



Executive Summary

Country Report Denmark 2011 on measures to combat discrimination

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1. Introduction

In the 1960s and 1970s, the Parliament [Folketinget] debated whether legislation on discrimination in the labour market due to race, religion or other grounds should be enacted. The social partners, i.e. employers' organisations and employees' organisation in the labour market rejected the proposal, arguing that Denmark has a tradition of collective agreements in the labour market instead of legislation. As no such collective agreements on anti-discrimination were concluded, victims of discrimination on grounds of race, ethnicity, sexual orientation, and religion were not protected until 1996, when legislation was finally enacted.

The Danish population was until the 1960s and 1970s relatively homogeneous and the majority were members of the Evangelical-Lutheran Church by conviction, tradition and/or culture. However, minority religious groups were present in Danish society and were protected under the Danish Constitution of 1849. With new groups of migrant workers and – in the 1980s – groups of refugees from South America, the Middle East, and Africa, this picture changed.

Apart from foreign nationals, there is a group of Danish citizens who have either been born in another country or have parents born in countries other than Denmark. This group is referred to as "descendents". Foreign citizens and their descendents are often referred to as ethnic minority groups, while German-speaking Danish citizens are the only formally recognised national minority.

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

EU legislation and judgments of the European Court of the European Union (ECJ) and ECtHR are taken seriously and monitored quite closely by the central administration – even if Denmark is not a party in a particular case. The domestic debate on whether and to what extent other international recommendations should be followed can be quite fierce. Politicians can be sceptical about the limitation of legislative power by international obligations.

In particular, there has been an emphasis on encouraging immigrants from third countries to explicitly sign up to basic values (e.g. gender equality and upbringing of



children) and to actively participate in the labour market. In Denmark, the requirement to adapt as understood by official and the general public seems somewhat stronger than in some of our neighbouring countries.

2. Main legislation

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

The Danish Constitution provides that no Danish subject shall be deprived of his or her liberty because of his or her political or religious convictions or because of his or her descent. Moreover, no person shall be denied the right to full enjoyment of civil and political rights by reason of his creed or descent, nor shall he for such reasons evade any common civil duty. Furthermore, the Constitution provides that no one shall be liable to make personal contributions to any denomination other than the one to which he adheres. Finally, the Constitution provides that citizens shall be entitled to form congregations for the worship of God in a manner consistent with their convictions, provided that nothing at variance with good morals or public order shall be taught or done.

The Criminal Code prohibits the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation.

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

In May 2003 the Act on Ethnic Equal Treatment [Lov om Etnisk Ligebehandling] (Act no. 374) was adopted. It aims to ensure protection against racial discrimination and to implement the non-employment aspects of the EU Racial Equality Directive. The Act on Equal Ethnic Treatment includes a prohibition against discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social benefits, education, access to and supply of

goods and services, including housing, and membership of and access to services from organisations whose members carry on a particular profession. The Act also includes a prohibition against harassment on the grounds of race and ethnic origin.

The Act on the Prohibition of Discrimination in the Labour Market [Lov om om forbud mod forskelsbehandling på arbejdsmarkedet] (adopted in 1996) prohibits direct and indirect discrimination based on race, skin colour, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, employers are not allowed to discriminate among employees as regards access to vocational education and training, continued training and retraining. The same prohibition applies to people providing guidance and training as well to those involved in work placement activities and in making rules and decisions about the right to perform professional activities and membership of workers' and employers' organisations.

The Act on the Prohibition of Discrimination in the Labour Market was amended twice in 2004 introducing a prohibition against discrimination based on religious conviction, age and disability as well as a shared burden of proof.

The Board of Equal Treatment [Ligebehandlingsnævnet] deals with complaints related to discrimination in the labour market based on gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin while outside the labour market the Board only deals with complaints related to discrimination based on race, ethnic origin or gender.

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

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

Denmark is a party to the Convention on the Rights of Persons with Disabilities (CRPD). Denmark signed the CRPD 30 March 2007 and ratified it in the summer of 2009. The convention entered into force 23 August 2009. At the end of 2010 the Danish Parliament decided to assign the Danish Institute for Human Rights the task of promoting, protecting and monitoring the implementation of the CRPD according to article 33 (2) of the CRPD.



3. Main principles and definitions

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

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

Harassment, instruction to discriminate and victimisation are also prohibited by the Act on the Prohibition of Discrimination in the Labour Market as well as by the Act on Ethnic Equal Treatment.

The Act on the Prohibition of Discrimination in the Labour Market contains two exceptions to the prohibition of discrimination.

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

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

The Danish acts on discrimination distinguish between natural persons and legal persons, and state that only natural persons are protected against direct or indirect discrimination on grounds of his/her race or ethnic origin or a third party's race or ethnic origin. Discrimination based on association with an individual is explicitly covered by the Act on Ethnic Equal Treatment.

Discrimination based on association is not mentioned in the wording of the Act on the Prohibition of Discrimination in the Labour Market but it is covered according to case law.



4. Material scope

In the public and private labour market, discrimination is prohibited on the grounds of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. In civil law covering areas outside the labour market, only discrimination on the grounds of race and ethnic origin is prohibited.

5. Enforcing the law

If the alleged case of discrimination is a criminal matter, the victim should report it to the police.

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

- 1) court, directly;
- 2) the Parliamentary Ombudsman[Folketingets Ombudsmand];
- 3) his or her trade union if it is a case within the labour market;
- 4) the Board of Equal Treatment
- 5) the Danish Institute for Human Rights (for advice/assistance);
- 6) the Citizens Advice Service which exists in some municipalities (advice/assistance);
- 7) the Danish Press Council [Pressenævnet], the Radio and Television Board on Commercials [Radio- og TV-Nævnet], the Consumer Ombudsman [Forbrugerombudsmanden].

A. Non-governmental Organisations

NGOs do not have legal standing in their own right before domestic courts of law in relation to alleged human right violations and cases of discrimination.

The Administration of Justice Act [Lov om Rettens Pleje] allows persons or associations to represent and support a complainant or intervene in a lawsuit if they have a legal interest in becoming a party to the case. One organisation working with non-discrimination issues is the Documentary and Advisory Centre on Racial Discrimination (DACoRD) [Dokumentations- og Rådgivningscenter om Racediskrimination] assisting victims of discrimination.

B. Shared burden of proof

The Act on Ethnic Equal Treatment and the Act on the Prohibition of Discrimination in the Labour Market include provisions on the shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies that when there is a prima facie case of discrimination, the burden of proof in court cases shifts back to the respondent.



C. Level of sanctions and monitoring the number of complaints

The Danish Security and Intelligence Service (PET) has - based on police reporting - since 1992 registered criminal activities where the motivation possible was racism against foreigners (so-called RACI reporting). In 2001 the register was expanded to cover criminal activities based on the victim's religious or ethnic origin. In 2009 the register was further expanded to cover criminal activities based on extremism. The level of sanctions remains low (normally a fine below EUR 2 000 in criminal cases)

D. Situation testing and statistical evidence used in practice

Statistical evidence has been used in some cases, but would probably not be accepted as the only proof in a case of discrimination. Situation testing is not regulated in Danish legislation and is primarily used by journalists or NGOs to confirm their presumption that discrimination exists in a specific sector.

6. Equality bodies

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

The Danish Institute for Human Rights (DIHR) has been the designated body since 2003 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 Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin.

B. The Board of Equal Treatment [Ligebehandlingsnævnet]

Legal Basis

On 25 January 2008 the proposal for an Equal Treatment Board was presented to the Parliament, and on 1 January 2009 it started functioning. The Board covers all protected grounds, (gender, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin). The Board was established by Act no. 387 of 27 May 2008.

Mandate

The Board is competent to hear complaints on the grounds of discrimination because of gender, race, religion or faith, age, disability, national, social or ethnic origin, political orientation or sexual orientation.

Functioning and Competences

The Board is modelled after the previous Gender Equality Board [Ligestillingsnævnet]. One of the main changes is that victims of discrimination can be awarded compensation for non-pecuniary damages directly by the Board and that



the Board will be entitled to take the case to court if the discriminating party is not willing to pay.

Shortcomings

The Board of Equal Treatment is a positive development within the field of combating discrimination and promoting equal treatment. In particular, uniform treatment of a complaint regardless of the ground of discrimination, as well as an increased exchange of knowledge among case-workers on various fields of discrimination, can be seen as positive aspects. However, organisations have especially expressed concern that the Board of Equal Treatment does not have the mandate to take up cases on its own initiative.

The knowledge of the existence of this administrative complaints mechanism among possible victim is an important parameter for the impact and success of the body. Therefore it is important that adequate resources are allocated for awareness raising.

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

The establishment of the Board of Equal Treatment in 2008 is a positive development. However there still exists a difference in the level of protection in relation to ground of discrimination.