



## **Executive Summary**

### **Danish Country Report on measures to combat discrimination**

#### **By Brigitte Kofod Olsen, 2007**

#### **1. Introduction**

In the 1960's and 1970's, it was discussed whether legislation on discrimination in the labour market due to race, religion or other grounds should be enacted. In response the social partners in the labour market rejected such legislation with the argument that Denmark has a tradition for collective agreements in the labour market instead of legislation. According to this so-called Danish model the social partners would make agreements prohibiting racial or religious discrimination if this was going to be a problem in the labour market. As no such collective agreements were enacted, victims of discrimination due to race, ethnicity, sexual orientation, and religion were not protected until 1996, when legislation was finally enacted in these fields. Those in need of such protection were amongst other those migrant workers, who were invited by Danish companies due to lack of Danish manpower in the 1960's. In connection to the Oil crises and the collapsing economy in many Western countries in the 1970's, however, unemployment became a major affecting amongst other the newly arrived migrant workers from countries like Turkey, Yugoslavia and Pakistan. At that time the great majority of the Danish population were members of the Evangelical-Lutheran Church, however minority religions existed.

With new groups of migrant workers and in the 1980's groups of refugees from the South America, Middle East, and Africa etc. this picture changed. Registration of a person's ethnicity, religion or belief has been prohibited since World War II, so it is difficult to provide figures on the numbers of members of each of the minority communities. It is however, estimated that the second largest religious group is Muslims, with about 150,000 members out of a total of about 5 million people living in Denmark today. The number of foreign nationals (migrants/refugees etc.) living in Denmark on a permanent basis is about 5 percent of the total population. Next to the group of foreign nationals another group of Danish citizens have a foreign background, while having been borne in another country, or having been born in Denmark by parents borne in other countries than Denmark. This group is referred to as descendents. Foreign citizens and their descendents may often be referred to as ethnic minority groups, while e.g. the group of German speaking Danish citizens is formally recognized as a National minority group.

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

Generally, the Danish Government is of another opinion in relation to the legal assessment of international obligations derived from non-legally binding documents than NGO's and international monitoring bodies.



As an example the Danish Government very often submit detailed appendixes to international reports and recommendations where it argues on a different interpretation.

It is the official policy of Denmark to respect international obligations. The field of integration and immigration has been high on the public agenda for a decade and has been decisive for the last parliamentary elections. Generally, there is public support for a strict immigration, asylum and integration policy. Hence, in the public debate and among some political parties international and domestic criticism is perceived to be somewhat flawed by a specific political approach or agenda. The criticism is generally seen as misunderstood or misplaced and therefore rejected if it is not drafted in binding legal documents or supported by legal analysis. Especially there has been a focus on immigrants from third countries to explicitly sign up to democratic values (e.g. gender equality and separation of religion and politics) and active participation on the labour market. The cartoons of the prophet Muhammad printed in a Danish newspaper in 2005 as well as a recent discussion on the use of headscarves and other religious symbols in the work place (especially the courts and the police) illustrate that the political and public focus and the scepticism is more directed towards the issue of respect for religious feelings and -symbols and religious tolerance rather than it is the question of race or ethnicity.

## 2. Main legislation

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 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 on the grounds of religion, to specific acts covering the areas outside and inside the labour market. The prohibition against anti-discrimination is covered by both civil and criminal legislation.

The Danish Constitution provides that no Danish subject shall in any manner whatsoever be deprived of his liberty because of his political or religious convictions or because of his descent. In addition 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. Furthermore the Constitution provides that no one shall be liable to make personal contributions to any denomination other than the one to which he adheres. Finally the Constitution provides that 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 Criminal Code prohibits the dissemination of statements or other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual orientation. In addition it shall be considered an aggravating circumstance if the conduct is characterized as propaganda. Also in the Criminal Code stipulate that generally, in sentencing, it must be considered an aggravating circumstance if an offence is based on the ethnic origin, religion or sexual orientation, of other individuals.



In addition to the Criminal Code, the Act on Prohibition against Discrimination on the basis of Race, etc. renders it a criminal offence to refuse, in connection with commercial or non-profit business, to serve or admit a person on the basis of race, colour, national or ethnic origin, religious belief or sexual orientation.

In May 2003 the Act on Equal Ethnic Treatment was adopted. It aims to ensure protection against racial discrimination and to implement in Danish law the non-employment aspects of the EU Racial Equality Directive. The Act on Equal Ethnic Treatment includes a prohibition against discrimination on the grounds of racial and ethnic origin as regards access to social protection, including social security and health care, social benefits, education, access to and supply of goods and services, including housing, and membership of and access to services from organisations, whose members carry out a particular profession. The Act also includes a prohibition against harassment on the grounds of race and ethnic origin.

The Act on Prohibition of Differential Treatment in the Labour Market, etc (cf. Consolidated Act No 31 of 12 January 2005) prohibits direct and indirect discrimination because of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. The Act prohibits discrimination in connection with recruitment, dismissal, transfer and promotion as well as discrimination with regard to pay and working conditions and also provides protection against harassment. Similarly, employers are not allowed to discriminate employees as regards access to vocational education and training, continued training and retraining. The same prohibition applies to people providing guidance and training as well as people involved in work placement activities and people who are involved in the formulation of rules and decision making concerning the right to perform activities in professional trades and membership of workers' and employers' organisations.

In connection with the implementation of the EU anti-discrimination directives (2000/43/EC and 2000/78/EC) in Danish legislation two amendments of the Differential Treatment Act were introduced in 2004. Parts of the directives were implemented by means of Act No. 253 of 7 April 2004, which introduced protection against discrimination because of religious conviction as well as a shared burden of proof in cases about differential treatment. Furthermore DIHR was given access to make statements in cases about discrimination because of race or ethnic origin. After the adoption of Act No. 1417 of 22 December 2004 the Differential Treatment Act also provides protection against discrimination because of age and disability.

Thus, at the moment in Danish *civil law*, the grounds of age, sexual orientation, disability and religion and belief do not enjoy protection outside the labour market. The *criminal law* covers direct differential treatment on the grounds of race, colour, national or ethnic origin, religious belief or sexual orientation outside the labour market, but not indirect discrimination and not harassment and not victimisation. The grounds of *age* and *disability* does not enjoy protection outside the labour market.

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



### 3. Main principles and definitions

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.

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.

Harassment, instruction to discriminate and victimisation is prohibited according to Act on Prohibition of Differential Treatment in the Labour Market (see below)

The Act on differential treatment in the labour market (prohibiting discrimination on the grounds of race, skin colour, political opinion, religion of belief, sexual orientation or national, social or ethnic origin, age or disability) contains two exceptions to the prohibition against differential treatment. The Act does not apply to 1) employers whose establishments have the aim of promoting a certain political or religious ethos and 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 of 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. Regarding reasonable accommodations for people with disabilities the Act on prohibition against differential treatment in the labour market obliges the employer to adapt the workplace in order to accommodate the employment of persons with disabilities, unless this will place an disproportionate burden on the employer.

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. Discrimination based on association with an individual is covered by the Act on Ethnic Equal Treatment in the wording of the legislation. Discrimination based on association is not mentioned in the wording in the Act on prohibition against differential treatment in the labour market

As a relatively new area of interest no case law on multiple discrimination is known, however with the establishment of the new Complaints Board for Equal Treatment (see below), hopefully this area will be more in focus, since the expertise of all the grounds of discrimination are situated in one place.



#### 4. Material scope

On the labour market direct and indirect discrimination is prohibited on the grounds of race, colour of skin, religion or faith, political conviction, sexual orientation, age, disability and national, social or ethnic origin. In the civil law, outside the Labour Market, only discrimination against persons on the grounds of racial, ethnic origin is prohibited, however in the criminal law also race, colour, national or ethnic origin, religious belief or sexual orientation are covered grounds. Regarding employment, the Act on differential treatment in the labour market covers both public and private sectors.

#### 5. Enforcing the law

If the alleged case of discrimination is on a *criminal law* matter the victim should report it to the police. The police has better possibility of securing evidence and interview alleged perpetrators than the administrative discrimination bodies, since the police has the mandate to summon implicated persons for an interview.

If the case is on *civil law* matter the victim could choose to go:

- 1) Directly to the courts
- 2) The Parliamentary Ombudsman
- 3) To his or her Trade Union if it is case within the labour market
- 4) To the Complaints Committee for Ethnic Equal Treatment established by DIHR
- 5) Citizens Advice Service (issues of discrimination in the Municipality of Copenhagen only on the grounds of age, handicap, sex, race, sexual orientation, religion, political persuasion, nationality, social status or ethnic origin)
- 6) The Danish Press Council, The Radio and Television Board on Commercials, The Consumer Ombudsman

##### A. Non-governmental Organisations

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. One organisation working with non-discrimination issues is the Documentary and Advisory Centre on Racial Discrimination, Denmark (DACoRD) which is a non-governmental independent organisation which assist victims of discrimination and refer cases to the *The Complaints Committee for Ethnic Equal Treatment (see below)* and also assist victims in filing complaints to the UN CERD Committee. DACoRD was founded in 1993. The DACoRD documents racially motivated discrimination in Denmark, and provides free legal advice to victims of, or witnesses to, racial discrimination. The centre does not receive any state funding.



## B. Shared burden

The Act on Equal Ethnic Treatment (covering the grounds of race and ethnic origin outside the labour market) and the Act on Prohibition of Differential Treatment in the Labour Market (covering the grounds of race, colour, religion, political opinion, belief, sexual orientation, age, disability and national, social or ethnic origin) includes provisions on shared burden of proof, ensuring that the principle of equal treatment is applied effectively. The shared burden of proof implies that when there is a prima facie case of discrimination, the burden of proof in court cases shifts back to the respondent when evidence of such discrimination is established.

## C. Level of Sanctions and lack of complaints

There is a positive trend in some amendments in administrative and investigatory practice, and an expansion of the reporting procedures issued by the Director of Public Prosecutions in relation to dealing with reports on hate speech and anti-discrimination legislation within criminal law.

However, recent figures show a declining number of reported incidents especially on the ground of ethnic origin and race. The reason behind the drop is not clear, but one explanation may be the lack of confidence by the exposed group of people in an effective remedy. The level of sanctions remains low (normally a fine below 2000 €).

## D. Situation testing and statistical evidence are used in practice

Statistical evidence is used in some cases in the jurisprudence but will probably not be accepted as the only proof in a case of discrimination. No case law is known where situation testing has been used. Situation testing is not regulated in Danish legislation and is primarily used by journalists or NGO's to clarify whether their assumption is precise on the existence of discriminatory practice in a specific sector.

The enforcement of the Racial Equality Directive and the Employment Equality Directive's prohibition against discrimination will thus primarily be the task of the Danish Courts. In court situation testing and statistical data are used and admissible as evidence.

## 6. Equality bodies

### A. The Danish Institute for Human Rights

Institut for Menneskerettigheder [The Danish Institute for Human Rights (DIHR)] is the designated body since 2003 for the promotion of equal treatment and effective protection against discrimination on grounds of racial or ethnic origin as set out in Article 13 of the EU Council Directive 2000/43/EC on Equal Treatment Irrespective of Race and Ethnic Origin. 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 independent surveys concerning discrimination and to publish independent reports and make recommendations on discrimination.



The Institute has the mandate to deal with individual complaints on racial discrimination both within and outside the labour market. DIHR is also the accredited National Human Rights Institution (NHRI) of Denmark (A-status), thus considered to fulfil the UN Paris Principles in relation to e.g. independence.

As part of implementing the mandate, DIHR established the Complaints Committee for Ethnic Equal Treatment in 2003. The Committee assists victims of discrimination (ethnicity or race) by reviewing individual complaints and express its opinion as to whether the prohibition of discrimination and the prohibition of victimisation has been violated cf. Act no. 374 on Ethnic Equal Treatment of 28 May 2003 and Consolidated Act no. 31 on Prohibition of Differential Treatment in the Labour Market, etc of 12 January 2005. 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.

#### B. Proposal for an independent Complaints Board for Equal Treatment (Ligebehandlingsnævnet)

The 25 January 2008 the proposal for an independent Complaints Board for Equal Treatment was presented before Danish Parliament. DIHR find that the proposal for a 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 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 resources to contact the Complaints Board on an individual basis or may be unaware of the existence of such a body. The Complaints Board for Equal Treatment will be competent to review complaints on the grounds of discrimination because of gender, race, religion or faith, age, disability, national, social or ethnic origin, political observation or sexual observation. The new Complaints Board is modelled after the existing Gender Equality Board (Ligestillingsnævnet). One of the main changes is that victims of discrimination can be awarded compensation for non-pecuniary damages directly by the Complaints Board and that the Complaints Board will be entitled to take the case to the courts if the discriminating part is not willing to pay. Both the Gender Equality Board and the mandate of DIHR to handle individual complaints on discrimination based on race and ethnicity will as a result of the establishment of the new body be closed down. DIHR 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 racial and ethnic discrimination, conduct independent surveys concerning discrimination and publish independent reports and make recommendations on any issue relating to such discrimination.

The Danish government presented in Parliament in December 2007 a Bill on a new Ligebehandlingsnævn [Equality of Treatment Board]. The new body is planned to function starting 1 January 2009. The financial issues have not yet been finally decided.