the night before, and then they're asked to fill out the asylum form. The CD at Immigration is not really good, they need to ask questions. They have so many prejudices about Denmark and they heard many myths and rumours, so they need some reliable information. It's considered very important what you write just after you arrive – if you change your account later, it will be seen as a sign that you're lying. A personal representative, like the unaccompanied minors get, would also be a great help."*

*- Interpreter with many years of experience with asylum cases*

## **7. Fewer and shorter interviews with another structure**

Today, an asylum seeker starts by filling in an asylum form alone, and then goes through two to four asylum interviews, each lasting three to eight hours, at Immigration – and if a rejection is given, another session with a lawyer and at the Refugee Appeals Board.

Both the preliminary interview and the following asylum interviews are very long and exhausting for applicant, caseworker and interpreter. When the day is over, everybody is too tired to concentrate on the control translation of the summary.

When you read all the summaries in one case, more or less the same questions are usually asked, and a disproportionate amount of the time is used to talk about details concerning secondary information like school, home, family etc. Besides, the interviewer jumps back and forth between the asylum motive and other issues.

The more times you are asked to give an account of the same events, the higher the risk of inconsistencies, and the more unmanageable the amount of data. This might happen with the best of intentions, when the caseworker is trying to understand a complicated story; but in the end, it will often be used to “catch” the applicant in saying something contradictory or accuse her/him of “elaborating” on the story. The goal should be to uncover the most important part of the story, clearly and simply – and to find an explanation of elements which seem unlikely or unusual.

A better solution could be to merge the form and the first interview together into a more structured interview, where the questions are precisely printed in advance, and the answers are put down word by word as much as possible, instead of changed into a summary. In this interview, all the formal and factual information is found, and the asylum motive only mentioned very shortly. Of course, it should still be possible to add relevant questions and ask for further explanations when necessary.

The next interview should not be a repetition of the questions from the first, but should add new questions to elaborate or clarify, and then let the applicant give a relatively free account of the asylum motive. A third interview could be needed, but it's best to avoid it. It's important that each interview should not take more than four hours, and a long waiting time between them should be avoided.

In this way, things will be separated more, you will avoid the many repetitions which often lead to “inconsistencies” or “elaborations”, and the files will be easier to read afterwards. The control translation at the end of the interviews can be avoided if everything is recorded (with time codes connected to the written file), and the applicant is urged to give corrections or additions the next day. Further, it will make the process more equal for illiterate applicants than the current procedure with its form.

*“Everything goes wrong when the interviews take too long. The caseworker and the interpreter are tired and can’t handle comments at the end, and the young person can’t concentrate... everybody just wants to go home and get it over with. The representative is really important here. In fact, you can come back with comments later, if the young person remembers something afterwards... as a representative, you can help with that.”*

*- Red Cross representative for unaccompanied minors*

*“I think it should really be avoided to have too many interviews. For every interview, information is lost or forgotten... 10-15 pages compared line by line... With the complex cases, it can be necessary to ask for more detail. But when a caseworker must judge 35 pages with different interviews and a complicated story, there is a big risk of misunderstandings.”*

*- Former caseworker in the Immigration Service’s asylum department*

## **8. Sound recording of interviews**

The control translation being done at the end of each interview is not a reliable control system. Technically it will not be a big problem to record the interview and put the sound file on the digital case file (confidential). To make sure it will not take a long time to control the recording, it’s necessary to add automatic time codes, referring to the written file, and to work with a more structured form. Many other countries are already recording interviews, and the Danish police has decided to expand the use of sound recordings at interrogations, as it will strengthen the rule of law.

According to the director of the asylum department at the Immigration Service, Anders Dorph, the applicant is allowed to record her/his own interviews. Several asylum seekers have, however, explained that they were not given permission to do it by their caseworker.

Firstly, the lawyer can use the recording at the Refugee Appeals Board by going back and asking another interpreter to translate what was being said, to clarify misunderstandings. Secondly, both interpreter and caseworker will be more attentive to doing their jobs correctly. Both former caseworkers, lawyers, interpreters and refugees have recommended this.

In a case from Iran, the young female applicant had recorded her own interview on her smartphone, as recommended by Refugees Welcome. Immigration rejected her, but the lawyer had another interpreter translate the recording and played a piece of it during the board meeting. It turned out that the applicant had said several things which were not added to the summary, including an important detail about the asylum motive. The board writes in the positive decision that the sound recording was important for the judgment. When this can be so significant, it’s obvious that sound recordings should be an integrated part of the procedure.

*"Sound recordings, that's an old topic. I simply don't understand why it's not being done! So many discussions could be ended right away. We could just say "okay, let's rewind and hear what was being said, then we find another interpreter, and that's it."*

*- Eva Singer, head of asylum department of Danish Refugee Council*

## **9. Better training of caseworkers**

To ask the right questions, write down the summary correctly and make a reliable evaluation, it's necessary for the interviewer to know quite a bit about the home country of the applicant – both culturally and with regard to risk. It is also necessary to have a basic knowledge of asylum law, psychology and interview techniques. There is a need for more in-depth training of the new caseworkers at Immigration and also a follow-up training over the years. The caseworkers need a certain level of experience and knowledge to be able to judge the cases but, on the other hand, you can become too tough and suspicious after working too many years in the field – it's a balance.

The caseworker needs to be more conscious of her/his own role and subjective judgement. The purpose of the asylum interview is not to find holes and catch the applicants on the wrong foot – the purpose is to help find the core of the case. The Danish Refugee Council and DIGNITY used to have courses for the caseworkers, but they are not asked to do them anymore.

*"It can be really hard to listen to the story... I was affected every time... After some time, you can't absorb it anymore. Iranians are seen as one group, Iraqis as another... you put people in boxes, because you "heard the story before"... You made up your mind in advance... you should not be doing asylum interviews for too long, but it also requires some experience to do it."*

*- Former caseworker in the Immigration Service's asylum department*

*"Our present training program is much inspired by Norway, and then adjusted to our conditions. We have introduced the training program to prepare the employee in a structured way, to make sure they are qualified and feel comfortable doing it."*

*- Anders Dorph, head of Immigration Service asylum department*

*"We were trained internally. A combination of classroom tuition and peer-to-peer training under the supervision of an experienced colleague. The course in interview technique came a little late after I started. The intention was different, but due to pressure (large influx) it took a year before I had the course on interview technique with relevant professionals like psychologists etc."*

*- Former caseworker in the Immigration Service's asylum department*



## **SECOND-INSTANCE:**

### **10. Change the construction and strengthen the rule of law at the Refugee Appeals Board**

The board was originally established as a board of experts who would have better preconditions to judge these kinds of cases than a court. But today the expertise (in the form of the Danish Refugee Council and the the Ministry of Foreign Affairs) has been removed, and at the same time, the board does not follow the same rule of law as a court. In practice, there are no signs that the Ministry of Integration is affecting the cases, but formally the board should be totally separated from first-instance. The following changes are recommended to increase the quality and the consistency in the decisions:

- 1) Re-establish the five members, with the change that the judge and the Lawyers Association remain, the Ministry of Foreign Affairs appoints the third member instead of the Ministry of Integration, the fourth member is appointed by the Danish Refugee Council and the fifth by a university faculty of law. This would secure a higher level of expertise, which was the original aim of the board.
- 2) Better access to call in witnesses.
- 3) Ability to complain to the Ombudsman re-established.
- 4) Lawyers wishing to be on the list should study a course in immigration and asylum law, and also have better access to observe meetings at the board when newly appointed.
- 5) The members of the board get no training in asylum law, knowledge about the countries of origin or psychological understanding. All members of the board should learn about asylum law and how to communicate with vulnerable persons and people from other cultures.
- 6) Interpreters should be approved on the highest level possible (see general recommendation about interpreters).
- 7) Interpreters, lawyers and members of the board must be excluded if there are complaints made about them and the complaints are justified.
- 8) A separate secretariat, serving also the Immigration Board, should be established, to secure its independence.
- 9) The individual decisions should be argued in more detail and with a clearer reference to which facts are crucial to the case, and which criteria have been used.

It is recommended that the meetings should still be closed to the public, as the cases often contain very confidential information which, if released, could harm the applicant. The presence of family members might also have a negative impact on the case.

*“The five-man board was a guarantee of expertise, both regarding asylum law and knowledge about the countries of origin. Many of my colleagues who were appointed by the Danish Refugee Council were respected experts on refugee topics. And the members from the Ministry of Foreign Affairs also possessed a great deal of knowledge on local conditions which often turned out to be decisive. These cases concern matters far from Denmark which a normal judge or lawyer can't be expected to know much about.”*

*- Thomas Gammeltoft-Hansen, former member of the Refugee Appeals Board*

*“When you arrive at the board in the morning and hope to see this or that judge, either you let out a sigh of relief, or you feel like turning around and going home. It's bizarre that you don't know in advance who is the judge on the case – in criminal cases, that's public. It's probably because there is such a huge difference between them.”*

*- Asylum lawyer Marianne Vølund*

*“The applicant's lawyer is extremely important. And unfortunately, there are examples of lawyers who don't take the job seriously and don't spend enough time with/for their clients or who behave in an unacceptable way. This is something we have discussed with the secretariat, and they feel they can't do anything about it. There should be some requirements to get on that list, and it should be possible to take people off it.”*

*- Eva Singer, head of asylum department of Danish Refugee Council*

## **Why do asylum seekers get rejected? Let's see an example:**

### **1st interview:**

Q1: What is your name?

A: My name is COVID-19.

Q2: Where do you come from?

A: I come from Wuhan.

Q3: Why did you flee your home country?

A: I was not safe, I don't want to die.

Q4: Where is your family?

A: They died because of the problems in Wuhan.

### **2nd interview:**

Q1: What is your name?

A: I'm called Corona Virus.

Q2: Where do you come from?

A: I come from China.

Q3: Why did you flee your home country?

A: The situation was dangerous.

Q4: Where is your family?

A: They got infected and many died.

### **3rd interview:**

Q1: What is your name?

A: My name is SARS CoV-2.

Q2: Where do you come from?

A: I come from Hubei province.

Q3: Why did you flee your home country?

A: To save my life.

Q4: Where is your family?

A: I think they are all dead now.

- Thanks, you will get the answer in three weeks, bye bye.

Three weeks later:

- Dear Virus, Immigration Service doesn't believe your case because in three interviews you gave different information. This is a story you created by yourself.

- Virus: My story is true, but maybe I described it in different ways...oh noooo!!

*This text was posted on Facebook March 2020. The author is a rejected asylum seeker, single mother from an African country with a 7-year old son. They have been rejected for four years, no country will accept them.*

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## MORE INFORMATION

Udlændingestyrelsen (Danish Immigration Service) / [nyidanmark.dk](http://nyidanmark.dk)

Flygtningenævnet (Refugee Appeals Board) / [fln.dk](http://fln.dk)

Udlændinge- og Integrationsministeriet (Ministry of Immigration and Integration)  
/ [uim.dk](http://uim.dk)

Dansk Flygtningehjælp (Danish Refugee Council) / [drc.org](http://drc.org)

Dansk Røde Kors (Danish Red Cross) / [rodekors.dk](http://rodekors.dk)

Institut for Menneskerettigheder (Danish Institute for Human Rights)  
/ [menneskeret.dk](http://menneskeret.dk)

DIGNITY - Dansk Center Mod Tortur (Danish Centre Against Torture) / [dignity.dk](http://dignity.dk)

Foreningen af Udlændingeretsadvokater (Immigration Lawyers) / [fauadvokater.com](http://fauadvokater.com)

UNHCR Norden / [unhcr.org/neu](http://unhcr.org/neu)

UNHCR World / [unhcr.org](http://unhcr.org) + [refworld.org](http://refworld.org)

European Council on Refugees and Exiles (ECRE) / [ecre.org](http://ecre.org)

EASO / [easo.europe.eu](http://easo.europe.eu)

European COI Network / [ecoi.net](http://ecoi.net)

AIDA: Asylum Information Database / [asylumineurope.org](http://asylumineurope.org)

Refugees Welcome / [refugeeswelcome.dk](http://refugeeswelcome.dk) + [REFUGEES.DK](http://REFUGEES.DK)

## Who gets asylum in Denmark, and how is that decision made?

Asylum assessments are complicated, based on international conventions but with disagreements in interpretations. The case processing determines the future of human lives but relies on a number of uncertain elements.

This report has a dual purpose: Partly to explain the Danish procedure and international asylum law for anyone who has an interest in refugees. Partly to show how weak points in the Danish procedure can lead to unreliable and wrong decisions – and to present recommendations for improvements.

The report is aimed at everyone who has an interest in refugees – either through their job as journalists, politicians, integration employees, language teachers – or as voluntary contact persons, neighbours, activists.

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Michala Clante Bendixen has worked with refugees for 14 years. She established the organisation Refugees Welcome, offering legal advice to refugees, and the information site REFUGEES.DK. On the side she is the Danish country coordinator for the integration website for the European Commission EWSI. In 2014 she was the first recipient of the Danish Human Rights Award.



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