



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Denmark
<b>Title:</b>	Board of Equal Treatment: Disability test cases
<b>Date:</b>	12 July 2019
<b>Expert:</b>	Pia Justesen
<b>Context</b>	
<b>Issue at stake:</b>	First three cases dealing with discrimination because of disability adjudicated according to the new 2018 Act on the Prohibition of Discrimination due to Disability
<b>Grounds of discrimination:</b>	Disability
<b>Field of application:</b>	Goods and services, Social protection
<b>Source:</b>	Board of Equal Treatment
<b>Applicable law:</b>	Act on the Prohibition of Discrimination due to Disability

### Content

The Board of Equal Treatment dealt with three complaints of discrimination because of disability outside the labour market as test cases. At the Board meeting, the chairperson and four board members attended. Typically, only the chairperson and two board members attend such meetings. The three cases were settled according to the new 2018 Act on the Prohibition of Discrimination due to Disability [*Lov om forbud mod forskelsbehandling på grund af handicap*].<sup>1</sup> The Board had not previously made substantive decisions according to this Act.

**Cases:** The first case dealt with a family who was denied access to a restaurant. A couple came to a restaurant with their three children, including their 2-year-old son. The son had Menke's syndrome and was in a baby carriage that served as a wheelchair. The family was rejected because the restaurant did not allow baby carriages due to fire safety and because escape routes should be free. There were few guests in the restaurant at the time. The Board concluded that the restaurant had not lifted the burden of proof that it was necessary to reject the family in order to achieve the purpose of fire safety and security. The Board concluded that indirect discrimination because of disability had taken place and the complainant was awarded a compensation of DKK 5 000 (EUR 670).<sup>2</sup>

The second case dealt with a complainant who had a guide dog. He was denied access to a café. The complainant had a visual impairment and was rejected on arrival at the café on the grounds that the café did not allow dogs inside for the sake of guests with possible allergies. It was clear that the dog was a guide dog. The Board found that the café had not, by reference to other guests' possible allergies, lifted the burden of proof that the rejection of the man with a guide dog was objectively justified by an objective purpose.

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<sup>1</sup> Act No. 688 of 8 June 2018.

<sup>2</sup> Board of Equal Treatment Decision No. 9468 of 23 May 2019. See: <https://www.retsinformation.dk/Forms/R0710.aspx?id=209360>.

The Board concluded that indirect discrimination due to disability had taken place and the complainant was awarded a compensation of DKK 5 000 (EUR 670).<sup>3</sup>

The third case dealt with a complainant who approached an ultrasound and x-ray clinic to book an appointment. The complainant who was blind arrived with his guide dog. He was informed that the clinic did not allow dogs in the examination room because of hygiene and other patients' possible allergies. The Board found that the indirect discrimination due to disability was objectively justified because of the purpose of ensuring allergy-free and hygienic examination rooms in the clinic. The next question for the Board was whether it was necessary to refuse the complainant's access with his guide dog in order to ensure an allergy-free and hygienic examination. The members of the Board did not agree on that question. Four board members considered that there was such ambiguity about the course of events and the detailed content of the conversations that a decision on whether there had been illegal discrimination because of disability required evidence in the form of oral witness statements. Such evidence cannot be submitted to the Board, but must be done by the courts. These members therefore voted in favour of the Board not being able to deal with the complaint. One board member assessed that the clinic had not lifted the burden of proof that it was necessary to limit the guide dog's access to the examination room in order to achieve the purpose of ensuring an allergy-free and hygienic examination room. This member therefore voted in favour of the complainant. In accordance with the majority's assessment, the Board dismissed the complaint.<sup>4</sup>

**Key points of analysis:** Before the adoption of the Act on the Prohibition of Discrimination due to Disability in 2018, there was no protection against discrimination outside the labour market for people with disabilities in Denmark. Before the adoption of this new Act, the discrimination that complainants in these cases experienced would not have been illegal. These cases illustrate the importance of a legal protection against disability discrimination outside the labour market. In Denmark, people with disabilities will now be able to access public goods and services on a more equal basis and they will be able to get redress from discrimination based on disability.

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<sup>3</sup> Board of Equal Treatment, Decision No. 9470 of 23 May 2019. See: <https://www.retsinformation.dk/Forms/R0710.aspx?id=209362>.

<sup>4</sup> Board of Equal Treatment, Decision No. 9467 of 23 May 2019. See: <https://www.retsinformation.dk/Forms/R0710.aspx?id=209359>.