

FN's konvention om afskaffelse af alle former for diskrimination imod kvinder

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Udlændingestyrelsen
Flygtningenævnet

FN's konvention om afskaffelse af alle former for diskrimination imod kvinder (CEDAW)

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1. Indledning

FN's konvention om afskaffelse af alle former for diskrimination imod kvinder (CEDAW) blev vedtaget i 1979 af FN's Generalforsamling og trådte i kraft den 3. september 1981. Danmark ratificerede konventionen den 21. april 1983. Danmark har endvidere tiltrådt den valgfrie tillægsprotokol til konventionen, som etablerer FN's komité vedrørende afskaffelse af diskrimination imod kvinder (FN's Kvindekomité) kompetence til at modtage og behandle individuelle klagesager.

Konventionen findes i bekendtgørelse nr. 83 af 9. september 1983.

2. FN's Kvindekomité

FN's Kvindekomité blev oprettet i 1982 i henhold til konventionens artikel 17 og består af 23 medlemmer, som mødes to gange årligt. Komitéen overvåger medlemsstaternes implementering af nationale tiltag, som modvirker diskrimination af kvinder, samt udviklingen af forholdene for kvinder. De deltagende lande/stater skal afgive beretning til komitéen om de foranstaltninger, de træffer for at gennemføre deres forpligtelser ifølge konventionen.

Den 22. december 2000 ratificerede Danmark den valgfrie tillægsprotokol til konventionen, hvorved Danmark har anerkendt komitéens kompetence til at behandle klager over medlemsstater for krænkelse af de i konventionen givne rettigheder fra enkeltpersoner eller grupper af enkeltpersoner, der er undergivet den enkelte stats jurisdiktion – den såkaldte individuelle klageadgang. Komitéens udtalelser er ikke retligt bindende for den indklagede stat, og komitéen kan ikke tilsidesætte eller ændre afgørelser, som er truffet af danske myndigheder. En klager er derfor forpligtet til at følge en afgørelse truffet af de danske myndigheder, indtil de danske myndigheder eventuelt måtte ændre afgørelsen.

Komitéens udtalelser m.v. kan findes i komitéens database:

3. Centrale artikler i CEDAW, General Recommendation no. 19 og CEDAWS eksteritoriale virkning

CEDAWs artikler 1 og 2 har følgende ordlyd: Artikel 1

“For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Artikel 2

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of elimination discrimination against women and, to this end, undertake:

...

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

...”

FN’s Kvindekomité har i sin General Recommendation no. 19: Violence against women nærmere defineret CEDAWs anvendelsesområde. Af pkt. 6 og 7 i General Recommendation no. 19 fremgår således at:

”6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

(a) The right to life;

(b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;

(c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;

- (d) The right to liberty and security of person;
- (e) The right to equal protection under the law;
- (f) The right to equality in the family;
- (g) The right to the highest standard attainable of physical and mental health;
- (h) The right to just and favourable conditions of work.”

I juli 2013 i en sag mod Danmark vedrørende en klage over en afgørelse truffet af Flygtningenævnet har komitéen udtalt sig generelt om CEDAWS eksteritoriale virkning.

Komitéen henviste i udtalelsen til komitéens General Recommendation no. 19 og udtalte herefter vedrørende de positive forpligtelser, der følger af konventionens artikel 2 (d):

“(…) the Committee recalls that, under article 2 (d) of the Convention, States parties undertake to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation. This positive duty encompasses the obligation of States parties to protect women from being exposed to a real, personal and foreseeable risk of serious forms of gender-based violence, irrespective of whether such consequences would take place outside the territorial boundaries of the sending State party: if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person’s rights under the Convention will be violated in another jurisdiction, the State party itself may be in violation of the Convention. For example, a State party would itself be in violation of the Convention if it sent back a person to another State in circumstances in which it was foreseeable that serious gender-based violence would occur. The foreseeability of the consequence would mean that there was a present violation by the State party, even though the consequence would not occur until later. What amounts to serious forms of gender-based violence will depend on the circumstances of each case and would need to be determined by the Committee on a case-by-case basis at the merits stage, provided that the author had made a prima facie case before the Committee by sufficiently substantiating such allegations.”

Den eksteritoriale virkning af CEDAW, der ifølge komitéens udtalelse i sagen M.N.N. mod Danmark gælder, hvor der er ”(…) a real, personal and foreseeable risk of serious forms of gender-based violence (…), vedrører således risikoen for fremtidig gender-based violence.

Kvindekomitéen har ved General Recommendation No. 35 opdateret General Recommendation No. 19, hvorved komitéen yderligere har uddybet sin fortolkning af vold mod kvinder som en form for kønsdiskrimination.

I april 2018 i en sag mod Danmark (communication no. 80/2015) vedrørende en klage over en afgørelse truffet af Flygtningenævnet henviste komitéen i udtalelsen til komitéens General Recommendation No. 35, og udtalte herefter i præmis 8.5 vedrørende medlemsstaternes forpligtelser, at:

“(…) it reaffirms the obligation of States parties to eliminate discrimination against women, including gender-based violence, resulting from the acts or omissions of the State party or its actor, on the one hand, and non-State actors, on the other (para. 21).”

Kvindekomitéen har ved sin General Recommendation No. 28 on the core obligations of states parties under article 2 of the CEDAW ønsket at “clarify the scope and meaning of article 2 of the Convention on the

Elimination of All Forms of Discrimination against Women ("the Convention"), which provides ways for States parties to implement domestically the substantive provisions of the Convention. The Committee encourages States parties to translate this general recommendation into national and local languages and to disseminate it widely to all branches of Government, civil society, including the media, academia and human rights and women's organizations and institutions."

Komitéen har endvidere ved sin General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women fastsat "authoritative guidance to States parties on legislative, policy and other appropriate measures to ensure the implementation of their obligations under the CEDAW and the Optional Protocol thereto regarding non-discrimination and gender equality relating to refugee status, asylum, nationality and statelessness of women".

Komitéen behandler i den forbindelse en række emner af betydning for asylsagsbehandlingen, hvoraf afsnit IV.B. om princippet om non-refoulement, afsnit IV.C. om indholdet af forpligtelserne i konventionens enkelte bestemmelser i en asylretlig kontekst og afsnit IV.D. med komitéens "specific recommendations" til blandt andet asylsagsbehandlingen særligt skal fremhæves.

Komitéen har derudover i den førnævnte sag mod Danmark (communication no. 80/2015) fra april 2018 vedrørende en klage over en afgørelse truffet af Flygtningenævnet i sin udtalelse endvidere henvist til komitéens General Recommendation No. 32, pkt. 16 og 21, hvoraf blandt andet fremgår, at:

"16. Gender-related claims to asylum may intersect with other proscribed grounds of discrimination, including age, race, ethnicity/nationality, religion, health, class, caste, being lesbian, bisexual or transgender and other status. The Committee is concerned that many asylum systems continue to treat the claims of women through the lens of male experiences, which can result in their claims to refugee status not being properly assessed or being rejected. Even though gender is not specifically referenced in the definition of a refugee given in the 1951 Convention relating to the Status of Refugees, it can influence or dictate the type of persecution or harm suffered by women and the reasons for such treatment. The definition in the 1951 Convention, properly interpreted, covers gender-related claims to refugee status. It must be emphasized that asylum procedures that do not take into account the special situation or needs of women can impede a comprehensive determination of their claims (...)"

"21. (...) under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably arbitrary deprivation of life or torture or other cruel inhuman or degrading treatment or punishment. In addition the Committee recalls that civil and political rights and freedoms, including the right to life and the rights not to be subjected to torture or ill-treatment, are implicitly covered by the Convention."

4. Danske klagesager

Komitéen har behandlet en række klagesager mod Danmark, som har vedrørt Flygtningenævnets afgørelse i konkrete sager. Komitéens udtalelser er listet kronologisk med nyeste udtalelser først.

4.1. Afsluttede sager i 2022:

[D.N.S. v. Denmark \(sag nr. 144/2019 af 23. februar 2022\)](#)

4.2. Afsluttede sager i 2021:

4.3 Afsluttede sager i 2020:

[F.H.A. v. Danmark \(sag nr. 108/2016 af 17. februar 2020\)](#)

4.4. Afsluttede sager i 2019:

[K.I.A. v. Danmark \(sag nr. 82/2015 af 4. november 2019\)](#)

[R.S.A.A. v. Danmark \(sag nr. 86/2015 af 9. august 2019\)](#)

[A.N.A. v. Danmark \(sag nr. 94/2015 af 27. juni 2019\)](#)

[A.R.I v. Denmark \(sag nr. 96/2015 af 8. april 2019\)](#)

4.5. Afsluttede sager i 2018:

[S.A.O. v. Denmark \(sag 101/2016 af 29. oktober 2018\)](#)

[M.K.M. v. Denmark \(sag 81/2015 af 29. oktober 2018\)](#)

[H.D. v. Denmark \(sag nr. 76/2014 af 9. juli 2018\)](#)

[A.S v. Denmark \(sag nr. 80/2015 af 26. februar 2018\)](#)

[S.F.A. v. Denmark \(sag nr. 85/2015 af 26. februar 2018\)](#)

4.6. Afsluttede sager i 2017:

[S.J.A. v. Denmark \(79/2014 af 6. november 2017\)](#)

[F.F.M v. Denmark \(sag nr. 70/2014 af 21. juli 2017\)](#)

[A.M. v. Denmark \(sag nr. 77/2014 af 21. juli 2017\)](#)

[N.M. v. Denmark \(sag nr. 78/2014 af 21. juli 2017\)](#)

[E.W. v. Denmark \(sag nr. 54/2013 af 28. februar 2017\)](#)

4.7. Afsluttede sager i 2016:

[K.S. v. Denmark \(sag nr. 71/2014 af 11. november 2016\)](#)

[P.H.A. v. Denmark \(sag nr. 61/2013 af 7. november 2016\)](#)

[V. v. Denmark \(sag nr. 57/2013 af 11. juli 2016\)](#)

4.8. Afsluttede sager i 2015:

4.9. Afsluttede sager i 2014:

[Y. C. v. Denmark \(sag nr. 59/2013 af 24. oktober 2014\)](#)

4.10. Afsluttede sager i 2013:

[M. E. N v. Denmark \(sag nr. 35/2011 af 26. juli 2013\)](#)

[M. S. v. Denmark \(sag nr. 40/2012 af 22. juli 2013\)](#)

[M. N. N v. Denmark \(sag nr. 33/2011 af 15. juli 2013\)](#)

5. Udtalelser fra komitéen vedrørende andre lande end Danmark

[S.T.H. v. Switzerland \(sag nr. 165/2021 af 16. februar 2024\)](#)

[T.M.B. v. Switzerland \(sag nr. 173/2021 af 15. maj 2023\)](#)

[E.D. and M.D. v. Belarus \(sag nr. 157/2020 af 12. februar 2024 \)](#)

[M.A. v. Switzerland \(sag nr. 145/2019 af 1. november 2021\)](#)

[R.A.O. v. Switzerland \(sag nr. 122/2017 af 6. juli 2020\)](#)