

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

### **COUNTRY REPORT 2007**

#### **Denmark**

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**State of affairs up to 29 February 2008**

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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 between different levels of government.*

Anti-discrimination legislation and protection in Denmark does not consist of one single piece of legislation. It is rather a combination of many acts, which over the years have been amended or introduced when new public issues, debates or ratifications of international obligations gave rise to an increased focus on a specific field of application or a specific vulnerable group. Hence, the protection against discrimination is a web of legislation ranging from protection in the constitution to specific acts covering the area outside and inside the labour market. The prohibition against anti-discrimination is covered by both civil and criminal legislation.

According to the Danish Constitution<sup>1</sup> Denmark is a Kingdom consisting of Denmark, Greenland and the Faroe Islands. Anti-discrimination legislation enacted by the Danish Parliament does not become the law in the Faroe Islands or Greenland, unless similar legislation is enacted there.<sup>2</sup> 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.<sup>3</sup> When it comes to legislation in Denmark (including anti-discrimination legislation), all legislation is made by the Danish Parliament. There is no division of legislative powers between Parliament and regional or local bodies.

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

The legal system is a continental legal system following primarily German legal traditions. The important legal principles are laid down by the Constitution the constitutional rules are expounded by laws, while detailed regulation is provided by governmental and ministerial decrees. In contrast to the German legal system, however, Denmark has no Constitutional 1. Court. The Danish Supreme Court has traditionally been very reluctant to use its power to annul statutes that may be in contradiction with the Danish Constitution. This is due to the democratic principle that laws made by a majority of members of Parliament are the will of the nation, and (even Supreme Court) judges should not compromise such rules.

For example “Hate speech” is prohibited by criminal law, as is the denial of access to public

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<sup>1</sup> Act No. 169 (1953) Danmarks Riges Grundlov (The Constitution of the Danish Kingdom, hereafter The Constitution 'Grundloven').

<sup>2</sup> Act No. 374 (2003) Lov om etnisk ligebehandling (Act on the prohibition against unequal treatment due to race and ethnicity, hereafter Ethnic Equal Treatment Act.), section 12 states that the Act only applies in Greenland and the Faroe Islands if all or parts of the provisions are made applicable by Royal Decree. During 2005 discussions took place on the Faroe Islands concerning the Bill that would prohibit discrimination in the labour market, however the law was not passed. This was mainly due to intense discussions about the ban on discrimination due to sexual orientation.

<sup>3</sup> Racial Equality Directive No. 2000/43/EU and Framework Directive No. 2000/78/EU (hereafter “the Directives” or if mentioned separately “The Racial Equality Directive” and “The Employment Directive”).



places, like bars and restaurants etc.

It is important to notice that criminal law was chosen due to the recommendations of a Commission of experts established in 1966 by the Ministry of Justice. This Commission had to consider whether Denmark needed to enact further legislation in order to ratify the International Convention on the Elimination of all forms of Racial Discrimination (ICERD). In 1969 the Commission published a report<sup>10</sup> (White paper), stating that in order to meet the requirements of Article 4 and Article 5 of ICERD, Denmark had to enact further anti-discrimination legislation. This legislation was passed by the Danish Parliament in 1971 as criminal law. Since then almost every court case on hate speech or discrimination in other areas has made reference to the Commission of Experts and their Report from 1969 as the main travaux préparatoires of the anti-discrimination legislation in Denmark. The Report had in fact a major impact on the interpretation and the (lack of) enforcement of the (criminal) anti-discrimination legislation.

This observation is relevant in relation to the transposition of the Racial Equality Directive, because on June 8, 2001, the Ministry of the Interior appointed the “*Committee on implementation in Danish law of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Equal Treatment Committee)*.” In September 2002 this Committee published their more than 300 page long report (White paper) on: “*The implementation in Danish law of the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*”<sup>11</sup> (henceforth: “the White paper”), including proposals for amendments to the present anti-discrimination legislation in Denmark. These amendments are mainly in the form of civil law supplementing the existing criminal law.

It is important to understand that the findings of the Equal Treatment Committee and the statements included in the 2002 Whitepaper are now the main source as the travaux préparatoires in relation to the new civil anti-discrimination legislation in Denmark. This “2002 White paper” may have a similar impact as the 1969 Report has had on the criminal law based anti-discrimination legislation.

Act No. 960 Section 266b of *Straffeloven* (The Danish Criminal Code, provision against hate speech, hereinafter ‘the Criminal Code’), covers the following grounds: race, colour, national or ethnic origin, religion, and sexual orientation.

*Act No. 626 (1987) Lov om forbud mod forskelsbehandling på grund af race m.v.* (Criminal Act on the prohibition against discrimination due to race etc. i.e. entrance to nightclubs, shops and restaurants), (originally *Lov nr. 289* of 9 June 1971 and changed by *Lov nr. 357* of 3 June 1987), covers the following grounds: race, colour of skin, national or ethnic origin, religion and sexual orientation.

*Act No. 374 (2003) Lov om etnisk ligebehandling* (Civil Act on Ethnic Equal Treatment deals with the prohibition against unequal treatment due to race and ethnicity).

The Danish private and public labour market is dominated by the so-called ‘Danish model’, that is, regulation of the labour market is generally based on collective agreements between the labour market social partners.



The Danish labour law is broadly speaking governed by collective agreements and a specific “labour court” is established in order to solve conflicts between the social partners. Anti-discrimination is also to some degree covered by the collective agreements, for example the question of “equal pay”.

This tradition of labour market rules made by collective agreements is, however, in many areas supplemented by a number of statutory provisions, such as those for safety in the workplace, made by the Danish Parliament.<sup>4</sup> One major difference between those conflicts in the labour market covered by collective agreements and those covered by civil law, is the mandate of the courts. As mentioned above, areas covered by collective agreements are the mandate of the “labour courts”, while areas covered by civil law are the mandate of the ordinary courts.

Since 1996, Denmark has had a civil law protecting against discrimination. According to the Act on Prohibition against Differential Treatment in the Labour Market, provisions in this Act may be replaced by similar provisions reached by collective agreements.<sup>5</sup> In other words, the statutory provisions of this civil law Act only cover those parts of the labour market which are not already covered by collective agreements.

In order not to lower the standards, collective agreements are only applicable if they provide the same or even better protection against discrimination than the statutory provisions made by law.

Act. No 459 (1996) amended by Act No. 253 (2004) and further amended by Act No. 1416 (2004) and presently published as Act. No. 31, (2005) Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (Civil Act on Prohibition against Differential Treatment in the Labour Market). It was hereafter amended by Act No. 240 (2006) and Act No. 1542 (2006) It covers the following grounds: race, colour, religion, political opinion, belief, sexual orientation, age, disability and national, social or ethnic origin.

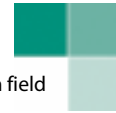
## 0.2 State of implementation

***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. Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?***

By end of 2004 the transposition of the Racial Equality Directive and the Employment Equality Directive was fulfilled in Denmark, whereby protection of all grounds in the labour market is ensured by Danish legislation as well as protection against discrimination due to race and ethnicity in sectors outside the labour market. Protection against discrimination outside the labour market on race and ethnicity is ensured via *Act No. 374 (2003) Lov om etnisk ligebehandling* (Civil Act on Ethnic Equal Treatment deals with the prohibition against unequal treatment due to race and ethnicity). Protection in the labour market is ensured via Act. No. 31, (2005) Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v. (Civil Act on Prohibition against Differential Treatment in the Labour Market).

<sup>4</sup> Act No. 784 (1999) Arbejdsmiljø beskyttelsesloven (Act on the protection of labour market environment).

<sup>5</sup> Racial Equality Directive Recital 27 and Framework Directive Recital 36



The option to defer implementation of Employment Equality Directive has been used in relation to age and disability.

- The deadline for transposition (December 3, 2003) was postponed for one year, after approval from the EU Commission. Implementation was ensured by the entering into force on December 28, 2004 of Act. No. 1417 amending the 1996 Act on Prohibition against Differential Treatment in the Labour Market.

Effective implementation of the Employment Equality Directive art. 9, 1 may be questioned in relation to access to judicial and/or administrative procedures in individual cases:

- On the labor market, trade unions possess legal capacity to initiate legal proceedings on behalf of their members in cases on discrimination, before the specialized Labor court or as part of labor arbitration.
- Access to the civil judicial system or the administrative procedure at the Danish Institute for Human Rights Complaints Committee on Ethnic Equal Treatment is dependent on the trade unions decision *not* to engage in an individual complaint. Hence, Institut for Menneskerettigheder [The Danish Institute for Human Rights (DIHR)] will refrain from engaging in a case if a trade union enter into legal proceedings.

As such, only persons who are not members of a trade union have direct access to civic judicial and administrative procedures.

#### *Application and Interrelatedness of the directives*

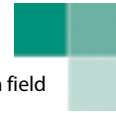
**Described below is the Eastern High Court decision (Mr. X vs. Copenhagen Technical School) 27 June 2006. The case gives rise to questions of correct application and interpretation of the two Equality Directives and the interrelatedness of the directives. In the present case the Act of Differential Treatment on the Labour Market (implementing the Employment Equality Directive) was not applied. Instead the Act on Ethnic Equal Treatment (implementing the Race Equality Directive) was applied. This interpretation and approach exclude other grounds than race and ethnicity from protection in the employment/educational system.**

### **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: a. Name of the court b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage. c. Name of the parties d. Brief summary of the key points of law (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 2 Directives, 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.*

*Eastern High Court. Weekly Law Journal (U.2008.1028Ø) case of 14. January 2008, 17. Department B-2339-06*

The applicant had been working as a temporary worker and had during the *Ramadan* been fasting. The institution treated small children who had experienced difficulties at home. It was argued by the employer that it was essential to eat lunch with the children, therefore the termination of her contract was based on the applicant's observance of the *Ramadan*.

The Court found direct differential treatment based on religion, i.e a violation of the Act on Prohibition against Differential Treatment in the Labour Market, and awarded a compensation of DKK 25.000 (3.500 €). The Complaints Committee on Ethnic Equal Treatment dealt with the case in 2005.<sup>6</sup>

*Supreme Court case nr. 165/2006 – judgment of November 5th 2007. A versus the Ministry of Ecclesiastical Affairs*

The Supreme Court decided that the duty to report births by a person of the Catholic faith to the ministerial books of the Danish National Evangelical Lutheran Church was not a violation of the ECHR since registration of births was considered an administrative task with no religious content. The person in question did not have to personally show up at the office and the document was not stamped with a reference to the Church. Furthermore, the Supreme Court concluded, that it is not a violation of the ECHR that the national church receives a government subsidy which originates from the ordinary revenues of the state received through taxes, since there is no direct link between the amount of taxes paid by a citizen and the government subsidy. Some of the expenses of the national church come from the maintenance of non-religious assignments.

*Eastern High Court decision (Mr. X vs. Copenhagen Technical School) 27 June 2006*

On 29 November 2005 the City Court of Copenhagen heard the first case brought under the new act on Ethnic Equal Treatment (Transposing parts of the Racial Equality Directive). First, the Court established that the issue at stake concerned education rather than the labour market (it took place on a technical school). Second, in contrast to the Complaints Committee, the Court did not find that the claimant had established proof of discrimination. –Despite the existence of a note written by the teacher which stated that an employer did not want a P - which the teacher at the technical school admitted was used to indicate “Perker” which is Danish slang for Pakistani and Turkish - the Court was of the opinion that the teacher, who made this note, would not use it to discriminate in connection with the allocation of pupils to this company as trainees. The City Court furthermore noted that the complainant had not been one of the pupils entitled to a traineeship as the pupil at the time in question had not completed his main educational training and therefore could not begin traineeship before having passed a test of aptitude. Consequently the Court did not find any proof of a violation of the legislation. It seems that the City Court of Copenhagen has not applied the shifting of the burden of proof.

<sup>6</sup> Complaints Committee for Ethnic Equal Treatment/ Journal no. 810.2/Decision of 5. December 2005. The Complaints Committee found sufficient proof for the rejection by an institution of a long term contract for the applicant was based on indirect illegal differential treatment based on ethnicity and therefore a violation of the Act on Ethnic Equal Treatment.



The written note seems to constitute a prima facie evidence, as no other form of proof could be stronger than this.

This is also why the Complaints Committee in this case - as the only case out of a total of 142 cases in the period from July 2003 until July 2005 - considered this to be a violation. Consequently the case was granted free legal aid in the city court, however, the decision of the Complaints Committee do not amount to also providing free legal aid for appeal.

The Eastern High Court made a ruling on 27 June 2006 stating that the claimant was not eligible for the position due to his lack of qualifications. Consequently he was not discriminated at the time when the training position was allocated to a native born Danish trainee.

In a case of race discrimination at a technical school it was decided by the city court on 29 November 2005 and approved by the High Court on 27 June 2006, that this situation was not covered by the Act on Prohibition against Differential Treatment in the Labour Market Discrimination Act but rather by the Danish Act on Ethnic Equal Treatment prohibiting unequal treatment in goods and services. By considering a technical school as a form of education covered by the provision on goods and services, race discrimination is covered anyway, but the problem seems to be in relation to the other protected grounds. By this decision the Danish court has excluded students at the Danish technical schools from protection against discrimination due to age, disability, sexual orientation, religion and belief (as no provisions exist against discrimination on these grounds in the field of goods and services).

A similar problem rises with University students, who are protected against race discrimination, but not against discrimination on other grounds. In this relation the situation differs however, because most Universities in Denmark are public institutions, and thus under an obligation not to discriminate on any ground due to the Constitutional “principle of equality”. On the contrary technical schools are mainly private institutions.

*Judgment, Western High Court - U.2008.306V of 11 October 2007 and judgment of 12 October 2007*

Reduced functional capacity and disability is not considered the same by Danish courts. This was illustrated in a newly passed judgment from the Western High Court - U.2008.306V - where it was stated that multiple *sclerosis* was a reduction of a persons functional capacity but that it could not be regarded as a disability within the meaning of the act of prohibition of differential treatment in the labor market. Also, on October 12<sup>th</sup>, 2007, Western High Court decided in a case that *post-traumatic stress syndrome* could not be considered a disability as covered by the Act on Prohibition against Differential treatment in the Labour Market.

*Judgment of 12 April 2007 from the Maritime and Commercial Court*

In a judgment of 12 April 2007 from the Maritime and Commercial Court it was examined whether a dismissal of the plaintiff due to his language skills was a violation of the Act on Prohibition against Differential Treatment in the Labour Market. The employee who was of Dutch origin was employed project consultant dealing with sales. The court found that the language requirement constituted indirect discrimination on the ground of national origin but stated that it must be up to the employer and not the court to determine whether the employee speaks well enough to hold the job.



### *22 February 2008 - Western High Court*

An apprentice at a bakery chose in the summer 2005 to announce that he was homosexual. From that moment his employer began to systematically harass the apprentice. 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 poor psychological working environment.

The apprentice made contact with his trade union, who tried to solve 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 chose to take the case to the 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 Prohibition against Differential Treatment in the Labour Market, etc .

The Western High Court upheld the judgment of the District Court. The employer was ordered to pay DKK 100,000 (EUR 13,210) to the injured party.

### *Decision (j.nr. 740.22) The Complaints Committee for Ethnic Equal Treatment (Decision of 24 October 2006)*

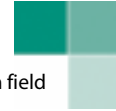
A person of ethnic minority background was rejected at the entrance of a nightclub with the explanation that he was not able to show a membership card. His wife, also of ethnic minority background, was at first allowed entrance without showing a membership card, but when the doorman discovered that the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

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 because of the ethnic origin of her husband. The case is an example of the fact that neither the Act on Ethnic Equal Treatment nor the Act on Prohibition against Differential Treatment in the Labour Market provides the Complaints Committee with powers to enforce the disclosure of material facts of a case. The Complaints Committee cannot demand either the complainant or the respondent to give their opinion or reveal factual circumstances of a case. Moreover, the Complaints Committee cannot demand the parties to produce documents or other material to further elucidate a case. The Committee in both cases found 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 section 3 (1). The Complaints Committee suggested that free legal aid was granted.

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

Case no. 780.19 The Complaints Committee found that the project "Fælles Indsats" ("Joint Effort") at Elsinore Municipality and the project's 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.





### *Prohibition of Discrimination*

From a number of communications from persons with a Roma background, the Complaints Committee for Ethnic Equal Treatment became aware that a number of individuals from this group felt they were experiencing discrimination based on race or ethnic origin as part of case handling by Elsinore Municipality. From the information in the case, it appeared that the municipal project "Fælles Indsats" ("Joint Effort") had referred citizens to two specific counsellors because of their ethnic origin. Therefore the Committee found that the project could only be undertaken if it complied with Art. 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 Art. 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 serve as beneficial to the individual and could not amount to a forced arrangement. The Committee found that Elsinore Municipality 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 case workers if, in the Municipality's assessment, such individuals required a particular kind of attention. Consequently, the Committee found that the arrangement had amounted to a forced measure for individuals with a Roma background contrary to Art. 2, Section 1 of the Act on Ethnic Equal Treatment.



## 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<sup>7</sup> does not contain a general provision prohibiting discrimination as such. Denmark had its first democratic Constitution in 1849. The Danish Constitution has been changed and amended in 1866, 1915, 1920 and 1953. One of the grounds mentioned in the Racial Equality Directive or the Employment Equality Directive is directly covered by the protection of the Danish Constitution. This is religion which is covered by a number of specific provisions.

#### *The Danish Constitution<sup>8</sup>*

Section 71 (1) of the Danish Constitution (Grundloven) 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, however the liberty of foreigners are to some extent protected by Section 70 of the Constitution.

Section 70 of the Danish Constitution provides 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 Danish 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 Danish Constitution provides that “The 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 principle of equality in administrative law.*

Public authorities are governed by the principle of equality applicable under general administrative law, which means that equal matters must be treated in full equality before the law.

In general this means that situations should be treated equally unless there exist objective and reasonable grounds for a different treatment. This is a limitation of the assessment of public authorities. Whether a criteria is objective and reasonable depends on an interpretation of the legislative foundation and the context of a specific case.

<sup>7</sup> Act no. 169 (1953) The Constitution.

<sup>8</sup> Lov 1953-06-05 No. 169 Danmarks Riges Grundlov.



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

The leading and fundamental principles of Danish administrative law 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 the citizens can only be treated differently if there is a legitimate reason to do so.

When it comes to the authority exercising discretionary power as an employer, the same principle applies. The Danish Parliament's Ombudsman has stated<sup>9</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 promotion of public employees, salary and other job conditions. It is the qualification of the employee that counts and not e.g. age and disability or any other grounds.

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

When it comes to private employers, however, administrative law does not apply. Private employers are bound by the Criminal Act on the prohibition against discrimination due to race etc. and the Civil Act on Prohibition against Differential Treatment in the Labour Market etc (see below).

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<sup>9</sup> Annual report of the Parliament's Ombudsman 1987 p. 107 ff. (FOB 1987, s. 107)



## 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.*

Grounds of discrimination covered in Danish law are the following: race, skin colour, religion or belief, political opinion, sexual orientation, age, disabilities, national, social or ethnic origin and gender.<sup>10</sup>

#### The Constitution

The Constitution (1953) *Danmarks Riges Grundlov*. Section 70 stipulates that no one can be deprived of any civil or political rights on grounds of faith or descent.

#### Criminal law

Act No. 960 Section 266b of *Straffeloven* (The Danish Criminal Code, provision against hate speech, hereinafter 'the Criminal Code'),

It covers the following grounds: race, colour, national or ethnic origin, belief and sexual orientation. Gender, age and disability are not covered by this provision.

*Act No. 626 (1987) Lov om forbud mod forskelsbehandling på grund af race m.v.* (Criminal Act on the prohibition against discrimination due to race etc.), (originally *Lov nr. 289* of 9 June 1971 and changed by *Lov nr. 357* of 3 June 1987)

It covers race, colour of skin, national or ethnic origin, belief (religious belief or faith) and sexual orientation.

#### Civil Acts

*Act. No 459 (1996) amended by Act No. 253 (2004) and further amended by Act No. 1416 (2004) and presently published as Act. No. 31, (2005) Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v.* (Civil Act on Prohibition against Differential Treatment in the Labour Market). It was hereafter amended by Act No. 240 (2006) and Act No. 1542 (2006)

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

*Act No. 374 (2003) Lov om etnisk ligebehandling (Civil Act on Ethnic Equal Treatment due to race and ethnic origin).*

<sup>10</sup> This report will however not focus on gender.



## 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 on 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"?*

Firstly it must be underlined that the terms only are vaguely defined in the Danish legislation.

### “Race” or “ethnic origin”

The anti-discrimination legislation from 1971 was enacted in order to ratify the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), and consequently the definition of “racial discrimination” in article 1 of the ICERD is also relevant in a Danish legal context, courts cases, public administration etc.

### Religion

The term “religion” is not defined in the legislation.

### Belief

Belief is assumed to protect a wider area than religion. A person is protected against differential treatment due to a more definite persuasion which is something else and more than the protection against differential treatment due to a confession to a certain and acknowledged religion.

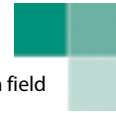
### Disability

Danish legislation does not contain a definition of “disability” and the preparatory works are relatively vague in their definition of disability. The wording used in the Danish Act on Prohibition against Differential Treatment in the Labour Market is “handicap” and not “disability”. According to the preparatory works, a ‘handicap’ occurs where a person with a ‘physical, psychological or intellectual impairment must be compensated in order for that person to function on an equal level with other citizens in a similar situation [...]. It is not a requirement for protection against differential treatment on the grounds of disability that there is a *specific* need for compensation.”<sup>11</sup> It should be noted that the Danish version of the Employment Equality Directive also uses the term ‘handicap’ and not ‘disability’.

In a recently passed judgment from the Western High Court - U.2008.306V, the Western High Court confirmed that a handicap in the sense of the Act on Prohibition against Differential Treatment in the Labour Market requires “a physical, mental or intellectual disability which results in a need for compensation in order for that person to be able to function on an equal footing with other citizens in a similar situation in life”.

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





The Western High Court established that A who suffered from Multiple Sclerosis and who as a result hereof suffered from tiredness, reduced concentration and memory capacity as well sensory disturbances “did have a disability, but the High Court did not find grounds to establish that the disability - as it was at the time of dismissal, and which only needed to be compensated for with an additional reduction in working time – constituted a handicap in the sense of the Act on Prohibition against Differential Treatment in the Labour Market.

It is unclear what is needed in order to be encompassed by the concept of ‘handicap’ under Danish law. The reference to “situation in life” could indicate that the disability in question must cause limitations in every day life and not merely in working life. Also 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 e.g. negative attitudes towards disability cannot qualify as leading to a need for compensation.

According to the Chacón Navas’ judgment, 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”?

It is unclear whether the Danish definition of disability is broad enough to live up to Danish obligations under the Employment Equality Directive. The use of the term ‘handicap’ indicates a narrow definition of the protected group and the Danish Courts operate with a narrow definition requiring “a physical, mental or intellectual disability which results in a need for compensation in order for that person to be able to function on an equal level with other citizens in a similar situation in life”. (Western High Court - U.2008.306V).

Whereas the EC Court required a limitation in professional life, Danish courts require a need for compensation in order to function on an equal footing in similar situations in life. In the High Court Judgment, the employee suffered from a limitation in professional life in that she could only work reduced hours. This was not sufficient to qualify as a ‘handicap’ as she was not considered to have a ‘need for compensation in order to function on an equal level in similar situations in life’. As mentioned above, the reference to “situation in life” could indicate that the disability in question must cause limitations in every day life and not merely in professional life. Also 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 e.g. negative attitudes towards disability cannot qualify as leading to a need for compensation. On these grounds it could be argued that the Danish concept of ‘handicap’ is more narrow than the definition of the concept given by the EC Court in its Chacón Navas judgment.

### **Sexual orientation**

In the existing Danish law the term ‘sexual orientation’ is used, which means homo- and heterosexual relations and other kinds of lawful sexual orientation as e.g. transvestism.<sup>12</sup> It is important to note that the implementation of the Directive has not changed the current notion.

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<sup>12</sup> See *Anti-diskrimination Lovgivningen med kommentarer* p. 59 and Karnov 2001 p. 4464 note 2



- 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’; or a “disability”, sometimes defined only in social security legislation)? Is recital 17 of the Employment Equality Directive reflected in the national legislation against discrimination?*

The term “religion” is not legally defined in Denmark. Indirectly a definition may be found due to the practice of the Danish authorities in relation to the approving of: “religious communities”.

Religious communities are approved by the Danish Ministry of Ecclesiastical Affairs. This is done in accordance with the rules of the Marriage Act. The ministerial approval of a religious community is not about religion. There is no assessment of religions. Approval is based on the administrative law view that the ministerial approval as a religious community (and thus the possibility of granting of marriage authorization) constitutes a delegation of the executive power.

Since 1998, a standing advisory committee has been appointed to assess whether the conditions for approval as a religious community are fulfilled. The Committee is independent of the Ministry of Ecclesiastical Affairs and holds 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 wanted approval for various reasons and societies that are not eligible for approval as actual religious communities (philosophical communities and societies, etc.) exist under the general freedoms of religion and association without any requirement of public registration.

The Committee uses a minimal definition of religion. The Committee understand a religion as a specifically formulated belief in the human being’s dependence on a power that stand over the human race and the laws of nature and a belief that provides guidelines for human ethics and morality.<sup>13</sup>

Recital 17 of the Employment Equality Directive is not directly reflected in the legislation. It is however stated in the guidelines to the act of Prohibition against Differential Treatment in the Labour Market, that an employer can only choose the applicant with a disability if the applicant is just as qualified as a the applicant without a disability.

- 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 of Prohibition against Differential Treatment in the Labour Market protects both the elderly and the young. There are however a number of exceptions.

<sup>13</sup> Vejledende retningslinjer udarbejdet af det rådgivende Udvalg vedr. Trossamfund, 2. rev. udgave, januar 2002, available at [http://www.km.dk/fileadmin/share/dokumenter/Vejledende\\_retningslinier\\_1\\_.rtf](http://www.km.dk/fileadmin/share/dokumenter/Vejledende_retningslinier_1_.rtf) (in Danish) (12.03.09)



According to section 1(a) in the act 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) in 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 presumed 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 in the directive).

Furthermore it is not prohibited to make either individual or collective arrangements that states that an employment stops when the employee turns 70 years old cf. section 5(a) (4).

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).

Finally 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, since their employment is not regulated by a collective agreement.

This means that differential treatment is allowed against people under both 18 and 15 years old under certain circumstances.

*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.*

In October 2006 the Danish Government announced an up-coming Bill which will establish a complaints board covering all protected grounds, (sex, race, skin colour, religion or belief, political opinion, sexual orientation, age, disability or national, social or ethnic origin). The proposal for the Bill was put before Parliament in January of 2008 and if it is adopted it will enter into force 1 January 2009. The Bill does not define the grounds.

#### Case law

On 28 January 2005 a job advertisement asked for manpower 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 March 1, 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 Prohibition against Differential Treatment in the Labour Market, which partly implements the Employment Equality Directive.

On 21 July 2005 the Copenhagen Municipality 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 equal treatment in respect of employment and occupation, 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 Euro 450 for discrimination due to



race/ethnicity and due to age as well. The fine of Euro 450 has the same level as fines only due to race, even though it ought to reflect that two forms of discrimination took place.

To our knowledge there has been no case law regarding multiple discrimination in the years 2006-2007.

### 2.1.2 Assumed and associated discrimination

- a) *Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*

In the comment to the act on equal treatment that implements parts of the Racial Equality Directive it is stated that the prohibition against differential treatment is applicable irrespective that the actual race or ethnic origin is not as assumed by the perpetrator. Discrimination based on assumed characteristics of race or ethnic origin is therefore prohibited.

Such a statement is however not included in the comment to the act on Prohibition against Differential Treatment in the Labour Market. But our view is that discrimination based on assumed characteristics inside the labour market is equally prohibited.

- b) *Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

It follows from the act on ethnic equal treatment section 3 (1) 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.

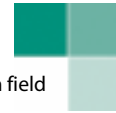
Again no such article is inserted in the act on Prohibition against Differential Treatment in the Labour Market. But it is our view that differential treatment based on a third party's e.g. sexual orientation inside the labour market is prohibited.

In a case from The Complaints Committee for Ethnic Equal Treatment the Committee found that an airline had violated the prohibition against differential treatment due to race or ethnic origin by having a price policy that entailed that customers with a certain ethnic origin (in the concrete case the customer was of a Pakistan/Danish origin) or customers with a family connection to a person with a certain ethnic origin would receive a discount on plane tickets to certain destination. Customers that was not of the required ethnic origin or who was not related to a person of that ethnic origin would not be offered the discount and were made to pay the full price.<sup>14</sup>

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

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

<sup>14</sup> Decision of 3 May 2007, [www.klagekomite.dk](http://www.klagekomite.dk). It exists however only in Danish.



Definition of direct discrimination: Direct discrimination shall be taken 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 c.f. section 1(2) in the act on Prohibition against Differential Treatment in the Labour Market and section 3 (2) in the act on ethnic equal treatment.

b) *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. See however under section 4.7.1. concerning justification in some areas.

c) *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?*

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 permit the use of 'situational 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 all grounds are not included, what are the reasons given for this limitation?*

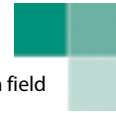
Situational testing is not prohibited. Hence, as such, no limitation for the use of situational testing apply. The tests have been used in relation to discrimination in night life. In January 2005 a television programme followed two groups of youngsters trying to enter night clubs in Copenhagen with hidden camera. One group of the majority population youngsters were allowed to enter while a group of minority youngsters were refused entry into a number of places. Doormen from 3 different night clubs have consequently been sentenced due to the evidence from this situation testing session by the City Court of Copenhagen. These cases were criminal cases according to the 1971 Act and the situation testing was invoked as evidence, but there are no specific procedural requirements.

b) *Is there any reluctance to use situational 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 the courts. However, the results of situational testing could support a case of discrimination against a victim, who in reality had been rejected at e.g. a specific nightclub known for discriminatory practice exposed in situational testing.

c) *Outline important case-law within the national legal system on this issue.*





*Press Council No. 2003-6-148 (Decision of 6 April 2004)*<sup>15</sup>

A taxi company made a complaint on articles brought in a newspaper dealing with the issue on whether customers could call and order a taxi with a “white or Danish driver”.

The Press Council found that it was of significant interest to society, whether discrimination of taxi drivers of another ethnic origin than Danish took place. 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 demands would be impossible to get in other ways.

*d) Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

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

### **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 taken 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, c.f. in the main section 1(3) in the act on Prohibition against Differential Treatment in the Labour Market and section 3(3) in 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?*

The courts have in a Supreme Court judgment<sup>16</sup> accepted that a company wanted to be politically and religiously neutral as a legitimate aim and that a clothing requirement as a means to achieve that aim was appropriate and necessary. The Supreme Court found that a dismissal of A 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 super market applied to every employee and the rules were consequently enforced. The Court recognised that the prohibition of wearing a head scarf when having direct contact to customers mainly would affect Muslim women but found that the differential treatment was

<sup>15</sup> KEN nr 9698 af 06/04/2004.

<sup>16</sup> U.2005.1265H



objectively reasoned 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 of Human Rights.

c) *Is this compatible with the Directives?*

This decision may raise questions about the interpretation of justification of indirect discrimination in relation to religion.

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

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

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

In a case from the Maritime and Commercial Court it was examined whether a dismissal of the plaintiff due to his language skills was a violation of the act on Prohibition against Differential Treatment in the Labour Market.

The court found that the language requirement constituted indirect discrimination (probably on the ground of nationality – it is not mentioned explicitly) but stated that it must be up to the employer and not the court to determine whether the employee speaks well enough to hold the job.<sup>17</sup> The judgment has been appealed to the Danish Supreme Court.

### 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 work to the Act on Ethnic Equal Treatment the assessment of whether a criteria etc. 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 than 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 in which it can be made probable that the criteria etc. in question is suitable to have this effect.

The same information regarding statistical material and indirect discrimination is not found in the preparatory work to the act on Prohibition against Differential Treatment in the Labour Market.

b) *Is the use of such evidence commonly used? 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?*

<sup>17</sup> Judgment from the Maritime and Commercial Court of 12 April 2007.



Statistics have only been used in cases on gender discrimination, but not yet in cases on discrimination on other grounds. There has been no debate or evolution surrounding their use and admission in court.

As part of media focus on cases on e.g. rejection of access to insurance schemes for persons living in specific neighbourhoods or streets, statistics based on place of birth of immigrants and descendants have been used to support arguments on indirect discrimination.

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

No published court cases on discrimination are available that illustrate the use of statistical evidence.

*d) Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is 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?*

Certain restrictions on data collection stem from legislation on personal data protection. Thus, Danish law<sup>18</sup> does not permit the collection of data on race or ethnicity, religion or belief and sexual orientation.

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 within industry from Statistics Denmark. Data on age may also be compiled by labour market organisations or employers.

Positive measures have been initiated within both public administrative authorities and private entities as part of diversity management programs or recruitment programs aiming at achieving representation of ethnicity and gender among staff members.

A tool to collect data on the ethnic composition of staff and show the progression in recruitment has been developed by the Ministry of Employment in cooperation with the Danish Institute of Human Rights. 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 for the collection of data by Statistics Denmark<sup>19</sup> on country of birth, parents' country of birth and citizenship. In case such data may reveal personal data of identifiable persons, it is ensured that information is provided in a format that protects individual data protection, e.g. by showing benchmark numbers for a sector or a group of entities.

## 2.4 Harassment (Article 2(3))

<sup>18</sup> Act on Personal Data, No. 429 af 31/05/2000 and Act on Statistics Denmark, Lovbekendtgørelse nr. 1189. af 21. december 1992, and Act on Personal Data,

<sup>19</sup> CPR-opgørelse af medarbejderstabens oprindelse, Beskæftigelsesministeriet og Institut for Menneskerettigheder.



- 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.*

Definition of harassment: Harassment shall be deemed to be discrimination when a 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, c.f. in the main section 1 (4) in the act on Prohibition against Differential Treatment in the Labour Market and section 3 (4) in the act on Ethnic Equal Treatment.

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

It follows from the national legislation that harassment shall be deemed to be discrimination.

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

There is no additional sources on the concept of harassment.

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

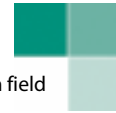
*Does national law prohibit instructions to discriminate?*

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, c.f. in the main section 1 (5) in the act on Prohibition against Differential Treatment in the Labour Market and section 3 (5) in the act on Ethnic Equal Treatment.

## **2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 of the Employment Equality Directive)**

- a) *How does national law implement the duty to provide reasonable accommodation for people with disability? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. → 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?*

Reasonable accommodations for people with disabilities c.f. article 5 of the Employment Equality Directive are implemented in section 2(a) in the act on Prohibition against Differential Treatment in the Labour Market. Section 2(a) obliges the employer to adapt the workplace in order to accommodate the employment of people with disabilities, unless this will place an disproportionate burden on the employer. Reasonable accommodations only applies inside the labour market.



The duty of reasonable accommodation applies only when the applicant with a disability has the necessary qualifications to do the job if the accommodations are made. At the evaluation of whether the burden of the employer is disproportionate it is taken into consideration whether the public administration covers some or all of the expense. National law does not define what would be a disproportionate burden. In the end it will be for the courts to decide. Furthermore the term “disabilities” in section 2(a) of the act is subject to the interpretation of the term in Danish law, cf. section 2.1.1. Hence, According to the preparatory works, which plays a central role in the interpretation of Danish legislation, a ‘handicap’ occurs where a person with a ‘physical, psychological or intellectual impairment must be compensated in order for that person to function on an equal level with other citizens in a similar situation [...], it is not a requirement for protection against differential treatment on the grounds of disability that there is a *specific* need for compensation.”<sup>20</sup> It is unclear whether the Danish definition of disability is broad enough to live up to Danish obligations under the Employment Equality Directive.

The use of the term ‘handicap’ indicates a narrow definition of the protected group and the Danish Courts operate with a narrow definition requiring “a physical, mental or intellectual disability which results in a need for compensation in order for that person to be able to function on an equal level with other citizens in a similar situation in life”. It seems, according to Danish jurisprudence, that persons with a reduced functional capacity, must establish before the courts that the reduced functional capacity is significant in their concrete case. Otherwise they probably fall outside the definition of the Danish interpretation of the term ‘handicap’ and they are therefore in Danish legislation and according to the scarce jurisprudence in this field, excluded from the right to reasonable accommodation.

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

If an employer refuses to provide reasonable accommodations and it is not justified it will constitute indirect discrimination.

c) *Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

Reasonable accommodation only applies to persons with disabilities.

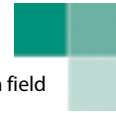
d) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing the Employment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

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 establishing minimum one level free access to a building. The regulation covers all public accessible buildings and commercial buildings for services and administration.<sup>21</sup> Failure to comply can

<sup>20</sup> Proposal L92 of 11 November 2004, ‘4.1. Handicapkriteriet’ and ‘Bemærkninger til de enkelte bestemmelser’, ‘Til nr. 2’

<sup>21</sup> Regulation no. 1250 of 13 December 2004





probably also be a violation of the Act on Differential Treatment on the Labour Market under certain circumstances.

- e) *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?*

There exist various acts that concerns persons with disabilities outside the area of anti-discrimination legislation. Two examples are the following:

*The act on compensation for persons with disabilities in the labour market (Lov om Kompensation til Handicappede I Erhverv mv.)*

The purpose of the act is that persons with disabilities are to have the same opportunities in the labour market as persons without disabilities through accomodation. The act was passed in 1998 and has been amended afterwards. In accordance with the Act people with disabilities, who wish to work, can be given reasonable accommodation such as personal assistance, etc. The expenses under such schemes are covered by the state.

*The act on active occupational effort (Lov om Aktiv Beskæftigelsesindsats)*

This act has introduced a range of common tools for the municipalities and the employment services e.g. wage-subsidy by the local authorities, financial contributions to teaching materials, working tools and personal assistance. The tools are to be applied when offers are made to, for instance newly qualified persons with disabilities and persons with a permanent reduced working capacity who receives early retirement pension and who are not able to hold a job or obtain occupation on shorter hours on normal terms.

## **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?*
- b) *Would such activities be considered to constitute employment under national law?*

The Danish Law Gazette published the decision of the Eastern High Court (UfR. 2005 p. 1429), which seems to narrow the scope of what is considered as coming within the definition of work in relation to sheltered workshops.

For a certain length of time the claimant lived in a sheltered home St. Dannesbo, while he was receiving social benefits. During his stay he also worked in St. Dannesbo's sheltered workshop. Next to his social benefit he received a so-called "working reward" of Euro 1½ an hour (DKK 11,87 pr. Hour). On this basis, he asked for a work contract, which according to Danish law is an obligation for all employers to 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 the contract. Consequently, he brought a claim for compensation for a failure to supply a work contract under the Act on Work Contracts because he had not received the contract one month after he started to work.



The Eastern High Court held that the main purpose of his stay at St. Dannesbo was not to work but to provide him with shelter and care. The amount of money he received in the sheltered workshop was only pocket money and not a real salary but rather a “work reward”. If he did not show up for the work, he could not be fired and the production was not income generated. 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 to benefit his social skills and consequently he did not have the right to a work contract.

Even though the claimant was not disabled, it may be concluded that those disabled persons who are working in the (same) sheltered workshops are not protected by the employment laws, because such activities are considered outside the scope of the definition of what is considered work. In relation to the Employment Equality Directive this may limit the protection under this Directive in that employment will not include sheltered workshops.

### **3. PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Racial Equality Directive and Recital 12 and Article 3(2) Employment Equality Directive)**

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

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

##### **3.1.2 Natural persons and legal persons (Recital 16 Racial Equality Directive)**

*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 being subjected to direct or indirect discrimination on grounds of his/her race or ethnic origin or a third party’s race or ethnic origin.<sup>22</sup>

##### **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-*

<sup>22</sup> Act on Ethnic Equal Treatment article 3 (1) and the guidelines to the provision number 6.



*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?*

The act on Prohibition against Differential Treatment in the Labour Market article 1 (4) contains the prohibition against harassment and article 1 (5) the 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 instruction to other employees to discriminate e.g. in a hiring situation where the employer gives the personnel manager instruction of avoiding hiring of employees with ethnic minority background.

In the guidelines to the provisions it is stated 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 for the employees.

This also follows from the general Danish employer liability principle according to provision 3-19-2 in *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 if (new) statutory rules do not lead to another result. Harassment by such personnel is not a part of their job performance, and will not therefore 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 ought to do to avoid harassment among the employees.

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

## 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.*

The provisions in the national law apply to all areas of employment such as all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office.<sup>23</sup> All the grounds i.e. race, colour, national or ethnic

<sup>23</sup> Section 2 (1).



origin, sexual orientation, age, disability religion and belief are covered by the Act on Prohibition against Differential Treatment in the Labour Market.

In article 3 (3) of the Act on Prohibition against Differential Treatment in the Labour Market it is moreover stated that the prohibition against differential treatment also applies for anyone that lays down rules, or makes decisions on access to, or the exercise of independent business or trade.

*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.*

### **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 Prohibition against Differential Treatment in the Labour Market covers all aspects of discrimination in relation to access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion.

In the public sector “Danish citizenship” may 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 may have subcontracted with the Danish state – e.g. for the printing of Danish passports or bank notes etc. – this company may be obliged by the contract only to hire Danish citizens. In such cases it may not be unjustified for the private company to discriminate against people who are not Danish citizens. The justification may stem from the same principle as within the public sector, that in all those tasks relating to the sovereignty of the state, the citizenship requirement may be justified.

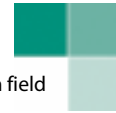
The law does not differentiate between the public and the private sector.

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

- a) *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.*
- b) *In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by the Employment Equality Directive?*

Article 3 (1) (c) of the Directive states that employment and working conditions, dismissals and pay are included in the protection of the Directive. These requirements are met in section. 2 (2)<sup>24</sup> of the Act on Prohibition against Differential Treatment in the Labour Market according to which an employer is prohibited from making differential treatment in connection with employing, dismissal, transferral, promotion, work and pay conditions. The prohibition covers all the protected grounds (see 3.2.1). Occupational pensions are not mentioned specifically in the Act on Prohibition against Differential Treatment in the Labour

<sup>24</sup> Art. 2(2) of the Act on Discrimination states: 'Discrimination in relation to payment conditions is, if equal salary is not offered for the same job or for jobs which are regarded as having the same value'.



Market. 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 course?*

The Act on Ethnic Equal Treatment section 2 (3) states that the act shall not apply to areas covered by the Act on Prohibition against differential treatment in the labour Market etc. Vocational training outside the labour market is however dealt with by the Act on Ethnic Equal Treatment.

According to section 3 (1) (b) of the Act on Prohibition against Differential Treatment in the Labour Market, 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.

There is 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. Consequently the AMU-centre decided to dismiss him, as he provoked the other participants by his act of prayer. 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>25</sup>

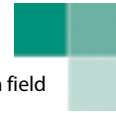
In a case of race discrimination at a technical school<sup>26</sup> it was decided by the city court and approved by the High Court, that this situation was not covered by the Act on Prohibition against Differential Treatment in the Labour Market but rather by the Danish Act prohibiting unequal treatment in goods and services (from 2003). By considering a technical school as a form of education covered by the provision on goods and services, race discrimination is covered anyway, but the problem seems to be in relation to the other protected grounds. By this decision the Danish court has excluded students at the Danish technical schools from protection against discrimination due to age, disability, sexual orientation, religion and belief (as no provisions exist against discrimination on these grounds in the field of goods and services).

### **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))**

<sup>25</sup> Danish Law Weekly 2001 page 83. UfR 2001, 83 H

<sup>26</sup> Eastern High court 27 June 2006





*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 the Act on Prohibition against Differential Treatment in the Labour Market section 3 (4) 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) Racial Equality Directive)**

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

The exception has not yet been applied. The exception is not directly repeated or implemented in the Act on Differential Treatment 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.

### **3.2.7 Social advantages (Article 3(1)(f) Racial Equality Directive)**

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

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 areas of social advantages is now protected cf. section 2. Also with the new provision (section 7) on shared burden of proof the possibility of victims of discrimination to successfully bring cases to court may increase in the future. This Act was not extended to other grounds than ethnicity, leaving amongst others age and disability outside of the scope of protection.

Complementary to said protection is the 1971 Criminal Anti-discrimination Act section 1(1), cf. just above, 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 advantage.

Any public or private leisure facilities etc. open to the public, whether it is commercial or non profit must on this basis be offered on equal terms to everybody. Under the 1971 Act it is also an offence to refuse a person admittance on the same terms as others to social centres, or the like that is open to the public, if the refusal is based on one of the protected grounds, mentioned above.

### 3.2.8 Education (Article 3(1)(g) Racial Equality Directive)

*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. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*

Danish anti-discrimination prohibits discrimination on race and ethnicity (cf. Act Equal Treatment); race, skin colour, national or ethnic origin, belief and sexual orientation (cf. Act on Prohibition against Differential Treatment on Grounds of Race etc.). The legislation applies to all aspect of education including university education and all types of schools. There are no provisions explicitly mentioning Roma children.

According to Danish legislation there exist a very detailed regulation on the issue of children and adults with disabilities and the educational system. The system is different according to the level and field of education.

The local municipality of Elsinore has since 2002 set up segregated classes for Romani children. 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 European Commissioner for Human Rights<sup>27</sup> and the Danish Institute for Human Rights' Complaints Committee for Ethnic Equal Treatment,<sup>28</sup> which consequently stated that the segregation of Romani children was not in accordance with the law..

In 2006 the municipality has thus decided to dismantle the Romani classes and allow the children back in the ordinary classes in public schools in Elsinore.

Until now similar forms of school segregation of other ethnic minority groups than Romani have not been observed.

Discussions on segregation has been absent from the public debate in 2008. Since there is only a few examples the only pattern one could describe is that it has been the intent of the authorities to introduce special measures to the group of Romani children to improve their educational skills and attendance to school activities. Hence, the segregation has been perceived as a tool for targeting this special group and providing teachers and staff which with knowledge and experience with this particular group.

<sup>27</sup> Final report by Mr. Alvaro Gil/Robles, 15 February 2005, Council of Europe.

<sup>28</sup> Decisions of 5 December 2005, 730.27 and 780.9.



### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Racial Equality Directive)**

*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 1971 Criminal Antidiscrimination Act section 1(1) 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. 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 an equal footing on the same terms as 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 protected grounds in the criminal Act section 1, which do not include age and disability. In practice this criminal act has been very difficult to use in the area of goods and services, however some doormen have been fined for violation of the criminal Act in relation to denial of access to restaurants, night clubs etc.

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 the supply of goods and services are now protected. Also with the new provision on shared burden of proof the possibility of victims of discrimination to bring successful cases to court may increase in the future.

### **3.2.10 Housing (Article 3(1)(h) Racial Equality Directive)**

*To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination of the Roma and other minorities or groups.*

The Act on Ethnic Equal Treatment applies to public and private housing companies that are hiring houses, and to real estate companies. The housing should be available to the public, cf. article 2, (1). 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 the private home of their own.

Discrimination in housing is moreover prohibited according to the Act on Ethnic Equal Treatment and in relation to public housing it is furthermore prohibited according to the Principle of equality in Administrative Law.

As a main rule, the rental of public dwellings is done in accordance with a waiting list. In 1997, it was approved by the Danish Parliament to experiment with the rental and assignment of public dwellings. The intention was to attract applicants from a broader segment of the population to troubled areas. From 1997 until April 1999 the experiments departing from the waiting list included more than 43,000 residences. This approach may thus result in



discrimination against ethnic, since ethnic minorities have a higher unemployment rate than ethnic Danes.

With the adoption of the Act on Ethnic Treatment in 2003 – covering the non-employment aspects of the Racial Equality Directive – both direct and indirect unequal treatment in the area of housing is now protected. With the new provision on shared burden of proof the possibility of victims of discrimination to successfully bring cases to court may increase in the future.

## 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 the Racial Equality Directive and Article 4(1) of the Employment Equality Directive?*

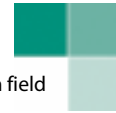
Section 6(1) and 6(2) of the Act on Prohibition against Differential Treatment in the Labour Market contain two exceptions to the prohibition against differential treatment in the labour market.

According to the exemption in section 6(1), the Act 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.

According to section 6(2) if it is of crucial meaning that a person has a particular race, political opinion, sexual orientation or national, social or ethnic origin or has a particular skin colour, age or disability or belongs to a certain religion or belief and if the demand of such a particular affiliation is in reasonable 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.

This seems to comply with the directives in question.

### 4.2 Employers with an ethos based on religion or belief (Art. 4(2) Employment Equality Directive)



- 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 the Employment Equality Directive?*

As stated above section 6(1) in the Act on Prohibition against Differential Treatment in the Labour Market contains an exception to the prohibition against differential treatment. According to this section the act 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 it has to be of crucial *meaning or importance*. Hence it has to be a case by case assessment and organisations with religious ethos are as a point of departure bound by the Act.

No application of the procedure within the relevant period is known.

- 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?*

According to a regulation from 1978 regarding deviation on equal treatment of men and women in regard to occupation etc. when it comes to occupation as a clergyman, such positions in the Danish National Evangelical Lutheran Church and other similar positions within religious communities are excepted from the scope of the law (the act on equal treatment between men and women).

### **Case law**

A young person was in February 2004 dismissed from his cleaning job in a Christian humanitarian organisation (the Christian Cross Army). In a written notice he was told that he was being dismissed because he was not a member of the National Lutheran Church. According to the rules of the organisation all staff members must be members of the National Church.

When the case went to court, the Christian Cross Army argued that according to section 6 (1) of the Act on Prohibition against Differential Treatment in the Labour Market they, as an employer, had the right to demand membership of the National Lutheran Church.

On the other hand they also admitted that Article 4 of the Employment Equality Directive no longer permitted such a requirement for a cleaning position. Denmark, however, did not transpose the Employment Equality Directive on time, as this was delayed until April 2004. Consequently the organisation argued that as a private employer they were under no obligation to follow the Employment Equality Directive in February 2004 and that for this reason the dismissal was not illegal under Danish law.

In November 2004 the case went to court and the claimant demanded €8000 in compensation on the basis of a violation of the Act on Prohibition against Differential Treatment in the Labour Market, ILO convention 111 and the Employment Equality Directive.



On 1 September 2005 the City Court of Copenhagen started the hearing of the case. However, contrary to the former position of the Christian Cross Army, expressed by their lawyer, it agreed to pay compensation of € 8000 without further discussion. The City Court consequently awarded the claimant this amount.<sup>29</sup>

#### **4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Employment Equality Directive)**

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

According to section 1(a) in the Act on Prohibition against Differential Treatment in the Labour Market the Ministry of Defence can make exceptions for armed forces in relation to age and disability.

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

According to section 5(a) (3) in the Act on Prohibition against Differential Treatment in the Labour Market the act is not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements presumed 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 will apply to the police, prison and emergency services.

- c) *Are there cases where religious institutions can 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 (example: the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done? 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) in the Act on Prohibition against Differential Treatment in the Labour Market such a selection is however legal. The set up requirements are imposed in accordance with the principle of proportionality.

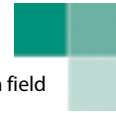
#### **4.4 Nationality discrimination (Art. 3(2))**

*Both the Race Directive and the Framework 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?*

<sup>29</sup> City Court of Copenhagen 1 September 2005 (unpublished)





*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 (ie where nationality discrimination may constitute ethnic discrimination as well) ?*

In the public sector “Danish citizenship” is a selection criterion for the police, judges etc. This is established by law. These are functions related to the core of Danish sovereignty while public employees in other sectors like teachers are not required to be Danish citizens.

In the private sector and in the public sector (considering the limitations mentioned above) such requirements may be considered indirect unjustified discrimination due to national or ethnic origin.

The Danish Parliament passed a bill in 1997, bill no. 329 of 14th May 1997, according to which only persons of Danish nationality, and persons from EU member countries, in the future could obtain a license as taxicab owner. According to the above mentioned bill a taxicab owner of foreign nationality was denied a license for another taxicab.

He disputed the validity of this new rule because it was incompatible with art. 14 of the European Human Rights Convention and art. 26 of the UN Convention on Civil and Political Rights.

While the High Court upheld his contention, the Supreme Court came to the opposite decision,<sup>30</sup> granting Parliament a right to judge if nationality could be an appropriate criterion to make use of, because it was not considered out of proportion to the legitimate aim of the bill.

This decision has been criticised by some legal experts. The bill was changed in 1999 so that Danish nationality is now no longer a condition that shall be fulfilled to obtain a license as a taxicab owner.

Thus, it is possible to set up citizenship requirements but only by law and only as long as it is considered proportionate and has a legitimate aim.

In the concluding observations from the UN ICERD Committee on Denmark from 2006 the Committee welcomed the municipalities’ obligation to offer mother tongue teaching to bilingual students coming or originating from the European Union and European Economic Area countries, as well as from the Faroe Islands and Greenland, but regretted that in 2002, the municipalities’ obligation to do so for bilingual students from other countries was repealed and that municipalities no longer receive financial support for such purposes.

The Committee recommended that the State party reviewed its policy, taking into consideration its obligation under the Convention not to discriminate against persons on the basis of their national or ethnic origin or against any particular nationality. The Committee recalled that differential treatment based on nationality and national or ethnic origin constituted discrimination if the criteria for such differentiation, judged in the light of the

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<sup>30</sup> Danish Law weekly 2002 page 1789 Supreme Court (UfR. 2002. 1789.H).



objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.<sup>31</sup>

Generally, in surveys and by international monitoring mechanisms concerns has been raised regarding the Nationality Act, the Integration Act and the Alien's Act and whether the restrictions introduced during the last few years have had a disproportionate impact on the ability of members of minority groups to acquire Danish citizenship, to benefit from spousal and family reunification and to have access to social protection.

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

No, there are no exceptions relying on Art 3(2).

#### **4.5 Work-related family benefits (Recital 22 Employment Equality Directive)**

*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 employee and their partner. Certain employers limit these benefits to the married partners 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) *Does national law permit an employer to provide benefits that are limited to those employees who are married?*

National law does not include provisions on whether private employers can provide benefits to married couples or not.

b) *Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?*

No case law is known. It seems that such a practice would be a violation of the Act on Prohibition against Differential Treatment in the Labour Market.

#### **4.6 Health and safety (Art. 7(2) Employment Equality Directive)**

*Are there exceptions in relation to disability and health and safety (Article 7(2), Employment Equality Directive)?*

*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)?*

Public authorities are governed by the principle of equality applicable under general administrative law, which means that equal matters must be treated in full equality before the law.

<sup>31</sup> CERD/C/DEN/CO/17 August 2006.

The only known exception is found in the Road Traffic Act<sup>32</sup> section 81(5) and the government circular (bkg 1998 518) paragraph 2, male Sikhs are exempted from wearing 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 Eastern High Court 24 October 2006*

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 in relation to religious symbols. Therefore the court held the kirpan to be a knife and consequently there had been a violation of the act. The kirpan was confiscated, whereas a fine was annulled. The Court did not find the sanction to be a violation of article 9 of ECHR. 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 Employment Equality Directive)**

### **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, Employment Equality Directive, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?*

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

Subsection 4 further states that collective agreements that prescribe the termination of employment at the age of 70 years can be maintained. In subsection 4, however, it is not mentioned that such provisions in collective agreements must meet the proportionality test, as was 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. It is disputed whether the member states can permit forced retirement age without justification.

<sup>32</sup> Consolidated Act 2005-11-14 no. 1079 Færdsselsloven.



Further more section 9, subsection 3, in the act on Prohibition against Differential Treatment in the Labour Market provides for access to positive action towards senior workers with a view to promote employment of elderly people.

Section 9, subsection 4 of the Act on Prohibition against Differential Treatment in the Labour Market also allows for age requirements invoked in other legislation, if such a requirement is set up 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 the Employment Equality Directive?*

See just above under answer a.

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

According to section 6(a) of the Act on Prohibition against Differential Treatment in the Labour Market age requirements can be set up for the admission of occupational pension schemes – such requirements may however not 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.*

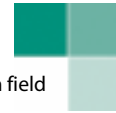
As mentioned above section 9, subsection 3 in the Act on Prohibition against Differential Treatment in the Labour Market provides for access to positive action to senior workers with a view to promote employment of elderly people.

According to section 16, subsection 4 in act (no.734 of 28th June 2006) 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. In these situations the employer must prove that the dismissal was not motivated by these reasons.

According to section 16, subsection 5, a person dismissed during pregnancy or maternity leave has the right to receive a written and thorough explanation of the reasons for the dismissal.

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

According to section 41 of *Lovbekendtgørelse No.. 979 of October 1. 2008 om social service* [Danish Act on Social Service], *kommunalbestyrelsen* [the municipal council] is under the obligation to contribute to reimburse necessary additional costs for homecare of children



under the age of 18 with a permanent reduced functional capacity. It is a requirement that the extra costs are caused by the reduced capacity.

According to section 42 of the Danish Act on Social Service the municipal council must contribute to reimbursing loss of earnings for persons who support an underage child at home with a permanent 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 the municipal council must provide additional payment for until 3 months to unemployed persons who receive reimbursement according to 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 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).

According to section 5(a), subsection 6, 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, since 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 retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).*

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 for longer, or can an individual collect a pension and still work?*

The retirement pension is an age-determined pension payable to persons of 65 years.<sup>33</sup>

The pension remains payable even though the pensioner works while receiving retirement pension. The pension will however be reduced on the basis of the recipients source of income.

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

Persons who are age 60 or more and who do not qualify for social pensions due to the eligibility rules are offered a special rate of social assistance corresponding to the amount payable to a married old-age pensioner (section 27 of the Act on an Active Social Policy).<sup>[1]</sup>

<sup>33</sup> See the Act on Social Pension, Lov nr. 484 of 29. May 2007.

<sup>34</sup> See Act on Public Servants, (Tjenestemandsløven, Lov nr. 597 of 24. Juni 2003).



- b) *Is there a normal age when individuals 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 for longer, or can an individual collect a pension and still work?*

Occupational pensions 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, 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 exists an age limit for public servants stating that they will be dismissed from the end of the month where they turn 70<sup>35</sup>. It has however been proposed to abolish the 70-year rule<sup>36</sup>.

- 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 allows for an age limit of 70 years. According to section 5(a) subsection 4 in the act on Prohibition against Differential Treatment in the Labour Market the provision regarding differential treatment due to age is not a hindrance for provisions regarding age limits laid down in or agreed upon in collective agreements, when the employee reaches the age of 70.

- 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. 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 scope of the Danish Salaried Employees Act. A person who is 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 women.

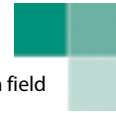
*For these above questions, please indicate whether the ages are different for women and men.'*

<sup>34</sup> See bill L 175, act amending the act on public servants etc., Forslag til lov om ændring af lov om tjenestemænd og forskellige andre love (ophævelse af den generelle pligtige afgangsalder på 70 år m.v.)

<sup>35</sup> See Act on Public Servants, (Tjenestemandsløven, Lov nr. 597 of 24. Juni 2003).

<sup>36</sup> See bill L 175, act amending the act on public servants etc., Forslag til lov om ændring af lov om tjenestemænd og forskellige andre love (ophævelse af den generelle pligtige afgangsalder på 70 år m.v.)





There is no instance of different ages for men and women specified by law under 4.7.4. a-e. However according to section 5(a) subsection 3 in the act the act is furthermore not a hindrance to the maintenance of valid age limits regulated in or agreed upon in collective agreements presumed that these age limits are objectively and reasonable justified by a legitimate aim within the scope of Danish legislation and that the means of achieving that aim are appropriate and necessary.

#### 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 Prohibition against Differential Treatment in the Labour Market it is forbidden to take age into considerations in selecting workers for redundancy. There is however exceptions in article 5(a) of the act. See under section 7.4.1. concerning exceptions. In practice seniority has been accepted as one among other considerations when going through budget cut- and dismissal procedures<sup>37</sup>. It must however not be a cover for dismissing someone because of their age.

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

If it is assessed that the redundancy is illegal one can be awarded compensation according to national law. If a person has seniority of 25 years or more there exist a practice after which special considerations should be shown.

#### 4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Employment Equality Directive)

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

No provision directly implements article 2(5) of the Directive. Special requirements regarding e.g. age exist however.

#### 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 in Danish legislation.

<sup>37</sup> See Judgment U.1995.177.H



## 5. POSITIVE ACTION (Article 5 Racial Equality Directive, Article 7 Employment Equality Directive)

- 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 exemption is section 9 subsection 2 of the Danish Act on Prohibition against Differential Treatment 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, provisions by virtue of rules with a different legal basis or 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. The protection of the principle of prohibition against discrimination is considered by the authorities to be best ensured if it is only by means of legislation or other public measures that the possibility of improving employment opportunities for persons of a different ethnic origin is made possible. According to the Act, section 9, such special measures thus require legal authority and are primarily to be taken by the minister in the course of public projects.

Hence section 9, the Act on Prohibition against Differential Treatment is primarily directed at the public sector and projects improving the qualifications and integration of ethnic minorities. A private employer needs a specific legislative foundation to perform such a conduct.

According to section 9, subsection 3, however, it is possible to allow private employers to take positive measures in relation to age and disability.

### **Race and ethnic origin:**

In the guidelines to the Act on Prohibition against Differential Treatment in the Labour Market, the types of programs that are to be considered lawful public positive measures encompass projects initiated by the different ministries as part of national integration schemes, including projects with the aim of improving qualifications of persons with ethnic minority background.

The guidelines underline that it is only possible to initiate public programs with the aim of improving access to employment, and not private or public businesses' initiatives to introduce programs allowing for preferences of specific persons, e.g. persons with ethnic minority background.

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



In the preparatory work to the Act it is stated 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 the possibility to initiate specific measures is available both to the public authorities as well as private organizations and entities. The Act only covers equal treatment outside the labour market.

**Age and disability:**

With a revision in 2005 the prohibition against differential treatment on grounds of age and disability was amended to the Act on Prohibition against Differential Treatment in the Labour Market. If the persons have the same qualifications, according to section 9 (3) of the act it is possible for an employer to prefer the one with the disadvantage.

This means that if two applicants are equally qualified, the private employer may choose the disabled person instead of the non-disabled person. The rationale being that disabled persons are under-represented on the Danish labour market. The definition of the term “disability” in Danish law is explained in section 2.1.1.

Next to section 9, sub section 3, furthermore section 9 subsection 2, also applies in relation to disability and age, allowing for a number of legislative or public measures that promotes the employment opportunities of elderly and disabled.

No public positive measures were initiated in 2007 with this aim.

By act of Parliament no. 55 of 29th January 2001 on compensation to persons with disabilities in jobs, the integration of disabled persons in the job market has been promoted. This Act is about how compensation for impairments in the labour market is best given, and has been supplemented by a new Act of Parliament, no 577 of 19th June 2003. The general rules on how to promote and enhance employment for persons with (special) difficulties finding a job is now described in this, and among them are also some measures aiming at creating better job possibilities for persons with disabilities. The two Acts are not alternatives, but supplementary to each other.

The general aim of these Acts is to enhance the integration of persons with disabilities in the labour force by means of affirmative action and various other compensatory measures. 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.

**Religion or faith:**

There are no provisions in Danish law 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 of 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 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market, any related to Roma and regarding minority rights based measures.*

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

It should be mentioned that most of the positive measures initiated are mostly broad social policy measures in the labour market. Quotas and preferential treatment are not lawful, unless the person preferred with e.g. ethnic minority background has the same professional qualifications as the person not preferred. Examples of positive measures existing in Denmark are given in the following passage:

#### **Race and ethnicity:**

Examples of public positive measure programs initiated for the labour market in accordance with the Act on prohibition against differential treatment article 9 (2) are e.g. the establishment of five knowledge centres to help people with ethnic minority background to clarify their competencies and the possible use thereof in the labour market. Other examples cover mentorship programs, traineeship programs, etc.

There are no specific measures initiated for Roma people.

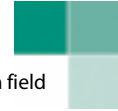
As examples from the Danish society of initiated specific measures on the basis of article 4 in the Act on Ethnic Equal Treatment, a 1-year preparation course offered to person with migrant background at the state teachers colleges should be mentioned. Also, a preparation course offered at the Danish School of Journalism, where students are equipped with tools to overcome possible cultural and linguistically barriers they might encounter at the school illustrates the willingness to adopt positive measures as part of the strive against discrimination.

Other examples cover recruitment campaigns for nurses' colleges and the Danish Police Academy targeted specifically at ethnic minorities.

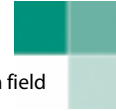
#### **Religion or faith:**

There are no provisions that permit the initiating of positive measures on grounds of religion or faith.

Although there has been seen examples both in the labour market and in the education sector that positive actions have been initiated in order to allowing e.g. students or employees with Muslim background the possibility to exercise their daily prayer in a room that is reserved for this purpose.



Other examples from the Danish society of positive measures initiated in the field of sport is e.g. the initiative of some municipalities to reserve swimming facilities for certain hours of a week only to women in order to provide women of Muslim background with the possibility to enjoy the swimming facilities without meeting men.



## 6. REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Racial Equality Directive, Article 9 Employment Equality Directive)

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 are reviewing cases in which provisions of the Act on Ethnic Equal Treatment and the Act on Prohibition against Differential Treatment in the Labour Market, both transposes the Racial Equality Directive and the Employment Equality Directive.

Finally it is important to note that the labour court only deals with the interpretation of the collective agreements, and not with e.g. a violation of the Act on Discrimination.

Cases on discrimination initiated by trade unions are typically tried before the courts, but may be reviewed as part of labour arbitration<sup>38</sup> or reviewed by the Labour Court. The labour court rules in matters dealing with the interpretation of collective agreements.<sup>39</sup>

An administrative complaints procedure has been established only in relation to discrimination due to ethnicity and race in the labour market as well as in the sectors covered by the Racial Equality Directive. As part of the transposition of the directive, the Danish Institute for Human Rights was appointed specialised equality body with a specific mandate to receive such complaints.<sup>40</sup>

A Bill was proposed in Parliament 12 December 2007 introducing a new administrative complaints organ with the mandate to review individual cases on all discrimination grounds in the labor market and in sectors outside the labor market equivalent to those covered by the Racial Equality Directive. The complaints organ is envisaged to render binding decisions and provide compensation.

As a consequence, the Complaints Committee for Ethnic Equal Treatment (and the Gender Equality Board) will be closed down.

If adopted by Parliament, the Bill will create a new possibility to file complaints of discrimination on all grounds in the labour market and is as such a positive step.

b) *Are these binding or non-binding?*

Judgements from the courts are legally binding, whereas decisions from the Complaints Committee for Ethnic Equal Treatment are guiding or recommending, and thus non-binding.

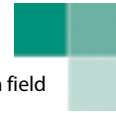
According to the Act on Ethnic Equal Treatment Article 10(2), the Complaints Committee for Ethnic Equal Treatment may recommend that complainants meeting the conditions of section 330(1)(ii) of the Danish Administration of Justice Act be granted free legal aid.

<sup>38</sup> See the Act on Arbitration, *Voldgiftsloven*, lov nr. 181 of 24 May 1972.

<sup>39</sup> For more details see *Lov om Arbejdsretten*, lov nr. 183 of 12 March 1997.

<sup>40</sup> Act on Ethnic Equal Treatment, section 10, sub section 2.





c) *Can a person bring a case after the employment relationship has ended?*

*In relation to each, 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 person can file a complaint even after the employment relationship has ended. Hence, there exists no deadline for filing a complaint, but practical difficulties can arise in relation to collecting evidence.

The administrative procedure before the Complaints Committee for Ethnic Equal Treatment is free of charge for the complainant.

No official statistics on cases concerning discrimination brought before the Danish courts exists

Statistics on cases brought to the city courts and Maritime and Commercial Court are not available as they are not registered and published as part of the Weekly Law Gazette.

The number of cases received and reviewed by the Complaints Committee for Ethnic Equal Treatment in 2007 amounts to 32 individual cases. The committee has *ex officio* initiated 3 cases in order to explore patterns of systematic ethnic discrimination.

## **6.2 Legal standing and associations (Article 7(2) Racial Equality Directive, Article 9(2) Employment Equality Directive)**

*Please list the ways in which associations may engage in judicial or other procedures*

- a) *in support of a complainant*
- b) *on behalf of one or more complaints (please indicate if class actions are possible)*

NGOs do not have legal standing before domestic courts of law in relation to alleged human right violations and cases of discrimination. The NGOs need a victim to promote a case.

The Danish Administration of Justice Act allows for 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.<sup>41</sup>

It may be questioned whether the requirement of legal interest fulfils article 9 (2) In the Employment Equality Directive, which uses the term *legitimate interest* of an association, organisation or legal persons to intervene as a part in a concrete case.

<sup>41</sup> Section 252.



In practice however, it must be assumed that intervention as a third party on behalf of a complainant or own standing is accepted by the interpretation of the courts.

The situation is similar when it comes to the possibility of legal standing for NGOs in the field of combating discrimination due to age, disability or sexual orientation or other grounds.

Section 124 of the Danish Administration of Justice Act furthermore allows associations, interest groups etc. to represent their members in legal proceedings in cases within the scope of the organizations field of interest.

Class actions are possible. More cases may be submitted and reviewed under the same court file<sup>42</sup> and organisations, associations and other legal persons may appear before the court as group representatives.

### **6.3 Burden of proof (Article 8 Racial Equality Directive, Article 10 Employment Equality Directive)**

*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 (2003) and the amended Act on Prohibition against Differential Treatment in the Labour Market (2004) introduced the principle of dividing the burden of proof.<sup>43</sup> This means that the person who feels that he or she has been discriminated against has to show evidence of possible discrimination, whereas the employer, a shop owner, landlord etc. has to prove that no discrimination has taken place. This divided (and not a total shift) burden of proof is in line with the (Danish version) of recital number 31 and article 10 of the Employment Equality Directive.

To live up to the Directives, a shared burden of proof generally has to be introduced in cases of racial and ethnic discrimination, as well as discrimination due to religion and belief, age, disability and sexual orientation. The burden of proof is to be applied in cases of direct and indirect discrimination, harassment and instruction, but not in cases regarding victimization.

### **6.4 Victimization (Article 9 Racial Equality Directive, Article 11 Employment Equality Directive)**

*What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses,  or person that help the victim of discrimination to present a complaint)*

In regard to victimization it is prohibited in national law to subject 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.

<sup>42</sup> Act on the Administration of Justice, chapter 23 a.

<sup>43</sup> The Ethnic Equality Act section 7 and Labour Market Discrimination Act section 7 a.



The Act on Prohibition against Differential Treatment in the Labour Market, section 7 subsection (2) reads that:

*‘the person who has met with disparaging treatment or unfavourable consequences because he or she has asked for equal treatment, as mentioned in section. 2 to 4, can be given compensation [by the court].’*

When the protection applies, the comments of the Bill from 2004 read: *‘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 the person who files a complaint regarding differential treatment of her/himself and to the person who files a complaint over differential treatment of another person.

It is of course a prior condition, that a causal link can be established between the victimisation and the employee’s request for equal treatment.

According to Act. No 31 of 2005 section 1, subsection 4, victimisation due to all the protected grounds are prohibited and according to section 7 subsection 2 the person who are met with disparaging treatment or unfavourable consequences because he or she has asked for equal treatment, as mentioned in section. 2, 3 and 4 of the same Act, can be given compensation by the court.

## **6.5 Sanctions and remedies (Article 15 Racial Equality Directive, Article 17 Employment Equality Directive)**

*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 a pecuniary compensation and discriminatory advertisements may result in a fine. So far there are only 6 or 7 court cases dealing with the *Act on Prohibition against Differential Treatment in the Labour Market etc.* One person has been granted compensation and one fine has been issued.<sup>44</sup>

Persons who have been discriminated against in the labour market may now be awarded compensation in pursuance of Section 7 of the *Act on Prohibition against Differential Treatment in the Labour Market etc.* The compensation covers non-pecuniary damages.

<sup>44</sup>1) BS 3-1211/97: unpublished decision from the city court of Lyngby of December 22, 1998. The decision was upheld by the Eastern Division of the High Court in an unwritten decision of September 27, 1999.

2) NS 1999/35/91: unpublished decision from the Supreme Court.

3) B-2732-97: unpublished decision from the Eastern Division of the High Court of October 21, 1998. The judgment was upheld by the Supreme Court in Ugeskrift for Retsvæsen 2001.83 H, Danish Law Weekly 2001, page 83.

4) 23450/97: unpublished decision from the city court of Copenhagen of April 14, 1999.

5) Ugeskrift for Retsvæsen 2000, s. 2350. Danish Law Weekly 2000, p. 2350.

6) Unpublished decision by the Eastern High Court of April 5, 2001.



In addition, the individual may claim compensation for pecuniary damages according to the ordinary rules on damages.

b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

There is no ceiling on the maximum amount for compensation that can be awarded.

c) *Is there any information available concerning:*

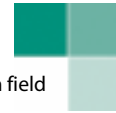
- *the average amount of compensation available to victims*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?*

Until recently, the level of compensation has been rather low in cases on ethnic discrimination. Case law from recent years show examples of compensation of DKK 10.000 to a Muslim girl who was rejected as a trainee by a department store due to her headscarf, and 15.000 to a young Muslim woman taking part in a work testing scheme (*arbejdsprøvning*) in a municipality. In other cases the compensation awarded amounted to DKK 70.000. (approx. 9500 €)

However, in a case reviewed by the Western High Court in February 2008 on discrimination on the ground of sexual orientation (employee fell ill due to harassment based on homosexuality), the court awarded the applicant DKK 100.000 (approx. 13500€) in compensation.<sup>45</sup>

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<sup>45</sup> See the details on case, above under 0.3.



## 7. SPECIALISED BODIES

*Body for the promotion of equal treatment (Article 13 Racial Equality Directive)*

*When answering this question if there is any data regarding the activities of the body (or bodies), 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?*

The Danish Institute for Human Rights is established cf. Act No. 411 of 6 June 2002. Furthermore the Danish Institute 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 EU Council Racial Equality Directive on Equal Treatment Irrespective of Race and Ethnic Origin. DIHR has a horizontal approach to discrimination as well as a broad human rights mandate. Hence, DIHR also publish reports on other grounds of discrimination e.g. disability and sexual orientation.

In accordance with the requirements of Article 13 in the Directive, the Institute has been given the mandate to assist victims of discrimination, to conduct surveys concerning discrimination and to publish reports and make recommendations on discrimination. The Institute has the mandate to deal with individual complaints on racial discrimination both in and outside the labour market.

The Complaints Committee for Ethnic Equal Treatment has in 2007 (as of 31 December) received 32 concrete complaints and taken up 3 on its own accord.

1. The concrete cases are distributed on the following areas:

2. Social Benefits:	1
3. Social Advantages:	5
4. Health:	2
5. Education:	7
6. Goods and Services:	4
7. Other:	1
8. Outside Mandate:	4
9. Labour Market – Dismissal:	2
10. Labour Market – Employment:	3
11. Labour Market – Salary and Working Conditions:	2



- [1]. Labour Market – Vocational Training: 1
- [2]. The 3 cases taken up on the Committee’s own accord are outside the Labour Market.
- 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.*

The Danish Institute for Human Rights assists victims of discrimination by reviewing individual complaints and express its opinion as to whether the prohibition of discrimination and the prohibition of victimization has been violated cf. Act no. 374 on Ethnic Equal Treatment of 28 May 2003 and Consolidated Act no. 31 on Prohibition against Differential Treatment in the Labour Market, etc. of 12 January 2005. The Danish Institute for Human Rights did in June 2003 set up a Complaints Committee for Ethnic Equal Treatment to review such complaints. The Complaints Committee may recommend that victims of discrimination are granted free legal aid in accordance with the Danish Administration of Justice Act. There are no fees for bringing a case before the Committee. Please note that it is not within the power of the mandate to award compensation.

The Complaints Committee consists of a chairman and two members appointed by the board of The Danish Institute for Human Rights. Two of the members shall have a juridical background. It shall be aimed at that both sexes are represented in the Committee and that at least one member has another ethnic origin than Danish.

The object of the Complaints Committee is to hear complaints over discrimination on grounds of race or ethnic origin. Further, the Committee hears complaints in which a person has been victimized as a reaction to the person’s complaint of discrimination on grounds of race or ethnic origin.

The Institute has been allocated 6 million DKK (800.000 €) on a yearly basis to perform as a specialised equality body. This includes the running of the Complaints Committee.

- 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*

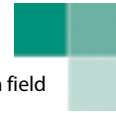
According to section 2, sub section 2, the provision that governs the mandate of the institute:

“..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 about discrimination without prejudice to the right of victims and of associations, organizations 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 assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*

The Danish Institute for Human Rights 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 analyses of the requirements set up in the Alien act and their compliance with the right to family life and prohibition against discrimination. Report No. 1, the Danish Institute for Human Rights 2004.

*Equal treatment - Status and future perspectives.* An analysis of the requirement for amending Danish legislation. Report No. 2, the Danish Institute for Human Rights 2005.

*Persons with disabilities in Denmark.* An analysis of the requirement for amending Danish legislation as regards the international obligations in relation to persons with disabilities. Report No. 3, the Danish Institute for Human Rights 2005.

*Effective protection against discrimination.* An analyses of protection and promotion of equal treatment and the proposed complaints handling organ on all discrimination grounds. Report No. 5, the Danish Institute for Human Rights 2007.

The secretariat of the Committee has informal meetings with the public and potential victims. The Complaints Committee is set up as a tribunal/quasi court with the competence to give independent opinion on whether discrimination did take place.

According to the mandate the Committee must be independent in relation to both parties of the case, and can not be seen as a body assisting either part in the conflict.

The Complaints Committee can also, on it own initiative initiate investigations.

*e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

Not explicitly, but in principle it may intervene in a case reviewed by the courts if a legal interest in the substance matter can be proven.

*f) Is the work undertaken independently?*

The Danish Institute for Human Rights is independent and under no instructions from public authorities or Government.

*g) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

No. Initiatives have been taken (visiting Roma and explaining about complaints procedure) , but it has not been possible to actively include Roma organisations as partners or participants. Reports have been made in which Roma issues have been ardesed (e.g. The DIHR annual Status Report on the Human Rights situation in Denmark and raising issues on Roma in relation to international monitoring committees).



## 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 Racial Equality Directive and Article 12 Employment Equality Directive)*

As part of the information campaign under the EU year on Equal Opportunities, the Ministry of Welfare initiated a number of activities, including:

- Books and information material
- Education material
- Theater and performances
- Website

The Danish Institute for Human Rights (DIHR) serve as specialised equality body according to the Racial Equality Directive and as complaints handling organ under the Employment Equality Directive, according to race and ethnicity only (the mandate of DIHR was expanded in 15 April 2004 to also partly cover the Employment Equality Directive).

DIHR is disseminating information about discrimination and equal treatment via:

- Books, reports, articles and notes on discrimination and equal treatment
- Pamphlets, brochures and guidelines
- Tools for compliance assessment of recruitment, promotion and dismissal practices in companies and tools for diversity management
- Information campaigns (posters, post cards etc.)
- TV spots on discrimination and diversity broadcasted by Danish television and disseminated via websites, including U-tube, Facebook and MySpace.
- Poster competition for children and youths
- The diversity award, MIA price, to companies serving as good practice models 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)
- Education programs in the Police Academy
- Public seminars
- Seminars, workshops and lectures for trade unions, the justice sector, primary and secondary school, civil society, public and municipal authorities
- Platforms for dialogue and debate among stakeholders in the field of anti-discrimination

The Complaints Committee for Ethnic Equal Treatment has disseminated information via

- pamphlets on the Complaints Committee on Ethnic Equal Treatment
- annual reports
- [www.klagekomite.dk](http://www.klagekomite.dk) with access to information and decisions
- seminars at public schools, advisory centres and minority associations about the national equal treatment and non-discrimination legislation



- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Racial Equality Directive and Article 14 Employment Equality Directive) and*

The Danish steering committee for the ‘2007 – equal opportunities for all’ was established by the Ministry of Welfare and comprised members of both public authorities, DIHR and NGOs.

After the implementation of the EU directives concerning equal treatment and the framework directive into Danish national law the Danish Institute for Human Rights (DIHR) recognised a need for developing a national strategy to combat discrimination in all areas inside and outside the labour market. As a consequence, DIHR started developing a national strategy to combat discrimination together with 22 NGOs represented in DIHR Council (governing body of the institute) and covering the areas of race and ethnicity, gender, disability, age, sexual orientation, religion and belief.

Hereby, a platform for NGOs was created that has served and serves as a forum for sharing knowledge, experience and good practice with each other and thus build up capacity and competences as well as developing a common strategy.

As a result of this process, DIHR in 2007 hosted a conference with the outcome of a Consensus Declaration that was signed by all represented NGOs and subsequently presented at a hearing at the Danish Parliament where members of the political parties in Parliament were present.

- 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 Racial Equality Directive and Article 13 Employment Equality Directive)*

DIHR has been active in the pursuit of getting labour market partners and employers to implement the principles of equal treatment into their personal and business politics. DIHR annually holds special designed seminars and conferences under the heading of Diversity Management for trade union workers and employees.

DIHR has also in cooperation with employers developed a tool for how to implement equal treatment and non-discrimination principles at the work place.

- d) *to specifically address Roma and Travellers*

No initiatives addressing the Roma population in Denmark have been taken in 2007.



## 8.2 Compliance (Article 14 Racial Equality Directive, Article 16 Employment Equality Directive)

- 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 in Danish law that a person cannot sign away or agree upon being situated in a less favourable position than that prescribed by law. A person can therefore not waive his or her right not to be subjected to differential treatment by a contract or agreement with his employer.

- b) *Are any laws, regulations or rules contrary to the principle of equality still in force?*

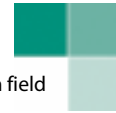
No.

The official state pension age is 65 years for men and woman. There is no general state imposed retirement age however, in some areas retirement ages are set by collective agreements for certain professions.

Section 5(a) subsection 3 and 4 in the act on Prohibition against Differential Treatment in the Labour Market allow for direct discrimination due to age. It is stated in subsection 3 that the existing collective agreements setting up age requirements for certain professions can be maintained, only if such an age requirement is objectively and reasonably justified by a legitimate aim, and 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 that states that an employment stops when the employee turns 70 years old cf. section 5(a) (4).

So far, no complaints on forced retirement are known.



## 9. OVERVIEW

*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 (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.*

The 13th of May 2008 a new bill<sup>46</sup> was passed which establishes an independent Common Complaints Board for Equal Treatment was presented before Danish Parliament. The bill enters into force 1<sup>st</sup> January 2009.

The Common Complaints Board for Equal Treatment will be competent to review complaints on the grounds of discrimination due to gender, race, religion or faith, age, disability, national, social or ethnic origin, political opinion or sexual orientation.

The new Common Complaints Board is modelled after the existing Gender Equality Board (Ligestillingsnævnet). One of the main changes is that victims of discrimination can be accorded compensation for non-pecuniary damages directly by the Common Complaints Board and that the Common Complaints Board will be entitled to take the case to the courts if the perpetrator is not willing to pay.

The Danish Institute for Human Rights will remain the independent national body for the promotion of equal treatment regardless of racial or ethnic origin and thus be competent to provide independent assistance to victims of discrimination, conduct independent surveys concerning discrimination and publish independent reports and make recommendations on any issue relating to such discrimination.

DIHR find that the proposal for a Common Complaints Board is a positive development within the field of combating discrimination and promoting equal treatment. Especially should a uniform treatment of a complaint regardless of the ground of discrimination, as well as an increased exchange of knowledge among the case-workers on various fields of discrimination, be seen as positive aspects of the proposal. However, DIHR and others have especially expressed concern that the Common Complaints Board does not have the mandate to take up cases ex officio. In particular taken into account that vulnerable groups are the most likely to fall victim to discrimination, but may lack the mental resources to contact the Common Complaints Board on an individual basis or may be unaware of the existence of such a body. Hence the visibility of the Common Complaints Board also seems crucial for the success of it.

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<sup>46</sup> Act no. 387 of 27<sup>th</sup> May 2008 on the Common Complaints Board for Equal Treatment.



## 10. 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?*

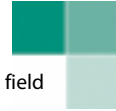
The Ministry of Welfare, the Ministry of Employment, and the Ministry of Integration conduct a variety of activities with the purpose of protecting and promoting equal treatment and non-discrimination. Hence, the Ministry of Welfare coordinated the Danish activities during the EU year 2007 – equal opportunities for all. The Ministry of Welfare has for instance also published materials for use in schools concerning equal opportunities. The material is seeks to promote debate concerning rights, tolerance, equal opportunities for all irrespective of age, sex, disabilities, ethnic origin, religion or sexual belief. The Ministry has also published an information folder concerning equality in Denmark. The folder contains information on marriage, sexual rights, divorce and parental custody and it is addressed primarily to women with other ethnical backgrounds than Danish.

The Ministry of Integration - and to some extent also the Ministry of Employment – launch action plans, programmes, reports and information with said purpose. For instance the Ministry of Integration has published the Danish Governments action plan to promote equal treatment and diversity and to fight racism. According to the Government Platform 2007 “Society of Opportunities”, the action plan is to be updated, and a new and revised plan is to be released by the end of 2009.

The specialized equality body designated in accordance with the Racial Equality Directive is the Danish Institute for Human Rights, which seeks to coordinate among Danish NGOs working with discrimination and equal treatment, see above.

In order to provide the citizens with an effective remedy against differential treatment, the Act on Ethnic Equal Treatment article 10 (2) authorizes The Danish Institute for Human Rights to deal with cases of differential treatment on basis of racial or ethnic origin and to deal with cases of reprisals.





## **Annex**

1. Table of key national anti-discrimination legislation
2. Table of international instruments

**ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION**

Denmark

Date 29 February 2008

<b>Title of Legislation (including amending legislation)</b>	<b>In force from:</b>	<b>Grounds covered</b>	<b>Civil/ Administrative/ Criminal Law</b>	<b>Material Scope</b>	<b>Principal content</b>
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Lovbekendtgørelse nr. 626 af 29/09/1987 om forbud mod forskelsbehandling på grund af race mv. <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=59249">https://www.retsinformation.dk/Forms/R0710.aspx?id=59249</a>	09/1987	race, color, national or ethnic origin, religion and sexual orientation	Criminal law	Occupational or non-profit activities	Prohibition of discrimination
Lov nr. 374 af 28/05/2003 om etnisk ligebehandling. <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=28938">https://www.retsinformation.dk/Forms/R0710.aspx?id=28938</a>	05/2003	Race, ethnic origin	Civil	Outside the labour market (e.g. health care; social advantages; education; supply of goods and	Prohibition of direct and indirect discrimination, instruction to discriminate, harassment,

				services; housing, access to restaurants, etc.)	reprisals, mandate to a specialised body re. complaints handling.
Lovbekendtgørelse nr. 31 af 12/01/2005 om forbud mod forskelsbehandling på arbejdsmarkedet mv. <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=30199">https://www.retsinformation.dk/Forms/R0710.aspx?id=30199</a>	01/2005	race, colour, religion, political opinion, belief, sexual orientation, age, disability and national, social or ethnic origin	Civil	in the labour market (e.g. employment, dismissal, transfer, and promotion. pay- and working conditions vocational out-of school education etc.)	Prohibition of direct and indirect discrimination, instruction to discriminate, harassment, reprisals, mandate to a specialised body re. complaints handling.
Danmarks Riges Grundlov af 05/06/1953 § 70 and § 71 <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=45902">https://www.retsinformation.dk/Forms/R0710.aspx?id=45902</a>	06/1953	Political opinion, faith or descent	Constitutional	Civil and political rights  Deprivation of personal liberty (Danish citizens only)	Prohibition of discrimination based on faith or descent in relation to enjoyment of civil and political rights Prohibition against deprivation of personal liberty in relation to political or religious conviction, (Danish citizens only)

<p>Lovbekendtgørelse nr. 1095 af 19/09/2007 om ligestilling af mænd og kvinder  <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=20929">https://www.retsinformation.dk/Forms/R0710.aspx?id=20929</a></p>	09/2007	Gender	Civil	in the labour market (public administration, private businesses, occupational or non-profit activities)	Prohibition of direct and indirect discrimination, harassment, creation of a specialised body
<p>Lovbekendtgørelse nr. 1260 af 23/10/2007 af Straffeloven § 266 b and § 81 (1) (6)  <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=113401">https://www.retsinformation.dk/Forms/R0710.aspx?id=113401</a></p>	10/2007	race, skin color, national or ethnic origin, religion or sexual orientation	Criminal law		<p>Prohibition of degrading or threatening remarks or announcements.</p> <p>Racism as a motivation for a crime shall be considered an aggravating circumstance</p>
<p>Lov nr. 411 af 6. juni 2002 om etablering af Dansk Center for Internationale Studier og Menneskerettigheder  <a href="https://www.retsinformation.dk/Forms/R0710.aspx?id=22966">https://www.retsinformation.dk/Forms/R0710.aspx?id=22966</a></p>	01/2003	Race, ethnic origin	Civil	assist victims	Promote equal treatment , creation of a specialised body

**ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS**

Denmark

Date 29 February 2008

<b>Instrument</b>	<b>Signed (yes/no)</b>	<b>Ratified (yes/no)</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)	Yes	Yes	No	Yes	Yes
Protocol 12, ECHR	No	No	No	No	No
Revised European Social Charter	Yes	No	yes	Ratified collective complaints protocol? No	No
International Covenant on Civil and Political Rights	Yes	Yes	No	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes	Yes	The Convention only covers Germans in Southern Jutland (part of Denmark), not e.g, Greenlanders, the Faroese and Roma population	Yes	Yes
International Convention on Economic, Social and Cultural Rights	Yes	Yes	The Convention only covers the German language in Southern Jutland.	Yes	Yes
Convention on the Elimination of All	Yes	Yes	No	Yes	Yes

Forms of Racial Discrimination					
Convention on the Elimination of Discrimination Against Women	Yes	Yes	No	Yes	Yes
ILO Convention No. 111 on Discrimination	Yes	Yes	No	Yes	Yes
Convention on the Rights of the Child	Yes	Yes	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	Yes	No	No	No	No