



**REPORT ON MEASURES TO COMBAT DISCRIMINATION**  
**Directives 2000/43/EC and 2000/78/EC**

**COUNTRY REPORT 2011**

**DENMARK**

**PIA JUSTESEN**

**State of affairs up to 1<sup>st</sup> January 2012**

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## INTRODUCTION

### 0.1 The national legal system

*Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.*

#### The legal system

The basic law of the State is the Constitution [*Danmarks Riges Grundlov*]<sup>1</sup> adopted by referendum in 1953. This is the latest successor to the 1849 Constitution. The Constitution sets out the essential rules governing the most important institutions of the State, the Government, the Parliament and the judiciary, and the relationship between these institutions. The Constitution recognises the existence of associations and thereby also political parties, which are the fundament of a pluralistic democracy. It also defines the structure and powers of the courts and outlines the fundamental rights of citizens.

National legislative authority rests with the Government and the Parliament jointly. The Government and any Member of Parliament can propose bills of law. All laws passed by Parliament must conform to the Constitution. The power to impose taxes and to distribute tax receipts rests solely with the legislator, which can use this power only when adopting an annual Financial Act. The Constitution prohibits delegation of powers relating to taxes. Parliament legislates with responsibility to the electorate in all matters.

Denmark joined the European Community in 1973 and is now a member of the European Union. Part of its legislative power therefore rests with the European Union. European legislation includes regulations. Regulations are self-executing which means that they are legally binding and directly applicable in Denmark. European legislation also includes directives, which require Denmark to achieve a particular result without dictating the means of achieving that result. Thus, directives allow national authorities to choose the form and method of implementation. Denmark's membership of the European Union does not include the Faroe Islands and Greenland.

No bill can be finally passed before having been read three times in Parliament. At its first reading only the main points of the bill are discussed. Before its second reading the bill is generally scrutinised by a standing committee that produces a report. The report forms the basis of the second reading during which the bill is debated in its entirety and possible amendments are moved. The bill is passed during the third

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<sup>1</sup> Act no. 169 of 5 June 1953.



reading, which requires the presence of at least 50 per cent of the Members of Parliament (90 members).

A bill passed by Parliament can only become law when signed by the Government and the monarch within 30 days. The Government is responsible for the promulgation of laws and their entry into force.

Rules are laid down in the Constitution governing the organisation of the courts and the functioning of the legislature. The current rules are contained in the Act on Administration of Justice [*Retsplejeloven*].<sup>2</sup>

Judges of the lower courts are primarily recruited from the Ministry of Justice [*Justitsministeriet*] and from among deputy judges. A limited number of judges are recruited among teachers at university law faculties and among practising lawyers. The Constitution guarantees complete independence of judges in the exercise of their duties, stating that they are to be guided solely by the law. It is laid down as a general rule that judges cannot be transferred against their wishes. They can be dismissed only by a judgement of the Special Court of Indictment and Revision [*Særlige Klageret*], consisting of three professional judges: one from the Supreme Court [*Højesteret*], one from a high court and one from a lower court. Judges in Denmark are obliged to retire at the age of 70. The remuneration of judges may not be reduced at any time while they hold office.

The Constitution sets out as a general rule that decisions of the public administration can be brought before the general courts. The possibility to review administrative decisions safeguards the principle of legality. The courts are empowered to deal with the constitutionality of laws and legislation.

Only professional judges sit in ordinary civil cases. In areas of civil law where special expertise is considered valuable, the courts may be assisted by lay judges with a special background, e.g. child psychology in juvenile cases. Lay judges participate on a wide scale in criminal proceedings, both as jurors for serious crimes and as assessors for minor criminal offences. Furthermore, experts participate in certain civil and criminal cases requiring specific knowledge, e.g. commercial or maritime affairs.

All general cases (i.e. civil, criminal and administrative actions) come under the jurisdiction of the ordinary courts: the lower courts [*Byret*], the high courts [*Landsret*] and the Supreme Court. By means of appeal, a case can generally be tried at two levels, although leave to appeal from the Ministry of Justice may be required in minor criminal and civil cases.<sup>3</sup>

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<sup>2</sup> Consolidated Act No. 1063 of 17 November 2011 with later amendments.

<sup>3</sup> Source of information: Core document forming part of the reports of the States Parties: Denmark. 29/06/95. HRI/CORE/1/Add.58. (Core Document).



The legal system is structured into legal fields (criminal law, civil law, labour law, administrative law etc.), and anti-discrimination laws are represented in all these various fields.

The legal system is a continental system following primarily German traditions. Fundamental legal principles are laid down by the Constitution in very general terms. Constitutional rules are expounded by laws, while detailed regulation is provided by administrative orders (delegated/secondary legislation). In contrast to the German legal system, however, Denmark has no Constitutional Court. The Supreme Court has traditionally been very reluctant to use its power to annul statutes that may contradict the Constitution. This is due to the democratic principle that laws are made by a majority of democratically elected Members of Parliament, and judges have therefore been reluctant to interfere into this process.

### Preparatory Works

The preparatory works are considered important sources for interpretation of legislation and other regulation [retskilder]. They are important sources for interpretation of the intention of the legislative powers.

### The Constitution [*Danmarks Riges Grundlov*]

Some of the provisions of the Danish Constitution contain prohibitions against discrimination: Section 70, for example, on equality of treatment regardless of creed or race, and Section 71 on personal liberty.

### Criminal legislation

Section 266b of the Criminal Code [*Straffeloven*]<sup>4</sup> prohibits the dissemination of statements or other information by which a group of people is threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation. Instigation, aiding and abetting is penalized through section 23 of the Criminal Code. Violation of section 266b is punishable by a maximum of 2 years imprisonment.

Section 81 of the Criminal Code has the following wording (in extract):

“In determining the penalty it shall generally be considered as an aggravating circumstance, i)-v)...vi) that the offence is based on others’ ethnic origin, faith, sexual orientation or the like, vii)-xi) ...”

The general scope of Section 81 of the Criminal Code is not limited to crimes or instances where the motive of the perpetrator is to threaten, insult or degrade a

<sup>4</sup> Consolidated Act no. 1062 of 17 November 2011 with later amendments. See Instruction no. 2/2011 from the Director of Public Prosecutions in Denmark regarding cases on section 266b and section 81. Available in Danish at [http://www.rigsadvokaten.dk/media/RM\\_2-2011.pdf](http://www.rigsadvokaten.dk/media/RM_2-2011.pdf).





person or a group of people. For instance, depending on the circumstances, Section 81 is also applicable to economic crimes committed to support a racist organisation of which the perpetrator is a member.

Criminal Act on the Prohibition of Discrimination due to Race etc. [*Lov om forbud mod forskelsbehandling på grund af race m.v.*] covers the following grounds: race, colour of skin, national or ethnic origin, belief and sexual orientation.<sup>5</sup> “Belief” is understood to be broader than religion, but since there is a lack of jurisprudence the definition is unclear. The Act contains a prohibition against discrimination in two areas: the provision of goods or services, and access to public places or events. With respect to the aim of eliminating all forms of racial discrimination or similar types of discrimination or less favourable treatment, the Danish Parliament adopted the Act on the Prohibition of Discrimination due to Race in 1971. The Act partly implemented the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, which Denmark has ratified. Under the Act, criminal sanctions of up to six months’ imprisonment can be sentenced by the courts.

### Civil Legislation

Public authorities are governed by a general principle of equality applicable under administrative law. The general principle has the force of legislation (and not constitutional law) and means that public authorities must treat equal matters in full equality before the law.

The Danish private and public labour market is still under influence by the so-called “Danish model”, that is, the labour market is generally regulated by collective agreements between the labour market social partners. A specialised “Labour Court” [*Arbejdsret*] exists to resolve conflicts between the social partners regarding breach of collective agreements.<sup>6</sup> Anti-discrimination is also to some degree covered by collective agreements, for example on the question of equal pay.

These labour market rules made by collective agreements are, however, co-existing with statutory provisions in many areas of the labour market. One major difference between conflicts on the labour market covered by collective agreements and conflicts covered by civil law is the jurisdiction of the courts. As mentioned above, areas covered by collective agreements fall within the jurisdiction of the “Labour Court”, while areas covered by civil law are dealt with by the ordinary courts.

Since 1996, Denmark has had a civil law protecting against discrimination on the labour market: Act on the Prohibition of Discrimination in the Labour Market etc. [*Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*].<sup>7</sup> Provisions in this Act may be replaced by provisions in collective agreements if they at least provide the

<sup>5</sup> Consolidated Act No. 626 of 29 September 1987 with later amendments.

<sup>6</sup> Act No. 106 on Labour Courts of 26 February 2008 with later amendments.

<sup>7</sup> Consolidated Act No. 1349 of 16 December 2008.



same protection against discrimination as the Act.<sup>8</sup> Thus, in order not to lower standards, collective agreements are only applicable if they provide the same or better protection against discrimination than the statutory provisions made by the Act. In other words, the Act covers those parts of the labour market, which are not regulated by collective agreements.

The Act covers the following grounds of discrimination: race, colour, religion, political opinion, belief, sexual orientation, age, disability, and national, social or ethnic origin.

The other civil law in the field of discrimination is Act on Ethnic Equal Treatment [*Lov om etnisk ligestilling*].<sup>9</sup> It covers race and ethnic origin only. It prohibits discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social advantages, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations whose members carry out a particular profession. The Act also prohibits harassment on the grounds of race and ethnic origin. Furthermore, the Act prohibits victimisation, thus protecting individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment. The Act includes provisions on the shared burden of proof aimed to ensure that the principle of equal treatment is applied effectively. The shared burden of proof implies the following: if a person who considers that he or she has been discriminated against can establish facts from which it may be presumed that there has been a breach of the principle of equal treatment, then the respondent has to prove that discrimination did not take place. The Act stipulates that victims of discrimination are entitled to compensation for non-pecuniary damages.

The Board of Equal Treatment [*Ligestillingsnævnet*] was established on 1 January 2009.<sup>10</sup> Within the public and private labour market the Board deals with complaints related to discrimination based on gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin. Outside the labour market, the Board only deals with complaints related to discrimination based on race, ethnic origin or gender. The Board divides the cases into three categories: the first one on gender, the second one on race and ethnic origin and the third one on age, disability, sexual orientation, political opinion, social origin, religion and belief. There are only few cases in which the Board has yet dealt with situations of multiple discrimination. One example is Decision No. 134/2011 from 30 September 2011 in which the claimant argued that discrimination had taken place both due to age and social origin.

In June 2002 the Danish Institute for Human Rights (DIHR) [*Institut for Menneskerettigheder*] was given the mandate as a Specialised Equality Body on Race and Ethnic Origin under the Directive 2000/43/EF and specific funding was

<sup>8</sup> Racial Equality Directive Recital 27 and Framework Directive Recital 36.

<sup>9</sup> Act No. 274 of 28 May 2003 with later amendments.

<sup>10</sup> The Board was established by Act no. 387 of 27 May 2008.





allocated to the Institute for this purpose.<sup>11</sup> DIHR is an independent public body appointed as National Human Rights Institution (NHRI) of Denmark and is accredited with A-status in accordance with the UN Paris Principles. Today DIHR holds two EU mandates as Specialised Equality Body on Race or Ethnic Origin as well as on Gender.<sup>12</sup> In addition DIHR monitors the Danish implementation of the UN Convention on Rights of Persons with Disabilities in accordance with article 33 of the Convention.<sup>13</sup>

### On unincorporated UN Conventions

In Denmark, it is generally assumed that unincorporated conventions are a relevant source of law, which may be invoked and applied by national courts and administrative authorities.

Two unwritten rules are applied in Danish law when a specific conflict arises between the provisions of a Danish act and the provisions of an international convention signed and ratified by Denmark. The “interpretation rule” states that Danish legislation as far as possible should be interpreted in consistence with Denmark’s international obligations. According to the “assumption rule” judicial authorities may assume, unless the opposite is specifically stated by Parliament, that the intention when drafting the legislation was to comply with international obligations. When a conflict occurs the Danish legislation should thus be applied in accordance with international obligations. These unwritten rules contribute to ensuring interpretation of Danish legislation in conformity with the UN Conventions and other international obligations by which Denmark is bound.

The Parliamentary Ombudsman has stated that the public administration on its own initiative must comply with human rights obligations when making decisions in specific cases.

Denmark has acceded to but not incorporated the following UN human rights conventions: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Convention to Eliminate All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities. Denmark is also preparing ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. Denmark has acceded to all protocols to these conventions, except for the protocol to the International Covenant on Economic, Social and Cultural Rights and the protocol to the Convention on the

<sup>11</sup> Act No. 411 of 6 June 2002 with later amendments.

<sup>12</sup> Specialized Equality Body on Gender according to Act No. 182 of 8 March 2011.

<sup>13</sup> Decision B15 on the promotion, protection and monitoring of the implementation of the UN Convention on Rights of Persons with Disabilities. Decision B15 was adopted by the Parliament on 17 December 2010.



Rights of Persons with Disabilities. Denmark has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Denmark has furthermore acceded to a number of ILO Conventions, including ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. The indigenous population in Greenland (Inuit) is the only indigenous people in the Kingdom of Denmark in the sense of the last-mentioned ILO Convention.

In October 2011, Denmark got a new coalition government consisting of the Social Democrats [*Socialdemokratiet*], the Socialist People's Party [*Socialistisk Folkeparti*] and the Social Liberal Party [*Radikale Venstre*]. In the written government program, the new government plans to map, register and update international conventions that Denmark has acceded to. The aim is on an ongoing basis to monitor the follow-up by Denmark of the various international obligations.<sup>14</sup>

Denmark is a member of the Council of Europe and has acceded to the European Convention on Human Rights (ECHR) and all of its protocols, apart from Protocol 12. The ECHR is the only human rights convention currently being incorporated in Danish law.

## 0.2 Overview/State of implementation

*List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.*

*This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.*

*This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

*Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.*

*Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.*

<sup>14</sup> Regeringsgrundlag Oktober 2011. Available in Danish at: [http://www.stm.dk/publikationer/Et\\_Danmark\\_der\\_staar\\_sammen\\_11/Regeringsgrundlag\\_okt\\_2011.pdf](http://www.stm.dk/publikationer/Et_Danmark_der_staar_sammen_11/Regeringsgrundlag_okt_2011.pdf).



Effective implementation of Article 9 (1) of the Employment Equality Directive may be questioned in relation to access to judicial and/or administrative procedures in individual cases. This is the case if the protection against discrimination in accordance with the requirements of the directives is implemented by collective agreements:

- In cases of discrimination on the labour market, trade unions possess the legal capacity to initiate legal proceedings on behalf of their members before the specialised Labour Court or as part of labour arbitration.
- Access to the civil judicial system or the administrative procedure in the Board of Equal Treatment [*Ligebehandlingsnævnet*] is dependent on the trade union's decision *not* to engage in an individual complaint. The Board of Equal Treatment will hence refrain from engaging in a case if a trade union enters into legal proceedings.
- As regards discrimination on the labour market, only persons who are not covered by a collective agreement implementing the protection against discrimination have direct access to civil judicial and administrative procedures.<sup>15</sup> In such situations trade unions may, however, initiate administrative proceedings on behalf of their member before the Board of Equal Treatment. Outside the labour market, trade union membership has no impact on access to the Board of Equal Treatment or other judicial procedures.

#### *Application and interrelated nature of the Directives*

Described below is the Eastern High Court decision (Mr X vs. Copenhagen Technical School) of 27 June 2006. The case gives rise to questions of the correct application and interpretation of the two Equality Directives and the interrelated nature of the Directives. The courts involved (Copenhagen City Court and the Eastern High Court) chose to apply the Act on Ethnic Equal Treatment (implementing the Racial Equality Directive and only covering race and ethnicity) instead of the Act on the Prohibition of Discrimination in the Labour Market etc. (implementing the Employment Equality Directive and covering sexual orientation, age, disability and religion as well as race and ethnicity). This interpretation and approach excludes grounds other than race and ethnicity from protection in the educational system.

#### *Definition of the term “disability”*

When interpreting the term “disability” the Danish courts seem reluctant to use the broader social model concept of disability as defined in the UN Convention on the Rights of Persons with Disabilities. Instead many judges still refer to a definition of disability stemming from traditional social legislation, which has the purpose of providing support and compensation *to persons with disabilities*. This is a more

<sup>15</sup> See also Section 6.1 of this report.



narrow approach than anti-discrimination legislation, which has the purpose of protecting *all persons* against discrimination on account of disability.

The “old” and narrow definition of disability stemming from social legislation is being referred to in the preparatory works to the Act on the Prohibition of Discrimination in the Labour Market etc. Here a person with a disability is described as someone with a “physical, psychological or intellectual impairment generating a need for compensation in order for that person to function on an equal level with other citizens in a similar situation”. Personal assistants or wheel chairs are just a few examples of what may constitute compensation. Even though the preparatory works also states that a need for compensation is not a requirement for the protection of the anti-discrimination law, the fact is that many judges still interpret the law in the manner that a need for compensation is a requirement for the person in question to be encompassed by the anti-discrimination law.

It could thus be argued that the understanding of the concept of “disability” by the Danish courts is narrower than the definition given by the ECJ in its *Chacón Navas* judgment and in the UN Convention on the Rights of Persons with Disabilities, which the European Union is also a party to.

### 0.3 Case-law

*Provide a list of any important case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:*

**Name of the court**

**Date of decision**

**Name of the parties**

**Reference number** (or place where the case is reported)

**Address of the webpage** (if the decision is available electronically)

**Brief summary** of the key points of law and of the actual facts (no more than several sentences).

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives.

*Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.*

#### Case-law 2011

In 2011 the Board of Equal Treatment decided on the following number of cases:



- 70 cases regarding gender,
- 43 cases regarding ethnic origin,
- 78 cases regarding age, disability, sexual orientation, political opinion, social origin, religion or belief.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 14 December 2011

**Reference number:** Decision No. 192/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=807&type=Afgoerelse>

**Brief Summary:** A woman 37 years of age was rejected for a position as an office clerk. The employer told her that they had chosen to hire two younger persons at 20 and 21 years of age. In that respect, the employer referred to the vision of the national government to ensure that at least 95 % of the young generation should have an education including a vocational education. The Board stated, however, that the vision of the national government had not been implemented in concrete legislation. Thus, the Board found that the employer had not proved that discrimination on account of age had not taken place. The complainant was awarded DKK 25.000 (€ 3.360) in compensation.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 14 December 2011

**Reference number:** Decision No. 198/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=813&type=Afgoerelse>

**Brief summary:** A woman 34 years of age was rejected for a position as an office clerk. The employer told her that they did not want to hire adult office clerks since the salary costs were too high. The Board found that the employer could not prove that the principle of equality in the Act on Prohibition of Discrimination in the Labour Market etc. had not been violated. According to the Board, the reference to higher salary costs precluded any other result. The complainant was awarded DKK 25.000 (€ 3360) in compensation.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 14 December 2011

**Reference number:** Decision No. 196/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=811&type=Afgoerelse>

**Brief summary:** The complainant who was born in 1946 was dismissed from his job as a commander in a public administration. A colleague same age was also





dismissed. The two of them were the only ones out of 6 commanders who were dismissed from their jobs. The employer argued that the two commanders were dismissed due to budget reductions. However, the fact that the dismissed commanders were the two oldest of the 6 commanders made the Board presume that discrimination on account of age had taken place. The Board concluded that the employer could not prove that the principle of equality in the Act of Prohibition of Discrimination in the Labour Market had not been broken. The complainant was awarded DKK 115.000 (€ 15.460) (9 months of salary) in compensation.

*Ground of discrimination: age*

**Name of the court:** Supreme Court

**Date of decision:** 7 December 2011

**Name of the parties:** A (HK) versus Holbæk Kommune

**Reference number:** 102/2010

**Brief summary:** A woman 55 years of age applied for a position in the public office dealing with passports and drivers licences. She was rejected from the position and received a letter from the manager of the public office stating among other things the following: "... as a manager I'm obliged to meet the generational change that will come up in the coming years in the current group of – as you know – primarily elderly experienced employees." The Supreme Court stated that this remark established facts from which it could be assumed that the age of A was part of the reasoning for A not to be hired. However according to the Supreme Court, the public office could prove that the rejection of A was not because of her age but because of the fact that she did not have the required personal qualifications. Thus, the public office had not violated the Act on Prohibition of Discrimination in the Labour Market.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 30 September 2011

**Reference number:** Decision No. 134/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=746&type=Afgoerelse>

**Brief summary:** In a job advertisement, a restaurant was searching for "young substitute waiters for brunch and parties". The complainant was rejected for the job and argued that she had been discriminated against due to her age. She also claimed discrimination due to social origin since the employer attached importance to a residence criterion. The Board concluded that the wording in the advertisement established facts from which it could be presumed that the principle of equality in the Act on Prohibition of Discrimination in the Labour Market had been violated. The employer could not prove that discrimination because of age had not taken place. With regard to discrimination because of social origin the claimant had not established facts from which it could be presumed that the principle of equality had been violated. The claimant was awarded DKK 25.000 (€ 3360) in compensation for discrimination due to age.





*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 31 August 2011

**Reference number:** Decision No. 126/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=738&type=Afgoerelse>

**Brief summary:** A woman 65 years of age was dismissed from her job as a children-expert with a public administration. The reasons for the dismissal were lack of finances. In the group of children experts the two employees being dismissed were the two most senior employees. The Board concluded that the employer could not prove that the age of the complainant had not influenced the dismissal. Thus the complainant was awarded DKK 175.000 (€ 23.525) (4 months of salary) in compensation.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 18 May 2011

**Reference number:** Decision No. 59/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=671&type=Afgoerelse>

**Brief summary:** A young man 17 years of age was working in a supermarket. He complained that he was not being paid in accordance with his qualifications. His employment was encompassed by a collective agreement having special rules for young employees below 18 years of age. The Board concluded that discrimination because of age had not taken place. The reason was the exception clause in the Act on the Prohibition of Discrimination in the Labour Market etc. exempting young employees below 18 years of age who are covered by collective agreements.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 18 May 2011

**Reference number:** Decision No. 57/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=669&type=Afgoerelse>

**Brief summary:** A woman was working in a protected employment according to a special Act on Services (Serviceloven). The local authorities stopped the subsidy which allowed the complainant to benefit from the special protected employment when she turned 65 years of age. She argued that she had been discriminated against due to her age. The Board concluded that the Act on Service was a special social measure aiming at the improvement of the quality of life of the individuals covered by the Act. Thus the Board concluded that the protected employment did not constitute normal employment encompassed by the Act on Prohibition of



Discrimination in the Labour Market. Thus no discrimination on account of age had taken place.

*Ground of discrimination: age*

**Name of the court:** Western High Court

**Date of decision:** 17 January 2011

**Name of the parties:** F (Ingeniørforeningen) versus Babcock og Willcox Vølund ApS (DI)

**Reference number:** Weekly Law Journal U.2011.1199V

**Brief summary:** F was an engineer 60 years of age with around 22 years of seniority in a private company. He was dismissed with 12 other colleagues from the company to reduce costs. The Court concluded that it was unlikely that the age of F had influenced the decision to dismiss him. Thus there had been no violation of the Act on Prohibition of Discrimination in the Labour Market.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 30 September 2011

**Reference number:** Decision No. 136/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=748&type=Afgoerelse>

**Brief summary:** An assistant nurse from a day nursery was dismissed among other things due to her Danish language capabilities. She had an ethnic minority background and had been working at the nursery for 3 years before the dismissal. On that background the Board found, that the employer had to prove that indirect discrimination due to her ethnic origin had not taken place. Despite of the fact that the employer had to dismiss around 60 nursery positions, the employer could not prove that the dismissal of the nurse in question was not a violation of principle of equality in the Act on Prohibition of discrimination in the Labour Market etc. Thus, the complainant was awarded DKK 175.000 (€23.525) (9 months of salary) in compensation.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 30 September 2011

**Reference number:** Decision No. 141/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=753&type=Afgoerelse>

**Brief summary:** A taxi driver with an ethnic minority background complained about discrimination due to ethnic origin in connection with the awarding of taxi licences. The public administration giving out licenses had declared that new criteria for the awarding of licences would be introduced. The Board found that a new criterion regarding documented education could result in indirect discrimination of ethnic minorities in their access to self-employment. The Board thus agreed with the



complainant, that the introduction of this new criterion would be a violation of the Act on Prohibition of Discrimination in the Labour Market etc.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 30 September 2011

**Reference number:** Decision No. 139/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=751&type=Afgoerelse>

**Brief summary:** A girl of 14 years of age felt harassed on her primary school because of her ethnic origin. After a meeting at the school, the mother of the girl contacted a NGO that sent a letter to the school complaining about discrimination and harassment. After the complaint from the NGO, one of the teachers wrote an e-mail to the mother arguing that the school understood the letter from the NGO as the mother's "ultimate rejection of cooperation". The mother complained to the Board and argued that she and her daughter understood this remark as an expulsion from the school. Thus she claimed that she and her daughter were victimized after the letter from the NGO. The Board did not find that victimization had taken place. The Board emphasized that the school on an on going basis had reacted when the mother had contacted the school regarding the harassment of her daughter. The Board also stressed the fact that the mother had kept her daughter from going to school and even before the meeting with the school the mother had stated that she had no confidence in the school. Thus, the Board concluded that there had been no violation of the Act on Ethnic Equal Treatment.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 29 April 2011

**Reference number:** Decision No. 53/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=665&type=Afgoerelse>

**Brief summary:** A medical doctor with southern European background felt harassed by his colleagues and managers at the hospital because of his lack of Danish language capabilities. In spite of the fact that the complainant without doubt had experienced negative and unwanted behaviour, the Board argued that the behaviour from the colleagues and managers could not be characterized as a gross infringement. The Board thus concluded that the prohibition of harassment in the Act on Prohibition of Discrimination in the Labour Market etc. had not been violated.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 4 February 2011

**Reference number:** Decision No. 22/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=634&type=Afgoerelse>

**Brief summary:** It was not a violation of the Act on Prohibition of Discrimination in the Labour Market etc. to advertise for Asian children to perform as extras in a TV-show. The Board found that it was not the intention of the Act to limit the artistic freedom in the making of TV-shows.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 4 February 2011

**Reference number:** Decision No. 14/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=626&type=Afgoerelse>

**Brief summary:** The complainant had an ethnic minority background and several times experienced that he was denied access to a discotheque. He claimed that he was denied access because of his ethnic origin and that a guard had told him that the guards were under the instruction not to let in ethnic minorities. As documentation for one of the episodes, the claimant had sent in a videotape. The discotheque argued that the guards were trained by the guard-company. In spite of that, the Board found that the discotheque had the control over the guards and thus was responsible for their actions. The discotheque could not prove that the principle of equality was not violated and the claimant was awarded a compensation of DKK 10.000 (€ 1350) for violation of the Act on Ethnic Equal Treatment.

The discotheque did not pay the compensation and the Board thus brought the case to the civil courts. In case no. BS 99-685/2011 of 20 June 2011, the local court of Viborg found that the discotheque should pay DKK 10.000 (€ 1350) in compensation to the claimant.

*Ground of discrimination: religion*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 31 August 2011

**Reference number:** Decision No. 125/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=737&type=Afgoerelse>

**Brief summary:** The complainant had applied for a job as a fitter. During the job interview the employer had asked the applicant whether he was a Muslim. The Board did not find that the question in itself established facts from which it could be presumed that there had been direct or indirect discrimination on account of religion. (This does not seem to be the same approach as in Decision No. 56/2010 where the Board stated that such a question during a job interview could constitute a violation of the Act.) The Board concluded that there were no indications that the employer had used the information about the religion of the applicant in the selection among the job



applicants. Thus, the employer had not violated the Act on Prohibition of Discrimination in the Labour Market etc.

*Ground of discrimination: religion*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 18 May 2011

**Reference number:** Decision No. 56/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=668&type=Afgoerelse>

**Brief summary:** A Christian organisation had a general requirement that their employees should be members of the Danish national church. The organisation posted a vacant position as an organisational consultant and required that applicants should be members of the Danish national church. The Board found that it was a violation of the Act on Prohibition of Discrimination in the Labour Market etc. to have a general requirement of membership of the church. However, with regard to the concrete position as an organisational consultant, the Board stated that it was legal to require membership of the National church. The Board thus concluded, that the religious requirement was encompassed by the exception in the Act since the organisational consultant should work with the core tasks of the Christian organisation.

*Ground of discrimination: social origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 31 August 2011

**Reference number:** Decision No. 124/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=736&type=Afgoerelse>

**Brief summary:** The complainant was in training as a teacher at a gymnasium. He overheard a conversation between two teachers at the gymnasium. He was convinced that they spoke about him, when one of the teachers stated: "What is it that they say about people who don't come from academic families? Don't we need to go to the third generation of academics before they can be allowed..." Both parents of the complainant had non-academic backgrounds. The Board found that this conversation between the two teachers did not establish facts from which it could be presumed that the social origin of the claimant was the reason for him not to pass the exam for diploma in education (pædagogikum) and thus concluded that no discrimination on account of social origin had taken place.

*Ground of discrimination: nationality*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 31 August 2011

**Reference number:** Decision No. 128/2011



**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=740&type=Afgoerelse>

**Brief summary:** A private company used a standard scheme in which job applicants among other things should state their nationality. The Board concluded that the question to job applicants dealt with citizenship in contrast to national origin and thus was not encompassed by the Act on prohibition of Discrimination on the Labour market etc. Thus, no violation of the Act had taken place. The Board also concluded that the fact that a question of nationality was posed did not by itself in this particular case establish facts from which it could be presumed that indirect discrimination had taken place.

*Ground of discrimination: national origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 2 March 2011

**Reference number:** Decision No. 33/2011

**Address of the website:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=645&type=Afgoerelse>

**Brief summary:** Complainant was of Russian origin and was rejected for a job as teacher and translator in Russian and English. The employer had stated that they only hired Danes or Englishmen as English teachers. The complainant had thereby established sufficient facts from which it could be presumed that the employer had discriminated her on account of her national origin. The employer could not prove that they had rejected the applicant due to her qualifications and not because of her national origin. The complainant was awarded DKK 25.000 (€ 3360) in compensation.

*Ground of discrimination: disability*

**Name of the court:** The Maritime and Commercial Court

**Date of decision:** 16 August 2011

**Name of the parties:** F (HK) versus Advokat A

**Reference number:** F-3-09

**Brief summary:** F was appointed as a secretary at a law firm. Only 4 days after she had started working, the owner of the law firm dismissed her instantaneously when he realized that she had a diagnosis of ADHD. His reason for the dismissal was her "special conditions." F argued that because of her medicine and because of various strategies and tools she had acquired, she did not need her colleagues to show special considerations because of her ADHD. The court stated that F had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. The court also stated that the employer had referred to the reduced possibilities of F to perform her job as a secretary. Thus, the Court concluded that the dismissal was a violation of the prohibition of discrimination and F was awarded DKK 56.000 (€ 7525) in compensation (4 months of salary).





*Ground of discrimination: disability*

**Name of the court:** The Maritime and Commercial Court

**Date of decision:** 1 July 2011 (lodging for a CJEU preliminary ruling in two cases)

**Name of the parties:** HK Denmark on behalf of Jette Ring v Dansk Almennyttigt Boligselskab (C-335/11) + HK Denmark on behalf of Lone Skouboe Werge v Pro Display A/S (C-337/11)

**Reference number:** CJEU Case C-335/11(pending) and CJEU Case C-337/11 (pending)

**Brief summary:** In both cases the plaintiffs argued that they had been dismissed from their jobs because of their disability. Jette Ring suffered from whiplash and Lone Skouboe had a back disorder as well as osteoarthritis.

The Maritime and Commercial Court has asked for a preliminary ruling from the CJEU on the following issues: clarification of the concept of disability; whether the reduction of working hours is a reasonable accommodation according to article 5 of the Directive 2000/78/EC; and whether Directive 2000/78/EC precludes the application of a provision of Danish law under which an employer is entitled to dismiss an employee with a shortened notice period if the employee has received salary during periods of illness for a total of 120 days during a period of 12 consecutive months.

*Ground of discrimination: disability*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 29 June 2011

**Reference number:** Decision No. 104/2011

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=716&type=Afgoerelse>

**Brief summary:** A woman was rejected a license to run a private day-care centre for children because of her sight disability and because of the importance of eye contact with small children. The Board found that the local administration could not prove that discrimination had not taken place. Thus the woman was awarded a compensation of DKK 25.000 (€ 3360).

*Ground of discrimination: disability*

**Name of the court:** The Eastern High Court

**Date of decision:** 29 June 2011

**Name of the parties:** F (HK) versus Køge Kommune

**Reference number:** B-2814-10

**Brief summary:** F had a chronic hearing disability and was dismissed from her job. The reason from her employer was bad hearing and sick leave. Due to that reasoning, the court found that F had established sufficient facts from which it could be presumed that the employer had violated the principle of equality. In the case, the court concluded that the employer could not prove that the principle of equality was not violated. The ground for this judgment was that the employer had not taken appropriate measures to eliminate the disadvantages of F in her work. The employer



had rejected a rebuilding of F's workspace to adapt the workplace to her disability. That rebuilding would cost DKK 40.000 (€ 5375), which the court "did not regard as an disproportional burden". Also the employer did not adapt the distribution of tasks to her disability. In conclusion, F was awarded DKK 150.000 (€ 20.150) in compensation (5 months of salary).

*Ground of discrimination: disability*

**Name of the court:** Western High Court

**Date of decision:** 25 March 2011

**Name of the parties:** A (FTF) versus Herning Kommune

**Reference number:** B-2814-10

**Brief summary:** A had cerebral paralysis. He was newly qualified and had no occupational experience. He was rejected for two positions and argued that he was being discriminated against because of his disability. The court found that the employer had appointed two job applicants with higher qualifications than A and concluded that no violation of the Act on Prohibition of Discrimination in the Labour Market etc. had taken place.

*Ground of discrimination: disability*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 2 March 2011

**Reference number:** Decision No. 30/2011

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=642&type=Afgoerelse>

**Brief summary:** Complainant had an accident with his motorbike and his arm was injured. His injury was permanent and he had difficulty fulfilling his job as a warehouse assistant. The complainant was dismissed from his job. The Board stated that he had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. However, the Board did not find that the dismissal was because of his disability. The complainant was dismissed in a round of 10 dismissals due to the recession and the financial problems of the company. Thus the employer did not violate the Act on the Prohibition of Discrimination in the Labour Market etc.

*Ground of discrimination: disability*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 2 March 2011

**Reference number:** Decision No. 27/2011

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=639&type=Afgoerelse>

**Brief summary:** The Board found that it was not a violation of the Act on the Prohibition of Discrimination in the Labour Market etc. that a public administration did not call in the complainant for a job interview. The public employer had made a mistake of not following rules on preferential treatment of job applicants with a disability (job applicants with a disability must be called in for job interviews).



However, that mistake could not change the assessment by the Board, that discrimination because of disability had not taken place.

### Case-law 2010

In 2010 the Board of Equal Treatment decided on the following number of cases:

- 63 cases regarding gender,
- 26 cases regarding ethnic origin,
- 33 cases regarding age, disability, sexual orientation, political opinion, social origin, religion or belief.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 1 December 2010

**Reference number:** Decision No. 107/2010

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=589&type=Afgoerelse>

**Brief summary:** It was a violation of the Act on the Prohibition of Discrimination in the Labour Market etc. [*Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*], that complainant was rejected from a job application with the explanation that “with regard to his age fell outside the target group of the company”. The complainant was awarded a compensation of DKK 25.000 (€3360).

*Ground of discrimination: age*

**Name of the court:** Supreme Court [*Højesteret*]

**Date of decision:** 02 November 2010

**Name of the parties:** CAU versus SAS

**Reference number:** Weekly Law Journal U.2011.1415H)

**Brief summary:** In 2004 the Act of Equal Treatment was changed in a way that age was included as a discrimination criterion. Cabin attendants in the Scandinavian carrier SAS (where A,B, and C were employed) had an obligatory retirements age, which was 60 years. After the amendment to the Act, the cabin attendants were offered to continue their employment, but SAS would stop payment into the pension scheme when they reached the age of 60. A, B and C continued as employees. Therefore SAS and the cabin attendants union CAU discussed the obligations to continue payment into the pension scheme. The parties could not reach an agreement, which lead to arbitration. The arbitrator came to the conclusion that SAS was obliged to continue the pension payment, even if the employee reached the age of 60. Afterwards SAS made an additional payment of pension to A,B and C.

On behalf of CAU the FTF (main trade union for 450.000 public and private employees) asserted that SAS should pay a compensation for violating the act of Equal Treatment section 7. The High Court of Denmark upheld the contention and A, B and C were awarded compensation of 50.000 DKK (6665 €). On appeal the



Supreme Court held, that it was directly discriminating if SAS had discontinued payment into the pension scheme. But since SAS had made an additional payment of pension, Supreme Court found that SAS should not pay any compensation.

*Ground of discrimination: age*

**Name of the court:** Western High Court

**Date of decision:** 24 February 2010

**Name of the parties:** HK against Arbejdsmarkedsstyrelsen

**Reference number:** Weekly Law Journal U.2010.1525V

**Brief summary:** The case dealt with a restructuring of job centres. A number of employees were moved and placed in new job centres – with or against their will. The complainant did not want to move and was dismissed from her job. She argued that she was discriminated against due to her age. The court gave judgment in favour of the job centre administration. The reasoning was that the purpose of the replacement was solely to restructure the job centre and not to dismiss employees. Furthermore the court argued that there was just a minor difference between the average age of employees who had their priorities fulfilled and the average age of employees who were replaced to a new job centre.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 10 December 2010

**Reference number:** Decision No. 115/2010

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=597&type=Afgoerelse>

**Brief summary:** The complaint concerned the question of the financing of a loan for a car. The Board found that it was a violation of the Act on Ethnic Equal Treatment [*Lov om etnisk ligebehandling*] to require additional documentation for citizenship or residence permit in connection with the loan, because of the fact that the applicant for the loan was not born in Denmark. The complainant was thus awarded a compensation of DKK 10.000 (€ 1350) for indirect discrimination because of ethnic origin.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 17 September 2010

**Reference number:** Decision No. 68/2010

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=548&type=Afgoerelse>

**Brief summary:** It was considered a violation of the Act of Ethnic Equal Treatment [*lov om etnisk ligebehandling*] that the owner of a wine store, in connection with a meeting being held in his store, had said to one of the participants “du kan bare tage tilbage til det forpulede land du kommer fra” (you can just return to the damn country you come from). The claimant was awarded a compensation of DKK 1.000 (133€)



*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 04 June 2010

**Reference number:** Decision No. 34/2010

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=513&type=Afgoerelse>

**Brief summary:** The complaint concerns the question of discrimination on grounds of ethnic origin in connection with renting an apartment.

The Board held that it was a violation of the Act of Ethnic Equal Treatment [*lov om etnisk ligebehandling*] and the prohibition to discriminate on the grounds of race and ethnic origin, when a non-commercial (i.e. private) renter would not rent an apartment to people, who were not of Danish origin. The claimant was awarded compensation of 5.000 DKK (665€)

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 23 April 2010

**Reference number:** Decision No. 56/2010

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=506&type=Afgoerelse>

**Brief summary:** The claimant was refused for a job as International Account Manager. In the assessment of her application, the employer had put weight on the fact that she spoke English with an eastern European accent. The Board stated that it was a legitimate purpose to require special language capabilities for a position as the one in question. However, the employer had emphasized the eastern European accent and in this regard according to the Board, the employer could not prove that the principle of equality in the Act on Prohibition of Discrimination in the Labour Market etc. had not been violated. The claimant had also argued that she was discriminated against because of her gender, since the employer during the job interview had asked her if she was planning to have children. The Board stated that such a question during a job interview could constitute a violation of the Act. However with regard to this particular issue, there were conflicting explanations from the parties and the complainant therefore had not established facts presuming that there had been discrimination because of gender. The Board awarded DKK 25.000 (€ 3360) in compensation for discrimination because of ethnic origin.

*Ground of discrimination: ethnic origin*

**Name of the court:** Supreme Court]

**Date of decision:** 12 February 2010

**Name of the parties:** A versus JS Danmark A/S

**Reference number:** Weekly Law Journal U.2010.1415H

**Brief summary:** A, who was Dutch, was employed in company V. In connection with closing of a department in the company, A and other employees were dismissed,





except the leader of the department and an employee, who speaks fluently Danish. The court did not find that V had violated the principle of equal treatment cf. the Act on Equal Treatment section 7. The court declared inter alia that A was not dismissed because of the Dutch origin. In consideration of the fact that there will be new tasks with telesales, which should be performed at the Danish market, the language requirements had therefore a legitimate aim.

*Ground of discrimination: disability*

**Name of the court:** Eastern High Court

**Date of decision:** 26 August 2010

**Name of the parties:** F against Dreist Advokater Vordingborg ApS

**Reference number:** B-644-09

**Brief summary:** F has multiple sclerosis and was dismissed from her job as an attorney. She claimed that she was dismissed because of her disability. The court found that she had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. According to the employer, the reason for dismissing F was illness. Due to that reasoning of the employer, the court found that F has established sufficient facts from which it could be presumed that the employer had violated the principle of equality. Despite of the fact that the employer had to reduce cost, the court concluded, that the employer could not prove that it had been necessary for financial reasons to dismiss F. Also, the employer had not fulfilled his obligation to take appropriate measures. Thus, the employer could not prove that the principle of equality had not been violated and F was awarded a compensation of DKK 180.000 (€ 24.200).

*Ground of discrimination: disability*

**Name of the court:** Western High Court

**Date of decision:** 22 June 2010

**Name of the parties:** F (HK) against Anpartsselskabet Rødbo (Kristelig Arbejdsgiverforening)

**Reference number:** Weekly Law Journal U.2010.2610V

**Brief summary:** F had a son with a very serious and incurable illness. F told her employer about the diagnosis of her son. The day after, she was dismissed without a reason. F claimed that she was discriminated against because of the disability of her son. Because of the close correlation between the diagnosis of her son's disability and the dismissal, the court found that the employer had to prove that the principle of equality had not been violated. During the case, the employer argued that the dismissal was due to the recession. However, the court concluded that the employer could not prove that discrimination had not taken place and F was awarded a compensation of DKK 180.000 (€ 24.200) (9 months of salary). The Court made no direct reference to the Coleman case (C-303/06 – Coleman).

*Ground of discrimination: disability*

**Name of the court:** Eastern High Court

**Date of decision:** 5 May 2010





**Name of the parties:** A (3F) against Ejendomsselskabet City Bolig

**Reference number:** Weekly Law Journal U.2010.2303Ø

**Brief summary:** A had epilepsy since he was 18 years old. Until the age of 33 he had had 10-15 attacks. After an attack, he was dismissed from his job. The employer reasoned the dismissal with the following: “we cannot take the responsibility for your safety in situations where you work by yourself”. The court stated that A had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. since his epilepsy was a chronic brain disorder which according to doctors could not be cured by surgery. The court found the dismissal to be disproportionate and concluded that instead of dismissing A the employer should have been taken appropriate measures. A was awarded DKK 40.000 (€5375) in compensation

### Case-law 2009

In 2009 the Board of Equal Treatment decided on the following number of cases:

- 32 cases regarding gender,
- 22 cases regarding ethnic origin,
- 20 cases regarding age, disability, sexual orientation, political opinion, social origin, religion or belief.

*Ground of discrimination: age*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 16 December 2009

**Reference number:** Decision No. 60/2009

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=140&type=Afgoerelse>

**Brief summary:** A public authority violated the prohibition against discrimination when a 58 years old job applicant with relevant qualifications was not called in for an interview for a management position. The board put emphasis on the fact that the 11 applicants called in for an interview were all below 50 years of age, while 10 out of the 13 other qualified applicants not called in for an interview were over the age of 50 years. The board did not find that the defendant had a satisfactory explanation for the selection for the job interviews. Hence, the Board found that the principle of equal treatment had been violated.

*Ground of discrimination: age*

**Name of the court:** Eastern High Court

**Date of decision:** 11 November 2009

**Reference number:** U.2010.603Ø

Employees were awarded 200.000 DKK (approximately 27.000 €) in compensation based on differential treatment on grounds of age since they had been appointed by the public tax authority for relocation to another part of the country.



The court found that the tax authorities had violated the principle of equal treatment cf. the Act on Equal Treatment section 7 a. The Court found that the re-location in reality should be considered a dismissal. All of the applicants had more than 25 years of seniority. The employees were awarded 200.000 DKK (€ 26.900) each in compensation due to their seniority.

It should be noted that if the redundancy is judged illegal, workers can be awarded compensation according to national law.

The Dismissal Board [Afskedigelsesnævnet] has developed a 25-year rule in its case law, meaning that an employer has an obligation, if possible, to refrain from dismissing a person who has been employed for 25 years or longer. If an employee with seniority of 25 years or more is dismissed, the burden of proof shifts to the employer, who has to prove that there were strong reasons for dismissing this particular person. There is, however, to our knowledge no case law indicating that the age of the worker has an influence on the size of the compensation awarded.

*Ground of discrimination: disability*

**Name of the court:** Western High Court

**Date of decision:** 23 September 2009

**Reference number:** V.L. B-0792-08

A case from the Western High Court from 23 September 2009<sup>16</sup> concerned whether a person with an intellectual disability (psykisk udviklingshæmmet) fell under the scope of the Act on sickness benefit.<sup>17</sup> The plaintiff had amongst other arguments pleaded that she, who works in a sheltered occupation, has a severe reduced physical or mental functional capacity, therefore cannot obtain or maintain occupation on normal terms in the labour market and cannot use offers after any other legislation. Furthermore depriving her of her right to sickness benefit actually means that she as a salary earner according to the rules on sheltered occupation will never be able to obtain the legal position that other salary earners have according to the sickness benefit act. She pleaded that this difference in legal positions was due to her disability and that such a treatment in relation to the sickness benefit act implied differential treatment in violation of the directive 2000/78/EC. The Western High Court found that sheltered occupation is a social measure and therefore does not fall under the scope of the directive. As such the fact that the plaintiff cannot receive health benefit is not a violation of the directive.<sup>18</sup>

*Ground of discrimination: disability*

**Name of the court:** The Maritime and Commercial Court

**Date of decision:** 24 August 2009

**Reference number:** Weekly Law Journal U.2009.2792SH

<sup>16</sup> Western High Court judgment of 23.09.2009, V.L. B-0792-08.

<sup>17</sup> Act no. 563 of 09.06.2006 *om sygedagpenge [Act on Sickness Benefit]*.

<sup>18</sup> The plaintiff won the case in the city court –City Court of Horsens Judgment of 28.04.2008, BS 55-99-1090/2006. The plaintiff has now applied for leave to appeal to a third instance.



**Brief Summary:** A female employee was laid off from her position in a supermarket. The dismissal was carried out according to the Salaried Employees Act section 5 subsection 2, which provides for a reduced notice after 120-days of paid sick days. On 6 January 2006 the employee was occupied by pulling a pallet lift [*palleløfter*] and during this work had pain under her right shoulder. As a result, the employee was on sick leave for a short period. After this period the employee was back at work for 6 months without the issue of changes or reductions in her work functions were being brought up by the employee or the employer. On 27 June, when F reported sick the employer became aware of the employee's problems with her shoulder.

After the dismissal the employee took a job as deputy head at a gas station with tasks, which essentially was of a physical nature as it was at the supermarket. She performed this work without restriction and without any considerations taken towards her and the manager at the gas station was not aware of her shoulder problems. She was dismissed from the position at the gas station after approximately one year of employment. The dismissal was motivated by circumstances other than her shoulder problems. Under those circumstances and in conjunction with the available medical documents the court found that the employee could not be defined as having had a disability [handicap] which would fall under the scope of the act on prohibition against discrimination in the labour market under her employment in the supermarket. She was therefore not entitled to compensation under the Act.

*Ground of discrimination: disability*

**Name of the court:** Western High Court

**Date of decision:** 20 March 2009

**Name of the parties:** F (HK) versus Danish Crown (DI)

**Reference number:** Weekly Law Journal U.2009.1966V

**Brief summary:** F was working as a butcher. Because of a work-related injury, she was ill for a couple of longer periods of time and after her illness she was only able to work part-time. When the employer realised that she would not be capable of working full time in the foreseeable future, she was dismissed from her job. F argued she was dismissed due to a disability. During the case, a medical doctor declared that her prognosis in the long run for full recovery was reasonable good. Thus the employer argued, that F did not have a disability but an illness and that illness was the reason for the dismissal. The court agreed with the employer and concluded that F had not been discriminated against because of disability.

*Ground of discrimination: race*

**Name of the court:** Eastern High Court [*Østre Landsret*]

**Date of decision:** 29 April 2009

**Reference number:** U.2009.2058 Ø

A door man (bouncer) was found guilty for having violated the prohibition against discrimination due to race by denying five persons of Brazilian ethnic origin access to a discotheque. The door man argued that the denied access was motivated by a fear of trouble from a group of persons all of a non Danish ethnic origin who had caused trouble at the discotheque. The door man was afraid that if he let the five persons of



a Brazilian ethnic origin in the group that earlier had caused trouble would do it again. The court found that this was not a justifiable reason and the door man was imposed a fine of 1000 DKK (app. € 135) with the alternative of six days imprisonment.

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment [*Ligebehandlingsnævnet*]

**Date of decision:** 3 April 2009

**Reference number:** Decision No. 11/2009

**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=88&type=Afgoerelse>

**Brief summary:** The complaint concerns the question of discrimination on grounds of ethnic origin. The complaint was targeted at a trade union which was accused of degrading a non-defined group presented as “eastern workers” in an advertisement. The Board held that the advertisement was not a violation of the prohibition against discrimination. The advertisement showed a child with a black moustache and the text following the advertisement read: “the eastern worker will come automatically. This is not the case with your collective agreement”. The trade union was not opposed to the fact that workers from the former Eastern block are a part of the Danish labour market, but the fact that an undermining of the collective agreements is taking place because of misuse of foreign labour and social dumping. The Board did not find that the add was comprised by the scope of the act on ethnic equal treatment since it was not a case of social protection, social welfare and health related benefit, education, access to goods or housing.

*Ground of discrimination: disability*

**Name of the court:** The Maritime and Commercial Court [*Sø- og Handelsretten*]

**Date of decision:** 2 April 2009

**Reference number:** U.2009.1948SH

An employee L had made an agreement with the employer W concerning training as a sales assistant with full wage compensation from the municipality. L suffered from severe permanent backaches caused by several years of physically demanding labour. During the training L was absent due to illness several times and the municipality decided to end the rehabilitation and wage compensation since the continuation of the training was considered unrealistic. The employer subsequently decided to terminate the training agreement. The Court stated that L’s backaches constituted impairment with a need for compensation when performing tasks for W that involved heavy lifting. The backaches thus constituted a disability within the Act on Prohibition against Discrimination in the Labour Market. W had however not provided any reasonable accommodations to L in order to comply with L’s need for compensation. For instance W had refused a proposal by the municipality concerning a personal assistant arrangement, which presumably could have fulfilled L’s need for compensation. Since the court found no reason to assume that the arrangement would impose a disproportionate burden on W the court found that W had not complied with the duty to provide reasonable accommodations. L was thus awarded 97.200 DKK (approximately 16.000 €) in compensation.



*Ground of discrimination: disability*

**Name of the court:** Western High Court of Denmark [*Vestre Landsret*]

**Date of decision:** 20 March 2010

**Reference number:** U.2009.1966V

An employee who was on sick leave but still working part time was not considered to have a disability.

F had received an electric shock when cleaning a device in connection to her job as a laboratory technician at a slaughterhouse. F was subsequently laid off since the slaughterhouse considered that she would not become fit for fulltime working within a foreseeable future. F claimed to have a disability caused by the accident which caused a need for compensation.

The Western High Court stated with reference to the preparatory works to the Act on the Prohibition of Discrimination in the Labour Market etc., that disability in practice is understood as a situation where a person has a physical, mental or intellectual impairment which causes a need for compensation in order for the person to be able to function equal to other persons in a similar situation. Disability is the consequence of a chronic impairment which is not treatable to a full recovery.

Since the prognosis for the full recovery of F in the long term was considered probable the court stated that F did not have a disability at the time of her dismissal. She was therefore not entitled to compensation according to Act on Prohibition against Differential Treatment in the Labour Market. She was however awarded compensation of 50.000 DKK (approximately 7.000 €) according to *the Salaried Employees Act* [*funktionærloven*] since the dismissal was not reasonably motivated in reasons related to F or the slaughterhouse.

### Case-law 2008

*Ground of discrimination: disability*

**Name of the court:** Eastern High Court of Denmark [*Østre Landsret*]

**Date of decision:** 5 March 2008

**Name of the parties:** A vs. the Heritage Agency of Denmark

**Reference number:** Weekly Law Journal (U.2008.1450Ø)

A visually impaired architect, A, was employed at the Danish Heritage Agency. Because of his impairment A was unable to carry out inspections on his own. In 2005 A was dismissed due to budget reductions and A claimed that the dismissal was in violation of the Act on the Prohibition of Discrimination in the Labour Market etc. The Eastern High Court found that in the light of the budget reductions, it was permissible for the Heritage Agency to prioritise employees who were able to perform assignments on their own. Judging employees based on their flexibility was therefore an objective criterion pursuing a legitimate aim. The issue of reasonable accommodation was considered by the courts. The High Court found that A would need assistance from an architect in order to carry out inspections and that this would impose a disproportionate burden on the employer. A dissenting judge in the





Eastern High Court was of the opinion that providing A with reasonable accommodation to the required extent was not a disproportionate measure for the employer.

The High Court found in its final judgment that there was no violation of the Act on the Prohibition of Discrimination in the Labour Market, since this was a requirement for disproportionate measures of reasonable accommodation.

*Ground of discrimination: sexual orientation*

**Name of the court:** Western High Court [*Vestre Landsret*]

**Date of decision:** 22 February 2008

**Name of the parties:** A vs. B

**Reference number:** Weekly Law Journal (U.2008.1353V)

In summer 2005 an apprentice at a bakery chose to announce that he was homosexual. From that moment his employer began to systematically harass him. He slandered the apprentice in front of other employees and customers, and called homosexuals the most disgusting people he knew. Furthermore he stated that homosexuals were mentally ill. The apprentice reported sick in February 2006. A medical certificate stated that the cause was a poor psychological working environment.

The apprentice made contact with his trade union, who tried to resolve the case at a mediation meeting. The trade union asked the employer for compensation equivalent to one year's salary. The employer refused to admit having slandered the apprentice and the trade union took the case to court.

The injured party (the apprentice) claimed that he had been discriminated against on the ground of his sexual orientation and been harassed with reference to the Act on the Prohibition of Discrimination in the Labour Market etc.

The Western High Court upheld the judgment appealed from the District Court [Retten i Hjørring]. The employer was ordered to pay DKK 100 000 (€ 13.450) to the injured party.

*Ground of discrimination: religion*

**Name of the court:** Maritime and Commercial Court [*Sø- og Handelsret*]

**Date of decision:** 28 January 2008

**Name of the parties:** F vs. COOP Denmark A/S

**Reference number:** Weekly Law Journal (U.2008.1011S)

F, who was working as a supermarket cashier, called a co-worker wearing a religious headscarf a "black-headed gull". F was dismissed without notice by the management for having referred to a co-worker in a racist and derogatory manner. The Court found that in general, using the term as F did was derogatory. In this specific case, however, the Court emphasised that F's conduct in the workplace had never before been improper and should be considered thoughtless rather than spiteful. The dismissal was therefore not justified, even though the remark was uttered in the





presence of a customer. F was awarded compensation in total of DKK 123.750 (approximately EUR 16.500). F's trade union conducted the case on behalf of F. The compensation was based on F's claim, against which the employer had not objected.

The claim consisted of compensation for unjust dismissal (DKK 47.587 - € 6400), compensation for damages equal to pay during the normal notice period (DKK 53.535 - € 7200) and agreed severance pay (DKK 22.628 - € 3050). There is no information concerning whether the person wearing a headscarf brought a complaint.

*Ground of discrimination: religion*

**Name of the court:** Eastern High Court [Østre Landsret]

**Date of decision:** 14 January 2008

**Name of the parties:** A vs. B

**Reference number:** Weekly Law Journal (U.2008.1028Ø)

The applicant had been working as a temporary worker and during Ramadan had been fasting. The institution worked with small children who experienced difficulties at home. The employer argued that it was essential for the applicant to eat lunch with the children, and therefore her contract was terminated. The Court found direct differential treatment based on religion, i.e. a violation of the Act on the Prohibition of Discrimination in the Labour Market etc., and awarded compensation of DKK 25 000 (EUR 3 500). The Complaints Committee for Ethnic Equal Treatment dealt with the case in 2005.<sup>19</sup> No reference to reasonable accommodation was made in the case.

### Case-law 2007

*Ground of discrimination: disability*

**Name of the court:** Western High Court [Vestre Landsret]

**Date of decision:** 11 October 2007

**Name of the parties:** A vs. O

**Reference number:** Weekly Law Journal (U.2008.306V)

A was employed in the company O and had multiple sclerosis. Because her illness worsened, O agreed to hire A for 25 hours a week with flexible working hours. Later A requested that her working hours be reduced to 15. O could not comply with this request and decided to dismiss A. The person A claimed that the person O had violated the Act on the Prohibition of Discrimination in the Labour Market.

The Western High Court found that A's illness, which caused sclerosis-fatigue, sensory impairment and memory and concentration difficulties, constituted a disability. However, the Court did not find that the disability constituted a disability according to the Act on the Prohibition of Discrimination in the Labour Market etc. (cf. Section 2.1.1 of this report).

<sup>19</sup> Complaints Committee for Ethnic Equal Treatment/ Journal no. 810.2/Decision of 5 December 2005. The Complaints Committee found sufficient proof that the termination by an institution of the applicant's long term contract was based on illegal indirect differential treatment based on ethnicity and therefore a violation of the Act on Ethnic Equal Treatment.



In its interpretation of the term “disability”, the Western High Court referred to the preparatory works to the Act on the Prohibition of Discrimination in the Labour Market etc. where a person with a handicap is described as someone with a “physical, psychological or intellectual impairment generating a need for compensation in order for that person to function on an equal level with other citizens in a similar situation”. Since the only compensation A needed was a further reduction of working hours, the Court found that her condition did not fall within the term “disability”. The Court therefore found that no violation had occurred.

On 12 October 2007, the Western High Court decided in another case that post-traumatic stress syndrome could not be considered a disability as covered by the Act on the Prohibition of Discrimination in the Labour Market.

*Ground of discrimination: religion*

**Name of the court:** Supreme Court [*Højesteret*]

**Date of decision:** 5 November 2007

**Name of the parties:** A versus the Ministry of Ecclesiastical Affairs

**Reference number:** Weekly Law Journal (U.2008.342H)

The Supreme Court decided that a Catholic’s duty to report births to the registry of the Danish National Evangelical Lutheran Church was not a violation of the ECHR since the registration of births is an administrative task with no religious content. The person in question did not have to personally show up at the office and the birth certificate was not stamped by the Church. Furthermore, the Supreme Court concluded that it is not a violation of the ECHR that the national church receives a government subsidy paid from state tax revenues since there is no direct link between the amount of taxes paid by a citizen and the government subsidy. Some of the national church’s expenses are incurred through its performance of non-religious tasks.

### Case-law 2006

*Ground of discrimination: ethnicity*

**Name of the court:** Eastern High Court (*Østre Landsret*)

**Date of decision:** 27 June 2006

**Name of the parties:** Mr. X vs. Copenhagen Technical School (Unpublished)

The applicant (with other ethnic origin than Danish) was a carpentry student at Copenhagen Technical School at the time of the events. As part of the syllabus, students were offered traineeships in private companies.

On 8 September 2003, the applicant accidentally saw a note in a teacher’s hands where the words “not P” appeared next to the name of a potential employer requesting trainees to work in his company. When asked what the note meant, the teacher explained to him that the P stood for “perkere” (“Pakis”) and that it meant that the employer in question had instructed the school not to send Pakistani or Turkish students. That same day, the applicant complained orally to the school inspector, arguing that the school was collaborating with employers that did not accept trainees



of a certain ethnic origin. The inspector stated that it was the school's firm policy "not to accommodate requests from employers only to accept ethnic Danes as trainees" and that he was not aware of cases where this had happened. On 10 September 2003, the applicant filed a written complaint to the school management board and in court he subsequently claimed that as a result of this he was treated badly by school staff and students and was assigned to projects which he would normally not be expected to carry out at the school.

The Complaints Committee examined the case and exchanged correspondence with the school. In the correspondence, the school admitted that unequal treatment based on ethnicity might have occurred in isolated cases, but that this was not the school's general practice. In its decision of 1 September 2004, the Complaints Committee considered that, in this particular case, a staff member of the school had followed discriminatory instructions and thus violated Section 3 of the Act on Ethnic Equal Treatment. It specified, however, that the school itself had not committed a violation. The Committee further considered that Section 8 of the Act (prohibiting retaliation for complaints aimed at enforcing the principle of equal treatment) did not appear to have been violated, although it noted that it did not have the competence to interrogate witnesses where evidence was lacking. It concluded that this issue was for the courts to decide and recommended that free legal aid be granted for the case to be brought before a court.

A civil claim was filed to the City Court of Copenhagen [Københavns Byret], seeking compensation of DKK 100 000 (EUR 13 500 approximately) for moral damages incurred as a result of ethnic discrimination. On 29 November 2005, the City Court considered that the evidence produced did not prove that either the school or its staff members were willing to carry out discriminatory requests from employers and that there was no reason to set aside the inspector's statement. It further found that the applicant was not among the students to whom a traineeship was to be allocated on 8 September 2003 as he was undergoing an aptitude test between 1 September and 1 October after having failed the first main course and could only subsequently be considered for a traineeship, which he obtained on 6 October 2003. It concluded that the applicant could not be considered to have been subjected to differential treatment on the basis of his race or ethnic origin, nor was he a victim of retaliation by the defendant because of the complaint filed by him. The applicant contended that, under the Act on Ethnic Equal Treatment, the burden of proof should have been on the staff member and not on him.

The applicant appealed the City Court's judgement to the Eastern High Court. He did not obtain legal aid to appeal the case and the Documentation and Advisory Centre on Racial Discrimination (DACoRD) [*Dokumentations- og Rådgivningscenter om Racediskrimination*] subsequently assisted him. One of the witnesses called before the High Court was a school staff member in charge of contacts between the school and potential employers. He stated that he had chosen not to send a student of an ethnic origin other than Danish to the company because "the school had previously received negative feedback from students of other ethnic origins who had trained



with the company. They had felt maltreated because employees at the company had used abusive language.” The school argued that the complainant had not experienced retaliation as a consequence of his complaint, but that he simply was not qualified enough to be sent for training. In the applicant’s view, this argument was irrelevant since the school had already admitted to not sending students of an ethnic background other than Danish to certain employers.

The High Court decided that it had not been proved that the complainant had been subjected to discrimination or had experienced retaliation as a consequence of his complaint and confirmed the judgement of the City Court. According to the complainant, the High Court based its decision on the school’s statement that the complainant did not have the necessary qualifications to be sent on training. The school was acquitted and the complainant was required to pay procedural costs amounting to DKK 25 000 (3 300 € approximately).

Under Danish law, a case can only be tried twice before national courts. If the case is of significant importance, it is possible to apply for leave to appeal to the Supreme Court. After the judgement of the Eastern High Court, the complainant did indeed apply for leave to appeal, but on 5 December 2006 his application was dismissed.

The written note made by the technical school seemed to constitute *prima facie* evidence, as no other form of proof could be stronger than this. This is why the Complaints Committee in this case – alone out of a total of 142 cases between July 2003 and July 2005 - considered that a violation had taken place. Consequently the complainant was granted free legal aid to take the case before the City Court. However, the Complaints Committee did not provide legal aid for the appeal.

This case could theoretically raise a problem for university students, who, following the Courts’ decision to apply the Act on Ethnic Equal Treatment rather than the Act on the Prohibition of Discrimination in the Labour Market etc, are protected against race discrimination but not against discrimination on other grounds. In practice most Danish universities are public institutions and thus under an obligation not to discriminate on any ground under the Constitutional principle of equality. However, technical schools are mainly private institutions.

The case was taken to the UN Committee on the Elimination of Racial Discrimination as an individual complaint and the Committee found with regard to the applicant’s allegation that the State party had failed to provide effective remedies within the meaning of Article 6 of the Convention.

The Committee noted that both national courts had based their decisions on the fact that the applicant did not qualify for an internship for reasons other than alleged discriminatory practice against non-ethnic Danes - namely that he had failed a course. It considered that this did not absolve the State party from its obligation to investigate whether or not the note “not P” written on the employer’s application and reported to be a sign recognised by a teacher as implying exclusion of certain



students from a traineeship on the basis of their ethnic origin, amounted to racial discrimination. In the light of the State party's failure to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, the Committee concluded that Articles 2, Paragraph 1 (d), and 6 of the Convention had been violated. In the circumstances, the CERD was of the opinion that the facts as submitted revealed a violation of Articles 2, Paragraph 1 (d); 5, Paragraph (e) (v); and 6 of the Convention by Denmark.<sup>20</sup>

*Ground of discrimination: ethnicity*

**Name of the court:** The Complaints Committee for Ethnic Equal Treatment

**Date of decision:** 24 October 2006

**Reference number:** Decision (j.nr. 740.22)

A person of ethnic minority origin was refused entrance to a nightclub with the explanation that he was not able to show a membership card. His wife, also of ethnic minority origin, was at first allowed entrance without showing a membership card, but when the doorman discovered that the two were together, she was also turned away.

The Complaints Committee for Ethnic Equal Treatment found in relation to the man a violation of Section 3 (1) of the Act on Ethnic Equal Treatment. In relation to the wife the Committee also found a violation of Section 3 (1) of the Act on Ethnic Equal Treatment based on the fact that she was rejected based of the ethnic origin of her husband. The Complaints Committee could not require either the complainant or the respondent to give their opinion or reveal the factual circumstances of a case. Moreover, the Complaints Committee could not demand that the parties produce documents or other material to further elucidate a case. The case is an example of the fact that neither the Act on Ethnic Equal Treatment nor the Act on the Prohibition of Discrimination in the Labour Market provided the Complaints Committee with powers to enforce the disclosure of the material facts of a case. When the body does not poses any means to encourage the parties to cooperate, this limits the possibility to obtain the relevant information to base a decision upon.

However, the Committee found in both cases that the practice was a violation of the Act on Ethnic Equal Treatment and the prohibition of direct differential treatment on the ground of race or ethnic origin contained in Section 3 (1). The Complaints Committee suggested that free legal aid should be granted.

### *Trends and patterns in cases involving Roma/Travellers*

*Ground of discrimination: ethnic origin*

**Name of the court:** Board of Equal Treatment

**Date of decision:** 10 June 2011

**Reference number:** Decision No. 88/2011

<sup>20</sup> CERD/C/71/D/40/2007 of 8 August 2007.



**Address of the webpage:**

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=700&type=Afgoerelse>

**Brief summary:** An NGO working against discrimination because of race and ethnic origin filed a complaint to the Board. The complaint dealt with ethnic discrimination because of a newspaper article. In the article an owner of a campground stated that he would refuse access to the campground for Roma people. The NGO argued that the newspaper article was a violation of the Act on Ethnic Equal Treatment. The Board does not have the power to take up cases on its own initiative and rejected to adjudicate the complaint. The reason was that the NGO did not file the complaint on behalf of or in support of a concrete individual claiming that his or her rights had been violated.

Complaints Committee for Ethnic Equal Treatment Decision No. 44/2007.<sup>21</sup>

The Complaints Committee for Ethnic Equal Treatment became aware that a number of individuals with a Roma background felt they were experiencing racial or ethnic discrimination by the municipality of Elsinore. It appeared that the municipal project “Fælles Indsats” (“Joint Effort”) to promote the integration of Roma into the labour market had referred citizens to two specific counsellors because of their ethnic origin.

The Committee found that the project could only be undertaken if it complied with Article 4 of the Act on Ethnic Equal Treatment concerning specific measures aimed at “preventing or ameliorating disadvantages based on race or ethnic origin.” The Committee found that a specific measure according to Article 4 of the Act on Ethnic Equal Treatment could only be initiated if an individual or a group of individuals were offered extraordinary support focusing on that individual or group’s life situation and particular needs. The measure should be beneficial to the individual and could not amount to a forced arrangement. The Committee found that the municipality of Elsinore had been pursuing legitimate aims in the project in question, i.e. strengthening integration of individuals with a Roma background into the labour market and reducing or removing inequalities encountered by such individuals. However, the Committee also found that the measure in question entailed an automatic referral of individuals with a Roma background to the two particular caseworkers if such individuals required a particular kind of attention.

The Complaints Committee found that the municipality of Elsinore’s project and its referral of two individuals with a Roma background to two particular counsellors was a violation of the Act on Ethnic Equal Treatment’s prohibition of direct discrimination based on race or ethnic origin. Unlike case 730.7 (cf. Section 3.2.8 below) there was no issue of educational segregation in the “Joint Effort” case.

<sup>21</sup> See:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=502&type=Afgoerelse>.



## General Concerns regarding Roma

On 30 December 2011, the Danish government presented its National Roma Inclusion Strategy to the European Commission focussing on the areas of education, employment etc. as listed in the EU Framework Strategy.<sup>22</sup> Neither official statistical data nor alternative academic data on Roma in Denmark is available. According to the Danish Strategy there are no future plans to e.g. work with the local communities to more precisely estimate the numbers of Roma in Denmark. The Danish action plan for Roma inclusion has three components:

- Fully realising the integration tools available for the benefit of Roma inclusion
- Continuing and strengthening the efforts towards combating poverty and social exclusion in general
- Disseminating knowledge on best practice and agreed principles for Roma inclusion to the municipal level.

In short, the government plans to use existing means for the general combating of marginalization and poverty in Denmark in its efforts to improve the inclusion of Roma into Danish society. There is no budget for the implementation of the governmental Roma Strategy. Also, the Strategy does not include any initiatives on the role of the police in the protection of Roma against racist violence.<sup>23</sup>

NGO's including Roma NGO's were consulted on the strategy. They complained however, that the deadline for input was very short in reality limiting the possibility for serious input. They also complained that the Strategy was only made in English.<sup>24</sup>

In September 2010 the UN Committee on the Elimination of Racial Discrimination noted with regret that Denmark did not provide data on the numbers and legal status of the Roma living in Denmark. The committee recommended that Denmark establish the numerical and legal status of the Roma people and afford them full protection from discrimination, racial profiling, hate crimes, and facilitate their access to public facilities.<sup>25</sup>

According to a report from the Danish Institute for Human Rights, a group of foreign individuals with Roma background characterized by extreme poverty live in Copenhagen.<sup>26</sup> Other groups of foreign, homeless people are persons from Africa

<sup>22</sup> See: [http://ec.europa.eu/justice/discrimination/files/roma\\_denmark\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_denmark_strategy_en.pdf).

<sup>23</sup> Response from the Documentation and Advisory Centre on Racial Discrimination to the Danish Roma Strategy (February 2012). See: [www.drcenter.dk](http://www.drcenter.dk).

<sup>24</sup> See: <http://www.udenfor.dk/dk/Menu/Det+mener+projekt+UDENFOR/Når+inklusion+ekskluderer%3a+++++Den+danske+roma-strategi+i+formandskabets+teg>.

<sup>25</sup> UN document: CERD/C/DNK/CO/18-19. See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/451/62/PDF/G1045162.pdf?OpenElement>.

<sup>26</sup> Parallel Report to the UN Committee on the Elimination of Racial Discrimination on the 18th and 19th periodic reports by the Government of Denmark on the implementation of the International Convention on all Forms of Racial Discrimination; The Danish Institute for Human Rights



primarily, from Ghana and Nigeria, of whom many have a visa from either Spain or Italy, but travel north due to lack of job opportunities.

It follows from the report that several of the individuals with Roma background consider life as homeless in Copenhagen better than the life they can make at home. It is estimated that the purpose of their stay in Copenhagen is to earn as much money as possible and then return to Romania with the hope of creating a more tolerable life. According to the study, there is a specific place in Copenhagen where Roma people settle in camps, and that it is clear to see at the camps that crime is part of their survival strategy.

On 6 July 2010, the Danish police raided two places in Copenhagen where they knew that many non-Danish individuals with Roma background were staying.<sup>27</sup> 24 individuals with Roma background were arrested and the Danish Immigration Service decided to expel them with an entry prohibition of two years. The reason for the expulsion was that they were a disturbance to the public order due mainly to their choice of place of residence, cf. article 25 a (2) (3) in the Danish Aliens Act (consolidation act no. 1061 of 18 August 2010). In April 2011 the Ministry of Integration annulled the expulsions of the 24 Roma people.<sup>28</sup>

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Copenhagen, Denmark July 2010, page 21. See:

[http://www2.ohchr.org/english/bodies/cerd/docs/ngos/DIHR\\_Denmark77.pdf](http://www2.ohchr.org/english/bodies/cerd/docs/ngos/DIHR_Denmark77.pdf).

<sup>27</sup> *Id.*

<sup>28</sup> Politiken, 18 April 2011.



## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*
- b) *Are constitutional anti-discrimination provisions directly applicable?*
- c) *In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

#### *The Danish Constitution*

The Danish Constitution does not contain a general provision prohibiting discrimination or a general equality clause. Denmark had its first democratic constitution in 1849, and it was changed and amended in 1866, 1915, 1920 and 1953.

Only one of the discrimination grounds in Directive 2000/78/EC are directly encompassed by the Danish Constitution. That is religion being covered by a number of specific provisions.

Section 71 (1) of the Constitution provides that “No Danish subject shall in any manner whatever be deprived of his liberty because of his political or religious convictions or because of his descent”. As a point of departure the Section only covers Danish citizens, but the liberty of foreigners is to some extent protected by Section 70 stating, that “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.”

Section 68 of the Constitution provides that “No one shall be liable to make personal contributions to any denomination other than the one to which he adheres.”

Section 67 of 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 constitutional provisions mentioned above are directly applicable and can also be enforced against private actors.



## 2 THE DEFINITION OF DISCRIMINATION

### 2.1 Grounds of unlawful discrimination

*Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.*

#### *The Constitution*

Section 70 of the Constitution stipulates that no one can be deprived of any civil or political rights on grounds of faith or descent.

#### *Criminal law*

Section 266b of the Criminal Code [*Straffeloven*] prohibits hate speech. It covers the following grounds: race, skin colour, national or ethnic origin, religion, and sexual orientation.

Act on the Prohibition of Discrimination due to Race etc. [*Lov om forbud mod forskelsbehandling på grund af race m.v.*] covers the following grounds: race, colour of skin, national or ethnic origin, religion and sexual orientation.

#### *Civil Acts*

Act on the Prohibition of Discrimination in the Labour Market etc. [*Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.*] covers the following grounds: race, colour, religion, political opinion, belief, sexual orientation, age, disability and national, social or ethnic origin.

Act on Ethnic Equal Treatment [*Lov om etnisk ligestilling*] covers race and ethnic origin.

#### *The principle of equality in administrative law*

Public authorities are governed by the principle of equality [*ligestingsgrundsætningen*] applicable under general administrative law. The general principle has the force of legislation (and not constitutional law) and means that public authorities must treat equal matters in full equality before the law.

In general this means that situations should be treated equally unless there are objective and reasonable grounds present for different treatment. This is a limitation of the powers of the public authorities. Whether a criterion is objective and reasonable depends on the interpretation of the relevant legislation and the implicated public authorities deciding the case and the context of a specific case. The principle of equality applied by public authorities in case handling supplements the





regulation as stipulated in the relevant act and is often also supplemented by the unwritten principle of proportionality.

The leading and fundamental principles of Danish administrative law having the force of legislation are, among others:

- The principle of legality, or the rule of law;
- The principle of proportionality; and
- The principle of equality.

In this connection the principle of equality is of special interest. When an administrative authority is exercising discretionary power it is obliged to treat citizens equally. This means that citizens can only be treated differently if there is a legitimate reason to do so.

When it comes to an administrative authority exercising discretionary power as an employer, the same principle applies. The Danish Parliamentary Ombudsman [*Folketingets Ombudsmand*] has stated<sup>29</sup> that public employers are obliged to make a fair assessment of all jobseekers and to choose the applicant who is the most qualified, thus ruling out the possibility of giving preference to applicants of a certain sexual orientation, ethnic or religious background etc.

This is also the case when it comes to the promotion of public employees, salary and other employment conditions. It is the employee's qualifications that count and not, for example, age and disability or any other grounds.

This principle also applies when the public sector acts as a labour exchange, or is engaged in job skills training, and any other labour market related activity.

When it comes to private employers, administrative law does not apply. Private employers are bound by the Act on the Prohibition of Discrimination in the Labour Market etc.

### 2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation? Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in Case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

<sup>29</sup> Annual report of the Parliamentary Ombudsman 1987 p. 107 ff. (FOB 1987, s. 107) [*Folketingets Ombudsmand – Årsrapport 1987*].



Firstly it must be emphasised that the grounds of discrimination are only vaguely defined in Danish legislation.

## **Race**

Anti-discrimination criminal law on hate speech and access to public places was passed in 1971 in order to ratify the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), and consequently the definition of “racial discrimination” in Article 1 of the CERD is also relevant in a Danish legal context, courts cases, public administration etc.

Race is not defined but must be understood in accordance with international human rights conventions. Thus the concept of race must be understood as a social concept in contrary to a biological concept.

## **Ethnic origin**

According to the preparatory works of the legislation, ethnic origin should be understood in accordance with international human rights conventions. Ethnic origin thus includes a person’s association to a particular group of people with a common culture, religion, history, country of origin etc.

## **Religion**

The term “religion” is not defined in the legislation but understood as formally approved or recognized religions.<sup>30</sup>

## **Belief**

“Belief” is not defined in the legislation but generally assumed to protect a wider area than religion. Thus, belief includes religions that are not formally recognized. In short, belief is considered to be a more defined conviction covering something different than formally recognized religions. Examples of belief are atheism and other philosophical orientations.

## **Disability**

Danish legislation does not contain a definition of “disability” and the preparatory works are relatively vague in this respect. According to the preparatory works, a disability occurs where a person with a “physical, psychological or intellectual impairment generating a need for compensation in order for that person to function on an equal level with other citizens in a similar situation.” The need for compensation covers various services and facilities with the purpose of limiting the

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<sup>30</sup> Vejledning om forskelsbehandlingsloven nr. 9237 af 06/01/2006. See: <https://www.retsinformation.dk/Forms/R0710.aspx?id=30653>.



consequences of the disability. Compensation can, for instance, take the form of providing a wheelchair, hearing aid, personal assistance etc. Compensation can also consist of the provision of parallel services, for instance publishing written material as well as an audiotape.<sup>31</sup>

However the preparatory works also states: “it is not a requirement for protection against differential treatment on the grounds of disability that there is a *specific* need for compensation”.<sup>32</sup> It has thus been argued that the Act on the Prohibition of Discrimination in the Labour Market etc. protects against discrimination on the ground of disability when a disabled person is in need of specific reasonable accommodation in order to carry out a job as well as situations where the disability has no influence on the ability to carry out a specific job.<sup>33</sup> However, many judges still rely on the narrower concept of disability requiring a need for compensation.<sup>34</sup>

It would seem that according to Danish jurisprudence, applicants must establish before the courts that the extent of reduced functional capacity is significant in their concrete case. Otherwise they probably fall outside the definition of the Danish interpretation of the term “disability” and are therefore excluded from the right to reasonable accommodation.

Moreover, the reference to a need for compensation indicates that the limitation must be closely linked to the individual’s disability. It seems that a limitation which occurs as a result of, for example, negative attitudes towards disability cannot qualify under Danish law as leading to a need for compensation.

It is hence unclear whether the Danish understanding of the concept of disability in the Act on the Prohibition of Discrimination in the Labour Market is broad enough to live up to obligations under Directive 2000/78/EC.

## Sexual orientation

Sexual orientation means homo- and heterosexual relations and other kinds of lawful sexual orientation such as bisexuals, intersexuals, transsexuals, masochists etc. Lawful sexual orientation refers to Danish criminal law. This means that an employee who promotes pedophilia (which is illegal) would not be considered to be protected by the Act on the Prohibition of Discrimination in the Labour Market etc.<sup>35</sup>

<sup>31</sup> Handicap og Ligebehandling – et refleksionspapir, Det Centrale Handicapråd (2001) p. 11.

<sup>32</sup> Proposal L92 of 11 November 2004, ‘4.1. Handicapkriteriet’ and ‘Bemærkninger til de enkelte bestemmelser’, ‘Til nr. 2’.

<sup>33</sup> Pia Justesen, Disability and discrimination on the labour market. In Danish: Handicap og diskrimination på arbejdsmarkedet, U.2008B.302 p. 2.

<sup>34</sup> Anne Mortensen and Maria Topholm Skarum, The concept of disability in the Act on the Prohibition of Discrimination in the Labour Market. Available in Danish: Forskelsbehandlingslovens handicapbegreb, U2010B.115 p. 6.

<sup>35</sup> Finn Schwarz and Jens Jakob Hartmann, Forbud mod forskelsbehandling på arbejdsmarkedet – forskelsbehandlingsloven (2011), page 178.



- b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

The term "religion" is not legally defined in Denmark. A definition may be found indirectly through the Danish authorities' practice of approving "religious communities".

Religious communities were previously approved by the Ministry of Justice. Since October 2011 they have been approved by the Ministry of Integration and Social Affairs in accordance with the Marriage Act [*Ægteskabsloven*]. This approval has nothing to do with religion - instead, it is based on the administrative law view that approval as a religious community (which authorises the community to conduct marriages) constitutes a delegation of executive power.

A standing advisory committee regarding religious communities [*Det Rådgivende Udvalg vedr. Trossamfund*] is appointed to assess whether the conditions for approval as a religious community are fulfilled. The Committee is independent of the Ministry of Integration of Social Affairs and has expertise in religious sociology, religious history, law and theology. The Committee has prepared guidelines for approval as a religious community.

Religious communities that have not sought approval for various reasons and societies that are not eligible (philosophical communities and societies, etc.) exist under the general freedom of religion and association without any requirement for public registration.

The Committee uses a minimal definition of religion, understanding it as a specifically formulated belief in the human being's dependence on a power over the human race and the laws of nature and a belief that provides guidelines for human ethics and morality.<sup>36</sup>

Recital 17 of the Employment Equality Directive is not directly reflected in legislation. It is, however, stated in the preparatory works to the Act on the Prohibition of Discrimination in the Labour Market etc. that an employer can only choose an applicant with a disability if the applicant is just as qualified as an applicant without a disability. When comparing the qualifications, the disabled person is to be judged according to his or her capacity to carry out the essential functions of the post after reasonable accommodation is made.

<sup>36</sup> Vejledende retningslinjer udarbejdet af Det Rådgivende Udvalg vedr. Trossamfund, 6. rev. udgave, den 18. august 2011, available in Danish at: [http://www.familiestyrelsen.dk/fileadmin/user\\_upload/Trossamfund/Vejledende\\_retningslinjer\\_trossamfund.pdf](http://www.familiestyrelsen.dk/fileadmin/user_upload/Trossamfund/Vejledende_retningslinjer_trossamfund.pdf).



- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

As a starting point the Act on the Prohibition of Discrimination in the Labour Market etc. protects both the elderly and the young. There are, however, a number of exceptions.

According to Section 1(a), the Minister of Defence can decide to except armed forces in active duty from the prohibition against differential treatment due to age and handicap (see Section 3 (4) of the Directive).

According to Section 5(a) (3), the Act is not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements, presuming that these age limits are objectively and reasonably justified by a legitimate aim within the scope of Danish legislation and that the means of achieving that aim are appropriate and necessary (see Article 6 of the Directive).

Furthermore, it is not prohibited to make either individual or collective arrangements that state that employment stops when the employee turns 70 years old, cf. Section 5(a) (4) of the Act.

It is also not prohibited to have provisions in collective agreements regarding special rules on payment etc. for young people under the age of 18, cf. Section 5(a) (5) of the Act.

According to Section 5(a) (6) of the Act, the prohibition against differential treatment due to age also does not apply in regard to employment, conditions of pay and dismissal for young people under the age of 15, if their employment is not regulated by a collective agreement.

This means that under certain circumstances, differential treatment is allowed against people below 18 and 15 years of age.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination. Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

On 1 January 2009 the Board of Equal Treatment [*Ligebehandlingsnævnet*] began functioning. The Board covers all protected grounds, (sex, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability and national, social or ethnic origin). The Board was established by Act no. 387 of 27 May 2008. The various discrimination grounds are not defined in the Act.





There are only few cases in which the Board has yet dealt with situations of multiple discrimination. One example is Decision No. 134/2011 from 30 September 2011 in which the claimant argued that discrimination had taken place both due to age and social origin (see case above).

To enhance the legal protection against multiple discrimination and raise awareness of this issue, it would be preferable for the concept of multiple discrimination to be introduced directly in wording into the field of anti-discrimination legislation.

- e) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

The Board of Equal Treatment Decision No. 134/2011 from 30 September 2011 dealt with age discrimination as well as discrimination on account of social origin. First, the Board concluded on the issue of age discrimination and secondly the Board concluded on the issue of discrimination due to social origin. Thus, the case was dealt with as two separate discrimination issues.

In Decision No. 56/2010 by the Board of Equal Treatment the claimant was refused for a job as International Account Manager. In the assessment of her application, the employer had put weight on the fact that she was talking English with an eastern European accent. The claimant had also argued that she was discriminated against because of her gender, since the employer during the job interview had asked her if she was planning to have children. With regard to this particular issue, there were conflicting explanations from the parties. The Board awarded DKK 25.000 (€ 3360) in compensation for discrimination because of ethnic origin (and not because of gender). Thus, the case was dealt with as two separate discrimination issues.

On 28 January 2005 a job advertisement asked for workers aged 18 to 30 years old: the company International Office Supply located in Copenhagen needed 10 new staff members for positions. It was also stated that the employees had to be Danish, and consequently this was a situation of multiple discrimination.

On 1 March 2005 this job advertisement was reported to the police by the Documentation and Advisory Centre on Racial Discrimination (DACoRD) according to Section 5 of the Danish Act on the Prohibition of Discrimination in the Labour Market, which partly implements the Employment Equality Directive.

On 21 July 2005 the Copenhagen Municipal Police informed the complainant that the investigation of the case was complete and they imposed a fine on International Office Supply for violating Section 5 of the Act on the Prohibition of Discrimination in the Labour Market etc., which prohibits discriminatory job advertisements. As this fine was never paid, the case went to court and on 3 January 2006 the court upheld the



fine of EUR 450 for discrimination due to race/ethnicity and due to age.<sup>37</sup> The fine of EUR 450 was the same as a fine for racially motivated discrimination. Thus it did not reflect the fact that two forms of discrimination had taken place.

### 2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

In the commentary to the Act on Ethnic Equal Treatment implementing parts of the Racial Equality Directive, it is stated that the prohibition against differential treatment is applicable irrespective of whether the actual race or ethnic origin of the victim is as assumed by the perpetrator or not. Discrimination based on a perception or assumption of who a person is, is therefore prohibited.

Such a statement is, however, not included in the commentary to the Act on the Prohibition of Discrimination in the Labour Market etc. But our view is that discrimination based on assumed characteristics in the labour market is also prohibited.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

It follows from Section 3(1) of the Act on Ethnic Equal Treatment that no person may subject another person to direct or indirect discrimination on grounds of the latter's or a third party's race or ethnic origin.

Again, no such article appears in the Act on the Prohibition of Discrimination in the Labour Market etc. However, discrimination in the labour market based on a third party's disability is prohibited according to case law concluding that discrimination by association is covered by the Act. See U.2010.2610 in which a mother to a son with a disability was protected against discrimination because of disability. No direct reference was made to the Coleman case (C-303/06 – Coleman) by the Court.

## 2.2 Direct discrimination (Article 2(2)(a))

- a) *How is direct discrimination defined in national law?*

<sup>37</sup> City Court of Copenhagen, Judgment of 3 January 2006.



Definition of direct discrimination: direct discrimination is deemed to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin etc., cf. Section 1(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. and Section 3 (2) of the Act on Ethnic Equal Treatment.

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Discriminatory statements or discriminatory job vacancy announcements are capable of constituting direct discrimination in national law. Infringement of Section 5 of the Act on the Prohibition of Discrimination in the Labour Market etc. prohibiting discriminatory job announcements results in a fine and as such is a criminal provision being dealt with by the police.

The company International Office Supply was fined EUR 450 in a court judgment of 3 January 2006 because of a job advertisement constituting direct discrimination. The job advertisement asked for Danish workers aged 18 to 30 years old.<sup>38</sup>

The Board of Equal Treatment, however, can award compensation for violation the prohibition of discriminatory job announcements. See Decision No. 134/2011 where a restaurant was searching for “young substitute waiters for brunch and parties”. In that case the claimant was awarded DKK 25.000 (€ 3360) in compensation for discrimination due to age.

- c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The starting point is that direct discrimination is never legal – not even if it could be argued to be objectively justified and proportionate.

In Decision No. 22/2011 from the Board of Equal Treatment, the Board concluded that it was not a violation of the Act on Prohibition of Discrimination in the Labour Market etc. to advertise for Asian children to perform as extras in a TV-show. The Board found that it was not the intention of the Act to limit the artistic freedom in the making of TV-shows.

Also refer to Section 4.7.1. in this report on exceptions and justification of discrimination due to age.

- d) *In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?*

<sup>38</sup> City Court of Copenhagen, Judgment of 3 January 2006.



The law does not specify how a comparison should be made in relation to age discrimination.

### 2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

Situational testing is not prohibited, and no limitations on its use apply. It is, however, not widely known and used as a method of documenting discrimination.

In few instances, tests have been used to examine discrimination in nightlife. In January 2005 a television programme followed two groups of youngsters trying to enter nightclubs in Copenhagen with a hidden camera. One group of youngsters belonging to the ethnic majority were allowed to enter while a group of ethnic minority youngsters were refused entry into a number of places. Doormen from three different night clubs were subsequently sentenced by the City Court of Copenhagen based on this evidence. These were criminal cases under the Act on the Prohibition of Discrimination due to Race from 1971 and the situation testing was invoked as evidence.

In general, there are no specific procedural requirements on the use of situation testing in Denmark.

- b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc).*

Typically journalists and NGOs have used situational testing as a way of exposing discriminatory practices, especially by private businesses or in specific sectors of society.

- c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The use of situational testing as sole evidence for discriminatory practice would probably encounter some scepticism at court. However, the results of situational testing could support a case of discrimination against a victim who claims to have been rejected at, for example, a specific nightclub.

No domestic case law indicates the influence of European strategic litigation using situational testing.



d) Outline important case law within the national legal system on this issue.

To my knowledge there is no case law on this issue.

*Press Council [Pressenævnet] no. 2003-6-148 (Decision of 6 April 2004).*<sup>39</sup>

A taxi company made a complaint about articles published in a newspaper dealing with the issue of whether customers could call and order a taxi with a “white or Danish driver”. The Press Council found that the question of whether discrimination against taxi drivers of ethnic origin other than Danish took place was of significant interest to society. The Press Council concluded that it was acceptable for a journalist, during the course of research, to call a taxi company and order a “white or Danish driver” without introducing him- or herself as a journalist, since it must be assumed that the information on whether the company complied with customers’ discriminatory requests would be impossible to get in other ways.

## 2.3 Indirect discrimination (Article 2(2)(b))

a) *How is indirect discrimination defined in national law?*

Definition of indirect discrimination: Indirect discrimination shall be 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. Section 1(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. and Section 3(3) of the Act on Ethnic Equal Treatment.

b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

In Decision No. 141/2011 the Board of Equal Treatment concluded that a requirement of documented education to obtain a taxi licence constituted indirect discrimination on account of ethnic origin. The case dealt with a taxi driver having an ethnic minority background. He complained about discrimination due to ethnic origin in connection with the awarding of taxi licences. The public administration giving out licenses had declared that new criteria for the awarding of licences would be introduced. The Board stated that taxi drivers of Danish origin according to statistical information in general had a higher level of education than taxi drivers of another ethnic origin than Danish. Therefore, the Board found that a new criterion regarding documented education could result in indirect discrimination of ethnic minorities in

<sup>39</sup> KEN nr 9698 af 06/04/2004.





their access to self-employment. The Board concluded that the public administration had not been able to prove that the criterion of “documented education “ was neither objectively justified nor appropriate and necessary. The Board thus agreed with the complainant, that the introduction of this new criterion would be a violation of the Act on Prohibition of Discrimination in the Labour Market etc.

A Supreme Court judgment<sup>40</sup> accepted a supermarket’s wish to be politically and religiously neutral as a legitimate aim and found that a clothing requirement as a means to achieve that aim was appropriate and necessary. The Supreme Court found that A’s dismissal for having worn a head scarf for religious reasons in opposition to the rules on clothing did not amount to illegal differential treatment. The clothing rules in the supermarket applied to every employee and the rules were consistently enforced. The Court recognised that the prohibition of wearing a headscarf when having direct contact with customers would mainly affect Muslim women but found that differential treatment was objectively justified in the performance of the work. The Court did not find that the clothing rule was in breach of Article 9 of the European Convention on Human Rights.

*c) Is this compatible with the Directives?*

From an overall perspective Danish case law (including decisions from the Board of Equal Treatment) on indirect discrimination seem to be in accordance with the Directives.

However, there are still very few judgements from the Supreme Court clarifying the state of the law with regard to indirect discrimination. The headscarf judgement from 2005 (U.2005.1265H) seems to accept a very wide area of managerial powers with regard to clothing rules that have a discriminatory effect on ethnic or religious minorities. The wish to appear politically and religiously neutral to the customers was accepted by the Supreme Court as a legitimate purpose. It can be questioned whether this rather wide interpretation of “legitimate purpose” is compatible with the Directives.

*d) In relation to age discrimination, does the law specify how a comparison is to be made?*

No.

*e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

Yes.

In Decision No. 136/2011 from the Board of Equal Treatment an assistant nurse from

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<sup>40</sup> U.2005.1265H.



a day nursery was dismissed among other things due to her Danish language capabilities. The complainant had an ethnic minority background and had been working at the nursery for 3 years before the dismissal. The employer could not prove that the dismissal of the nurse in question was not a violation of principle of equality in the Act on Prohibition of discrimination in the Labour Market etc. Thus, the complainant was awarded DKK 175.000 (€ 23.525) (9 months of salary) in compensation.

A case from Supreme Court examined whether the plaintiff's dismissal due to his language skills was a violation of the Act on the Prohibition of Discrimination in the Labour Market etc.<sup>41</sup> The Supreme Court concluded that the Dutch nationality of the plaintiff was not the cause of the dismissal. Rather it was the requirement to be able to speak Danish language in connection with the plaintiff's new job assignment on telemarketing on the Danish market. The Supreme Court considered the language requirement to be legitimate and had no reason to overrule the assessment made by the company in question to assign another employee with the telemarketing task.<sup>42</sup>

In Decision No. 56/2010 from the Board of Equal Treatment the claimant was refused for a job as International Account Manager. In the assessment of her application, the employer had put weight on the fact that she spoke English with an eastern European accent. The Board stated that it was a legitimate purpose to require special language capabilities for a position as the one in question. However, the employer had emphasized the eastern European accent and in this regard according to the Board, the employer could not prove that the principle of equality in the Act on Prohibition of Discrimination in the Labour Market etc. had not been violated. The Board awarded DKK 25.000 (€ 3360) in compensation for discrimination because of ethnic origin.

### 2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

According to the preparatory works to the Act on Ethnic Equal Treatment, the assessment of whether a criterion will place persons of a certain race or ethnic origin at a particular disadvantage can be made on the basis of statistical material which shows that the criteria actually place the group of persons proportionately at a particular disadvantage to other persons. Furthermore, it is stated that if it is not possible to produce statistical material, the assessment can be made in any other way demonstrating that the criteria are likely to have this effect.

<sup>41</sup> U.2010.1415H.

<sup>42</sup> U.2010.1415H (Supreme Court 12-02-2010).



The same statement regarding statistical material and indirect discrimination is not found in the preparatory works to the Act on the Prohibition of Discrimination in the Labour Market etc.

- b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

Statistics have primarily been used in cases of gender discrimination, but not very much in cases of discrimination on other grounds, except e.g. as an argument in a court of law that a defendant did hire staff with ethnic minority background and thus according to the defendant did not discriminate.<sup>43</sup> There have been no debates or developments regarding their use and admission in court.

Statistics on the place of birth of immigrants and their descendants have been used to support arguments of indirect discrimination in media coverage of cases where, for example, people living in certain streets or neighbourhoods were denied access to insurance schemes.

- c) *Please illustrate the most important case law in this area.*

To my knowledge there are no published court cases on discrimination that illustrate the use of statistical evidence.

However, in Decision No. 60/2009 from the Board of Equal Treatment, the Board put weight on statistical evidence. The case dealt with a public authority violating the Act on Prohibition against Discrimination in the Labour Market. A job applicant of 58 years of age with relevant qualifications was not called in for an interview for a management position. The Board put emphasis on the fact that 11 applicants called in for an interview were all below 50 years of age, while 10 out of the 13 other qualified applicants not called in for an interview were over the age of 50 years. The Board did not find that the defendant had a satisfactory explanation for the selection for the job interviews. Hence, the Board concluded that discrimination on account of age had taken place.

- d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

<sup>43</sup> U.2005.1265H. See above footnote 38.



Certain restrictions on data collection arise from legislation on personal data protection. Danish law<sup>44</sup> does not permit the collection of data on race or ethnicity, religion or belief and sexual orientation.

Section 4 of the Act on Prohibition of Discrimination in the Labour Market etc. contains an even stricter rule than the Act on Personal Data. Section 4 prohibits employers to ask for, obtain, receive or use information about the race, skin colour, religion or belief, political opinion, sexual orientation or national, social or ethnic origin of a job applicant or an employee.

Concerning data on ethnicity, data collated on country or region of birth of immigrants and their descendants may be used to indicate or prove patterns of discrimination in the labour market, in education and in geographical areas, e.g. neighbourhoods.

Data on age may be retrieved from official surveys on the population as a whole or on sectors or branches of industry from Statistics Denmark [*Danmarks Statistik*]. Data on age may also be compiled by labour market organisations or employers.

Positive measures have been initiated within both public authorities and private entities as part of diversity management programmes or recruitment programmes aiming at achieving better representation of ethnicity and gender among staff members. The above mentioned Section 4 of the Act on the Prohibition of Discrimination in the Labour Market, however, makes it very difficult for private companies to establish positive measures. They are only allowed to establish positive measures to improve equality if they are really big companies being able to make anonymous data collection after the CPR-method. With regard to age and disability, it is possible for private companies to take positive measures (see below Par 4.a. regarding Section 9(3) of the Act).

The CPR method is a tool to collect data on the ethnic composition of staff and show trends in recruitment. It is based on data retrieved via the so-called CPR number – a personal number consisting of birth-date and a four digit code – that allows Statistics Denmark<sup>45</sup> to collect data on country of birth, parents' country of birth and citizenship. To avoid revealing the personal data of identifiable persons, information is provided in a format that ensures anonymity and individual data protection, e.g. by showing benchmark numbers for a sector or a group of entities.

## 2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

<sup>44</sup> Act on Personal Data, no. 429 of 31/05/2000 [*Persondataloven*] and Consolidated Act on Statistics Denmark [*Lov om Danmarks Statistik*] nr. 599 of 22/6/2000.

<sup>45</sup> Publication on Registration of the Ethnic Origin of Employees [*CPR-opgørelse af medarbejderstabens oprindelse*, *Beskæftigelsesministeriet og Institut for Menneskerettigheder*].



Definition of harassment: Harassment shall be deemed to be discrimination when conduct related to race, skin colour, religion or belief, political opinion, sexual orientation, age and disability or national, social or ethnic origin, takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment for the person concerned, cf. the main Section 1 (4) of the Act on the Prohibition of Discrimination in the Labour Market etc. and Section 3 (4) of the Act on Ethnic Equal Treatment.

*b) Is harassment prohibited as a form of discrimination?*

It follows from the national legislation that harassment is deemed discrimination.

In Decision No. 53/2011 from the Board of Equal Treatment, a medical doctor with southern European background felt harassed by his colleagues and managers at the hospital because of his lack of Danish language capabilities. In spite of the fact that the complainant without doubt had experienced negative and unwanted behaviour, the Board argued that the behaviour from the colleagues and managers could not be characterized as a gross infringement. The Board thus concluded that the prohibition of harassment in the Act on Prohibition of Discrimination in the Labour Market etc. had not been violated.

*c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

According to the Act on Work Environment employers are obligated to secure a healthy physical and psychological work environment.<sup>46</sup> This also means that employers must work against harassment at the individual workplace.

## **2.5 Instructions to discriminate (Article 2(4))**

*Does national law (including case law) prohibit instructions to discriminate?  
If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?*

An instruction to discriminate against persons on grounds of race, skin colour, religion or belief, political opinion, sexual orientation, age and disability or national, social or ethnic origin shall be deemed to be discrimination, cf. Section 1 (5) of the Act on the Prohibition of Discrimination in the Labour Market etc. and Section 3 (5) of the Act on Ethnic Equal Treatment.

Persons who are subject to discrimination can be awarded compensation, cf. Section 7 of the Act on the Prohibition of Discrimination in the Labour Market etc. Legal persons can be liable for discrimination.

<sup>46</sup> Act on Work Environment, Consolidated Act Nr. 1072 of 07/09/2010 [*Arbejdsmiljøloven*].



## 2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden? Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

Reasonable accommodation for people with disabilities (cf. Article 5 of the Employment Equality Directive) is implemented through Section 2(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. Section 2(a) obliges the employer to adapt the workplace in order to accommodate the employment of individual persons with disabilities, unless this will place a disproportionate burden on the employer.

The duty of reasonable accommodation applies in situations of hiring a person with a disability, in regard to employment conditions as well as in situations of dismissals.

The duty of reasonable accommodation applies only when the applicant with a disability has the necessary qualifications to do the job if accommodations are made. In Decision No. 82/2010 from the Board of Equal Treatment, the Board concluded that discrimination on account of disability had not taken place. The reason was that the claimant did not seem to have the qualifications required for the job in questions and thus it was legitimate for the employer to hire another candidate who was much more qualified.

When evaluating whether the burden placed on the employer is disproportionate, it is taken into consideration whether some or all of the expense will be covered by the public authorities. National law does not define what would be a disproportionate burden.

Case law gives some indications on the issue of "appropriate":

In a judgement by the Eastern High Court from 29 June 2011, the Court concluded that discrimination because of disability had taken place since the employer had not taken appropriate measures to eliminate the disadvantages of F in her work. The case dealt with F who had a chronic hearing disability and was dismissed from her job. The reason for dismissing her was bad hearing and sick leave. It was revealed





during the case, that the employer had rejected the rebuilding of F's workspace to adapt the workplace to her disability. That rebuilding would cost DKK 40.000 (€ 5375), which the court "did not regard as an disproportional burden". Also the employer did not adapt the distribution of tasks to her disability. In conclusion, F was awarded DKK 150.000 (€ 20.150) in compensation (5 months of salary).

A judgement from the Eastern High Court dealt with A who had epilepsy.<sup>47</sup> After an attack, he was dismissed from his job. The employer reasoned the dismissal with the following: "we cannot take the responsibility for your safety in situations where you work by yourself". When concluding that A had a disability encompassed by the Act on the Prohibition of Discrimination in the Labour Market etc. the court emphasized that his epilepsy was a chronic brain disorder which according to doctors could not be cured by surgery and that A had a need for compensation in the form of reduced working hours and special work tasks. The court found the dismissal to be disproportionate and concluded that instead of dismissing A the employer should have been taken appropriate measures. A was awarded DKK 40.000 (€ 5375) in compensation.

In a court case from 2009, the Maritime and Commercial Court concluded that discrimination because of disability had taken place since the employer did not provide for reasonable accommodation.<sup>48</sup> The case dealt with L who had severe permanent backaches. Due to illness the employer decided to terminate the training agreement. The employer had not provided any reasonable accommodations to L in order to comply with his need for compensation. For instance the employer had refused a proposal by the municipality concerning a personal assistant arrangement, which presumably could have fulfilled L's need for compensation. Since the court found no reason to assume that the arrangement would impose a disproportionate burden on the employer, the court awarded 97.200 DKK (€ 13.050) in compensation.

The definition of a disability for the purposes of claiming reasonable accommodation is the same as for claiming protection from discrimination in general.

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The duty to provide reasonable accommodation only applies on the labour market.

- c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

<sup>47</sup> U.2010.2303Ø.

<sup>48</sup> U.2009.1948SH.



If an employer does not provide reasonable accommodation and if this is not justified, it will constitute indirect discrimination in violation of the Act.

- d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

There is no general duty to provide reasonable accommodation for grounds other than disability.

However, Section 81(5) of the Road Traffic Act<sup>49</sup> and Paragraph 2 of a government circular (Bkg 1998 No. 518) state that male Sikhs are exempted from wearing a crash helmet when riding a motorbike since they are obliged to wear the turban outside at all times. There is no known legal obligation to provide reasonable accommodation in regard to other grounds of discrimination.

There are many examples both in the labour market and in the education sector of reasonable accommodation to for example allow Muslim students or employees the opportunity to pray in a room reserved for this purpose or to allow the opportunities to eat special food. However, this kind of reasonable accommodation is not based on any legislative obligation. Another example from the field of sport is that some municipalities reserve swimming pools at certain times for women so that Muslim women can use the facilities without meeting men.

- e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

According to Section 7a of the Act on the Prohibition of Discrimination in the Labour Market etc., the burden of proof shifts if the claimant is able to present facts giving reasons to assume that differential treatment has occurred. Thus the provision does not entail a total shift of burden of proof, but a divided burden of proof. The same rule applies in cases of denial of reasonable accommodation.

- f) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?*

According to a regulation from 2004 regarding accessibility in connection with the rebuilding of existing buildings, a number of accessibility measures are to be taken such as providing disabled access to at least one level of a building. The regulation covers all publicly accessible buildings and commercial buildings for services and administration.<sup>50</sup>

<sup>49</sup> Consolidated Act 2005-11-14 no. 1079 Færdselsloven.

<sup>50</sup> Regulation no. 1250 of 13 December 2004.



In a concrete case, the failure of an employer to comply with this regulation could probably be used in support for the point of view that the employer did not fulfil his obligation to provide reasonable accommodation. I am, however, not aware of any such cases.

- g) *Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?*

No general obligation exists.

- h) *Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?*

Outside the area of anti-discrimination legislation, there are a number of acts concerning persons with disabilities. In the following, two examples on labour market regulations will be mentioned:

*The Act on Compensation for Persons with Disabilities in the Labour Market [Lov om Kompensation til Handicappede i Erhverv mv.]*<sup>51</sup>

This Act aims to allow persons with disabilities the same opportunities in the labour market as persons without disabilities through accommodation. In accordance with the Act, people with disabilities who wish to work can be given reasonable accommodation such as personal assistance, financial support to the employee when hiring a person with disabilities, etc. Expenses under such schemes are covered by the state.

Section 2 of the Act on Compensation provides for preferential treatment of job applicants with disabilities within the public sector. Thus, a job applicant with a disability is entitled to a job interview for vacant positions in the public administration.

*The Act on Active Employment Effort [Lov om Aktiv Beskæftigelsesindsats]*<sup>52</sup>

This Act has introduced a range of measures for municipalities and the employment services, e.g. a wage subsidy by local authorities and financial support for teaching materials, equipment in the workplace and personal assistance. The tools are to be applied when job offers are made to, for instance, newly qualified persons with disabilities and persons with a permanent reduced working capacity who are in

<sup>51</sup> Consolidated Act No 727 of 7 July 2009.

<sup>52</sup> Consolidated Act No 710 of 23/6 2011.



receipt of an early retirement pension and who are not able to get or hold a job with shorter hours on normal conditions

## 2.7 Sheltered or semi-sheltered accommodation/employment

- a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Chapter 19 of the Social Service Act [Serviceloven]<sup>53</sup> and chapter 10 of the Act on Active Employment Effort [Lov om Aktiv Beskæftigelsesindsats]<sup>54</sup> provides for an obligation for local authorities to offer sheltered employment and education for persons with physical and intellectual disabilities.

- b) *Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?*

In Decision No. 57/2011 from the Board of Equal Treatment, the Board concluded that “protected employment” did not constitute employment encompassed by the Act on the Prohibition of Discrimination in the Labour Market. The case dealt with a woman was working in a protected employment according to a special Act on Services (Serviceloven). The local authorities stopped the subsidy, which allowed the complainant to benefit from the special protected employment when she turned 65 years of age. The complainant argued that she had been discriminated against due to her age. The Board concluded that the Act on Service was a special social measure aiming at the improvement of the quality of life of the individuals covered by the Act. Thus the Board concluded that the protected employment did not constitute normal employment encompassed by the Act on Prohibition of Discrimination in the Labour Market. Thus no discrimination on account of age had taken place.

In a judgement by the Eastern High Court, the scope of what is considered as work in relation to sheltered workshops seems to be relatively narrow.<sup>55</sup> For a certain length of time the claimant (who was not disabled) lived in the St. Dannesbo sheltered home while he was receiving social benefits. During his stay he also worked in St. Dannesbo’s sheltered workshop. On top of his social benefits, he received a so-called “working reward” of EUR 1.5 an hour (DKK 11.87 per hour). On this basis, he asked for a work contract, which under Danish law all employers must issue to employees within one month of commencing work (including provisions on working conditions, working hours etc.). The municipality argued that this was not real work and refused to issue a contract. The claimant therefore brought a claim for compensation for failure to supply a work contract under the Act on Work Contracts.<sup>56</sup>

<sup>53</sup> Consolidated Act No. 904 of 18/08/2011.

<sup>54</sup> Consolidated Act No 710 of 23/6 2011.

<sup>55</sup> U.2005.1429Ø.

<sup>56</sup> Act No. 240 of 17 March 2010 om arbejdsgiverens pligt til at underrette lønmodtageren om vilkårene for ansættelsesforholdet.



The Eastern High Court held that the main purpose of his stay at St. Dannesbo was not to work but to receive shelter and care. The amount of money he received in the sheltered workshop was only pocket money and not a real salary. If he did not show up for work, he could not be fired and the items produced did not generate income. Even though he did pay tax on this so-called work reward, the High Court concluded that this did not constitute conditions of employment but was rather an offer of a service to benefit his social skills. Consequently he did not have the right to a work contract.

Even though the claimant was not disabled, it may be concluded that disabled persons who are working in the (same) sheltered workshops are not protected by employment law, because such activities are considered outside the scope of “work”. This may limit protection under the Employment Equality Directive in that employment will not include sheltered workshops.

Thus it seems that the Danish courts apply a narrow interpretation of what constitutes employment or work under national law and leaves out sheltered work / employment which may limit protection under the Employment Equality Directive.



### 3 PERSONAL AND MATERIAL SCOPE

#### 3.1 Personal scope

##### 3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

*Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?*

All individuals within Danish jurisdiction regardless of their status, whether they have a permanent or time-limited residence permit or are illegal migrants, and irrespective of citizenship and nationality, are protected from discrimination according to the Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market etc. that transpose the Directives.

##### 3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

*Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

Danish law distinguishes between natural persons and legal persons and states 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.

##### 3.1.3 Scope of liability

*What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?*

Section 1 (4) of the Act on the Prohibition of Discrimination in the Labour Market etc. contains a prohibition against harassment and Section 1 (5) provides a prohibition against instruction to discriminate. This prohibition applies both in situations where the employer is the one exercising the harassment as well as in situations where he or she gives an instruction to other employees to discriminate, e.g. in a recruitment situation where the employer tells the personnel manager to avoid hiring employees with an ethnic minority background.





The guidelines to the provisions<sup>57</sup> state that the employer is also liable for any harassment or other discriminatory behaviour exercised by other employees as the employer has to take the necessary measures to ensure a harassment-free working environment.

This also follows from the general Danish principle of employer liability according to Provision 3-19-2 of *Danske Lov*, which dates from 1683. According to this principle, an employer is responsible not only for his own negligence and faults, but also for faults committed by his employees acting on his behalf.

If a sub-contractor is an independent legal entity, person or company, the responsibility lies with the sub-contractor and not with the contractor.

Faults committed by employees are the employer's responsibility. However, as harassment is not part of performing a job, harassment will not be considered to be included in, or to be part of, the employer's responsibility, unless he has neglected his duty to instruct or correct his personnel as a good employer should to avoid harassment among employees. Thus, if the employer is not responsible for harassment by an employee against another employee, the only thing the employee who experienced harassment can do is to claim compensation from his or her colleague according to Section 26 Act on Damage Liability [*Erstatningsansvarsloven*].<sup>58</sup> A reason for this is that only employers are obligated by the Act on Prohibition of Discrimination in the Labour Market etc.

Similarly, a trade union is liable if an employee of the trade union discriminates against a member of the trade union, but this liability is restricted to the actions of employees and not of members of the union.

## 3.2 Material Scope

### 3.2.1 Employment, self-employment and occupation

*Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?*

*In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.*

<sup>57</sup> Vejledning om forskelsbehandlingsloven VEJ nr 9237 af 6 januar 2006 - Chapter 5 Page 13.

<sup>58</sup> Consolidated Act No. 885 of 20/9/2005.



### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?**

Section 2(1) of the Act on the Prohibition of Discrimination in the Labour Market etc. covers all aspects of discrimination in relation to access to employment, to self-employment and to occupation, including selection criteria, recruitment conditions and promotion.

Decision No. 104/2011 from the Board of Equal Treatment dealt with a woman who had been rejected a licence to run a private day-care centre for children because of her sight disability and because of the importance of eye contact with small children. The Board found that the local administration could not prove that discrimination had not taken place. Thus the woman was awarded a compensation of DKK 25.000 (€ 3360).

In general, the anti-discrimination legislation does not differentiate between the public and the private sector.

However, in the public sector Danish citizenship can be a selection criterion for the police, judges etc., while in the private sector such requirements may be considered indirect unjustified discrimination due to national or ethnic origin. If, however, a private company has subcontracted with the Danish state – e.g. for printing Danish passports or bank notes etc. – this company may be obliged by the contract to hire only Danish citizens.

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))**

*In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.*

*Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.*

Article 3 (1) (c) of the Directive states that areas of employment and working conditions, dismissals and pay are covered by the Directive. These requirements are met in Section 2 (2)<sup>59</sup> of the Act on the Prohibition of Discrimination in the Labour Market etc., according to which an employer is prohibited from exercising differential

<sup>59</sup> Art. 2(2) of the Act on the Prohibition of Discrimination in the Labour Market etc states: "Discrimination shall be deemed to have occurred in relation to payment conditions if an equal salary is not offered for the same job or for jobs which are regarded as having the same value".



treatment in connection with recruitment, dismissal, transferral, promotion, and work and pay conditions. The prohibition covers all the protected grounds. Occupational pensions are not mentioned specifically in the Act. However, occupational pensions are probably covered by the term “pay conditions” in Section 2 (2) of the Act.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))**

*Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?*

The Act on Ethnic Equal Treatment Section 2 (3) states that the Act shall not apply to areas covered by the Act on the Prohibition of Discrimination in the Labour Market etc. Training outside the labour market is, however, directly dealt with by the Act on Ethnic Equal Treatment.

Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience, are covered in Section 3(1) of the Act on the Prohibition of Discrimination in the Labour Market, etc.

There was one case concerning adult vocational training (AMU), which in a Danish context is considered to be similar to paid work. A participant was subject to religious/racial harassment from other participants while he was praying in the corridor at the AMU centre. The AMU centre decided to dismiss him, as he provoked the other participants by praying. The court passed judgement in favour of the AMU centre with the argument that the dismissal was justified by the need to keep order. The decision was upheld by the Supreme Court.<sup>60</sup>

In a case of race discrimination at a technical school<sup>61</sup> it was decided by a city court and confirmed by the Eastern High Court that this situation was not covered by the Act on the Prohibition of Discrimination in the Labour Market etc. but rather by the Act prohibiting unequal treatment in goods and services (the Ethnic Equal Treatment Act of 2003). By considering a technical school as a form of education covered by the provision on goods and services, race discrimination was covered, but a problem potentially exists in relation to the other protected grounds: through this decision the Danish court excluded students at technical schools from protection against discrimination due to age, disability, sexual orientation, religion and belief (as no

<sup>60</sup> Danish Law Weekly 2001 page 83. UfR [Ugeskrift for Retsvæsen] 2001, 83 H. For a full description of this case, see section 0.3 above.

<sup>61</sup> Eastern High Court [Østre Landsret] 27 June 2006.



provisions exist against discrimination on these grounds in the field of goods and services). This judgement appears wrong.<sup>62</sup>

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))**

*In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.*

According to Section 3 (4) of the Act on the Prohibition of Discrimination in the Labour Market etc., the prohibition against discrimination also covers membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations. The Act covers the following grounds: race, colour, religion, political opinion, belief, sexual orientation, age, disability and national, social or ethnic origin.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

*In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?*

The exception is not directly repeated or implemented in the Act on the Prohibition of Discrimination in the Labour Market.

With the adoption of the Act on Ethnic Equal Treatment in 2003 – covering the non-employment aspects of the Racial Equality Directive – both direct and indirect unequal treatment in the area of social protection (including social security) and healthcare are now prohibited, cf. Section 2 of the Act.

In Decision No. 58/20 by the Board of Equal Treatment<sup>63</sup> the claimant was discriminated against due to his ethnic origin when he was applying for social security.

### **3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)**

*This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for*

<sup>62</sup> Finn Schwarz and Jens Jakob Hartmann, Forbud mod forskelsbehandling på arbejdsmarkedet – forskelsbehandlingsloven (2011), page 70.

<sup>63</sup> See:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=537&type=Afgoerelse>.



*example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of ‘social advantages’ or if discrimination in this area is likely to be unlawful.*

According to the Act on Ethnic Equal Treatment in 2003 – covering the non-employment aspects of the Racial Equality Directive – both direct and indirect discrimination in the areas of social advantages is prohibited, cf. Section 2 of the Act. This Act was not extended to other grounds than ethnicity, leaving age and disability, amongst others, outside of the scope of protection.

Complementary to this protection is Section 1(1) of the criminal Act on the Prohibition of Discrimination due to Race from 1971, according to which penalties are warranted for differential treatment of persons on the ground of colour of skin, national or ethnic background, belief and sexual orientation in a number of areas of life including social advantages. Any public or private leisure facilities etc. open to the public, whether on a commercial or non-profit basis, must be offered on equal terms to everybody.

According to the Act on the Prohibition of Discrimination due to Race it is also an offence to refuse admittance on the same terms as others to social centres, or similar facilities open to the public, if the refusal is based on one of the protected grounds.

### **3.2.8 Education (Article 3(1)(g) Directive 2000/43)**

*This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*

*Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated “special” education are favoured and supported.*

The civil Act on Ethnic Equal Treatment prohibits discrimination on account of race and ethnicity. The criminal Act on the Prohibition of Discrimination due to Race from 1971 prohibits discrimination on account of race, skin colour, national or ethnic origin, belief and sexual orientation. The two laws apply to all aspects of education including university education and all types of schools. There are no provisions explicitly mentioning Roma children.

The municipality of Elsinore set up segregated classes for Roma children from 2002. The official explanation for these segregated classes was the need to make sure that the children would show up at school in the morning. This was not believed to be an



objective justification by the Council of Europe Commissioner for Human Rights<sup>64</sup> and the Complaints Committee for Ethnic Equal Treatment,<sup>65</sup> which consequently stated that the segregation of Roma children was not in accordance with the law. In 2006 the municipality thus decided to cease the Roma classes and allow the children back into the ordinary classes in state schools in Elsinore.

Similar forms of school segregation of ethnic minority groups other than Roma have not been observed.

The point of departure in Danish legislation concerning education is that children are educated in schools or at home by their parents.

Children who require special support (for instance children with disabilities) that cannot be achieved by differentiating teaching within the framework of ordinary education are offered special education and other types of special educational assistance.

The purpose of special educational assistance is to enhance the development of children with special needs so that the children can, among other things, continue their education or take up employment. It includes, for instance, provision of advice to teachers, parents and other relevant persons, special educational materials and facilities, education specially focusing on the learning ability of the child, personal assistance, special activities focusing on relieving a disability etc., cf. Section 2 of the Administrative Order on Special Education.<sup>66</sup>

According to the legislation, the relevant factor when selecting the type of education is not the child's diagnosis but an estimation of how the child will profit most from education. If a child is able to retain a connection to normal teaching and classes while receiving special educational assistance, this will be preferred. If the child cannot profit from participating in ordinary education, he or she may be given the opportunity to attend a special class at a state school or at a special teaching facility, cf. Section 9 of the Order.

In 2011 the segregation of children with disabilities in special schools or classes was criticized in the public debate. It was argued that children with disabilities to a much larger extent must be included in the primary school.<sup>67</sup>

<sup>64</sup> Final report by Mr. Alvaro Gil/Robles, 15 February 2005, Council of Europe.

<sup>65</sup> Decisions of 5 December 2005, 730.7.

<sup>66</sup> Bekendtgørelse om folkeskolens specialundervisning og anden specialpædagogisk bistand No. 885 of 7/7/2010.

<sup>67</sup> Stig Langvad, President of the Disabled Peoples Organisations Denmark: <http://www.kristeligt-dagblad.dk/artikel/445137:Debat--Inklusion-er-bedst--Folkeskolen-boer-have-plads-til-boern-med-handicap>.

See also Policy Paper on Primary School by the Disabled Peoples Organisations Denmark: <http://www.handicap.dk/dokumenter/politikpapirer/politikpapir-grundskolen>.





### 3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

The criminal Act on the Prohibition of Discrimination on grounds of Race etc. warrants penalties for differential treatment of persons on the ground of colour of skin, national or ethnic background, belief and sexual orientation in a number of areas of life including the supply of goods and services. The discrimination grounds of age and disability are not covered.

Any public or private supply of goods and services open to the public, whether it is commercial or non-profit, must be offered on the same terms as to others.

It is also an offence to refuse a person admittance on the same terms as others to a place, restaurant, shop, or the like that is open to the public, if the refusal is based on one of the grounds protected by the Act on the Prohibition of Discrimination on grounds of Race etc. In practice the Act has been very difficult to use in the area of goods and services, although some doormen have been fined for denying access to restaurants, night clubs etc.

The civil Act on Ethnic Equal Treatment covers all public and private activity concerning social protection, including social security and healthcare; social benefits; education and access to goods and services, including housing, available to the public. It also covers membership of organisations whose members carry out a specific profession and the benefits that the members of such organisations receive. This Act, however, only covers the discrimination grounds of race and ethnic origin.

In Decision No. 14/2011 from the Board of Equal Treatment, the Board concluded that a discotheque had violated the Act on Ethnic Equal Treatment by refusing the complainant access because of his minority background. The discotheque was responsible for the behaviour of the guards and the claimant was awarded a compensation of DKK 10.000 (€ 1350) from the discotheque.

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

The law allows for differences in treatment on the grounds of age and disability if the service is not related to the labour market. Besides from the general principle of



equality in administrative law covering the public sector in Denmark, Danish law does not protect against discrimination due to age or disability outside the labour market.

### 3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

*To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.*

The Act on Ethnic Equal Treatment applies to public and private housing companies that rent houses, and to real estate companies. The term “available to the public” should be interpreted in a broad sense, but the Act does not apply to private persons sub-letting a room in their own home. Direct and indirect discrimination in the area of housing is prohibited by law.

In Decision No. 34/2010 from the Board of Equal Treatment a student claimed that he had been discriminated against in connection with renting an apartment because of his ethnic origin. The Board held that it was a violation of the Act of Ethnic Equal Treatment and the prohibition to discriminate on the grounds of race and ethnic origin, when a non-commercial (i.e. private) renter would not rent an apartment to people, who were not of Danish origin. The claimant was awarded compensation of DKK 5.000 (€ 675).

In relation to public housing, discrimination is, moreover, prohibited by the principle of equality in administrative law.

Various initiatives have been introduced to avoid segregation and promote integration. As a rule, public housing is assigned according a waiting list, but a number of exceptions apply. This means that public housing can use criteria other than length of time on a waiting list. The intention is to attract applicants from a broader segment of the population to troubled areas with high numbers of residents outside the labour market.<sup>68</sup> This approach may result in discrimination against ethnic minorities, since they have a higher unemployment rate than ethnic Danes.

Municipalities are obliged to offer housing which is fit for permanent residence to disabled persons who are in need of accommodation, cf. Section 108 of Act on Social Services [*Lov om social service*].<sup>69</sup> Furthermore, they must offer accommodation for older people with a need for housing no later than two months after they have applied, cf. Section 192a of the Act.

<sup>68</sup> Regulation on rental of public housing [*Udlejningsbekendtgørelse*] No. 1303 of 15/12/2009.

<sup>69</sup> Consolidated Act No. 904 of 18/8/2011.



## 4 EXCEPTIONS

### 4.1 Genuine and determining occupational requirements (Article 4)

*Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?*

Sections 6(1) and 6(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. contain two exceptions to the prohibition against differential treatment in the labour market. See 3.2.

These exceptions seem to comply with the Directives.

### 4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

According to the exemption in Section 6(1), the Act on the Prohibition of Discrimination in the Labour Market etc. does not apply to employers whose establishments have the aim of promoting a certain political or religious point of view (for example a church that wants to hire a priest can exclude all applicants of another faith, because religion in this case is an occupational requirement). The same applies to organisations with a specific ethos, for example, private schools established on the basis of a specific religion.

The provision explicitly states that the requirement has to be of crucial *significance or importance* to the particular job in question. There hence has to be a case-by-case assessment, and organisations with a religious ethos are as a point of departure bound by the Act.

In Decision No. 56/2011 from the Board of Equal Treatment a Christian organisation had a general requirement that their employees should be members of the Danish national church. The organisation posted a vacant position as an organisational consultant and required that applicants should be members of the Danish national church. The Board found that it was a violation of the Act on Prohibition of Discrimination in the Labour Market etc. to have a general requirement of membership of the church. However, with regard to the concrete position as an organisational consultant, the Board stated that it was legal to require membership of the National church. The Board thus concluded, that the religious requirement was encompassed by the exception in Section 6(1) of the Act since the organisational consultant should work with the core tasks of the Christian organisation.



According to Section 6(2), if it is of crucial significance that a person has a particular race, political opinion, sexual orientation or national, social or ethnic origin, has a particular skin colour, age or disability or belongs to a certain religion or belief and if the requirement for such a characteristic is reasonable in relation to the work in question, the minister concerned can, after having obtained a statement from the Ministry of Labour, deviate from the prohibition against differential treatment.

- b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

According to a regulation on deviation from equal treatment of men and women in regard to occupation etc. when it comes to occupation as a clergyman,<sup>70</sup> such positions in the Danish National Evangelical Lutheran Church and other similar positions within religious communities are exempted from the scope of the Act on Equal Treatment between Men and Women.<sup>71</sup>

- c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

There are no cases regarding whether religious institutions can select people on the basis of their religion. According to Section 6(1) of the Act on the Prohibition of Discrimination in the Labour Market etc., such a selection is, however, legal. Selection requirements must be relevant for the particular job in question and in accordance with the principle of proportionality.

#### **4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)**

- a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

According to Section 1(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., the Ministry of Defence can make exceptions for the armed forces in relation to age and disability.

<sup>70</sup> Regulation No. 350 of 10/7/1978.

<sup>71</sup> Consolidated Act No. 645 of 8/6/2011. Bekendtgørelse af lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse m.v.



- b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

According to Section 5(a) (3) of the Act on the Prohibition of Discrimination in the Labour Market etc., the Act is not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements, presuming that these age limits are objectively and reasonably justified by a legitimate aim within the scope of Danish legislation and that the means of achieving that aim are appropriate and necessary. This exception applies to the police, prison and emergency services.

#### 4.4 Nationality discrimination (Art. 3(2))

*Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).*

- a) *How does national law treat nationality discrimination? Does this include stateless status?  
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?  
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)*

The Act on the Prohibition of Discrimination in the Labour Market etc. does not cover discrimination based on nationality, as citizenship is not covered by the Act. Demanding a certain citizenship may constitute indirect discrimination based on ethnic origin.<sup>72</sup> Since specific citizenship is not covered by the Act, it must be assumed that the same goes for stateless persons.

In the public sector "Danish citizenship" is a selection criterion for the police, judges etc. This is established by law as these are functions related to the essence of Danish sovereignty. However, public employees in most sectors are not required to be Danish citizens.

Besides from these particular job categories, requirements of nationality in the private and public sector may be considered indirect discrimination due to national or ethnic origin.

In Decision No. 128/2011 by the Board of Equal Treatment, a private company had used a standard scheme in which job applicants among other things should state their nationality. The Board concluded that the question to job applicants dealt with citizenship in contrast to national origin and thus was not encompassed by the Act on

<sup>72</sup> Preparatory works to Act no. 459 of 12. June 1996 on Prohibition against Differential Treatment in the Labour Market.



prohibition of Discrimination on the Labour market etc. Thus, no violation of the Act had taken place.

In Decision No. 115/2010 from the Board of Equal Treatment, the complaint concerned the question of the financing of a loan for a car. The Board found that it was a violation of the Act on Ethnic Equal Treatment to require additional documentation for citizenship or residence permit in connection with the loan, because of the fact that the applicant for the loan was not born in Denmark. The complainant was thus awarded a compensation of DKK 10.000 (€ 1350) for indirect discrimination because of ethnic origin.

The Act No. 329 of 14 May 1997 (lov om taxikørsel), stipulated that only persons of Danish nationality and persons from EU member countries could obtain a licence as a taxicab owner. According to the Act, a taxicab owner of foreign nationality would be denied a licence for another taxicab.

In a court case a taxicab owner disputed the validity of this rule as being incompatible with article 14 of the European Human Rights Convention and article 26 of the UN Convention on Civil and Political Rights. While a high court upheld his contention, the Supreme Court came to the opposite decision,<sup>73</sup> arguing that the applicant did not have a legal claim for an additional, (besides the 6 he already possessed) license. The aim of the restriction was to have identical requirements for a license to public transportation which was considered an important part of the infrastructure of the country and the Supreme Court was of the opinion that the Parliament was better placed to assess whether this was the situation in this case. Finally the Supreme Court found Denmark did not violate CERD article 5 and ICCPR article 26 by making differential treatment between people with Danish nationality and foreigners.

This decision was criticised by some legal experts. The Act was changed in 1999 so that Danish nationality is now no longer a condition of obtaining a licence as a taxicab owner.

It is hence possible to set citizenship requirements but only by passing a law and only as long as they are considered proportionate and have a legitimate aim.

There is often an overlap between the discrimination grounds of ethnic origin and national origin. In Decision No. 33/2011 by the Board of Equal Treatment, the complainant was of Russian origin and was rejected for a job as teacher and translator in Russian and English. The employer had stated that they only hired Danes or Englishmen as English teachers. The complainant had thereby established sufficient facts from which it could be presumed that the employer had discriminated against her on account of her national origin. The employer could not prove that they had rejected the applicant due to her qualifications and not because of her national origin. The complainant was awarded DKK 25.000 (€ 3360) in compensation.

<sup>73</sup> Danish Law weekly 2002 page 1789 Supreme Court (UfR. 2002.1789.H).





b) *Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?*

No.

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

*Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.*

a) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?*

The Act on Prohibition of Discrimination in the Labour Market etc. prohibits the discrimination on account of sexual orientation in the area of employee benefits. Therefore such a limitation may be unlawful. No case-law is known.

b) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?*

The Act on Prohibition of Discrimination in the Labour Market etc. prohibits the discrimination on account of sexual orientation in the area of employee benefits. Therefore such a limitation may be unlawful. No case-law is known.

#### **4.6 Health and safety (Art. 7(2) Directive 2000/78)**

a) *Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

Section 9(3) of the Act on Prohibition of Discrimination in the Labour Market etc. allows for the establishment of positive measures to improve the employment possibilities of individuals with a disability. It does not directly refer to health and safety issues.

b) *Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc)?*



The only known exception is found in Section 81(5) of the Road Traffic Act [Færdselsloven]<sup>74</sup> and § 2 of Government Circular Bkg 1998 518, which states that male Sikhs are exempted from wearing a crash helmet when riding a motorbike, since they are obliged to wear the turban outside at all times. There are no known exceptions concerning other grounds.

*Judgment by the Eastern High Court of 24 October 2006 (U.2007.316Ø)*

A Sikh carried a kirpan knife as a religious symbol in a public space. The Court found that there was no exception in the Act on Small Arms [Våbenloven]<sup>75</sup> in relation to religious symbols. The Court therefore held the kirpan to be a knife and consequently there had been a violation of the Act. The kirpan was confiscated, but a fine was annulled because the Court considered the reason for wearing the kirpan as mitigating circumstances. The Court did not find the sanction to be a violation of Article 9 of the ECHR. The Danish courts made no reference to any ECtHR decisions or judgments.

The issue of reasonable accommodation was not as such argued in the case. This example shows that there are no religious exceptions in relation to the Act on Small Arms.

#### **4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold?*

Subsection 3 and 4 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. allow for direct discrimination due to age. It is stated in Subsection 3 that existing collective agreements setting age requirements for certain professions can be maintained only if such an age requirement is objectively and reasonably justified by a legitimate aim within the scope of national legislation and that the means of achieving that aim are appropriate and necessary.

In Decision No. 59/2011 by the Board of Equal Treatment, a young man 17 years of age had been working in a supermarket. He complained that he was not being paid in accordance with his qualifications. His employment was encompassed by a collective agreement having special rules for young employees below 18 years of age. The Board concluded that discrimination because of age had not taken place.

<sup>74</sup> Consolidated Act 2005-11-14 no. 1079 Færdselsloven.

<sup>75</sup> Lovbekendtgørelse 2009-06-22 No.. 704 om våben og eksplosivstoffer.



The reason was the exception clause in the Act on the Prohibition of Discrimination in the Labour Market exempting young employees below 18 years of age being covered by collective agreements.

Subsection 4 further states that collective agreements that prescribe the termination of employment at the age of 70 years can be maintained. However, Subsection 4 does not mention that such provisions in collective agreements must meet the proportionality test, as is the case in Subsection 3. In other words, direct discrimination due to age before the age of 70 (in existing collective agreements) can be maintained if the proportionality test is met. From the age of 70, direct discrimination does not need to meet the proportionality test, if it is part of a collective agreement.

Furthermore, Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. provides for positive action with regards to senior workers to promote the employment of elderly people.

Subsection 4 of Section 9 of the Act on the Prohibition of Discrimination in the Labour Market etc. also allows for age requirements imposed by other legislation, if such requirements are established in order to protect children and young people.

b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

See above under a).

c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?*

According to Section 6(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., age requirements can be set for admission to occupational pension schemes – such requirements must not, however, result in sex discrimination.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

*Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.*

As mentioned above, Section 9(3) of the Act on the Prohibition of Discrimination in the Labour Market etc. provides for positive action with regards to senior workers with a view to promoting the employment of elderly people.



According to Section 16(4) of the Act on Equal Treatment of Men and Women regarding Occupation etc., the burden of proof is reversed when a person is dismissed during pregnancy or maternity leave.<sup>76</sup> In these situations the employer must prove that the dismissal was not motivated by these reasons.

There are no special conditions set by law for younger workers.

According to Section 41 of the Act on Social Services, the municipal council is under an obligation to contribute to the reimbursement of additional costs necessary for the homecare of children under the age of 18 with a permanently reduced functional capacity. It is a requirement that the extra costs are caused by the reduced capacity.

According to Section 42 of the Act on Social Services, municipal councils must reimburse a portion of the earnings lost by persons who support an underage child at home with a permanently reduced functional capacity.

It is a requirement that it is necessary to take care of the child at home because of the reduced functional capacity and that it is most suitable that the child is cared for by the mother or the father.

According to Section 43 of the Act, municipal councils must provide an additional payment for up to 3 months to unemployed persons who receive a reimbursement under Section 42.

#### **4.7.3 Minimum and maximum age requirements**

*Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?*

It is not prohibited to have provisions in collective agreements regarding special rules on payment etc. for young people under the age of 18, cf. Subsection 5 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc.

According to Subsection 6 of Section 5(a), the prohibition against differential treatment due to age does not apply in regard to employment, conditions of pay and dismissal for young people under the age of 15. This also the case, when their employment is not regulated by a collective agreement.

#### **4.7.4 Retirement**

*In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-*

<sup>76</sup> Consolidated Act No. 645 of 8/6/2011.



*imposed, imposed by an employee's employment contract or imposed by a collective agreement).*

*For these questions, please indicate whether the ages are different for women and men.*

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

The retirement pension is an age-determined pension payable to persons of 65 years and over if they are born before 1959.<sup>77</sup> If they are born in or after 1959 the pension age increases to 67 years of age.

The pension remains payable even if the pensioner works. The pension will, however, be reduced on the basis of the recipient's income.

If a person is entitled to a retirement pension, he or she can postpone the payment of the pension to a time after he or she has turned 65 if he or she chooses to postpone retirement.

- b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

Occupational pension schemes and other employer-funded pension arrangements are not regulated by law, but are either a part of collective agreements or individual arrangements. There are different age limits in the different agreements/arrangements.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

There is no general state-imposed retirement age; however, in some areas retirement ages are set by collective agreements for certain professions. Furthermore, there is an age limit for civil servants working within the judiciary according to which they are dismissed from the end of the month where they turn 70.<sup>78</sup> The general mandatory retirement age of 70 years of age for civil servants was abolished in 2008.

<sup>77</sup> See the Act on Social Pensions, Consolidated Act No. 1005 of 19/8/2010.

<sup>78</sup> See Section 34 of the Act on Public Servants [Tjenestemandsloven], Consolidated Act No. 488 of 6/5/2010.



- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

National legislation provides for a retirement age of 70 years. According to Subsection 4 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc., the provision regarding differential treatment due to age does not apply to provisions regarding age limits laid down in or agreed upon in collective agreements when the employee has reached the age of 70. Provisions on retirement ages below 70 years of age violate the law unless they are derived from existing collective agreements.

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

This area is covered both by legislation and by collective agreements and the protection does not depend on age. For instance, a worker's rights are not lost because he or she is still employed late in life as long as the person is covered by the Salaried Employees Act [*Lov om retsforholdet mellem arbejdsgivere og funktionærer*]. A person not covered by this act will often be covered by a collective agreement. It does not make a difference whether the person is a man or woman.

#### 4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

According to the Act on the Prohibition of Discrimination in the Labour Market etc., it is forbidden to take age into consideration in selecting workers for redundancy.

In Decision No. 126/2011 by the Board of Equal Treatment, a woman of 65 years of age was dismissed from her job as a children-expert with a public administration. The reasons for the dismissal were lack of finances. In the group of children experts the two employees being dismissed were the two oldest. The Board concluded that the employer could not prove that the age of the complainant had not influenced the dismissal. Thus the complainant was awarded DKK 175.000 (€23.525) (4 months of salary) in compensation.

- b) *If national law provides compensation for redundancy, is this affected by the age of the worker?*

If the redundancy is judged illegal, workers can be awarded compensation according to national law. The Dismissal Board [*Afskedigelsesnævnet*] has developed a 25-year rule in its case law, meaning that an employer has an obligation, if possible, to





refrain from dismissing a person who has been employed for 25 years or longer. If an employee with seniority of 25 years or more is dismissed, the burden of proof shifts to the employer, who has to prove that there were strong reasons for dismissing this particular person. There is, however, to our knowledge no case law indicating that the age of the worker has an influence on the size of the compensation awarded.

#### **4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

*Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?*

No. However, special requirements regarding age do exist.

#### **4.9 Any other exceptions**

*Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.*

No other exceptions are found.



## 5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

There is no general provision for special or positive measures in Danish law embracing all discrimination grounds.

An exception is Section 9(2) of the Act on the Prohibition of Discrimination in the Labour Market. This Section states that the Act does not prevent measures being taken with a view to improving employment opportunities for persons of a specific race, skin colour, religion, political opinion, sexual orientation or national, social or ethnic origin, age or disability by virtue of other legislation, rules other than legislation and other public measures.

This right to take special measures does not apply to private employers who want to improve employment opportunities for persons with, for instance, a different ethnic background. Thus, legislation makes it difficult for private employers to do active equal opportunity work.

According to Section 9 of the Act, such special measures thus require legal authority and are primarily to be taken by the minister through public projects.

Hence, Section 9 of the Act is primarily directed at the public sector and projects improving integration of ethnic minorities.

According to Section 9(3), it is possible for private employers to take positive measures – but only in relation to age and disability.

### Race and ethnic origin

In the guidelines to the Act on the Prohibition of Discrimination in the Labour Market etc., lawful public positive measures encompass projects initiated by the different ministries as part of national integration schemes, including projects with the aim of improving the qualifications of persons with an ethnic minority background.

The guidelines underline that only public programmes with the aim of improving access to employment are possible. Preferential treatment of persons belonging to one of the discrimination grounds is not allowed.

Article 5 of the Racial Equality Directive has been transposed into Section 4 of the Act on Ethnic Equal Treatment, which states that the Act does not prevent the maintenance or adoption of specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. The preparatory works to the Act state



that there has to be an *actual* disadvantage linked to racial or ethnic origin in order for specific measures to be initiated. It is also stated that it is possible for public authorities and private organisations and entities to initiate specific measures. The Act only covers equal treatment outside the labour market.

## Age and disability

A prohibition against differential treatment on grounds of age and disability was inserted into the Act on the Prohibition of Discrimination in the Labour Market etc. in 2005.

According to Section 9(3) of the Act, it is possible for private employers to take positive measures in relation to age and disability. The purpose of the positive action has to be the improvement of employment possibilities for persons with disabilities or for senior employees. If job applicants have the same qualifications, it is thus possible for the employer to prefer the applicant with the disability or the “older” age. It is only if the two applicants are equally qualified, that a private employer may choose the person with the disability instead of person without.

Furthermore, Section 9(2) also applies in relation to disability and age, allowing for a number of legislative or public measures that promote the employment opportunities of the elderly and persons with a disability.

Act on Compensation for Persons with Disabilities in the Labour Market<sup>79</sup> promotes the integration of persons with disabilities into the job market. This act focuses on how compensation for impairments in the labour market is best provided and sets out general rules on how to promote and enhance employment for persons with (special) difficulties in finding a job.

The general aim of the act is to enhance the integration of persons with disabilities into the labour force by means of affirmative action and various other compensatory measures. Section 2 of the Act provides for preferential treatment of equally qualified job applicants with a disability to positions in the public administration. It also states that job applicants for positions in the public administration who have a disability have the right to a job interview.

There is at present no clear legal distinction between social security measures and positive actions in relation to disability and age in the labour market. Social security measures are the responsibility of the Ministry of Social Affairs and encompass general compensatory regulations in favour of all persons with disabilities, while the specific positive action measures aimed at the labour market are the responsibility of the Ministry of Employment.

<sup>79</sup> Consolidated Act No. 727 of 7/7/2009.



## Religion or faith

There are no provisions in Danish law explicitly allowing for positive measures on grounds of religion or faith.

## Sexual orientation

There are no provisions in Danish law allowing for positive measures on grounds of sexual orientation.

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

As mentioned above, provisions in Danish anti-discrimination legislation allows for certain positive action measures both inside and outside the labour market, although there are different criteria for initiating such measures.

Initiatives in this respect are mostly broad social policy measures in the labour market. Quotas and preferential treatment are not lawful, unless the job applicant e.g. with a disability has the same professional qualifications as the person without.



## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

*In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.*

*In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).*

*Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.*

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

City courts, the high courts, the Maritime and Commercial Court and the Supreme Court hear cases which involve provisions of the Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market etc., implementing Directive 2000/43 and Directive 2000/78.

It is important to note that the Labour Court and labour arbitration bodies only interpret collective agreements and cases concerning violations of collective agreements. They do not deal with cases concerning violations of the legislation on discrimination.<sup>80</sup> However, Section 1(6) of the Act on the Prohibition of Discrimination in the Labour Market etc. states that the Act does not apply if equal protection is provided by a collective agreement. Trade unions engage in judicial procedures before the Labour Court on behalf of their members in cases concerning the violation of a prohibition against discrimination in a collective agreement. In the individual case, it is the trade union deciding or not it wishes to bring a case. If an individual person covered by a collective agreement wishes to initiate a case concerning the violation of collective agreements, the case must be tried at the ordinary courts and the individual must provide proof that his or her trade union has no intention of pursuing the matter before the Labour Court.

The Board of Equal Treatment started functioning on 1 January 2009.<sup>81</sup> The Board deals with complaints related to discrimination based on gender, race, colour, religion or belief, political views, sexual orientation, age, disability or national, social or ethnic origin *within* the labour market. In sectors outside the labour market, the Board has the mandate to hear individual cases on discrimination because of race and ethnic origin. The Board of Equal Treatment issues binding decisions and can order compensation to be paid.

<sup>80</sup> Act no. 106 of 26 February 2008 on the Labour Court and Labour Arbitration [*Lov om Arbejdsretten og faglige voldgiftsretter*].

<sup>81</sup> Act No. 387 of 27/5/2008 on the Equal Treatment Board.



As a consequence of the establishment of the Board, the Complaints Committee for Ethnic Equal Treatment and the Gender Equality Board were closed down.

The Board of Equal Treatment cannot force the parties to produce documents, give their opinion, or reveal the factual circumstances of a case. The Board secretariat can, however, request that the parties contribute to the elucidation of the case. If a party does not comply with this request within the stated time period, a new deadline will be set. If the party still does not respond, the Board can choose to decide the case based on the existing evidence, cf. Section 5 of the Act on the Equal Treatment Board. The Board can also procure expert evidence for use in specific cases, cf. Section 7 of the Act.

The Board of Equal Treatment cannot deal with a complaint if the situation is covered by a prohibition of discrimination in a collective agreement. In Decision 199/2011, the Board of Equal Treatment rejected a complaint from an employee within the postal services because it was dealing with a violation of a collective agreement.<sup>82</sup>

The Danish Institute for Human Rights (DIHR) has the status of National Equality Body on race and ethnic origin according to article 13 of the Directive 2000/43 (as well as gender). Thus, DIHR has the mandate to provide assistance to victims of discrimination on grounds of racial or ethnic origin and to provide information to potential victims on the right not to be discriminated and on possible means of redress. In some cases, DIHR may also assist with taking the case to court. However, this requires that the case has already been tried by the Board of Equal Treatment and that it has not been possible to have the case tried fully at the Board (due to lack of produced evidence based on the lack of cooperation from the defendant. Finally, the Institute can intervene in principle cases in court to support an individual person who believes to have been discriminated against.

*b) Are these binding or non-binding?*

The above-mentioned judgements and decisions are legally binding.

According to Section 12(2) of the Act on the Board of Equal Treatment, the Board must bring a case to court if a decision is not followed and the applicant wishes to pursue the matter. One example is Decision No. 14/2011 by the Board regarding discrimination because of ethnic origin in the access to a discotheque. The District Court of Viborg concurred with the Board of Equal treatment.

*c) What is the time limit within which a procedure must be initiated?*

No time limit is indicated in the Act.

<sup>82</sup> See:

<http://www.ligebehandlingsnaevnet.dk/naevnsdatabase/afgoerelse.aspx?aid=814&type=Afgoerelse>.





d) *Can a person bring a case after the employment relationship has ended?*

A person can file a complaint even after the employment relationship has ended. There is hence no deadline for filing a complaint, but practical difficulties can arise in relation to collecting evidence.

No official statistics on cases concerning discrimination brought before the Danish courts exist. Statistics on cases brought to the city courts are not available as they are not registered or published in the Weekly Law Journal [*Ugeskrift for Retsvæsen*]. Only selected judgments from the High Courts and the Maritime and Commercial Court are published in the Weekly Law Journal.

## 6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

*Please list the ways in which associations may engage in judicial or other procedures*

a) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).*

The Danish judicial system is regulated by the Act on Administration of Justice [*Retsplejeloven*].<sup>83</sup> Chapter 31 of the Act deals with legal aid and free legal proceedings. The Minister of Justice can financially support Legal Aid Offices, which are the places where people can find free legal advice.<sup>84</sup>

No particular legislation exists regarding the possibility of entities to represent victims of discrimination. However, according to Section 12 of the Act on the Board of Equal Treatment, the Board can bring a case to the courts if the defendants refuse to follow the decision of the Board.

In addition, DIHR may assist complainants in bringing legal proceedings by helping the complainant apply to the authorities for free legal aid in court.

Finally, trade unions occasionally represent their members in court.

Trade unions as well as associations like the Danish Documentary and Advisory Centre on Racial Discrimination represent individuals in their complaints to the Board of Equal Treatment.

b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of*

<sup>83</sup> Consolidated Act No. 1063 of 17/11/2011.

<sup>84</sup> Regulation No. 100 of 30/1/2012. [Bekendtgørelse om tilskud til retshjælpskontorer og advokatvagter].



*standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove “legitimate interest”, what types of proof are needed? Are there legal presumptions of “legitimate interest”?*

Under Danish procedural rules (Administration of Justice Act section 260(2), a person may either go to court her- or him-self or authorize a process agent to appear in court on her or his behalf. As a main rule, in Danish procedural law, only jurists authorized to practice law, i.e. certified attorneys, may serve as process agent for a party. As an exception, the minister of Justice may allow for interest groups, labour unions and the like to represent their members in court through an in-house jurist in cases concerning pay and employment conditions, even when the in-house jurist is not a certified attorney (cf. Administration of Justice Act section 260(6)). In addition, some public bodies have been given express statutory power to represent complainants in court, e.g. the Equal Treatment Board. In practice, the Equal Treatment Board is represented by “kammeradvokaten” who is the legal adviser to the Danish Government.<sup>85</sup>

According to established case law, an association may also be allowed to serve a function similar to that of a process agent for its members in the sense that the association files a suit in its own name on behalf of its member, it represents the member in court, i.e., it is not a party itself. However, it is still the member and not the association who is a party to the case.

In a report from 2005 on the reform of the Danish civil justice system, it is pointed out that it is difficult to conclude on the basis of case law what the criteria are for acting as an alternative process agent; however, the entities that, in general, have been allowed to act as process agents have had some qualified interest in the issue raised in the case. The report suggests as a guiding rule that an entity may act as an alternative process agent, where it has a “legal interest” in the outcome of the case similar to the “legal interest” required from third parties to intervene in court cases in support of one of the parties to the case. According to the report, the requirement of having a “legal interest” is necessary to ensure that the general rule that only certified attorneys may act as process agents is not bypassed.<sup>86</sup>

<sup>85</sup> As described in Described in Jacobsen, Bjørn Dilou, *Assistance to Victims of Discrimination by Equality Bodies of the EU Member States – a Scandinavian Perspective*, DJØF Publishing Copenhagen 2010.

<sup>86</sup> Reform af den civile retspleje IV – Gruppesøgsmål mv. p.71. Described in Jacobsen, Bjørn Dilou, *Assistance to Victims of Discrimination by Equality Bodies of the EU Member States – a Scandinavian Perspective*, DJØF Publishing Copenhagen 2010.



- c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

It is possible to give somebody power of attorney (in Danish procesfuldmagt or rettergangsfuldmagt). Please refer to chapter 25 of the Danish Administration of Justice Act for details.

A member of an association (such as a labour union) can annul the permission of the trade union to represent him or her in the case. The organisation can represent the plaintiff via a lawyer, legal advisor etc, but does not have to be represented by a certified attorney.

Organisations (typically trade unions) represent occasionally their members in court (in Danish: mandatar), which is not the same as awarding somebody power of attorney.

- d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

Once the Board of Equal Treatment has decided on a complaint, the Secretariat shall inform the parties of the possibility of bringing the matter before the courts. Where the decisions made by the Board and the settlements made with the assistance of the Board are not observed, the Board, at the request of the complainant and on behalf of the complainant, must bring the matter before the courts.

Public bodies and organizations have been allowed to represent a party in court where the case raises an issue that falls under the framework of that body's competence, e.g the Danish Consumer Ombudsman and the Danish Consumer Council have been allowed to serve as process agents for consumers in principle consumer cases for the purpose of clarifying consumer law.

- e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Associations may only engage in civil and administrative procedures.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.*

The association is as representative responsible to pay legal costs but is not obliged in any other way in regard to the judgment. Compensation awarded by a judgment is awarded to the applicant and not the association.



- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

No.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

In Decision No. 88/2011 by the Board of Equal Treatment, an NGO working against discrimination because of race and ethnic origin filed a complaint to the Board. The complaint dealt with ethnic discrimination because of a newspaper article. In the article an owner of a campground stated that he would refuse access to the campground for Roma people. The NGO argued that the newspaper article was a violation of the Act on Ethnic Equal Treatment. The Board rejected to adjudicate the complaint because of the fact that the NGO did not file the complaint on behalf of or in support of a concrete individual claiming that his or her rights had been violated.

No court cases on actio popularis exist in relation to discrimination. However, in other fields the Supreme Court has accepted cases filed on e.g. the constitutional legality of Denmark's membership of the European union (see UfR1996.1300 H and UfR 1998.800 H). So one could argue that there is a tendency to actio popularis cases being accepted within the Danish judicial system.

- i) *Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Chapter 23a of the Danish Administration of Justice Act contains rules on collective action.

Collective actions are special type of procedure prepared with a view to join several, and especially a large number, of uniform claims in the same proceedings. The term "collective actions" implies that the action relates to the claims of a group of persons, a representative of this group (not individual members of the group) being regarded as a party to the action.

The rules on collective actions are based on a main rule that the members of the group must opt for the action (the opt-in model). At the request of the group representative, the court may also decide that a collective action must comprise the



group members who do not opt out of the collective action (the opt-out model). This is however subject to two additional conditions being satisfied.

First of all, the case must concern claims that are so small that it is evident that they cannot generally be expected to be brought through individual actions, not because the persons concerned do not think that they have a justified claims, but merely because the inconvenience and financial risk of individual litigation are deemed to be disproportionate to the outcome of the individual action.

A number of conditions for bringing collective action have been laid down including that the court must approve the case as being suited for a collective action as well as a number of “control mechanisms”, which include that the court must approve the group representative and may decide that the representative must provide security for the legal costs that he/she may have to pay to the other party if he/she loses the case.

As for associations, there are no specific requirements as to age, number of members, financial situation etc., but in order to be appointed as group representative, the association must have sufficient financial means, including e.g. by virtue of insurance to be able to cover legal costs.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

*Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).*

The Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market etc. introduced the principle of a shared burden of proof.<sup>87</sup> This means that if a person who considers him- or herself to be discriminated against is able to establish facts of possible discrimination, then the employer, the shop owner, landlord etc. has to prove that no discrimination has taken place. This shared (and not shifted) burden of proof is in line with the Directives.

The shared burden of proof is to be applied in cases of direct and indirect discrimination, harassment and instruction, but not in cases regarding victimisation.

A judgement from the Supreme Court of 7 December 2011 illustrates the use of a shared burden of proof (Reference no. 102/2010). The case dealt with a woman 55 years of age who had applied for a position in the public office of passports and drivers licences. She was rejected from the position and received a letter from the manager of the public office stating among other things the following: “... as a

<sup>87</sup> The Act on Ethnic Equal Treatment Section 7 and the Act on the Prohibition of Discrimination in the Labour Market etc. Section 7 a.



manager I'm obliged to meet the generational change that will come up in the coming years in the current group of – as you know – primarily elderly experienced employees.” The Supreme Court stated that this remark established facts from which it could be assumed that the age of A was part of the reasoning for A not being hired. However, according to the Supreme Court, the public office could prove that the rejection of A was not because of her age, but because of the fact that she did not have the requested personal qualifications. Thus, the public office had not violated the Act on Prohibition of Discrimination in the Labour Market.

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

*What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).*

National law prohibits subjecting a person to any adverse treatment or adverse consequence as a reaction to a complaint or to any type of proceedings aimed at enforcing compliance with the principle of equal treatment.

Section 7(2) of the Act on the Prohibition of Discrimination in the Labour Market etc. as well as Section 8 of the Act on Ethnic Equal Treatment prohibits adverse treatment as a reaction to a complaint concerning discrimination.

Where protection applies, the commentary to the Act on the Prohibition of Discrimination in the Labour Market etc. reads:

“Protection against victimisation applies in cases where a formal letter of complaint has been filed with a court of justice or another public authority, as well as in cases where a certain incident is criticised verbally at the place of work, or where the employee has contacted his or her trade union and related the circumstances to the union.”

The protection applies to a person who files a complaint regarding differential treatment of her/him and to a person who files a complaint of differential treatment of another person.

It is a prior condition that a causal link can be established between the victimisation and the employee's request for equal treatment. Adverse treatment is not considered as a violation of the prohibition against discrimination in the Directives.<sup>88</sup> The burden of proof is therefore not shared in this instance.

According to Section 1(4) of the Act on the Prohibition of Discrimination in the Labour Market etc., victimisation on all the protected grounds is prohibited, and according to

<sup>88</sup> Cf. the preparatory works to Act no. 253 of 7 April 2004 amending the Act on Prohibition against Differential Treatment in the Labour Market.





Section 7(2), a person who experiences negative treatment or unfavourable consequences because of the fact that he or she has asked for equal treatment as described in Sections 2, 3 and 4 of the same Act can be granted compensation by the court.

## **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

- a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

Discrimination in the labour market may result in pecuniary compensation and discriminatory job advertisements may result in a fine.

A person who has been subject to discrimination can be awarded compensation for non-economic damages, as stipulated in section 7 in the Act on Prohibition against Differential treatment in the Labour Market etc and section 9 in Act on Ethnic Equal Treatment.

Furthermore, damages for an established economic loss can be awarded by the Danish courts according to the general Danish rules concerning damages. The Danish law of torts is developed through case law at the Danish courts. Damages can be awarded if negligent behaviour has resulted in an economic loss and there is a causal link between the negligent behaviour and the loss. Furthermore the loss has to be foreseeable to the person acting negligently. Thus, a person who is responsible for an unlawful violation of another person's freedom, honour or integrity is liable to pay compensation, according to section 26 of the Damage Liability Act. There is a 3 year period of limitation meaning that compensation claims must be brought to the courts 3 year after the unlawful violation at the latest.<sup>89</sup>

- b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

No.

- c) *Is there any information available concerning:*
- *the average amount of compensation available to victims?*
  - *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

Typically, the following amount of compensation will be awarded to victims of discrimination:

<sup>89</sup> Act on Limitations section 3 (Forældelseslov).



In cases of discriminatory job advertisements: DKK 25.000 (€ 3360)

In cases of discriminatory denials of employment/new job: DKK 25.000 (€ 3360).

In cases of discriminatory dismissals: 3 to 9 months of salary.



## 7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

*When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.*

- a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

The Danish Institute for Human Rights (DIHR) is designated as a body for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin as set out in Article 13 of the Racial Equality Directive. In accordance with the requirements of Article 13 of the Directive, the Institute has been given the authority to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination.

The Board of Equal Treatment adjudicates individual complaints of discrimination. The Board consists of a president, two vice-presidents and nine additional members. When handling a complaint, the president or a vice-president participates together with two additional members. In complaints concerning matters of principle, the president can decide that four additional members participate instead of two.

The president and the vice-presidents must be judges and are appointed by the President of the Court.<sup>90</sup> Both genders must be represented in the presidency. The additional members must hold a degree in law and possess knowledge of Danish anti-discrimination legislation. The Minister for Refugee, Immigration and Integration Affairs [Ministeren for flygtninge, indvandrere og integration] and the Minister for Gender Equality [Ministeren for Ligestilling] each nominate three of the additional members, and the Minister of Employment [Beskæftigelsesministeren] appoints the additional members.

- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

<sup>90</sup> According to the Act on Administration of Justice [Lov om rettens Pleje] section 47 a (3) it should be the relevant President of the Court.



The DIHR assists victims of discrimination and has a unit responsible for giving advice relating to individual cases of discrimination, where persons can call or meet in person for advice and counselling.

The Institute has been allocated DKK 6 million as a fixed amount (EUR 800 000) on a yearly basis to perform its duties as a specialised equality body. It is established by law as an independent institution. Its board members are appointed by various institutions, namely the University of Copenhagen, the University of Aarhus, the employees of the DIHR, the Danish Council for Human Rights [*Rådet for Menneskerettigheder*] and the Danish Conference of Rectors [*Rektorkollegiet*]. The Equal Treatment Board is not represented on the DIHR's board.

- c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

According to Section 2(2) of Act no. 411 on the Establishment of the Danish Centre for International Studies and Human Rights:

“..the Institute is to promote the equal treatment of all persons without discrimination on the grounds of **racial or ethnic origin**, by providing independent assistance to victims of discrimination in pursuing their complaints of discrimination without prejudice to the right of victims and of associations, organisations or other legal entities, by conducting independent surveys concerning discrimination, by publishing independent reports and by making recommendations on any issue relating to such discrimination.”

- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

The DIHR provides general information to the public on human rights, courses, seminars and other promotional activities as well as surveys, reports and analyses on all grounds of discrimination, e.g.:

*Reunification of spouses in Denmark:* An analysis of the requirements set out in the Aliens Act and their compliance with the right to family life and prohibition of discrimination. Report no. 1, the Danish Institute for Human Rights 2004.

*Equal treatment - the current status and future perspectives:* An analysis of the need to amend Danish legislation. Report no. 2, the Danish Institute for Human Rights 2005.



*Persons with disabilities in Denmark:* An analysis of the need to amend Danish legislation as regards international obligations. Report no. 3, the Danish Institute for Human Rights 2005.

*Effective protection against discrimination:* An analysis of the protection and promotion of equal treatment and the proposed body for handling complaints on all discrimination grounds. Report no. 5, the Danish Institute for Human Rights 2007.

In 2009, the EU Fundamental Rights Agency (FRA) published a report entitled *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - the Social Situation*. The data and information contained in the report were provided by COWI (a Danish consultancy firm) and the DIHR. The responsibility for the conclusions and opinions lies with the FRA.<sup>91</sup>

*Hate crimes in Denmark.* Report no. 8, the Danish Institute for Human Rights 2011.

- e) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The DIHR has no explicit legal standing, but in principle it may intervene in a case heard by the courts if a legal interest in the matter at issue can be proven. The Equal Treatment Board hears cases concerning discrimination. If a decision by the Board is not respected, the Board must bring the case before the courts at the request of the complainant pursuant to Section 12 of the Act on the Equal Treatment Board.

- f) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions). Is the independence of the body / bodies stipulated in the law? If not, can the body/bodies be considered to be independent ? Please explain why.*

The Board of Equal Treatment is a quasi-judicial institution. The decisions of the Board of Equal Treatment are legally binding and generally well respected. A decision may be taken to the civil courts if a defendant refuses to follow the decision by the Board.

DIHR is not a quasi-judicial institution after the Board On Equal Treatment received the mandate as of 1. January 2009 to deal with individual cases on discrimination, however DIHR retained the mandate as a specialised body to assist victims of discrimination.

<sup>91</sup> The reports are available at:

[http://www.fra.europa.eu/fraWebsite/attachments/FRA\\_hdgso\\_report\\_part2\\_en.pdf](http://www.fra.europa.eu/fraWebsite/attachments/FRA_hdgso_report_part2_en.pdf) (15-06-09).



- g) *Are the tasks undertaken by the body / bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

DIHR besides being a specialized body according to Directive 2000/43 is also an "A" accredited national human rights institution according to the UN Paris Principles – hence it is independent. Staff provides independent assistance to victims of discrimination and publish reports on issues such as the risk of ethnic profiling by police and reports on hate crimes, as well as promote equal treatment via campaigns on diversity in cooperation with key stakeholders such as municipalities and private companies.

- h) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

No.





## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

*Describe briefly the action taken by the Member State*

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

As part of the information campaign conducted under the European Year of Equal Opportunities for All in 2007, the then Ministry of Welfare [Velfærdsministeriet] undertook a number of initiatives, including:

- Publication of books and informational material;
- Publication of education material;
- Organisation of theatrical performances;
- Publication of a website.

The DIHR serves as a specialised equality body as required by the Racial Equality Directive and disseminates information about discrimination and equal treatment via:

- Books, reports, articles and notes on discrimination and equal treatment;
- Pamphlets, brochures and guidelines;
- Tools for assessing the compliance of recruitment, promotion and dismissal practices in companies and tools for diversity management;
- Information campaigns (posters, postcards etc.);
- TV clips on discrimination and diversity broadcast by Danish television and disseminated via websites, including [www.youtube.com](http://www.youtube.com), [www.facebook.com](http://www.facebook.com) and [www.myspace.com](http://www.myspace.com);
- Poster competition for children and young people;
- The diversity award (the MIA Prize), to companies serving as models of good practice in diversity management;
- DIHR websites: [www.menneskeret.dk](http://www.menneskeret.dk) [www.mangfoldighed.dk](http://www.mangfoldighed.dk) [www.humanrights.dk](http://www.humanrights.dk);
- Educational programmes at the Police Academy;
- Public seminars;
- Seminars, workshops and lectures for trade unions, the legal sector, primary and secondary schools, civil society, and public and municipal authorities;
- Platforms for dialogue and debate among stakeholders in the field of anti-discrimination.



- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

The Danish steering committee for the “2007 – Equal Opportunities for All” campaign was established by the Ministry of Welfare and comprised members of public authorities, the DIHR and NGOs.

- c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

To my knowledge no recent actions have been taken.

- d) *to specifically address the situation of Roma and Travellers.*

In December 2011 the Danish government presented its National Roma Inclusion Strategy to the European Commission.<sup>92</sup> The Danish action plan for Roma inclusion has three components:

- Fully realising the integration tools available for the benefit of Roma inclusion;
- Continuing and strengthening the efforts towards combating poverty and social exclusion in general;
- Disseminating knowledge on best practice and agreed principles for Roma inclusion to the municipal level.

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

- a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

The rules of *lex specialis* and *lex posterior* apply as part of Danish law.

Moreover, it is a general principle of Danish anti-discrimination law as well as most employment law that a person cannot sign away or agree to be placed in a less favourable position than that prescribed by law. A person cannot therefore waive his or her right not to be subjected to differential treatment through a contract or agreement with his/her employer.

<sup>92</sup> See: [http://ec.europa.eu/justice/discrimination/files/roma\\_denmark\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_denmark_strategy_en.pdf).



*b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

No, not to my knowledge.

The official state pension age is 65 years for men and woman. There is no general state-imposed retirement age, but retirement ages are set by collective agreements for certain professions.

Subsection 3 and 4 of Section 5(a) of the Act on the Prohibition of Discrimination in the Labour Market etc. allow direct discrimination on grounds of age. It is stated in Subsection 3 that the existing collective agreements setting age requirements for certain professions can be maintained only if such an age requirement is objectively and reasonably justified by a legitimate aim within the scope of national legislation and that the means of achieving that aim are appropriate and necessary.

Furthermore, it is not prohibited to make either individual or collective arrangements stating that employment stops when the employee turns 70 years old, cf. Section 5(a) (4) of the Act.



## 9 CO-ORDINATION AT NATIONAL LEVEL

*Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?*

In October 2011, Denmark got a new coalition government consisting of the Social Democrats [*Socialdemokratiet*], the Socialist People's Party [*Socialistisk Folkeparti*] and the Social Liberal Party [*Radikale Venstre*]. It is still not quite clear which Ministry will co-ordinate issues regarding anti-discrimination.

The Ministry of Employment is responsible for issues of discrimination at the labour market.<sup>93</sup>

The Ministry of Social Affairs and Integration is responsible for integration issues and thus for equality issues as well.<sup>94</sup>

The Ministry of Gender Equality is responsible for issues on gender equality.<sup>95</sup>

In the written 2011 government program, the new government plans to establish a national anti-discrimination unit on ethnic origin. The task of the unit is to map the extent and forms of discrimination on account of ethnic origin in the labour market and in society in general. The unit shall also make campaigns against discrimination as well as coordinate municipal activities against discrimination and support private companies fighting discrimination at the workplace.<sup>96</sup> The unit has not yet been established.

*Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.*

The previous government published the "Action Plan on Ethnic Equal Treatment and Respect for the Individual" in July 2010. The Action Plan included support for local community initiatives, local help for victims of discrimination, a campaign on the respect for the fundamental rights; and research projects on the extent of discrimination.<sup>97</sup>

<sup>93</sup> See: <http://www.bm.dk/Beskaeftigelsesomraadet/Arbejdsret/Forskelsbehandling.aspx>.

<sup>94</sup> See: [www.sm.dk](http://www.sm.dk) and [www.nyidanmark.dk](http://www.nyidanmark.dk).

<sup>95</sup> See: [www.lige.dk](http://www.lige.dk).

<sup>96</sup> Regeringsgrundlag Oktober 2011. Available in Danish at: [http://www.stm.dk/publikationer/Et\\_Danmark\\_der\\_staar\\_sammen\\_11/Regeringsgrundlag\\_okt\\_2011.pdf](http://www.stm.dk/publikationer/Et_Danmark_der_staar_sammen_11/Regeringsgrundlag_okt_2011.pdf).

<sup>97</sup> See: [http://www.nyidanmark.dk/NR/rdonlyres/20BA8169-7806-416F-B412-48DA175799DB/0/handlingsplan\\_etnisk\\_ligebehandling\\_2010.pdf](http://www.nyidanmark.dk/NR/rdonlyres/20BA8169-7806-416F-B412-48DA175799DB/0/handlingsplan_etnisk_ligebehandling_2010.pdf).



## ANNEX

1. Table of key national anti-discrimination legislation
2. Table of international instruments

**ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION**

Name of Country: Denmark

Date: 26 March 2012

<b>Title of Legislation (including amending legislation)</b>	<b>Date of adoption:</b>	<b>Date of entry in force from:</b>	<b>Grounds covered</b>	<b>Civil/Administrativ e/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
Act on Prohibition of Discrimination in the Labour Market etc. Latest amendments: 27 May 2008	16 December 2008	1 July 1996	Age, Disability, Ethnicity and Race, belief and religion, Sexual orientation and political opinion, national and social origin.	Civil Law (however section 5 is criminal law, prohibition of discriminatory job adds)	Labour market	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate in the labour market
Act on Ethnic Equal Treatment Latest amendments: 27 May 2008	28 May 2003	1 July 2003	Ethnic origin and race	Civil Law	Access to goods and services education, housing, and all other parts covered by the Race Equality Directive	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate outside the Labour Market





<b>Title of Legislation (including amending legislation)</b>	<b>Date of adoption:</b>	<b>Date of entry in force from:</b>	<b>Grounds covered</b>	<b>Civil/Administrativ e/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
Act on the Prohibition of Discrimination due to Race etc. Latest amendments: 3 June 1987	9 June 1971	1 August 1971	Race, skin colour, national or ethnical origin, belief or sexual orientation.	Penal Law	Access to public places and to services e.g. businesses refusing to serve certain persons.	Prohibition of direct discrimination on the grounds of race and ethnicity
Act on the Board of Equal Treatment	27 May 2008	1 January 2009	Gender, race, skin colour, religion or faith, political opinion, sexual orientation, age, disability or national, social or ethnic origin	Administrative	Handle complaints	Administrative (access to effective remedy)



## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Denmark

Date: 26 March 2012

<b>Instrument</b>	<b>Date of signature (if not signed please indicate))</b>	<b>Date of ratification (if not ratified please indicate)</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	04.11.1950	13.04.1953	No	Yes	Yes
Protocol 12, ECHR	Not signed	Not ratified			
Revised European Social Charter	05.1996	Not ratified		Not signed collective complaints protocol	
International Covenant on Civil and Political Rights	20.03.1968	06.01.1972	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	22.09.1997	Only recognised minority: Germans in southern Jutland	No	Yes



<b>Instrument</b>	<b>Date of signature (if not signed please indicate))</b>	<b>Date of ratification (if not ratified please indicate)</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
International Convention on Economic, Social and Cultural Rights	20.03.1968	06.01.1972	No	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	21.06.1966	09.12.1971	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	17.07.1980	21.04.1983	No	Yes	Yes
ILO Convention No. 111 on Discrimination	05.06.1958	22.06.1960	No	No	Yes
Convention on the Rights of the Child	26.01.1990	19.07.1991	No	No	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	24.07.2009	No	No (but in October 2011, the new government of	Yes



<b>Instrument</b>	<b>Date of signature (if not signed please indicate))</b>	<b>Date of ratification (if not ratified please indicate)</b>	<b>Derogations/ reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
				Denmark has expressed willingness to do so)	