



Overview of Denmark's Asylum System*

1 What arrangements does Denmark have with its neighbours to stop asylum seekers reaching the border? Do they engage in upstream disruption?

On the 25 March 2001 Denmark entered the *Schengen Cooperation*. The purpose of Schengen is to make travel possible between the Schengen area as well as encouraging cooperation to combat transnational crime and illegal immigration. This is carried out mainly through the Schengen Information System (SIS). The SIS is a joint computerised information system for ensuring rapid and safe exchange of information between member countries. The authorities can retrieve data from the SIS in connection with police tasks and for the administration of immigration legislation. The current Schengen Cooperation member states are: Iceland, Norway, Sweden, Finland, Denmark, Germany, Austria, Italy, Greece, The Netherlands, Belgium, Luxemborg, France, Spain and Portugal.

2 What proactive steps outside its territory does Denmark take to stop undocumented, unauthorised persons reaching its border?

In September 2003, the Danish Ministry for Refugee announced that officials have met with representatives from Albania, Bosnia-Herzegovina, FYROM, Croatia, Serbia and Montenegro to coordinate “information campaigns” in the Balkans.¹

3 What arrangements are there at the border to return immediately those who present with manifestly unfounded claims to asylum?

Whilst there are two categories of ‘manifestly unfounded’, these are only determined at the end of the initial screening process. When an asylum seeker enters Denmark, s/he must contact the police. It is the responsibility of the National Commissioner of Police to establish

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¹ Danish Ministry for Refugee, Immigration and Integration Affairs, “Ministers for Nordic countries and representatives from the Balkan countries met in Elsinore 24 September 2003”, Press Release, 27/09/2003, www.inm.dk

the nationality and identity of the asylum seeker. The police will fingerprint and photograph the asylum seeker, as well as record an official statement from the applicant, including details on the route s/he travelled to Denmark. An asylum seeker will be turned around at the border if:

- their application for asylum has been examined in another EU country under the terms of the Dublin Convention; or
- they have resided in a safe third country prior to arriving in Denmark. Currently these countries include: Switzerland, Poland, USA, Canada, Australia, Japan and Hungary.²

4 Is there any appeal or review of this summary procedure?

No.

5 What is the difference in treatment for asylum seekers arriving by land, by sea and by air?

There is no difference in treatment of asylum seekers whether they arrive by sea, air or land.

6 How many unauthorised/undocumented arrivals are turned around at the border each year? Does the country have a comprehensive visa system?

Danish requests to other EU member states for taking back asylum seekers who fall within the Dublin Convention:³

<i>Year</i>	<i>Requests</i>	<i>Accepted</i>	<i>Rejected</i>	<i>Pending on 31 December</i>
2000	5,230	4,539	547	114
2001	7,257	6,412	624	221
2002	8,555	7,672	707	176

Between 1997 - 2002 74% of those deported from Denmark under the Dublin Convention were transferred to Germany; 4% to Sweden; and 22% to other member countries.⁴

Persons returned on safe third country grounds – 2002: 8; 2001: 7.⁵

Citizens of EU member states do not need a visa to travel to Denmark. A variety of other countries (mainly developed nations and eastern European states) do not need visas.⁶

7 Once admitted to the territory, what is the procedure for checking health, security and identity? Is there detention? Is it judicially reviewable? How many are admitted each year?

² European Committee for Refugees and Exiles, Country Report 2002: Denmark, www.ecre.org/country02/denmark_69-84.pdf, p.75.

³ Ibid, p.77.

⁴ Ibid, p.78.

⁵ Ibid, p.75.

⁶ For a full list see: www.udlst.dk/english/Visa/who_needs_visa.htm

When an asylum seeker enters Denmark, he or she must contact the police. It is the responsibility of the National Commissioner of Police to establish the nationality, identity and security of the asylum seeker. The police will fingerprint and photograph the asylum seeker, as well as record an official statement from the applicant, including a statement on the route he or she travelled to Denmark. During this phase of an asylum case the asylum seeker is usually assigned to an accommodation centre. Accommodation centres are spread throughout Denmark: most are operated by the Danish Red Cross and the Danish Emergency Management Agency. Asylum applicants may be permitted to live privately in some cases. See the answer to the following question for more detail on accommodation centres.

Asylum seekers who cannot establish their identity and travel route are usually detained at the border under the authority of the Ministry of Justice. After an individual claim assessment asylum seekers whose application is subject to the manifestly unfounded procedure may be detained for no longer than 7 days.

Asylum seekers may also be detained to ensure their presence during the determination procedure and possible appeal if (a) they are not a permanent resident and are suspected of committing an offence that may lead to deportation or (b) they entered Denmark in violation of an entry provision.

The initial decision to detain is reviewed by the Lower City Court after a maximum of 3 days. In some cases, detention may be extended for a maximum of 4 weeks. Any further periods of detention, each not to exceed 4 weeks, must be ordered by the Lower City Court. Decisions of the Lower City Court can be appealed to the High Court. For further information on detention, please see answers to questions 8 and 18.

8 Once health, security and identity are established, what is the procedure for processing an asylum claim? Detention? Residence provided? Social security? Right to work? Legal assistance?

Procedure: if the Danish Immigration Service determines that an asylum application is to be examined in Denmark, the Immigration Service will process and determine the asylum claim. The asylum seeker must fill out an official application form for asylum, in which he or she can explain in more specific terms why he or she is seeking asylum in Denmark. The Danish Immigration Service then holds an interview with the applicant, assisted by an interpreter. During the course of the interview, the asylum seeker has the opportunity to further clarify why he or she is applying for asylum in Denmark.

Following the interview, the Danish Immigration Service will deliver a decision. The Immigration Service will consider the statement provided by the asylum seeker, as well as information on conditions in the applicant's country of origin. In most cases, the Immigration Service will be able to reach a decision based on these grounds alone. There may be instances where the Immigration Service requires additional information to reach a decision: if, for example, there is some doubt regarding conditions in a specific country.

Most cases are decided according to so-called **normal procedure**. This means that, if the asylum applicant is rejected, the case is referred to the Refugee Board, which will deliver a final decision in the case.

A minority of cases are considered **manifestly unfounded**. This occurs when the Immigration Service assesses that the applicant clearly cannot be granted asylum in Denmark. These cases are sent to the Danish Refugee Council which will deliver a decision on the case. If the Danish Refugee Council agrees with the Immigration Service that the application is manifestly unfounded, the application will be rejected without contest. However, if the Danish Refugee Council disagrees, the Immigration Service will generally still reject the application, but will nevertheless refer the matter to the Refugee Board for a final decision.

In certain cases, asylum applications are addressed according to an **expedited version of the manifestly unfounded procedure**. This is when the asylum seeker comes from a country where, according to the most up-to-date information available to the Danish Immigration Service, it is unlikely that the applicant would risk persecution on return..

In these cases, the asylum seeker does not fill out an official application form for asylum, and is quickly referred for an interview with the Danish Immigration Service. The Danish Refugee Council will then deliver a decision on the case: if this is in accordance with the findings of the Immigration Service, the application will be rejected. These cases are decided within a few days.

Detention: detention of asylum seekers is common, with an estimated 50% of asylum seekers detained at some point. 12,200 people applied for asylum in Denmark in 2000, with 495 asylum seekers detained within this period. In 2001, there were 12,403 asylum applications with 666 asylum seekers detained. These statistics do not include asylum seekers detained in accordance with Section 36 of the Aliens Act who are released within 3 days of detention.⁷

Accommodation: asylum seekers who are not detained or are released from detention are referred to one of the two Danish **reception centres**, both run by the Danish Red Cross within 50 kilometres of Copenhagen. The centres have a combined capacity of 900 beds. The reception centres are open and serve as a primary site for registration with the police and preliminary interviews with the Danish Immigration Service. After six weeks, asylum seekers are normally assigned to accommodation centres, unless they make a special application to live with family or friends. However, financial assistance is conditional on residence in an accommodation centre.

Asylum seekers residing in Denmark are generally housed at an **accommodation centre** during the examination of their case. It is the responsibility of the Danish Immigration Service to provide for this housing, however, several groups are responsible for the day-to-day administration and operation of accommodation centres.

The Danish Red Cross operates and administers most accommodation centres in Denmark. The Danish Emergency Management Centre, on the island of Funen, runs a number of centres, while Hanstholm municipality is responsible for one centre.

⁷ Human Rights First (formerly Lawyers' Committee for Human Rights), *Review of States' Procedures and Practices Relating to the Detention of Asylum Seekers*, September 2002, www.humanrightsfirst.org/refugees/reports/cntry_rev_02/country_reps.htm.

As of 2003, a total of 28 accommodation centers were in service around the country. During 2002, a total of 8,744 asylum seekers were housed in accommodation centres; 7,686 with the Red Cross; 941 with the Danish Emergency Management Service; and 147 with municipal operators.

Adult asylum seekers, defined as individuals aged 17 years and older, are offered educational courses in connection with the accommodation centre in which they reside. The objective of these courses is to maintain and expand the individual's general and professional skills. Asylum applicants are instructed in the Danish language, Danish society and English, and are offered these courses for a minimum of 5 hours per week. Asylum applicants aged between 17-25 years of age can receive up to 10 hours of instructional courses per week.

Child applicants, defined as children aged 7-16 years of age, are offered special education at, or in cooperation with, their accommodation centres. Children are instructed in Danish, English and other public school subjects. The weekly number of classroom hours corresponds roughly to the timetable for the relevant grade levels in the Danish public school system.

Asylum seekers are able to leave the centres for up to 6 weeks per year in order to visit relatives in other parts of Denmark, provided they have an address and telephone number at which they can be contacted.

Social security: The expenses incurred during an asylum seeker's stay in Denmark are covered by the Danish Immigration Service, unless the asylum seeker is married to an individual already resident in Denmark. In this case, the spouse must provide financial support for the applicant.

In addition to accommodation, the Danish Immigration Service provides resident asylum seekers an allowance for food, clothing and pocket money. Throughout 2002 asylum seekers received the following amounts:

Category	Food (per day)	Pocket allowance (per day)	Clothing (per day) ⁸	Total (per month)
Child (< 13 years)	DKK 33.88	DKK 6.79	DKK 8.01	DKK 1,481
Youth (14 - 17 years)	DKK 37.35	DKK 17.07	DKK 8.01	DKK 1,899
Adult (> 18 years)	DKK 40.82	DKK 31.74	DKK 8.01	DKK 2458

9 Is there a distinction drawn between those arriving with a visa and those without?

No.

⁸ An asylum seeker does not receive the clothing allowance until he or she has resided in an accommodation centre for 150 days.

10 Is there a distinction drawn between those arriving directly from a country of persecution, and those engaged in secondary movement? If so, how is this distinction drawn? Who draws the distinction? Is the decision reviewable?

Only in regards to the terms of the Dublin Convention and return to a safe third country as outlined in the answer to question 3.

11 Does one have to be strictly a refugee to be able to remain, or are there other humanitarian classifications available? If so, who decides, what are the criteria and is the decision reviewable?

In addition to Convention reasons, Denmark grants residence permits to asylum seekers who risk the following if they are returned to their country of origin:

- death penalty;
- torture;
- inhumane or degrading treatment or punishment⁸.

An asylum seeker's place within one or more of the above categories is assessed throughout the normal asylum procedure. If found to fit into one or more of the above categories the asylum seeker is granted the same status as an individual determined to be a Convention refugee. The decision is reviewable through standard appeal channels. For more detail on appeal see answer to question 15.

The Ministry of Refugee, Immigration, and Integration Affairs has the authority to grant a temporary residence permit on humanitarian grounds to an asylum seeker who has received a final rejection of his or her application for asylum. However, very few permits of this type are granted.

The decision of whether or not to apply the asylum determination procedure to an **unaccompanied minor** is made by the Danish Immigration Service according to an evaluation of the child's maturity. If the child is not considered mature enough, his/ her application will not be processed and s/he will be automatically issued with a residence permit for exception reasons. If deemed to be sufficiently mature, the child will undergo the determination procedure.

However, if a child's asylum application is examined, and the Danish Immigration Service determines a rejection, the child may, in certain cases, receive a residence permit anyway. Criteria include:

- if the child would have inordinate difficulty surviving in his or her country of origin due to the lack of an adequate support network in the form of family, other adults, and public assistance;
- the child's state of mental and physical health, and need for specific or particular care or support;
- the general situation in the child's country of origin (e.g. conditions of war, famine, conflict etc.).

⁸ Section 31(1) and (2) of *Aliens (Consolidation) Act 2002*.

12 How many asylum and humanitarian claims are decided each year?
4,281 claims in 2002; 9,366 in 2001; and 9,427 in 2000.⁹

13 Does the country take a quota of off-shore refugees each year as well as on-shore asylum seekers? If so, is there a nexus between the numbers?

Yes, Denmark does take a quota of refugees each year. The numbers are annually determined by the Quota Committee, but are usually around 500. There is no nexus between the number of on-shore and quota refugees.¹⁰

14 How long does an asylum claim take?

The official target for all cases is 95 days. Average processing time of Asylum cases for 2003/2004:⁹

50% of the cases: 42 days

80% of the cases: 76 days

100% of the cases: 121 days

15 How many levels of appeals are there?

The level of appeal an asylum seeker is able to access depends upon which procedure has been applied to their case (ie. normal or manifestly unfounded).

Normal procedure

When a case is examined according to the normal procedure, a rejection is automatically forwarded to the Refugee Board, with the asylum seeker's case details. At the same time the asylum applicant receives a written rejection of his or her application. The case will be re-evaluated by the Refugee Board, and the asylum seeker has the right to remain in Denmark until the Refugee Board has determined the outcome of the case.

Manifestly unfounded procedure

If the Danish Immigration Service believes that an asylum application is manifestly unfounded, the Danish Refugee Council will examine the case. If the Danish Refugee Council concurs with the opinion of the Danish Immigration Service, the asylum applicant will be rejected, and must leave Denmark immediately. The asylum applicant cannot appeal this decision.

⁹ Danish Immigration Service, *Statistical Overview 2003*, www.udlst.dk/english/Statistics/statistics_overview_2003.htm.

¹⁰ For further information see: http://www.udlst.dk/english/Asylum/quota_refugees.htm.

⁹ Danish Immigration Services, *Average Processing Time of the Cases in the Danish Immigration Service*, www.udlst.dk/english/Statistics/average_processing.htm.

If the Danish Refugee Council does not agree with the opinion of the Danish Immigration Service, the Immigration Service will generally reject the application anyway, but the case will be forwarded to the Refugee Board.

The Refugee Board

The Refugee Board is the final avenue for appeal in asylum cases where the decision of the Danish Immigration Service can be contested. The Refugee Board is an independent, court-like body consisting of three members. The chairman must be an appointed judge. The other two members are appointed by the Ministry of Refugee, Immigration, and Integration Affairs and the Danish Bar and Law Society.

When the Refugee Board verbally handles a case, the asylum seeker will normally be present for the hearing. A lawyer is appointed by the Refugee Board to represent the applicant's interests. However, the asylum seeker also has the option to choose his or her own lawyer. The Danish state will pay the lawyer's fees. The board can also handle cases on a written basis.

Refugee Board Decisions

If the Refugee Board agrees with the Danish Immigration Service's rejection, then the decision is upheld. This means that the asylum seeker must leave Denmark immediately.

If the Refugee Board does not agree with the decision of the Danish Immigration Service, the applicant is granted a residence permit either as a refugee or under protected status. The asylum applicant is then covered by regulations set forth in the *Integration Act*. There is no avenue for appeal against the Board's decisions.

16 In what circumstances could a person be held in detention while the claim is processed?

Under Section 35 and 36(2) of the Aliens (Consolidation Act), Asylum seekers can be detained on the following grounds:

- to ensure the individual's presence during his/her case and throughout appeal;
- if there are reasons to suspect that the asylum seeker has committed an offence that may lead to deportation;
- to ensure efficient enforcement of a removal decision following a rejection by the Refugee Board;
- failure to comply with a Danish Immigration Board decision requiring the asylum seeker to reside at a specified residence;
- obstruction to the procuring of information necessary to the determining of an asylum seeker's case by (i) without reasonable cause repeatedly failing to appear for police or Danish Immigration Service interviews to which they have been summoned; (ii) not giving or obscuring information on identity, nationality or travel route; and (iii) otherwise not assisting in procuring information for their case;
- non-compliance with alternatives to detention.

17 How many overstayers a year does the country have?

Information not available.

18 Once an asylum seeker is rejected, are they taken into detention? If so, what are the conditions and is the decision appealable? If not, how do they arrange the removal of persons?

Unless emergency circumstances apply (eg. pregnancy, health risks) departure from Denmark for rejected asylum seekers is immediate. If the asylum seeker does not leave voluntarily, the police make arrangements for their departure. In cases where the rejected asylum seeker is not detained, the police may order the asylum seeker to:

- deposit passport, other travel documents and ticket with the police;
- provide bail in an amount determined by the police;
- report to the police at specified times.

Section 37 (1) states of the *Aliens (Consolidation) Act* states that a detained asylum seeker must be brought before the Lower City Court within 3 full days of detention. The court rules on the lawfulness of detention and its continuance. Section 37 (2) states that the court must assign a lawyer to the asylum seeker. The date and hour when detention was enforced and when the asylum seeker was brought before the court must be registered in the court records. Section 37 (3) states that the decision of the court to release or further detain the asylum seeker must be made by court order subject to interlocutory appeal under the Administration of *Justice Act*. If detention is found to be lawful, the court must determine a time-limit for continued detention. This time-limit cannot exceed 7 days but the court can extend this time limit at the end of the period, but by no more than 4 weeks at a time. (Thus there is effectively a review of the decision to continually detain every 4 weeks).

In cases where an asylum seeker has not been able to be deported for at least 18 months due to difficulty in acquiring travel documents, passports etc., and they have co-operated fully with police, the Danish Immigration Service can issue a temporary residence permit. This permit is valid for an initial period of 6 months. The rejected asylum seeker can apply for an extension of the permit, provided that it remains impossible for the applicant to leave Denmark or if the police are still unable to enforce deportation.

19 What are the terms of a recognised asylum seeker (or humanitarian entrant) remaining in the country? Is there a time limit on the visa? Family reunion? Right to travel? Right to work? Social security assistance?

Terms for remaining: once granted a residence permit, a refugee is allocated and moved to one of Denmark's municipalities (equivalent of Australian local government areas) where accommodation is provided. Personal circumstances are taken into account during the allocation process (ie. cultural and language groups, family, employment, education and training opportunities). However, allocation decisions cannot be appealed. Once the refugee has moved to the allocated municipality, s/he must take part in an integration program prepared by the local authority. Individuals residing in Denmark due to family reunion must also take part in an integration program. Integration programs are generally 3 years and cover cultural issues, Danish language courses, vocational education and training, and also help with employment placement.

Visa time limits: residence permits are time-limited (7 years), however recognised refugees and people on humanitarian visas will normally receive permanent residence permits if they have lived in Denmark for 7 years, are over 18, have completed an integration program, passed a Danish language exam and have no outstanding public debts. They must not have received a prison sentence of over 2 years for serious offences including drug crimes, people smuggling, murder, aggravated assault or rape. If the applicant has been sentenced to probation for a lesser offence, the timeframe for his/her eligibility for permanent residency will be extended. There is no need to prove continued persecution in the country of origin.

Family reunion: once granted a residence permit, an individual can apply for family reunion with spouse/fiancée/fiance and dependent children.

Right to travel: once granted a residence permit, an individual is eligible to receive either (i) the Convention passport for those granted asylum for a Refugee Convention reason or (ii) a Danish Aliens Passport those granted asylum for a non-Convention reason. These passports are invalid for travel to the country of persecution although this can be appealed. A residence permit will lapse if the holder: moves to another country or travels/resides outside Denmark for more than 6 months (or 12 months for those resident in Denmark for 2 or more years).

Right to work: all adult asylum seekers granted a residence permit have the right to work.

Social security assistance: During the first 7 years of their stay in Denmark, refugees will receive social benefits allowances amounting to 50-70% of the full rates.¹⁰ Housing is provided for refugees.

20 How stringent is the law for removal of non-citizens who have committed criminal offences and served their sentences? Is there any appeal from the decision to deport?

Expulsion of individuals who have committed criminal offences and served their sentences is not compulsorily enforced, but jointly decided on a case-by-case basis by the Danish Immigration Service and the Ministry of Refugee, Immigration and Integration Affairs. Section 26 of the Aliens (Consolidation) Act 2002 states that in deciding on an expulsion, consideration must be given to how burdensome expulsion will be for the individual, particularly in relation to the following:

- ties with Danish society;
- age, health and personal circumstance;
- ties with persons living in Denmark;
- consequences of the expulsion for close relatives resident in Denmark;
- individual's slight or non-existent ties with their country of origin or any other country in which they may be expected to reside;
- the risk that the individual will be ill-treated in his/her country of origin or any other country in which they may be expected to reside.

¹⁰ European Committee for Refugees and Exiles, *Country Report 2002: Denmark*

21 How does the country ensure compliance with the Convention Against Torture, the ICCPR, and the Convention on the Rights of the Child before ordering forcible removal of a failed asylum seeker?

As explained in the answer to question 11, in addition to Convention reasons, Denmark grants protection in cases where it is obliged to do so in order to comply with international conventions it has ratified eg. if an asylum seeker will face torture, the death penalty, inhumane or degrading treatment in their country of origin. As explained in the answer to Question 11, unaccompanied minors are often processed through a different procedure.

22 Is there any distinctive jurisprudence by the domestic courts or parliaments qualifying or restricting the terms of the Refugees Convention? Make particular reference to 'particular social group', persecution by non-state actors, and Convention reasons being the main cause of persecution or human rights abuse.

Information not available.

23 How does the country apply the cessation clause once there is a change in the situation of the home country? Does the country insist on the refugees re-establishing their individual claim or does the country permit the refugee to remain pending proof of a substantial, durable solution in the home country?

Denmark does not apply the cessation clause if there is a change in the conditions of the home country. Once an asylum seeker has been granted a residence permit they do not have to re-establish their claim in order to gain a permanent residence permit.

24 Does the country countenance anything like the pacific solution?

No.

Websites for further information

Danish websites

Danish Immigration Service: <http://www.udlst.dk>

Danish Ministry of Refugee, Immigration and Integration Affairs: <http://www.inm.dk>

Danish Red Cross: <http://www.asylum.redcross.dk>

Danish Refugee Council: <http://www.flygtning.dk>

European websites

Amnesty International, European Union Office: <http://www.amnesty-eu.org>

Eurasyllum Portal: <http://www.eurasyllum.org/portal/DesktopDefault.aspx>

European Commission: <http://europa.eu.int>

European Committee for Refugees and Exiles: <http://humanrightsfirst.org>

European Migration Information Network: <http://www.emin.geog.ucl.ac.uk>

European Parliament: <http://www.europarl.eu.int>

European Refugee Fund: <http://www.european-refugee-fund.org>

Harvard Law School, Guide to EU Documents and Treaties:

http://www.law.harvard.edu/library/ref/ils_ref/eu_guide/eu_legal_research_treaties.htm

Jesuit Refugee Service, European Office: <http://www.jrseurope.org>

Migration Policy Group: <http://www.migpolgroup.com>

Odysseus Network, Academic Networks for Legal Studies on Immigration and Asylum in Europe: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

RefugeeNet: <http://www.refugeenet.org>

University of Kent, EU Information: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

General Websites

Amnesty International: www.amnesty.org

Human Rights First: <http://www.humanrightsfirst.org>

Human Rights Watch: www.hrw.org

Jesuit Refugee Service: www.jrs.org

Migration Information Source: <http://www.migrationinformation.org>

Migration Policy Institute: <http://www.migrationpolicy.org>

Refugee Studies Centre, University of Oxford: <http://www.rsc.ox.ac.uk>

United Nations High Commissioner for Refugees: <http://www.unhcr.ch>

US Committee for Refugees: www.refugees.org

Vera Institute of Justice: <http://www.vera.org>