



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

### **FLASH REPORT**

<b>Country:</b>	Denmark
<b>Title:</b>	Does post-traumatic stress disorder constitute a disability
<b>Date:</b>	11 August 2020
<b>Expert:</b>	Pia Justesen
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Reasonable accommodation and dismissal
<b>Grounds of discrimination:</b>	Disability
<b>Field of application:</b>	Employment
<b>Source:</b>	Board of Equal Treatment
<b>Applicable law:</b>	Section 1, 2, 2a, 7, and 7a of the Act on Prohibition of Discrimination in the Labour Market etc.

### **Content**

**Case:** A social worker claimed that she had been discriminated against because of disability. In 2019, she was dismissed from her position in the Danish Prison and Probation Service where she had been appointed since 1983. In 1986 she was the victim of a violent client assault during her work. After the assault she was working full time, primarily as a specialist in the team of community service. In 2017, the Prison and Probation Service issued a requirement that all employees in the future should be working as generalists working with all kinds of clients, including clients who had been convicted to psychiatric treatment. This requirement by the employer reactivated the social worker's post-traumatic stress disorder (PTSD) and she went on sick leave. According to a statement from a psychiatrist, the social worker would be able to work again full time on the condition that she was spared contact with convicted clients with mental illnesses or with other clients who could be expected to exhibit unpredictable behaviour. After more than 2 years of sick leave, she was dismissed and the employer argued that the dismissal was based on her sick leave.

The Board assessed that the claimant had a disability encompassed by the Act based on the fact that her PTSD was long term and that the impairment constituted a limitation on her participation in professional life on an equal basis with others. The Board also argued that the Danish Prison and Probation Service at the time of dismissal at least should have known that the social worker had a disability within the meaning of the Act.

The Board further argued that the employer is under an obligation to provide reasonable accommodation, which can be of both a material and organisational nature, including adjustment of workplaces and workstations, modification of work patterns or divisions of labour, or reduction of working hours. During the sickness absence of the complainant, the employer had appointed a substitute social worker who had community service functions, which did not include clients who had been convicted to psychiatric treatment. On that basis, the Board assessed that the Danish Prison and Probation Service in reality had offered the substitute social worker the kind of position that would provide reasonable accommodations for the complainant. The Board therefore concluded that the employer

had not proved that it would have constituted a disproportionate burden to offer appropriate precautionary measures so that the social worker could retain her position. In other words, the employer had not lifted the burden of proof that it had fulfilled its obligation to provide reasonable accommodation. The Board also found that the employer had not lifted the burden of proof that the complainant was not competent, capable and available to perform the most important functions of her position. In summary, the Board concluded that discrimination because of disability had taken place and the social worker was therefore awarded a compensation equal to 12 months' salary.<sup>1</sup>

**Key points of analysis:** The decision illustrates the obligations to provide reasonable accommodation in employment.

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<sup>1</sup> Board of Equal Treatment Decision No. 9538 of 24 June 2020. See: <https://www.retsinformation.dk/eli/accn/W20200953825>.