



Executive Summary

Country Report Denmark 2009 on measures to combat discrimination

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1. Introduction

In the 1960s and 1970s, the Parliament [*Folketinget*] debated whether legislation on discrimination in the labour market due to race, religion or other grounds should be enacted. The social partners, i.e. employers' organisations and employees' organisation in the labour market rejected the proposal, arguing that Denmark has a tradition of collective agreements in the labour market instead of legislation. Under this so-called Danish model, the social partners would make agreements prohibiting racial or religious discrimination if this were a problem in the labour market. As no such collective agreements were concluded, victims of discrimination on grounds of race, ethnicity, sexual orientation, and religion were not protected until 1996, when legislation was finally enacted. Those in need of such protection were, amongst others, migrant workers from countries such as Turkey, Yugoslavia and Pakistan who were invited by Danish companies due to a shortage of Danish labour in the 1960s. However, as a result of the oil and economic crises in many Western countries in the 1970s, unemployment became a major problem affecting, amongst others, those same migrant workers.

The Danish population was until the 1960s and 1970s relatively homogeneous and the majority were members of the Evangelical-Lutheran Church by conviction, tradition and/or culture. However, minority religious groups were present in Danish society and were protected under the Danish Constitution of 1849. With new groups of migrant workers and – in the 1980s – groups of refugees from South America, the Middle East, and Africa, this picture changed. Registration of a person's ethnicity, religion or belief has been prohibited since World War II, so it is difficult to provide figures on membership of minority communities. However, it is estimated that the second largest religious group are Muslims, with about 150,000 people out of a total population of around 5 million. The number of foreign nationals (migrants/refugees etc.) living in Denmark on a permanent basis is about five per cent of the total population. Apart from foreign nationals, there is a group of Danish citizens who have either been born in another country or have parents born in countries other than Denmark. This group is referred to as "descendants". Foreign citizens and their descendants are often referred to as ethnic minority groups, while German-speaking Danish citizens are the only formally recognised national minority.

Denmark is a kingdom consisting of Denmark, Greenland and the Faroe Islands. Anti-discrimination legislation enacted by the Danish Parliament does not become law in the Faroe Islands or Greenland unless similar legislation is enacted there. The Faroe Islands and Greenland are not members of the European Union, and consequently under no obligation to transpose the Racial Equality Directive or the Employment Equality Directive.

On the other hand, EU legislation and judgments of the ECJ and ECtHR are taken seriously and monitored quite closely by the central administration – even if Denmark is not a party in a particular case. The domestic debate on whether and to what extent other international recommendations should be followed can be quite fierce. Politicians can be sceptical about the limitation of legislative power by international obligations. In 2008, the ECJ *Metock* judgment (C-127/08) and the influence of the judgment on the strict Danish immigration policy and legislation on family reunification to Danish citizens ignited debate.¹ The ECJ held that the condition of having a previous lawful stay in another EU- Member State could not be a precondition of achieving a right to family reunification pursuant to EC-law. This implied that the national immigration legislation could not apply at all, if EC-law was applicable. Danish citizens exercising free movement rights are comprised by the EU-residence directive (2004/38/EC) and thus entitled to family reunification pursuant to the conditions in the directive, which are more favourable than the restrictive conditions in the national immigration legislation.

The issues of integration and immigration have been high on the public agenda for a decade and were decisive in the latest parliamentary elections. There is general public support for a strict immigration, asylum and integration policy. Hence, the public and some political parties tend to see international and domestic criticism of this policy as misplaced or based on misunderstandings. Such criticism is therefore rejected as political intervention if it is not supported by legal analysis. At present the Danish government is a Liberal-Conservative minority government with the support of Danish Peoples Party.

In particular, there has been an emphasis on encouraging immigrants from third countries to explicitly sign up to basic values (e.g. gender equality and upbringing of children) and to actively participate in the labour market. This is seen, for example, in a test that foreigners applying for citizenship have to pass.

The cartoons of the prophet Muhammad printed in a Danish newspaper in 2005 as well as the discussion on the wearing of headscarves and other religious symbols in the workplace illustrate that the political and public focus is more on whether members of religious communities can integrate or adapt to a secular society than on questions of race or ethnicity. In Denmark, the requirement to adapt as understood by officialdom and the general public seems somewhat stronger than in some of our neighbouring countries.

¹ In response to the Danish no-vote in the Maastricht referendum in 1992, Denmark was granted four opt-outs from European co-operation. The opt-outs concerned defence, justice and home affairs, the Euro and Union citizenship, and paved the way for the Danish yes-vote in 1993. The opt-outs are maintained in the Treaty of Lisbon, ratified by Danish Parliament in April 2008. However, the Treaty has opened up the possibility that Denmark's opt-out regarding cooperation on justice and home affairs could be changed, subject to approval by referendum. If approved, Denmark will be able to co-operate in justice and home affairs on a case-by-case basis.

2. Main legislation

Anti-discrimination legislation in Denmark does not consist of one single piece of legislation. It is rather a combination of many acts, which have been introduced or amended when public debate or the ratification of international obligations has focused on a specific field of application or a specific vulnerable group. Hence, protection against discrimination is ensured by a web of civil and criminal legislation ranging from the Constitution to specific acts covering areas outside and inside the labour market, making it a challenge to explain and for the public to understand.

The Danish Constitution provides that no Danish subject shall be deprived of his or her liberty because of his or her political or religious convictions or because of his or her descent. Moreover, no person shall be denied the right to full enjoyment of civil and political rights by reason of his creed or descent, nor shall he for such reasons evade any common civil duty.

Furthermore, the Constitution provides that no one shall be liable to make personal contributions to any denomination other than the one to which he adheres. Finally, the Constitution provides that citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done.

The Criminal Code prohibits hate speech, defined as the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation. In addition it shall be considered an aggravating circumstance if the conduct is characterised as propaganda. The Criminal Code also stipulates that, when sentencing, it must generally be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation of other individuals. In addition to the Criminal Code, the Act on the Prohibition of Discrimination on the grounds of Race [*Lov om forbud mod forskelsbehandling på grund af race m.v.*] (adopted as Act no. 626 in 1987) makes it a criminal offence to refuse, in connection with a commercial or non-profit business, to serve or allow entrance to a person on the basis of race, colour, national or ethnic origin, religious belief or sexual orientation.

In May 2003 the Act on Ethnic Equal Treatment [*Lov om Etnisk Ligebehandling*] (Act no. 374) was adopted. It aims to ensure protection against racial discrimination and to implement the non-employment aspects of the EU Racial Equality Directive.

The Act on the Prohibition of Discrimination in the Labour Market was amended by Act. no. 253 of 7 April 2004 (introducing a prohibition against discrimination based on religious conviction as well as a shared burden of proof) in line with EU Directive 2000/43 and Directive 2000/78/EC. After the adoption of Act no. 1417 of 22 December 2004 amending the Act on the Prohibition of Discrimination in the Labour Market Act, the Act also provides protection against discrimination based on age and disability.

The grounds of age, sexual orientation, disability and religion and belief do not currently enjoy protection outside the labour market in Danish civil law. Criminal law covers direct differential treatment on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation outside the labour market, but not age or disability. Moreover, criminal law does not cover indirect discrimination, harassment or victimisation.

Denmark has signed and ratified all major human rights conventions except the UN Convention on Migrant Workers and Protocol 12 to the European Convention on Human Rights (ECHR). Denmark has signed but not yet ratified (as of April 2009) the COE Revised European Social Charter.

Denmark is a party to the Convention on the Rights of Persons with Disabilities (CRPD). Denmark signed the CRPD 30 March 2007 and ratified it in the summer of 2009. The convention entered into force 23 August 2009. [The Ministry of the Interior and Social Affairs Indenrigs og Socialministeriet] is now in charge of the implementation of the directive.

The Danish Government has for the time chosen not to join the optional protocol that allows for citizens of the member states to file a complaint with the Committee on the Rights of Persons with Disabilities over violations of the convention.

On 17 March 2009 the Parliament adopted a Parliamentary decision requiring the Government to draft legislation allowing homosexuals to adopt children. The proposal was not supported by Government, but still adopted by majority in Parliament (62 in favour and 52 against). 6 MP's (from the liberal party) voted for the proposal and against the political line of the party.²

3. Main principles and definitions

Direct discrimination is defined as a situation where one person is treated less favourably than another is, has been or would be treated in a comparable situation based specified grounds in the Act (cf. Section 1(2) of the Act on the Prohibition of Discrimination in the Labour Market and Section 3 (2) of the Act on Ethnic Equal Treatment).

Indirect discrimination is deemed to occur where an apparently neutral provision, criterion or practice would put persons of e.g. a particular racial or ethnic origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (cf. the main Section 1(3) of the Act on the Prohibition of Discrimination in the Labour Market and Section 3(3) of the Act on Ethnic Equal Treatment).

² L B 36 Forslag til folketingsbeslutning om adgang til at ansøge om fremmedadoption for par i registreret partnerskab.

Harassment, instruction to discriminate and victimisation are also prohibited by the Act on the Prohibition of Discrimination in the Labour Market as well as by the Act on Ethnic Equal Treatment. Harassment is defined in the Act (cf. section 3 (4)) as differential treatment with the aim or result as to violate the dignity of a person and to create a threatening, hostile, degrading or uncomfortable environment.

The Act on the Prohibition of Discrimination in the Labour Market contains two exceptions to the prohibition of discrimination. The Act does not apply to: 1) employers whose establishments have the aim of promoting a certain political or religious ethos (Section 6(1)), and 2) as a general exception, a Government minister can, after having obtained a statement from the Ministry of Labour, deviate from the prohibition against differential treatment if it is of crucial significance that a person has a particular, political opinion, sexual orientation, or national, social or ethnic origin, or a particular skin colour, age or disability, or belongs to a certain religion or belief, and if the requirement for such an affiliation is in reasonable relation to the work in question (Section 6(2)).

Regarding reasonable accommodation for people with disabilities, the Act on the Prohibition of Discrimination in the Labour Market obliges the employer to adapt the workplace in order to accommodate persons with disabilities, unless this will place a disproportionate burden on the employer.

The Danish acts on discrimination distinguish between natural persons and legal persons, and state that only natural persons are protected against direct or indirect discrimination on grounds of his/her race or ethnic origin or a third party's race or ethnic origin. Legal entities are not covered by the acts.

No case law on multiple discrimination is known. However, with the establishment of the new Equal Treatment Board [*Ligebehandlingsnævnet*, see below], this area will be more in focus, since expertise on all grounds of discrimination is now situated in one place.

4. Material scope

In the labour market, discrimination is prohibited on the grounds of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. In civil law covering areas outside the labour market, only discrimination on the grounds of race and ethnic origin is prohibited. Regarding employment, the Act on the Prohibition of Discrimination in the Labour Market covers both the public and private sectors.

The Act on Equal Ethnic Treatment includes a prohibition against discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social benefits, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations whose members carry on a particular profession.

The Act also includes a prohibition against harassment on the grounds of race and ethnic origin.

The Act on the Prohibition of Discrimination in the Labour Market [*Lov om om forbud mod forskelsbehandling på arbejdsmarkedet*] (adopted in 1996 as Act no. 459) (Consolidated Act no. 1349 of 16 December 2008) prohibits direct and indirect discrimination based on race, skin colour, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, employers are not allowed to discriminate among employees as regards access to vocational education and training, continued training and retraining. The same prohibition applies to people providing guidance and training as well to those involved in work placement activities and in making rules and decisions about the right to perform professional activities and membership of workers' and employers' organisations.

5. Enforcing the law

If the alleged case of discrimination is a criminal matter, the victim should report it to the police. The police are better able to secure evidence and interview alleged perpetrators than the administrative discrimination bodies, since the police have the mandate to summon the people involved to an interview.

If the case is a civil matter, the victim can choose to go to:

- 1) court, directly;
- 2) his or her trade union if it is a case within the labour market;
- 3) the Danish Institute for Human Rights (for advice/assistance);
- 4) the Board of Equal Treatment (ruling)
- 5) the Citizens Advice Service which exists in some municipalities eg. *Københavns Kommunes Borgerrådgiver*] (issues of discrimination in the municipality of Copenhagen only on the grounds of age, handicap, sex, race, sexual orientation, religion, political persuasion, nationality, social status or ethnic origin) (advice/assistance);
- 6) the Parliamentary Ombudsman [*Folketingets Ombudsmand*] (ruling);
- 7) the Danish Press Council [*Pressenævnet*], the Radio and Television Board on Commercials [*Radio- og TV-Nævnet*], the Consumer Ombudsman [*Forbrugerombudsmanden*] (rulings in relation to media coverage or conduct of companies).

A. Non-governmental Organisations

NGOs do not have legal standing in their own right before domestic courts of law in relation to alleged human right violations and cases of discrimination. The NGOs cannot take the case to court of their own initiative, but an NGO can advise an individual who has experienced discrimination.

The Administration of Justice Act [*Lov om Rettens Pleje*] allows persons or associations to represent and support a complainant or intervene in a lawsuit if they have a legal interest in becoming a party to the case. One organisation working with non-discrimination issues is the Documentary and Advisory Centre on Racial Discrimination (DACoRD) [*Dokumentations- og Rådgivningscenter om Racediskrimination*], which assists victims of discrimination and referred cases to the Complaints Committee for Ethnic Equal Treatment (until 31 December 2008, see below) and to the Equal Treatment Board (from 1 January 2009). DACoRD was founded in 1993. It documents racially motivated discrimination in Denmark, and provides free legal advice to victims of, or witnesses to, racial discrimination. The centre does not receive any state funding.

B. Shared burden of proof

The Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market include provisions on the shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies (in line with the Directives) that when there is a *prima facie* case of discrimination, the burden of proof in court cases shifts back to the respondent. If the alleged victim can support his or her case by e.g. written documents or testimonies, there is an assumption of a violation if the alleged violator cannot convince the court that the principle of equal treatment has not been violated by producing evidence.

C. Level of sanctions and monitoring the number of complaints

The level of sanctions remains low (normally a fine below EUR 2 000 in criminal cases). Recent figures show a declining number of reported incidents, especially of reported criminal incidents on the ground of ethnic origin and race. The reason behind the drop is not clear, but one explanation may be victims' lack of confidence in an effective remedy.

D. Situation testing and statistical evidence used in practice

Statistical evidence has been used in some cases, but would probably not be accepted as the only proof in a case of discrimination. No case law is known where situation testing has been used. Situation testing is not regulated in Danish legislation, and it is primarily used by journalists or NGOs to confirm their presumption that discrimination exists in a specific sector.

The enforcement of the Racial Equality Directive and the Employment Equality Directive's prohibition against discrimination is thus primarily the task of the Danish courts and the Board of Equal Treatment. In court statistical data is used and considered admissible as evidence. Situation testing can probably be used to support other evidence in cases.

6. Equality bodies

A. The Danish Institute for Human Rights [*Institut for Menneskerettigheder*]

As regards the protection of ethnic minorities, specific mandate have been assigned to the Danish Institute for Human Rights (DIHR) [*Institut for Menneskerettigheder*] and specific funding allocated to the Institute for this purpose.³ Thus, the DIHR has been established as the Danish body for the promotion of equal treatment as required by Article 13 of the Racial Equality Directive (2000/43/EC). In accordance with the requirements of this article, the Institute has been given the power to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination. In this regard, the Institute replaces the former the Board for Ethnic Equality. [*Nævnet for Etnisk Ligestilling*]⁴

Until 31 December 2008, the Institute also had the mandate to deal with individual complaints of racial discrimination both within and outside the labour market. To fulfil this mandate, the DIHR established the Complaints Committee for Ethnic Equal Treatment in 2003. As part of the Act on the Establishment of the Equal Treatment Board, the Complaints Committee for Ethnic Equal Treatment was closed down (as of 1 January 2009).

B. The Board of Equal Treatment [*Ligebehandlingsnævnet*]

Legal Basis

On 1 January 2009 the Board of Equal Treatment started functioning. The Board covers all protected grounds, (gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin). The Board was established by Act no. 387 of 27 May 2008.

Mandate

The Board is competent to hear complaints on the grounds of discrimination.. The Board of Equal Treatment cannot demand the parties to produce documents, give their opinion, and reveal factual circumstances of a case in order to elucidate a case. Neither does the Board have power to enforce the disclosure of material facts of a case. The Board bases its decisions on written information received from the complainant, the defendant and the secretariat of the Board. It is not possible to present a complaint to the Board in person. It is possible however to request a meeting with the Secretariat.

³ In 2002 the Danish Institute for Human Rights was given the mandate for this task with the passage of Act no. 411 on the Establishment of the Danish Centre for International Studies and Human Rights [*Lov om etablering af Dansk Center for Internationale Studier og Menneskerettigheder*, Lov nr. 411 af 6. juni 2002].

⁴ Lov nr. 408 af 10. juni 1997 om Nævnet for Etnisk Ligestilling (abolished).



Functioning and Competences

The Board is modelled after the previous Gender Equality Board [*Ligestillingsnævnet*]. One of the main changes is that victims of discrimination can be awarded compensation for non-pecuniary damages directly by the Board and that the Board will be entitled to take the case to court if the discriminating party is not willing to pay.

The DIHR remains the independent national body for the promotion of equal treatment regardless of racial or ethnic origin and thus is competent to provide independent assistance to victims of racial and ethnic discrimination, conduct independent surveys concerning discrimination and publish independent reports and make recommendations on any issue relating to such discrimination (cf. Section 10 of the Act on Ethnic Equal Treatment).

Shortcomings

The Board of Equal Treatment is a positive development within the field of combating discrimination and promoting equal treatment. In particular, uniform treatment of a complaint regardless of the ground of discrimination, as well as an increased exchange of knowledge among case-workers on various fields of discrimination, can be seen as positive aspects. However, organisations have especially expressed concern that the Board of Equal Treatment does not have the mandate to take up cases on its own initiative. This is a particular concern in the light of the fact that vulnerable groups are most likely to fall victim to discrimination, but may either lack the resources to contact the Board individually or be unaware of its existence. The knowledge of the existence of this administrative complaints mechanism among possible victim is an important parameter for the impact and success of the body. Therefore it is important that adequate resources are allocated for awareness raising.